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ASSIGNMENT: The tort of trespass to Chattel is made up of: Trespass to Chattels, Conversion and Detinue. Discuss the above and support with case law.

INTRODUCTION

The three torts to chattels, conversion and detinue protect the possessor of a chattel from wrongful interference. This area of law of torts has been rightly said for historical reasons, to be somewhat complex. Furthermore, because of the separate and unsystematic way in which the old forms of action were gradually extended to deal with novel situations, each tort overlaps with the other at several points and cannot be regarded as watertight compartments. Each tort must moreover, be considered separately.

**TRESPASS TO CHATTELS**

The word “chattel” means any article, goods or personal property other than land and immoveable property. A chattel is simply any moveable property. Examples of chattel include books, cars, furniture, animal, vessel, aircraft, sea craft and anything that is moveable and capable of being owned. However, it should be noted that examples of chattels are innumerable and cannot be exhausted.

This tort may be defined as a direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional or negligent. The purpose of the tort of trespass to chattel is to protect all chattels, goods and personal properties of a person who has title or possession against meddling, damage, destruction, diminution, conversion, detinue or any other interference by any person without legal justification. This tort protects the rights of ownership or possession of a chattel from all wrongful interferences. In the case of **Kirk v Gregory,** the movement of the deceased’s rings from one room to another in his house was held to be trespass to chattel and nominal damages was awarded against the defendant. Also in **Haydon v Smith,** it was held to be trespass for the defendant to cut and carry away the plaintiff’s trees without permission. In this tort, injury or wrong is done to the chattel while it is in the possession of the person claiming damages for the injury.

TRESPASS TO CHATTEL IS ACTIONABLE *PER SE*

Trespass to chattels may take various forms such as destroying, damaging or merely using goods or wrongfully moving them from one place to another. In the case of **Davies v Lagos City Council,** the defendant council had granted the plaintiff a hackney carriage license to operate a taxicab in Lagos. The plaintiff was well aware that the permit was for his exclusive use and was not transferable, but he still transferred to a third party who operated a taxicab on the strength of it. On discovering this, certain officials of the council, in the exercise of their power to revoke the permit, seized the plaintiff’s taxi and detained it at the L.C.C. pound. In an action for trespass brought by the plaintiff, Adefarasin J. held that the Council was entitled to revoke the plaintiff’s permit for non-compliance with the regulations governing the use of hackney carriage licences, but was not entitled to seize the vehicle or otherwise take possession of it. The Council was thus held liable for trespass.

Like other forms of trespass, trespass to chattel is actionable *per se*, which means that it requires no proof of actual damage. Hence, the mere wrongful moving or touching of a chattel without any physical harm being caused is actionable. In such situations, the plaintiff will be entitled to at least nominal damages if trespass is proven.

ELEMENTS OF TRESPASS TO CHATTEL

In order for the plaintiff to succeed in a claim of trespass to chattel, he/she must prove that it was:

* Intentional
* Negligent

As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort as it was originally. Thus, there is no liability for interference with goods which is merely accidental. For example, a contractor in the course of carrying out excavations on land in the possession of a third party, struck and damaged the plaintiff’s underground cable is not held liable in trespass as he did not know of the presence of the cable and no fault was attributed on his part. In the case of **National Coal Board v Evans & co,** the court held that in the absence of establishing negligence on the defendant contractors, there was no fault and no trespass by the defendants as the damage to the plaintiff’s electricity cable was an inevitable accident. Accidental trespass must be distinguished from trespass by mistake, for even if the interference with the chattel is intentional, it is not a defence that the defendant did not realize he was committing a trespass. For example, x uses y’s towel thinking it was his own. He is liable in trespass since his act in using the towel was intentional and the fact he did not realize he was committing trespass is immaterial. In the case of the cable, the defendant’s act was entirely unintentional.

Also, a person whose chattel is damaged on or near the highway by the defendant’s vehicle must prove that the harm was caused by the negligence of the defendant or of someone for whom the defendant is vicariously liable, thus it is not sufficient for him to assert merely that the defendant’s vehicle came in contact with or damaged his property.

Trespass to chattels protects possession rather than ownership. The plaintiff in an action for trespass to chattel must have had actual possession of it at the time of the interference by the defendant. This principle has consequences:

1. The owner of a chattel will be liable in trespass if he interferes with it at a time when it is in the lawful possession of another person, such as a bailee.
2. A person who acquires possession wrongfully can maintain an action in trespass against any person who interferes with the goods.
3. The owner of a chattel cannot maintain action in trespass if he did not have actual possession at the time interference occurred.

PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL

The purpose of the tort of trespass is to protect possession or the right to immediate possession. Therefore, anyone that has possession or right to immediate possession may sue any other person who meddles with the chattel. Persons who may sue for trespass provided they have possession at the material time of the interference include:

1. owners
2. bailees
3. custodians
4. caretakers
5. trustees
6. administrators of estates, etc.

DEFENCES OF TRESPASS TO CHATTEL

1. Expiration of time specified for legal action.
2. Consent: this is the most common defence to trespass. If the owner had given permission, consent may be claimed.
3. Public necessity: the defence may be used if you intentionally interfere with another person’s chattel to protect the public so far as it is reasonable. For example, taking another person’s gun to prevent someone else from shooting up a bank.
4. Private necessity: this defence is used when the purpose of using another person’s chattel is to protect your own interest.
5. Jus tertii: this is the title or rather the better right of a third party provided he has the authority of such third party, and so forth.

REMEDIES OF TRESPASS TO CHATTEL

1. Damages
2. Replacement of the chattel
3. Payment of the market price of the chattel
4. Repairing the damage

**CONVERSION**

In conversion, there is no destruction of the property or chattel, rather the property is held in their possession with the intent to own it. Conversion can be defined in layman terms as when you take another person’s property knowing it does not belong to you with the intent to keep it and make it yours.

Conversion may be defined as intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiff’s possession or right to possess such chattel. Conversion is any interference, possession or disposition of the property of another person, as if it is one’s own without legal justification. Conversion is any dealing which denies a person of the title, possession or use of his own chattel. According to Sir John Salmond, “conversion is an act of willful interference without lawful justification with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it”.

Conversion is similar to trespass as its purpose is also to protect possession rather than ownership of goods, however, conversion differs from trespass in that:

1. in conversion, the interference must be intentional, while trespass may be intentional or negligent.
2. in conversion, it is not necessary for the plaintiff to have had actual possession of the goods at the time of the interference as opposed to trespass.
3. it is not conversion to merely move a chattel from one place to another without any intent to take possession of it, but such act would amount to trespass.

EXAMPLES OF CONVERSION

1. Conversion by taking: It is conversion where the defendant takes the plaintiff’s chattel out of the plaintiff’s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily. However, the defendant may not be liable if he merely moves the goods without denying the plaintiff of title as seen in the case of **Fouldes v Willoughby** where the owner of two horses brought them aboard a ferry. In an argument, the ferryman told the horse owner to remove the horses but he refused so he personally removed the horses and led them ashore. The horse owner sued for conversion and judgement was held in his favor. But on appeal, it was held that the act could not amount to conversion as the ferryman did not intend to assert dominion or ownership over the horses.
2. Conversion by using: If the defendant uses the plaintiff’s chattel as if it were his own, his act is inconsistent with the rights of the plaintiff and he will be liable in conversion. For example, wearing another person’s jewellery as in the case of **Petre v Heneage**.
3. Conversion by destruction, consumption or alteration: Mere damage of a chattel is not sufficient to make one liable for conversion. Intentionally destroying or consuming the plaintiff’s chattel however, constitutes conversion. For example, smashing the plaintiff’s mirror.
4. Conversion by receiving: Involuntary receipt of goods does not constitute conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Where a buyer receives goods which the seller has no right to sell is liable in conversion to the true owner even though the buyer may have been unaware of the seller’s bad title.
5. Conversion by detention: Where the defendant is in possession of the plaintiff’s chattel without legal authority and refuses to surrender it to the plaintiff when asked, he commits conversion. In **Armory v Delamirie,** a chimney sweep boy had found a jewel and gave it to a jeweler for valuation. The jeweler then took the jewel and refused to return it to the boy. The boy sued for conversion and an order for the return of the jewellery. It was held that the jeweler was liable for conversion.
6. Conversion by wrongful transfer of title or possession: This occurs where the defendant denies the true owner title to the goods by delivering them to another party that has no title.

INNOCENT RECEIPT OR DELIVERY

Innocent receipt or delivery is not conversion as they are neither torts nor criminal offences. Thus, where an innocent holder of gods like a carrier or warehouseman receives goods in good faith from a person he believes to have lawful possession. And he delivers them to a third party in good faith, there would be no conversion. Although, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. In **Owena Bank Nig. Ltd v Nigerian Sweets & Confectionary Co Ltd,** the 1st respondent was granted an import license by the Federal ministry of Trade to import granulated sugar. However, he 2nd respondent opened a letter of credit and imported the sugar so the 1st respondent sued for damages for wrongful conversion of the import license. It was held that the defendants were liable for conversion of the import licence papers.

LOST PROPERTY RULE

The rules applicable here were settled by the English Court of appeal in **Parker v British Airways** where the plaintiff was waiting in the defendant airways lounge when he found a bracelet on the floor. He gave it to employees of the defendant and requested it be returned to him if it was unclaimed. It was not claimed but the defendants failed to return it to the finder and sold it. It was held that the proceeds of the sale belonged to the plaintiff who found it.The rules are as follows:

1. A finder of a chattel has no right over it until it has been abandoned or lost and he takes it into his care and control.
2. Any person who finds lost property in the course of his employment does so on behalf of his employer, who by law acquires the rights of a finder.
3. An occupier of land or a building has superior rights to those of a finder. For example, in the case of **Elwes v Briggs Gas Co.,** a prehistoric boat discovered six feet below the surface was held to belong to the land owner.
4. An occupier of land does not have superior rights to those of the finder in respect of goods found on or in the premises except before the finding, the occupier has manifested an intention to exercise control over the premises and things on it.

PERSONS ENTITLED TO SUE FOR CONVERSION

1. Bailees: where goods are entrusted to another so as to create a bailment, the bailee can sue third parties in conversion. If the bailment is at will then the bailor may also sue because he is deemed to have an immediate right to possession. In **Manders v Williams**
2. Lien and pledge: the holder of a lien has a right to possession of goods that are subject to the lien.
3. Finders: a person who finds a chattel acquires possession and hence can maintain an action against anyone that interferes with such possession except the true owner or maybe the owner of the land on which it is found, who have better title and right to possession than the finder.
4. Licensee: in the case of  **Northam v Bowden(1855),** the plaintiff had license to prospect certain land for tin, but the defendant without permission, carted away some of the soil on the land. The plaintiff was entitled to an action of conversion.

DEFENCES TO CONVERSION

1. Abandonment of property by the plaintiff.
2. Consent of the plaintiff.
3. Statutes of limitation.

REMEDIES FOR CONVERSION

1. Alternative order for payment of the current market value of the chattel.
2. Order for delivery, return or specific restitution of the goods.
3. Recovery of general or special damages. Special damage is recoverable by a plaintiff for any specific loss proved.

**DETINUE**

The tort of detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person is entitled. It is a claim for the specific return, delivery or surrender of a chattel to the plaintiff who is entitled to it. In order to successfully sue in detinue, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel. An action in detinue is a claim for the specific return of a chattel wrongfully retained or for payment of its current market value and any consequential damages. An example of detinue is when x lends his tables to y for a one day party and y neglects, refuses or fails to return the tables at the end of the day as agreed. A plaintiff can only maintain action for detinue on the condition that:

1. The plaintiff has title that is ownership or right to immediate possession of the chattel.
2. There must have been a demand by the plaintiff for the return of the chattel and a refusal or a failure to return them by the defendant.

In the case of **West Africa Examinations Council v Koroye,** the plaintiff sat for an exam conducted by the defendant council who neglected or refused to release his certificate. The plaintiff successfully claimed in detinue for his certificate and was awarded damages in lieu of the release of the certificate by the Supreme Court. Also see the case of **Davies v Lagos City Council (supra)**.

REMEDIES OF DETINUE

1. Replacement of the chattel: a defendant may be ordered to replace the chattel by supplying an identical or similar chattel.
2. Damages: general damages are usually presumed in this action, especially for the loss of the use of a chattel.
3. Abatement or self-help: a person may be entitled to enter the land of another or take other self-help measures upon giving due notice, to abate a nuisance which substantially interferes with the enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession.
4. Restitution: this is usually applied where damages are inadequate.
5. Market value of chattel: the measure of damage in detinue is usually the market value of the goods as proved at the time of judgement.

DEFENCES FOR DETINUE

1. Jus Tertii: it is a defence to show that the third party had a better right to possession of the chattel than the plaintiff.
2. Consent: there is no trespass if interference occurs with the plaintiff’s consent.
3. Subsisting bailment
4. Subsisting lien on the chattel
5. Innocent delivery

DIFFERENCE BETWEEN CONVERSION AND DETINUE

Detinue covers the same ground as conversion through detention; however, there are still differences between them, namely:

1. Refusal to surrender on demand is the essence of detinue, but its only one of the several forms of conversion.
2. In conversion, damages are generally assessed on the value of the goods at the date of conversion, while in detinue they are assessed on the value of the goods at the date of the trial.
3. The plaintiff can claim specific restitution of the gods in detinue, but he cannot do so in conversion.

CONCLUSION

In other respects, the same principles apply to detinue as apply to conversion by detention. Hence, in both torts, the defendant must have shown an intention to keep the chattel in defiance of the plaintiff and in neither tort is it sufficient merely to show that the defendant had the goods in his possession without withholding the goods from the plaintiff. It is important to note that an action in detinue or trespass to chattel may not apply if it is committed by a person in the course of performance of a public duty.

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