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Question: The tort of Trespass to Chattel is made of Trespass to chattel, Conversion and Detinue. Discuss with aid of aid of relevant case law.

To begin with the meaning of a Chattel: a chattel is any property other land and an immoveable object, it simply means any property owned by a person that is moveable. For example car, books, clothes, furniture, aircrafts and whatsoever is moveable and capable of being owned. Trespass to Chattel is made up of three (3) types of torts in Nigeria namely:

1. Trespass to Chattel
2. Conversion
3. Detinue

TRESPASS TO CHATTEL

Trespass to chattel is any direct interference with a chattel in the possession of another person. Trespass to chattel is any unlawful interference with a chattel owned by another person. Trespass to chattels must be direct and unlawful so in that case if a person merely touches ones chattel without causing damage the plaintiff only has right to nominal damages. Trespass to Chattel is actionable per-se hence it must not be proven only the damage done would suffice as evidence.

As we are on the matter of Trespass to Chattel, its main aim is the protection of the possession of a chattel it must not necessarily mean ownership but possession, this can be seen when a person obtains possession of a chattel by hiring it or is a bailee. In the case of a hire such a person does not have ownership status over the property but that person has such a property in his possession the same goes for a bailee he is not the owner of the property in question such property is just within his possession. Trespass to chattel is designed to protect the following interests in personal property:

1. Right to retaining one's chattel.
2. Protection of the physical condition of the chattel.
3. Protection of the chattel against unlawful interference or meddling.

With regards to trespass to chattel being actionable per se, the mere touching of a person's chattel without causing harm is actionable but only nominal damages will be awarded but for concrete damages to be awarded the act done by the wrongdoer must be done:

- Intentionally
- Negligently

This was the stance of the court in the case of **ERIVO V OBI** where the defendant in a bid to close the plaintiffs car door after coming down resulted in the side windscreen of the car been broken, the plaintiff sued inter alia for the damage of the windscreen and the cost it took for him to get another car to carry out his business. The defendant pleaded that it was indeed an accident, the court held in the favor of the defendant that as far as the act was not done intentionally and negligently it was not a trespass to chattel.

ELEMENTS OF TRESPASS TO CHATTEL

(What a plaintiff must prove to succeed in a suit for trespass)

The plaintiff must prove that the act done was;

- Intentional.
- Negligent.

The law clearly states that any person who has direct possession of a chattel can sue if there is direct interference with such a chattel. But the question asked most of the time is who then has the right to sue for trespass to chattel and obtain any form of damages, they include: Owners, Bailee, Lenders, Assignees, Trustees, Finders, Custodian and so forth.

Differences between Trespass to Chattel and Conversion

- The main difference between a trespass to chattel, Detinue and conversion is that in trespass to chattel there must be some act of interference, harm, injury, damage on the chattel against the desire of the owner. **Kirk v Gregory** the movement of a deceased person's rings from one room in his house to another was held as trespass to chattel and nominal damages awarded.

The Defenses for Trespass to Chattel

In a suit of trespass to chattel the defendant may plead

- I. Inevitable accident: as stated by the court in the case of **National Coal Board v Evans & Co**; here the defendant contractors were employed by a county council to work on a land owned by the defendant council. In the course of building a trench one of the workmen of the defendant council hit an electric cable not known to anybody that such an electric cable existed as the defendants and the sub contractors Evans & Co knew about the cables existence. The damage of the cable led to an explosion which led to the cutting short of electricity supply to the coal mine. In a suit for trespass to chattel the court held that the plaintiff failed to prove that the act done was done negligently hence it was

merely an accident. This was the same decision the court held in the case of **Erivo v Obi** (supra)

- II. Subsisting Bailment: this means that the defendant can prove that the plaintiff a bailee no longer has the right to possession of the property.
- III. Subsisting lien.
- IV. Limitation of time: this occurs when the time in which the plaintiff can bring up an action has expired
- V. Honest conversion or acting honestly.

Remedies for Trespass to Chattel

- a) Payment of damages.
- b) Replacement of Chattel.
- c) Repair of damage.
- d) Payment of market price of the chattel.

CONVERSION

Conversion may 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 any interference with another person's right to possession of such a chattel as if it's one's own without legal justification. 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. If any interference denies the rightful owner of a chattel the right to use such a chattel is conversion. Also a person who has mere custody, temporary possession can sue any party which decides to deny him of the right to use such a chattel.

DIFFERENCES BETWEEN CONVERSION AND TRESPASS

1. In conversion, the conduct of the defendant must deprive the owners of the possession of the chattel, or amount to a denial or dispute of the title of the owner. Conversion can be seen as theft in criminal law so mere touching or moving of a chattel and so forth only amount to trespass. With regards to intentional conduct, a defendant will only be liable in conversion only where his conduct in relation to the plaintiff's good was intentional. An interference resulting from merely careless conduct is not actionable in conversion. For example a car parked at a parking lot and the car park attendant negligently allows a thief to drive away with the car will not be liable for conversion. **Ashby v Tolhurst**; the defendant who negligently allowed a car thief to drive away with the plaintiff's car from a car park which was under his watch was; held not to be liable for conversion. The driver had possession of the car which he had parked, for he has right to immediate

possession. The court held that the plaintiff should have sued in the tort of negligence for the loss of the car.

For something to amount to conversion, the intent of the defendant must be to deal the plaintiff's goods by exercising dominion over them on his behalf or on behalf of another person other than the plaintiff. **City Motor Properties Ltd v Southern Aerial Service**; an owner of a chattel was held liable in conversion for dispossessing the plaintiff a bailee during the subsistence of his bailment. Acting in good faith by a defendant thereby leading to a mistake is no defense. **Youl v Harbottle**; the defendant carrier of goods by mistake delivered to the plaintiff's goods; he liable for conversion with the court supporting the fact that an act of interference is done willfully or intentional it is no defense if it was done by mistake or in act of good faith.

2. To maintain an act of conversion, the plaintiff needs not to be in actual possession of the chattel at the time of the interference.

Examples of acts that would amount to Conversion

- **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 temporarily, there is conversion. In the case of **Davies v Lagos City Council**, the defendant council was held liable in both trespass and conversion for the act of its officials in wrongfully seizing the plaintiff's taxi cab. Also in a Ghanaian case of **Tormekpey v Ahiable** where the court held the defendant to be liable for conversion for wrongfully seizing the plaintiff's lorry.
- **Consumption, Altercation or destruction**: To destroy or consume the plaintiff's chattel constitutes conversion. Merely to damage the chattel of another is not conversion but trespass. It is also conversion to change the identity of a chattel when it does not belong to the person without obtaining proper permission.
- **Using**: using a plaintiff's chattel as if it's one's own, his acts will be inconsistent with the rights of the plaintiff and he will be liable for conversion. Where the defendant finds the plaintiff's chattel, he does not commit conversion by merely having it in his possession but he would be liable if he uses it. If a defendant in possession of a chattel as bailee he would be liable for conversion (i) if he uses it contrary to the express terms in the contract of bailment.
- **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 as it is wrongful for it is an

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

- **Detention: Armory v Delamirie;** a chimney sweeper boy found a jewel and gave a jeweler for valuation. The jeweler knowing the circumstances took the jewel and detained it and refused to return it to the boy. The boy then sued the for conversion, the court held the jeweler liable for conversion as the boy who found it was the owner of the jewel unless contested against by the rightful owner and no one else. However a temporary refusal of a finder to give the rightful owner a chattel found in other to authenticate his ownership is valid by law except the refusal is adversely to tell the owner he is not entitled to it ever again.
- **By wrongful delivery:** wrongful delivery of a person's chattel to another person who does not have title or right to possession without legal justification is conversion.
- By wrongful disposition.
- Purchase.

WHO MAY SUE FOR CONVERSION?

- **The Owner:** the owner is the principal individual who can sue for conversion as he has all the legal justification to do so.
- **Bailee:** a bailee of goods has lawful possession and so can maintain an action in conversion against a person who interferes with that possession. If the bailment is at will of the bailor the bailor too may sue as he is the rightful owner of the property. Any act that tramples on the terms set between the bailor and bailee would give the bailor the right to sue for conversion. E.g. selling the property to a third party.
- **Holder of liens:** a holder of lien has the right to possession of goods which are subject to the lien. He may therefore maintain an action of conversion against a person who interferes with them.
- **Finders:** a person who finds a chattel acquires possession and therefore can maintain an action against any person who interferes with such possession except (i) the true owner of the chattel. The finder has a duty to make 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. See **Armory v Delamirie (Supra)**.

- Buyers.
- Assignees.
- Trustees.
- Licenses.

Defenses for conversion of a chattel

- Subsisting bailment.
- Subsisting lien.
- Limitation of time.
- Temporary retention.

Remedies for Conversion

- General damages.
- Recovery of special damages.
- Alternative order for payment of the current market value of the chattel.

DETINUE

The tort of Detinue is 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 who rightfully owns it.

The action in Detinue lies where:

- The plaintiff has an immediate right to the possession of goods
- The defendant, who is in actual possession of those goods fail or refuses to deliver them up after the plaintiff has made a proper demand for their return.

Kosile v Folarin; the defendant motor dealer seized and detained the motor vehicle he had sold to the plaintiff on credit terms, upon delay by the plaintiff to pay the full amount, the plaintiff the buyer sued for Detinue claiming damages. The Supreme Court **held** that the seizure and detention of the car by the defendant was wrong. The plaintiff was entitled to a return of the vehicle and damages for the loss of use of the car. In this case the Supreme Court emphasized that a requirement for an action of Detinue there must have been a demand from the plaintiff to the defendant to return the chattel and if the defendant refuses to do so he would be liable for Detinue.

Ogiudo & Sons Ltd v C.O.P; the lorry of the plaintiff appellant transporter was carrying a customer's goods when the police intercepted and seized the vehicle on suspicion that the goods were contraband. The appellant claimed for Detinue of the vehicle, the Court of Appeal held that the appellant was entitled to immediate release of the vehicle and damages for unlawful detention. The plaintiff must have title or right to immediate possession to be able for a suit for Detinue to be successful as earlier stated.

Stitch v A.G Federation; the plaintiff appellant imported a car from overseas; it was detained by the board of Customs and Excise at the sea port. The customs then sold it to a fourth defendant who started cannibalizing and selling its parts. The plaintiff sued the defendants for a return of the car. On appeal, the Supreme Court held that the appellant was entitled to a possession of the car, and since the car was now destroyed, the court ordered that the plaintiff be awarded the purchase price as damages as a replacement for the car.

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 a scenario where A lends his cutleries and plates to C for a party and C refuses to return the cutleries and plates at the end of the day hence the expiration of a reasonable time.

DIFFERENCES BETWEEN CONVERSION AND DETINUE

- 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 as emphasized by the court in the case of **Kosile v Folarin (supra)**.
- Detinue is the proper remedy where the plaintiff wants a return of the specific goods in question and not merely and 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 as done by the court in the case of **Stitch v A.G Federation (supra)**.
- Refusal to surrender on demand is the essence of Detinue, but it is only one of the several forms of conversion.

Defenses for Detinue

The defendant may plead that

- He has mere possession of the goods.
- That the plaintiff has insufficient title as compared to him.
- Innocent delivery.
- Inevitable accident

- Reasonable defense of a person or property.

Remedies for Detinue

- Claim for return of the chattel
- Claim for replacement of the chattel.
- Damages
- Claim for the current market value of the chattel.

References

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