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REFERENCES

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Introduction

In the law of tort, the trespass to personal property is known as trespass to goods or trespass to chattel which is made up of three torts; trespass to chattel per se, conversion and detinue. Regardless of separation and further development of each tort, there have been areas of overlap and each tort cannot be considered watertight.

TRESPASS TO CHATTEL

Definition of a Chattel

According to Blacks law dictionary chattel can be defined as ‘an article of personal property; any species of property not amounting to a freehold or free land’. They are things in which law has deemed personal property, they can be split into real chattels and personal chattels.

The term ‘chattel’ is more comprehensive than ‘goods’ as it includes both animate and inanimate property examples include animals, aircraft, furniture, cars, anything which is moveable and capable of being owned.

Trespass to chattel may be defined as a direct and wrongful interference with a chattel in possession of the plaintiff, where such interference is either intentional or as a result of negligence. The aim of this tort is to protect the rights of ownership and possession from all external interference's. It protects all personal properties of a person who has title or possession against destruction, damage, decrement, conversion or detinue by any other person without lawful justification.

Feature of trespass to chattel

It is actionable per se: like other forms of trespass such as trespass to persons, trespass to chattel is actionable per se meaning that there is no need to prove actual damage.

In *Davies v. Lagos city council*¹, Adefarasin J., explaining the law on the ‘actionable per se’ nature of trespass to chattel held that;

‘...there may be a trespass without the infliction of any material damage by a mere taking or transportation.

He further stated in reference to the case in question;

‘In my view, the seizure of the plaintiffs vehicle without just cause... is a wrongful act, on account of which the defendants taking part in it are jointly and severally liable’.

Therefore direct interference is required but not damage.

¹ (1973) 10 CCHCJ 151 pg 154

This is a feature that passes across the three torts making up the tort of trespass to chattel. For the purpose of this assignment, trespass to chattel, conversion and detinue will be looked at separately notwithstanding their areas of overlap.

TRESPASS TO CHATTEL

This is defined as any direct interference with a personal property in the possession of another person without any lawful justification. It must be direct and wrongful, therefore the mere touching of a chattel without the owners consent may in certain instances be a trespass and entitle the owner to minimal damages.

The purpose of this tort is to protect and preserve ones possession. In order to bring action for trespass to chattel the plaintiff must show that he had possession at the time of the trespass or that he is entitled to possession of the chattel, therefore an individual who borrowed or hired such chattel can bring an action for its trespass due to the fact that he was in possession at the times the trespass occurred. This also applies to an individual who wrongfully acquired such chattel, he can bring an action for its trespass against anyone excluding the rightful owner. This was seen in the case of *Armory v. Delamirie*² where the plaintiff found a jewel and carried it to the defendants shop (who was a goldsmith) and asked him to value it, the defendant refused to return the jewel back to the boy and he brought an action. The court held that though the boy was not the true owner, his possession of the goods gave him a right to sue.

In this tort, injury or harm is done to the chattel whilst it is in the possession of the owner/person claiming damages.

Element of trespass to chattel

1. **The act must have been done Intentionally or Due to Negligence:** Formerly it was unnecessary to prove that the defendants act was committed negligently and intentionally but this law has been revised along with the rule established in *Fowler v. Lanning*³ where it was held that the burden falls on the plaintiff to prove that the defendants act was committed intentionally or negligently, this was a case on trespass to person but the rule has been adopted to cases regarding trespass to chattel. There is no liability for goods which have been interfered with

² (1722) 93 ER 664

³ (1959) 1 QB. 426

accidentally as seen in *National Coal Board v. J.E Evans and Co. Ltd*⁴ where a contractor(defendant) while excavating a site struck and damaged the plaintiffs(NCB) cable. It was held that the defendant could not be held liable for trespass due to the fact that he had no knowledge of the underground cable and the act was involuntary and accidental. The defendant's act was neither negligent nor intentional. Similarly in the case of *Erivo v. Obi*⁵ the defendant appellant closed the door of the plaintiff appellants car and the windscreen got broken, the plaintiff sued for damage to the windscreen and the loss he incurred in hiring another car to attend to his business. The defendant pleaded that the accident was inevitable, the Court of Appeal held that the defendant was not liable due to the fact that he did not break the windscreen intentionally or negligently and that he used the normal amount of force while closing the door. It was an inevitable accident and could not be averted even though reasonable care was exercised.

2. **The plaintiff/claimant must have been in possession:** As trespass is an interference with possession, it is required that the claimant is in possession of the chattel at the time of such trespass, if he is not in possession then he cannot sue for trespass to chattel. He may be able to sue for conversion but not trespass to chattel.

Persons qualified to sue for Trespass to Chattel

Basically anyone who has possession or is in care of a chattel has the right to bring an action for its interference. Provided they possess it at the time of the trespass, the following can sue for it:

- i. The rightful owners
- ii. Bailee- in a bailment agreement
- iii. Lenders
- iv. Trustees
- v. Caretakers
- vi. Custodians
- vii. Executors
- viii. Administrators of estates e.t.c.

⁴ (1951)2 KB. 861

⁵ (1993) 9 NWLR pt 316 p. 60 CA

Remedies for trespass to chattel

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

Defenses for Trespass to Chattel

The defenses a defendant may plead in an action for trespass to chattel include;

1. Inevitable accident
2. That he was acting honestly
3. Subsisting lien
4. Subsisting bailment

CONVERSION

Conversion is any interference, possession or disposition of the property of another person, as if it is ones own without legal justification. It means dealing with ones property as if it is ones own, it is a dealing that deprives a person of the title, possession and use of his chattel.

It involves dealing with a chattel that belongs to another person in a way that is inconsistent with the persons rights. It includes the wrongful taking, wrongful detention and disposition of the property.

It is immaterial that the defendant did not know that the goods belonged to another person.

In *North Central Wagon and Finance Co. Ltd v. Graham*⁶ where the defendant hire purchaser sold the car in breach of the rules of the hire purchase agreement, the Court held that he plaintiff finance company was entitled to sue the defendant for the tort of conversion.

Elements of Conversion

1. The owner owns or has the right to possess the personal property in question at the time of the interference.

⁶ (1950)1 All ER 740

2. Degree of Interference: Whether the interference with another persons chattel amounts to conversion is matter of degree. For an act to be considered conversion the defendant must have the intention to exercise dominion over the chattel or deny the owner his right. In the case of *Fouldes v. Willoughby*⁷ the owner of two horses brought them on a ferry, after an argument with the ferryman he was told to remove the horses but he refused. The ferryman then personally removed the horses and led them ashore, the horse owner sued for conversion. The Court of Appeal held that the act of moving the horses ashore was not conversion because the ferryman did not have the intention of exercising dominion over the horses.
3. That such interference deprives the plaintiff of possession or use of the chattel in question and that such interference caused damage to the plaintiff in which he will need to be reimbursed or paid in damages.

Innocent Receipt/ Delivery

This is also known as Involuntary receipt, and it does not constitute conversion. It is simply a case whereby an individual is in the possession of unsolicited goods.

In the case of *Howard v. Harris*⁸ where a playwright sent the manuscript to a producer who had never asked for it and who lost it, the producer was not held liable. The involuntary bailee must not willfully destroy or damage the chattel unless the goods constitute a nuisance.

It is elementary law that in a claim for conversion as a result of innocent receipt, the claimant is entitled to the return of the article or reimbursement for its value.

Lost Property Rule

The rules establishing the finding of a lost property was settled in *Parker v. British Airways*⁹ where the plaintiff was waiting in defendant's airport lounge when he found a bracelet on the floor and handed it to the airport authorities, along with his name and address with the request that it should be returned to him if it was unclaimed. It was not claimed by anybody and the defendant airport sold it. The Court of Appeal held that the proceeds of the sale belong to the plaintiff who found it. The rules formulated in the case are as follows;

⁷ (1841) 151 ER 1153

⁸ (1884) Cababe and Ellis 253

⁹ (1982) 1 All ER 834 CA

- a. The 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 will then acquire right to keep against all others except the real owner.
 - b. Any servant who acquires a lost property while carrying out his job, does so on the behalf of the employer and the employers acquires the right of the finder.
 - c. The owner of land or building has superior rights exceeding those of the finder over property or goods attached to the land or building. Based on this rule a prehistoric boat found six feet under surface were held as belonging to the owner of the land in *Elwes v. Briggs Gas*¹⁰.
 - d. The tenant of the premises will have right superior to the finder if before the finding, the tenant has made clear his intention to exercise things on the premises
- As a general rule, the finder is under the obligation to take reasonable steps to find the real owner before he can lawfully exercise the rights of the owner over the property.

Examples of Conversion

- i. Taking: Where the defendant takes the plaintiffs chattel out of the plaintiffs possession without lawful justification with the intent of exercising dominion over the goods, there is conversion. An example of conversion by taking is in the case of *Davies v. Lagos City Council*¹¹ where the defendant council was held liable in both trespass and conversion for the act of its officials in wrongfully seizing the plaintiffs taxi cab.
- ii. Using: The use of the plaintiffs chattel without his permission as if it is ones own also amount to conversion. This was the case in *Penfolds wine ltd v. Elliot*¹² where Mrs Elliot used Penfolds' empty wine bottles to carry another wine. This also includes consumption by eating or using it up.
- iii. Alteration: this is when the chattel is changed or its nature is altered, for example to turn a piece of fabric into trousers, to turn grapes into wine.
- iv. By Detention: This is the refusal to give or return the chattel back to the owner or the person in possession of it.
- v. Purchase: Under common law, conversion is also present when a person buys and takes delivery of goods from a seller who has no right to sell it.

¹⁰ (1886) 33 Ch D 562

¹¹ (1973)10 CCHCJ 151

¹² (1946)HCA 46

vi. Conversion also includes Destruction of the chattel.

Defenses for conversion of a chattel

1. Jus Terti: meaning that the title or better right of a third party
2. Limitation of time
3. Subsisting lien
4. Subsisting bailment

Remedies for Conversion

In a claim for the conversion of chattel, the court may award any of the following reliefs to the plaintiff;

DETINUE

This is the wrongful detention of the chattel of another person whereby the owner is denied possession or use of his own chattel. An action for detinue is a claim for the specific return of a chattel that has been wrongfully seized or detained or for the payment of its market value.

Elements of Detinue

The major element of detinue is that:

Refusal/ Failure to return to return the chattel to the owner: The defendant who is in possession of the chattel must have failed to return the chattel to the plaintiff after he has made a proper demand for the return of his property. Therefore this means that there must have been a request for his property and the defendants refusal to give it back.

In *West Africa Examinations Council v. Koroye*¹³ where the plaintiff sat for an examination conducted by the defendant council. The defendant refused or neglected to give the plaintiff his certificate. The plaintiff claimed an action for detinue and was awarded damages in lieu of the release of his certificate.

The Differences between Conversion and Detinue

¹³ (1977) 2 SC 45; 11 NSCC 61

There is a similarity between Detinue and Conversion by Detention, but the following differences should be noted;

- I. The defendant will not be held liable for an action in conversion by detention where before the demand for the chattel by the plaintiff, the goods are destroyed or lost whether by accident or due to the negligence of the defendant. But in cases of Detinue, the defendant will be held liable unless he is able to prove that the loss or destruction of such chattel was not as a result of his negligence.
- II. The refusal to return the goods on demand is the essence of detinue, but it is only one of the several forms of conversion.
- III. In conversion, the damages are generally assessed on the value of the goods at the time of conversion but in detinue, the value of goods will be assessed as to value on the date of the trial. Therefore a wise plaintiff would sue in detinue if the value of the goods has increased within the period of refusal and the date of the trial, but if there has been a decrease in the value of the good he should sue in conversion.
- IV. In detinue the plaintiff can claim specific restitution of the goods but he cannot do so in conversion. The defendant can only be awarded damages in an action for conversion but in an action for detinue the plaintiff can be awarded specific restitution, but this is at the discretion of the court and cannot be exercised when the chattel in question is an ordinary article of commerce and has no special value or interest.

The Defenses for Detinue

1. He had no intention of detaining the goods, he just has mere possession of the goods.
2. That the plaintiff doesn't have a sufficient title to the chattel.
3. He may also plead Jus Terti, meaning that a third party has a better title and that he is claiming the chattel under the third party or an agent of the third party.

Remedies for Detinue

The following are the remedies the court can award when an action for detinue is brought:

1. Claim for the return of the chattel: this is the claim for the return of the specific chattel that has been retained, this occurs when the chattel has not been destroyed or altered.
2. Claim for the replacement of the chattel; the defendant will be ordered to replace the chattel by supplying an identical or similar chattel.
3. Claim for the monetary value of the value: this is a claim for the current market value of the chattel as assessed
4. Damages for loss incurred as a result of the detention