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**LPB 301: Law of Torts I**

Question: The tort of trespass to chattel is made of: Trespass to Chattels Conversion and Detinue. Discuss the above and support with case law.

**Answer**

Chattels include properties other than land and immovable properties. Basically chattels are movable personal properties. In torts law, trespass to property is of two (2) kinds: trespass to land and trespass to chattel. This work will fundamentally look into the tort of trespass to chattel (movable personal property); it will consider the elements constituting such trespass, its purpose, defences, remedies and what trespass to chattel consist of (conversion and detinue).

The tort of trespass to chattel is done when there’s any direct and unlawful interference with a chattel in the possession of another person. For example, driving another person’s car without permission, throwing something at a person’s property, taking away a person’s property, throwing away a person’s property, and so on can constitute trespass to chattel and is actionable.

This tort seeks to protect all chattel, goods and personal properties of a person who has title or possession to a property by prohibiting all interference without legal justification; such interference must be direct. It protects the right of a person to the control, possession or custody of a chattel against wrongful and unlawful direct interference with the chattel from another person. Thus, the mere wrongful/ unlawful touching of a person’s property without causing any harm to it may in appropriate circumstances be actionable. Basically, trespass to chattel is any wrong against a chattel, goods or property in the possession or control of another person. Thus, in order to maintain an action for trespass to chattel, the plaintiff must show that he had possession or is entitled to immediate possession of the chattel at the time of the trespass.

Trespass to chattel is *actionable per se*. This means that the plaintiff doesn’t need to prove actual damage to his property before he can be entitled to nominal damages. All that needs to be proven is the wrongful and not justified direct interference with a person’s property. In the case of *Erivo v Obi (1993) 9 NWLR pt. 316, p. 60 CA*, where the defendant closed the door of the plaintiff’s car and the side windscreen broke, the court of Appeal restated this position of law saying the defendant was not liable. That he (the defendant) didn’t break the windscreen intentionally or negligently and that it was inevitable accident which the exercise of reasonable care by the defendant could not avert. Therefore, for trespass to chattel to be actionable, it must have been done by the wrongdoer directly and intentional/ negligently without exercising reasonable care given in the situation presented. Although trespass to chattel is actionable per se, it however isn’t a strict liability tort. Thus, proving intention or negligence in trespass to chattel is very important. However, accidental or negligent trespass does not automatically give rise to liability *per se*. They may be pleaded to avoid liability.

In an action for trespass to chattel, a defendant may plead *jus tertii* (third party right). A defendant may have a defence to an action for trespass if he can show that the property rightfully belongs neither to the person in possession nor to the person claiming the property but to a third person. The principle of third party right was established in the case of *Doe d Carter v Barnard*. In the case of *C.O.P v Oguntayo (1993) 6 NWLR pt. 299, p. 259 SC*, **Ogwuegbu JSC** stated the law clearly that: *“a person cannot plead jus tertii of a third party, unless the person is defending on behalf of, or on the authority of the true owner.”* Other defences include: limitation of time as a result of the expiration of time specified for legal action, inevitable accident, subsisting bailment and lien, honest conversion and temporary retention; which enables steps to be taken to check the title of the claimant.

As earlier mentioned, the purpose for the tort of trespass to chattel is to protect the right of a person to control, possess or safe keep a chattel against wrongful and unlawful direct interference with the chattel from another person. Therefore, anyone who has possession or custody of a chattel may sue a person who meddles with the chattel. Such persons include: owners, caretakers, custodians, administrators of estates, trustees, lenders, bailees, holder of liens, finders, etc. The mentioned category of people has remedies available to them when their chattels have been meddled with. Such remedies include:

1. Payment of damages
2. Repair of the damage
3. Replacement of the chattel
4. Payment of the market price of the chattel

In Nigeria, apart from *trespass to* *chattel per se*, there are two (2) other torts under trespass to chattel. They are **conversion** and **detinue**.

**CONVERSION:**

According to ***Sir John Salmond***, “a conversion is an act… of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that the other is deprived of the use and possession of It.” Conversion refers to any inconsistent dealing with a chattel to which another person is entitled to immediate possession whereby the person is denied use, possession or title to it. Thus, the owner of a property can sue for conversion; likewise, a person who has custody or temporary ownership can sue a third a party for conversion. Examples of conversion include: alteration (changing the form of person’s property), consumption (using a person’s property as if it is one’s own), damaging, wrongful disposition, taking (taking a person’s property from their possession without lawful justification), detention, etc. In the case of *North Central Wagon & Finance Co. Ltd v Graham (1950) 1 All ER 780*, the defendant, a hire purchaser sold a car in contravention of the terms of the hire purchase agreement. The court held that the plaintiff, a finance company was entitled to terminate the hire purchase agreement and sue the selling hire purchaser in the tort of conversion for recovery of the car. Conversion involves dealing with a chattel in a manner inconsistent with another person’s right to the property thereby depriving him of possession and use of the property. To be liable, the defendant needs not to have intended to question or deny the right of the plaintiff. It is enough that his conduct is inconsistent with the right of the plaintiff to the use, possession and title to the property. Conversion is an injury to the plaintiff’s possessory rights in the chattel converted.

1. INNOCENT RECIEPT OR DELIVERY IS NOT CONVERSION: where an innocent holder of goods receives goods in good faith from a person he believes to have lawful possession of them, and he delivers them on a person’s instructions to a third party in good faith, there would be no conversion. Likewise, innocent receipt of goods is not conversion. In the event of such receipt, the receiver must not wilfully damage the goods unless the goods constitute nuisance.
2. LOST PROPERTY RULE: the English Court of Appeal in the case of *Parker v British Airways (1982) 1 All ER 834 CA* laid the rules of law applicable to finding a lost property. The rules may be summarised as follows:
3. A finder of a chattel acquires no right over it unless it has been abandoned or lost and he takes it into his own care and control.
4. Any servant or agent who finds a lost property in the course of his employment does soon behalf of his employer, who by law acquire the right of finders.
5. An occupier of a land or a building has superior rights to those of a finder over the property or goods in or attached to the land or building.
6. An occupier of premises does not have superior rights to those of a 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.

In the case of *Bridges v Hawkesworth (1851) 21 LJ QB 75*, the plaintiff finder of a packet of bank notes lying on the floor in the public part of a shop was held entitled to the money instead of the shop owner, upon failure of the rightful owner to come forward to claim the money.

In addition, a finder has a duty to trace the true owner. Anybody who has a finder’s right over a lost property has an obligation in law to take reasonable steps to trace the true owner of the lost property before he may lawfully exercise the rights of an owner over the property he found. Just like the tort of trespass to chattel, conversion is mainly interference with possession; and so, the same category of people that can sue for trespass to chattel can sue for conversion and the same defences are available to defendants. Remedies for conversion include:

1. Recovery of special and general damages.
2. Order of delivery, return or specific restitution.
3. Order of payment of consequential damages
4. Alternative order of payment of the current market price.

**DETINUE:**

The tort of detinue is the wrongful detention of the chattel of another person and immediate possession of that which the person is entitled. Detinue is a claim for specific return, delivery or surrender of a chattel to the plaintiff who is entitled to it. In order for a plaintiff to maintain the action of detinue, he must have title/ownership or right to immediate possession of the chattel and the defendant who is in actual possession of the chattel must have failed and refused to deliver the chattel to the plaintiff after the plaintiff has made proper demand for the retun/delivery of the chattel without lawful excuse. In the case of *Kosile v Folarin (1989) 3 NWLR pt. 107, p. 1 SC*, the Supreme Court emphasised the requirement that in an action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel. Also, where there’s a subsisting lien on a property, a claim for detinue will not succeed. This was held in *Shuwa v Chad Basin Development Authority (19991) 7 MWLR pt. 205, p. 550 CA*, where a third party sold a bulldozer which they had no authority to sell to the plaintiff. The bulldozer was in custody of the defendant who had a lien on it. The defendant refused to release to the plaintiff unless the third party seller paid the money due on it to the defendant authority. The third party who was the owner of the bulldozer had forfeited it to the authority under the terms of an unfulfilled contract. The court held that the action of the plaintiff appellant must fail as the third party had no authority to sell to the plaintiff as they no longer had title. Thus, a plaintiff in a claim for detinue must establish that he is the owner or has right to immediate possession of the thing of which he seeks recovery.

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

1. Detinue seeks recovery of a piece of property that has been wrongfully held or retained. While conversion seeks compensation on an injury to the plaintiff’s possessory rights in the chattel converted.
2. Under detinue, the defendant received the property legally and the plaintiff never had the property in the first place. While under conversion, the defendant received the property wrongfully and unlawfully.
3. The essence of detinue is refusal to surrender or return a chattel on demand. While under conversion, the essence is that the defendant’s action/conduct is inconsistent with the right of the plaintiff in respect to his possession, custody or use of the property.
4. Detinue is the proper remedy where the plaintiff wants a return a return/ delivery of the specific goods in question and not merely an assessed market value as in conversion.

Reference:

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