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**TRESPASS TO CHATTELS, CONVERSION AND DETINUE**

**TRESPASS TO CHATTELS**

A chattel is any property other than land and immoveable property. A chattel is any moveable property. Te word chattel means any article, goods, or personal property, other than land or immoveable property. **Examples of chattels are;** books, car, furniture, animal, vessel, aircraft and anything whatsoever which is moveable and capable of being owned.

This tort is defined as a direct and wrongful interference with a chattel in the possession of a plaintiff , such interference being either intentional (the normal case ) or negligent. The interest of the plaintiff which the torts protects are:

1. His interests in retaining possession of the chattel
2. His interests in the physical condition of the chattel
3. His interest in protecting the chattel against intermeddling

Such acts consists of : destroying, damaging or merely using goods, or wrongfully moving them from one place to another.

**Examples of trespass to chattel:**

* Taking a chattel away
* Throwing another person’s property away
* Mere moving of goods of one place to another

**Davis v lagos city council**, here the defendant council had granted the plaintiff hackney carriage license to operate a taxi cab in the Lagos area. The plaintiff was well aware that the permit was for his exclusive use and was not transferable, but he nonetheless caused it to be transferred to a third party, who operated a taxi cab on the strength of it. On learning of this, certain officials of the council, in the purported 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 held 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 license, but it was not entitiled to seize the vehicle or otherwise take possession of it. The council was thereby liable to trespass.

**Leame v bray**, this was an accident between two horse drawn carriages. The defendant negligently drove his carriage and collided with the carriage of the plaintiff. The court held that the accident was a trespass to chattel and the defendant was liable in damages to the plaintiff for the damage done to the coach of the plaintiff.

**Trespass to chattel is actionable per say,** this means an action for trespass to chattel can be brought without proof or actual damage. Thus mere wrongful moving or touching without harm being caused is actionable.

**Kirk v Gregory**, the movement of a deceased person’s ring from one room in his house was held to be a trespass to chattel and nominal damages was awarded against the defendant.

**ELEMENTS TO TRESPASS TO CHATTEL**

To succeed in an action for trespass to chattel he must establish the trespass was:

**Intentional and negligent**

As a general rule, proving **intention or negligent** is very important as trespass to chattel is not a strict liability tort.

**PERSONS WHO MAY SUE UNDER THIS TORT**

Anyone who has possession or caretakership of a chattel may sue any other person who meddles with the chattel. In other words anyone one who has immediate possession or right to immediate possession can sue. Accordingly some persons who do not have legal right are deemed by law to have possession, so that they will be able to protect the chattels left under their care. For example, a person giving another person custody of his own goods. These goods could be anything owned by the first party. Therefore those who may sue for trespass to chattel, provided that they have possession at the material time of the interference include:

**Owners**

**Bailees**

**Lenders**

**Assignees**

**Trustees**

**Finders and so forth.**

**National coal board v Evans and co.**

The defendant contractors were employed by a county council to wwork on land owned by the defendant council. A trench had to be dug, which the defendant employed a sub-contractor to do. An electric cable passed under the land, but neither the council, nor Evans and co. who were head contractors, nor sub contractors knew this, and the cable was not marked in any available map. During excavation, a mechanical digger damaged the cable and water seeped into it causing an explosion and thereby cutting off electricity supply to the plaintiff’s coal mine. The plaintiff sued claiming damages for trespass to the electricity cable. The court held that in the absence of establishing negligence on the part of the defendant contractors, there was no fault and no trespass by the defendant. The damage was an inevitable accident.

**REMEDIES**

The remedies in trespass to chattel are

**Payment of damages**

**Replacement of chattel**

**Payment of the market price of the chattel**

**Repair of the damage**

**DEFENCES**

**Inevitable accident**

**Jus tertii, that is the title, or better right of a third party, provided that he has the authority of such third party.**

**Subsisting bailment**

**Subsisting lien**

**Limitation of time, as a result of time specified for legal action**

**Honest conversion or acting honestly and so forth**

**CONVERSION**

According to SIR JOHNSALMOND, in his book the LAW OF TORT:

A 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 can be defined as an intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiff’s possession or right to possession of such chattel. It is dealing with the chattel which belongs to another person in a manner that is inconsistent with the rights of the person, in other words it is the intentional interference with another person’s chattel which unlawfully deprives the person of title, possession, or use of it. Conversion includes: **wrongful taking, wrongful detention, or wrongful disposition of another person’s property.** Therefore conversion includes denying a person of title or possession or use of his chattel. It is not necessary to prove that the defendant had the intention to deal with the goods. It is enough to prove that the defendant interfered with the goods.

Summarily conversion is

**Any inconsistent dealing with a chattel**

**To which another person is entitled to immediate possession**

**Whereby the person is denied the use, possession or title to it.**

**ACTS OF CONVERSION**

**CONVERSION BY TAKING :** When the defendant takes a plaintiff’s chattel out of the plaintiff’s possession without lawful justification with the intent of exercising dominion over them permanently or temporarily. **Tormekpey v Ahiable**, the defendant had sold and delivered a lorry to the plaintiff under credit sale agreement, the effect of which was that property in the lorry passed to the plaintiff on delivery, with no right of seizure reserved to the defendant upon any contingency. Several months later, the defendant wrongfully seized the lorry and refused to hand it back to the plaintiff. The court of appeal of Ghana held the defendant liable in conversion.

**CONVERSION BY USING:** using a plaintiff’s chattel as if it is one’s own, such as, by wearing the plaintiff’s jewellery, as in the case of **petre v heneaege,** or using the plaintiff’s bottle to store wine as was the cause in **penfolds wine ltd v Elliot.** If a man takes my car, drives it, and then redeliver it to me it can be held as CONVERSION, where the defendant finds the plaintiff’s chattel, he does not commit conversion merely by keeping it in his possession, but he will be liable if he uses it.

**CONVERSION BY DESTRUCTION, CONSUMPTION AND ALTERATION:** intentionally destroying or consuming a plaintiff’s chattel constitutes conversion. Where the defendant smashes the plaintiff’s window or drinks his wine. Merely to damage another’s chattel is not conversion but trespass. It is also conversion n to alter the identity of a chattel.

**CONVERSION BY DETENTION, CONVERSION BY RECEIVING etc.**

**ELEMENT**

**Intentional conduct:** A defendant will be liable in conversion only where his conduct in relation to the plaintiff’s goods was intentional. To amount in conversion, the intent of the defendant must be to deal with the plaintiff’s goods by exercising dominion over them on his own behalf or someone else other than the plaintiff.

**THOSE ALLOWED TO SUE NDER THIS TORT**

**OWNERS:** An owner in possession, or who has right to immediate possession may sue another person for conversion

**BAILEES:** A bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him. However a bailor, at will has title to immediate possession of a chattel he has deposited with a bailee and can maintain action against a bailee for conversion.

**IN THE CASE OF WINKFIELD:**

The winkfield ship ran into another ship ran into another ship, a mailship which sank. The post-master general though not the owner of the mails in the ship that sank was entitled to sue the owners of the Winkfield, as a bailee in possession for the value of the mails that were lost in the sunk ship. COLLINS MR in the English court of appeal held: that the owner of the Winkfield was liable and that ‘*as within a bailee and a stranger possession gives title’*

Other persons who may have right to immediate possession and therefore, may be able to sue another person for conversion of a chattel include;

**HOLDERRS OF LIEN AND PLEDGE**

**FINDERS**

**BUYERS**

**ASSIGNEES etc.**

**REMEDIES**

* Order for delivery, return or specific restitution of the goods or
* Alternative order for payment for the current market value of the chattel
* An order of payment for any consequential damages
* Recovery of special and general damages, special damages are recoverable by a plaintiff for any specific loss proved.
* General damages

**DEFENCES**

* Jus tertti, that is the title or better right of a third party
* Subsisting bailment
* Subsisting lien
* Temporary retention, to enable steps tom be taken to check the title of the claimant. A defendant may be temporarily, refuse to give up goods, while steps are taken to verify the title of the plaintiff who is claiming title before the chattel is handed over to the plaintiff if he is found to be the owner, or has right to immediate possession.

**DETINUE**

This is the wrongful detention of a chattel of another person, the immediate possession of which the person is entitled. Detinue is a claim for specific the specific return, delivery or surrender of a chattel to the plaintiff who is entitled to it.

Simply put the tort of Detinue is

* The wrongful detention of the chattel of somebody
* The immediate possession of which the person is entitled

An action for detinue is a claim brought for the specific return of a chattel wrongfully retained or for payment of its current market value and any consequential damages. Anyone who wrongfully takes or detains, or retains a chattel, and after proper demand for it, refuses, or fails to return it to the claimant without lawful excuse may be sued in detinue or detention.

Examples of this tort are at legion;

Rodger for instance lends his laptop to Daniel for a week. After expiration of the week, Daniel fails to return it. This can be seen as detinue.

**ELEMENTS**

The plaintiff must have ownership, that is, title or right to immediate possession of the chattel

The defendant who is in actual possession of the chattel must have failed, and or refused to deliver the chattel to the plaintiff after the plaintiff has made proper demand for the return of the chattel, without lawful excuse. Thus there must have been a demand made by the plaintiff to return the chattel and a refusal to return the chattel.

**KOSILE V FOLARIN**

The defendant seized the plaintiff’s bike on the ground that the plaintiff had not completed the payment for the vehicle. The plaintiff sued in detinue. It was held that the defendant’s seizing of the bike was wrong and that he was liable for detinue.

**WEST AFRICAN EXAMINATION COUNCIL V KOROYE**

The plaintiff took an exam conducted by the examination council. The defendant neglected or refused to release his certificate. The plaintiff successfully claimed in detinue for his certificate and was awarded damages.

**REMEDIES**

**Claim for return of chattel**: this is a claim for return of specific chattel, especially if the chattel has not changed character, content, and has not been damaged during detention.

**Replacement of chattel:**

Where possible or appropriate, a defendant may be ordered to replace the chattel by supplying an identical one.

**Claim for the market value:**

This is a claim for the current market value of the chattel as may be assessed. The measure of damage in detinue is usually the market value of the goods as proved at the time of judgment. The onus is on the plaintiff to prove the market value.

**Damages:** when a defendant has been found liable in detinue, he cannot deprive the plaintiff of his right to damages for detention of the chattel, simply because he has not been using it, nor earning anything from its use.

**DEFENCES**

* he has mere possession of the goods
* That the plaintiff has insufficient title as compared to himself
* The defendant may plead jus tertii that is, that a third party has a better title.
* Innocent delivery
* Inevitable accident etc.

**DIFFERENCE BETWEEN CONVERSION AND DETINUE**

Detinue covers the same ground as the tort of conversion by detinue. However, some differences are;

* The refusal to surrender or return a chattel on demand is the essence of detinue, or detention. There must have been a demand for return of chattel.
* Detinue is the proper remedy where the plaintiff wants a return of a specific good in question not merely an assessed market value. However where specific return of a chattel or replacement will not be possible, an award of the current market value of the chattel is usually made to the plaintiff

**INNOCENT DELIVERY OR RECIEPT**

Innocent delivery or receipt is not a torts, nor criminal offences. Thus innocent delivery is not conversion. Therefore where an innocent holder of goods, such as a carrier, or warehouseman, receives goods in good faith from a person he believes to have lawful possession of them, and he delivers them, on the person’s instruction to a third party in good faith, there will be no conversion. Similarly, innocent receipt of goods is not conversion. However the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance.

**Unipetrol v prima Tankers ltd**

The defendant oil tanker owners had a contract to carry unipetrol’s cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of cargo. The court of Appeal held: that the respondents were liable in conversion.

**LOST PROPERRTY RULE**

The rule of law applicable to finding a lost property was authoritatively by the English court of appeal in the case of **Parker v British Airways.** However the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows

* A finder of a chattel has no right over it, unless it has been abandoned, or lost, and he takes it into his care and control. He acquires a right to keep it against all persons, except the true owner; or a person who can assert a prior right to keep the chattel, which was subsisting at the time when the finder took the chattel into his care and control.
* Any servant, or agent who finds a lost property in the course his employment, does so on behalf of his employer, who by law acquires the rights of a finder
* An occupier of land or a building has superior rights to those of a finder, over property or over goods in, or attached o the land, or building. Based on this rule, rings found in the mud of a pool in the case of **South Staffordshire water co. v Sharman,** and a pre historic boat discovered six feet below the surface were held as belonging to the land owner in the case of **Elwes v Briggs Gas Co.**
* However, 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.

A finder has the duty to trace the true owner. As a general rule of law, 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 the rights of an owner over the property he found.

Reference;

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