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COURSE: LAW OF TORT

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QUESTION:

The tort of trespass to Chattel in is made of: Trespass to Chattels Conversion and Detinue Discuss the above and support with case law. Students may consider the following: define and explain each tort State the elements of Trespass to Chattel, conversion and detinue Explain the concepts of innocent delivery or receipt, lost property rule and give examples of conversion Give examples of persons qualified to sue for Trespass to Chattel Discuss the remedies and defense to Trespass to Chattel, conversion and detinue Differences between conversion and Detinue Suppo References Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

TRESPASS TO CHATTEL

Trespass to chattel is any direct and unlawful interference with a chattel in the possession chattel of another person. It is the intentional or negligent interference with the possession of the chattel of another person. Trespass to chattel can also be seen as a tort whereby the infringing party has intentionally or, negligently interfered with another person's lawful possession of a chattel. The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattel whether by taking it, destroying it, or barring the owner's access to it. The mere touching of a chattel without causing any harm to it may in appropriate circumstances be actionable and entitled the plaintiff to get nominal damages. Trespass to chattels is designed to protect possession, that is the right of immediate possession of a chattel, as distinct from ownership. It

protects the right of a person to the control, possession, retention or custody of a chattel against interference by another person without lawful justification. In other words, it prohibits a person from any unlawful interference with a chattel that is under the control, possession or custody of another person.

**ELEMENTS OF TRESPASS TO CHATTEL:** To be successful, a plaintiff must establish that the act of trespass was: 1. Intentional<sup>1</sup> or 2. Negligent<sup>2</sup>. As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort. However, accident, intentional or negligent trespass do not automatically give rise to liability per se, as an appropriate defense, may be pleaded to avoid liability.

#### **EXAMPLES OF PERSON THAT MAY SUE FOR TRESPASS TO CHATTEL**

In the law of tort, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference consist of the;

- I. Owner
- II. Bailee
- III. Lenders
- IV. Finders
- V. Assignees
- VI. Trustees
- VII. Custodians
- VIII. Caretakers
- IX. Executors
- X. Administration of estates and so forth.

In tort law, any person who has possession or takes care of a chattel may sue any other person who meddles with the chattel. In other words, anyone who has possession or right to immediate possession of a chattel can sue. In the same train, some persons who do not have legal right are deemed by law to have possession, so that they will be able to protect chattels left under their care,

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<sup>1</sup> Gaylor & Pope v Davies & Sons (1924) 2 KB 75.

<sup>2</sup> National Coal Board v Evans & Co. (1951) 2 KB 861

for instance an employee to whom an employer has given custody of goods, a repairer, caretaker, personal representatives of a deceased and so forth.

## DEFENCES FOR TRESPASS TO CHATTEL

In an action for trespass to chattel, the defenses a defendant may plead include:

- I. Inevitable accident
- II. Subsisting bailment
- III. Limitation of time, as a result of the expiration of time specified for legal action.
- IV. Honest conversion, or acting honestly.
- V. Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third party.
- VI. Subsisting lien

## REMEDIES FOR TRESSPASS TO CHATTEL

The following remedies listed below are those available to a person whose chattel has been meddled with;

- I. Payment of damages
- II. Repair of the damages
- III. Replacement of the chattel
- IV. Payment of the market price of the chattel

## CONVERSION

Conversion is an intentional tort consisting of "taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession." **CONVERSION** A conversion is an act of willful interference, into the affairs of the chattel of another 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."<sup>3</sup> Conversion is any dealing which denies a person of the title,

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<sup>3</sup> Saimond, 21st ed. 1996, p. 97-98. Ihenacho v Uzochukwu (1997) 2 NWLR pt 487, p. 257 SC.

possession, or use of his chattel. It is the assertion of a right that is inconsistent with the rights of the person who has title, possession or right to use the chattel.

It is dealing with a chattel which belongs to another person in a manner that is inconsistent with the rights of the person. In other words, conversion is any 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, and or wrongful disposition of the property of another person. Therefore, conversion includes denying a person of the title or possession, or use of his chattel. It is not necessary to prove that the defendant had intention.

THE ELEMENTS OF CONVERSION; 1. Any inconsistent dealing with a chattel to which another person is entitled to immediate possession 3. Whereby the person is denied the use 4. Possession; or 5. Title to it.

#### EXAMPLES OF CONVERSION

1. Taking: Where a defendant takes a 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, there is conversion. This example was established in the cases of *Fouldes v Willoughby*<sup>4</sup> and *Davies v Lagos City Council*<sup>5</sup> but on the other hand, the defendant may not be liable if he merely moves the goods without denying the plaintiff of title.
2. Using: this is the act of using a plaintiff's chattels as if it is one's own, such as, by wearing the plaintiff's jewelry, as in the case of *Petre v Heneage*<sup>6</sup>, or using the plaintiff's bottle to store wine as was seen in the case of *Penfolds Wine ltd v. Elliot*<sup>7</sup> is a conversion of such chattel.
3. Receiving: Involuntary receipt of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Receiving a chattel from a third party who is not the owner is a conversion. This is wrongful, for it is

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<sup>4</sup> (1841) 151 ER 1153

<sup>5</sup> (1973) 10 CCHCJ 151

<sup>6</sup> (1701) 88 ER 149.

<sup>7</sup> (1946) 74 CLR 204 at 214-5.

an act of assisting the other person in the conversion of the chattel, or the receiving of stolen goods.

4. Wrongfully delivery: Wrongfully delivery of a person's chattel to another person who does not have title or right to possession without legal justification is a conversion.

Some other examples of conversion are by alteration, consumption, destruction, by detention, by purchase, or by wrongful disposition.

#### DEFENCES FOR CONVERSION OF A CHATTEL

- I. Subsisting bailment
- II. Subsisting lien
- III. Jus tertii, that is the title or better right to of a party
- IV. Limitation of time
- V. Temporary retention to enable steps to be taken to check the title of the claimant.

#### REMEDIES FOR CONVERSION

- I. Order for delivery, return or specific restitution of the goods; or
- II. Alternative order for payment of the current market value of the chattel
- III. An order for payment of any consequential damages
- IV. Recovery of general and special damages
- V. General damages: here a plaintiff whose tools are converted by another, the plaintiff can sue for the loss of profit or existing contract or wages for the period of the conversion of the tools.

#### DETINUE

The tort of detinue occurs when a person wrongfully detains a person's property and unreasonably refuses to return that property to the rightful owner. Detinue can also be seen as the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. Detinue is similar to the Tort of Conversion except for a specific element it is a condition of the action of detinue that the plaintiff has made demand for the return of goods, and

the demand has been refused. The plaintiff must also have a right to immediate possession of the chattels. It is a universal rule that to successfully sue in detinue, a plaintiff must have had possession before the detention, or have right to immediate possession of the chattel.

#### ELEMENTS OF DETINUE

1. The wrongful detention of the chattel of another person
2. The immediate possession of which the person is entitled.

#### THE DEFENCES FOR DETINUE

A defendant may plead the following;

- I. He has mere possession of the goods
- II. That the plaintiff has insufficient title as compared to himself
- III. Jus tertii; which means that a third party has a better title, provided the defendant is the agent or has the authority of the third party
- IV. Innocent delivery
- V. Inevitable accident
- VI. Subsisting lien on the chattel

#### THE REMEDIES FOR DETINUE

- I. Claim for return of the specific chattel
- II. Claim for return of the chattel
- III. Claim for the current market value of the chattel
- IV. Recapture or self-help to recover the goods
- V. Damages

#### DIFFERENCES BETWEEN CONVERSION AND DETINUE

1. The refusal to surrender or return a chattel on demand is the essence of detinue, or detention. There must have been a demand for the return of the chattel
2. Detinue is the proper remedy where the plaintiff wants a return of the specific goods in question, and not merely an assessed market value. However, where specific return of the

chattel or a replacement will not be possible, an award of the current market value of the chattel is usually made to the plaintiff.

3. Detinue is similar to the Tort of Conversion except for a specific element it is a condition of the action of detinue that the plaintiff has made demand for the return of goods, and the demand has been refused. The plaintiff must also have a right to immediate possession of the chattels.

## INNOCENT RECEIPT OR DELIVERY

Generally, innocent delivery, or innocent receipt are not 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 instructions to a third party in good faith, there would 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.

## LOST PROPERTY RULE

The rules regarding finding a lost property were settled in the case of *Parker v British Airways*<sup>8</sup>. The rules are not always easy to apply; the rules are as follows;

1. A finder of a chattel has no rights over it unless it has been abandoned, or lost and he takes it into his care and control. He has the right to keep it from everyone except the true owner or a person who can prove he had the previous right to keep the chattel which was subsisting at the time when the finder took the chattel into his care and control.
2. Any servant who finds a lost property in the course of his employment, does so on behalf of his employer, who by law has the rights of a finder.
3. An occupier of land, or a building has superior rights to those of a finder, over property or in goods in, or attached to the land, or building. According to this rule, rings found in the mud of a pool in the case of *South Staffordshire water co. v Sharman*<sup>9</sup> and a prehistoric

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<sup>8</sup> (1982) 1 All ER 834 CA

<sup>9</sup> (1896) 2 QB 44

boat discovered six feet below the surface were held as belonging to the land owner in the case of *Elwes v Briggs Gas Co*<sup>10</sup>

## Conclusion

Summarily, as we have seen above the writer has extensively spoken about the tort of trespass to chattel and has shown that in Nigeria, the trespass to chattel is made up of three types of torts which is; trespass to chattels per se, without a conversion or a detinue of the chattel in question, a conversion and lastly, detinue.

## REFERENCES

### BIBLIOGRAPHY

1. Ese Malemi (2013) *Law of Tort* 2<sup>nd</sup> ed. Lagos, Nigeria; Princeton Publishing company

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<sup>10</sup> (1886) 33 Ch D 562