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**Trespass to Chattel**

A chattel is any property other than land and immovable property. A chattel is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land and immoveable property. Examples of chattel include a book, cars, furniture, animal, vessels and any other thing which are capable of being owned.

The purpose of the tort of trespass to chattel, goods, or personal properties of a person who has title, or possession by prohibiting all interference without legal justification. Thus, the tort of trespass to chattel protects the chattels, goods, and all personal properties of a person who has title, possession, or right to immediate possession against meddling, damage, destruction or any interference whatsoever, by any other person without lawful justification. Trespass to chattels is actionable per se because it does not require for a damage to occur to the plaintiff’s property before a case it taken to the court. It is actionable whether there is damage or not.

In Nigeria, Trespass to Chattel is made up of three types of torts. And they are

1. Trespass to Chattel (without a conversion or a detinue of the chattel in question)

2. Conversion; and

3. Detinue

We will be looking each one separately.

Trespass to chattel, as explained earlier, it is any direct and unlawful interference with a chattel in the possession of another person. The interference must be direct and wrongful. Thus, 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 chattel protects the right of retaining one’s chattel, protection of the physical condition of the chattel and protection of the chattel against unlawful interference or meddling. To maintain an action for trespass, the plaintiff must show that he had possession at the time of the trespass or is entitled to immediate possession of the chattel. In this tort, injury or wrong is done to the chattel while it is in possession of the person claiming damages for the injury. The chattel is usually not taken from his possession as we have in conversion or detinue. In the case of *Erivo v Obi*, the court held that for trespass to chattel to be actionable, the harm or damage done by the wrongdoer must be intentionally or negligently. Examples of trespass to chattel include taking a chattel away, throwing another person’s property away, such as in annoyance, mere moving of the goods from one place to another, scratching, or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle, killing another person’s animal, etc.

Differences between Trespass to Chattel, Conversion and Detinue

The main and vital difference trespass to chattel, conversion and detinue is that in trespass to chattel the chattel is taking away or stolen from the person entitled to possession. However, in trespass to chattel, the must be some act of interference, meddling, harm, injury, damage or destruction of the goods, against the desire of the owner. In the case of *Kirk v Gregory*, the movement of a deceased person’s rings, from one room in his house to another was held to be a trespass to chattel and nominal damages was awarded against the defendant. And in the case of *Fouldes v Willoughby*, the court held that the act of removing the horses from the boat by the manager is trespass to chattel not conversion.

The Persons who may Sue for Trespass to Chattel

For a plaintiff to succeed in the action of trespass to chattel, he must be able to establish the vital **elements**, which are intentional or negligent. That is to say, the plaintiff must be able to prove that the act of trespass to chattel done by the plaintiff was done intentional or negligently for the plaintiff to succeed. Proving intention or negligence is very important as trespass to chattel is not a strict liability tort.

Anyone who has possession or caretakership of a chattel may sue any other person who meddles with the chattel. This is so because this tort was created to protect the right of possession of an owner. Also, people 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, for example Shopkeepers, Lenders, Assignees, Trustees, Custodians, Caretakers, etc. In the case of National Coal Board v Evans & Co, the defendants were unaware of the electric cable that passed under the land that provided light to the plaintiff’s home. The cable was damaged and the plaintiff sued the defendants for trespass to chattel, but due to his inability to prove negligent, the court found the defendants not liable.

Defenses for Trespass to Chattel

When trespass to chattel is pleaded, the defendant may plead the following defenses;

1. Inevitable accident: the defendant can plead that the so called trespass to chattel was an accident and was not done to cause damage to the plaintiff’s chattel.

2. Jus tertii, that is, authority over possession as a third party: this is a defense is brought up when the defendant tries to show that the present possessor has no legitimate possession over the chattel.

3. Subsisting bailment: this defense is brought up when the defendant is a legitimate bailee of the chattel.

4. Limitation of time, as a result of the expiration of time specified for legal action

5. Honest conversion or acting honestly, and so forth.

Remedies for Trespass to Chattel

The following remedies are available to a person whose chattel had been meddled with, and they are;

1. Payment of damages

2. Replacement of the chattel

3. Payment of the market price of the chattel

4. Repair of the damage.

**Conversion**

Conversion is any interference, possession or disposition of the property of another person, as if it is ones own without legal justification. Conversion is any dealing which denies a person of the title, possession, or use of his chattel. 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. An owner of the chattel can sue for conversion. In the case of *North Central Wagon & Finance Co. Ltd v* Graham the defendant sold the car in contravention of the terms of the hire purchase agreement. The court held that the plaintiff was entitled to terminate the hire purchase agreement, and sue the selling hire purchaser in the tort of conversion, for recovery of the car. The difference between conversion and trespass is that in conversion, the conduct of the defendant must deprive the owners of the possession of the chattel. Conversion is known as stealing or theft in criminal law. And the **essential element** that the plaintiff is to prove maintain an action in conversion is that plaintiff must not be in actual possession of the chattel at the time of the interference but must have right to immediate possession of the chattel. In the case of *Consolidated Co. Ltd v Curtis & Son*, a client instructed an auctioneer to sell a good that did not belong to the client. The plaintiff sued the auctioneer and the court held that the auctioneer was liable to the owner of the goods for conversion.

Examples of conversion, we have taking, using, alteration, consumption, receiving, detention, wrongful delivery, wrongful sale, etc.

Innocent Receipt or Delivery is not Conversion

Innocent delivery or innocent receipts are not torts, nor criminal offences. Therefore, innocent 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 the person’s instructions to a third party in good faith, there would be no conversion. In the case of *Unipetrol v Prima Tankers Ltd*, the defendants oil tankers that were expected to deliver fuel to the plaintiff and obliged to a contract, when somewhere else. The court held that the defendants were liable in conversion.

The Rules Regarding finding Lost Property

The case of *Parker v British Airways* settled the rules of law applicable to finding a lost property. The rules are as follow:

1. A finder of a chattel acquires no rights over it, unless it has been abandoned or lost and he takes it unto his care and control.

2. Any servant or agent who finds a lost property, in the course of his employment, does so on behalf of his employer, who by law acquires the rights of a finder.

3. Any occupier of land or a building has superior rights to those of a finder over property or goods in, or attached to the land.

4. 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.

In the case of *Parker v British Airways*, the plaintiff found a bracelet in the lounge at airport and returned to the defendant stating that if the owner is not found, it should be returned back to him. The defendants later sold the bracelet. The Court held that the defendants had no right to sell the bracelet and the proceeds of the sale belonged to the plaintiff.

In conversion, those **who may sue in the tort of conversion** include:

1. Owners: an owner in possession who has right to immediate possession may sue another for version.

2. Bailees: a bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him.

In the case of *The Winkfield*, the court held that the Post-Master General, though not the owner of the post mail ship, was entitled to sue as a bailee in possession for the value of the mails that were lost in the sink ship. Other that can sue in conversion are holders of lien and pledge, finds, buyers, assignees, licensees and trustees.

Defenses for Conversion of a Chattel

1. Jus tertii

2. Subsisting bailment

3. Temporary retention

4. Subsisting lien

5. Limitation of time

Remedies for Conversion

1. Order for delivery, return or specific restitution of goods

2. Alternative order for payment of the current market value of the chattel

3. An order for payment of any consequential damages.

4. Recovery of special and general damages.

**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 the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. **To successfully sue in detinue**, a plaintiff must have possession before the detention, or have tight to immediate possession of the chattel. 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.

A plaintiff can only maintain an action in the tort of detinue if the plaintiff has title of ownership to immediate possession of the chattel and the defendant who is in possession of the chattel failed to deliver the chattel after the plaintiff had made demands for the chattel. In the case of *Kosile v Folarin*, the defendant detained a motor vehicle that he had sold to the plaintiff on credit upon delay by the plaintiff to fully pay up. The plaintiff sued for detinue. The court held that the defendant was wrong.

Remedies for Detinue Awarded to a Plaintiff

1. Claim for return of the specific chattel: this is a claim for the return of the specific chattel.

2. Claim for replacement of the chattel: a defendant may be ordered to replace the chattel by supplying an identical or similar chattel.

3. Claim for the current market value of the chattel: this is a claim for the current market value of the chattel as may be assessed.

4. 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.

Defenses for Detinue

1. He has mere possession of the goods

2. That the plaintiff has insufficient title as compared to him

3. The defendant may plead jus tertii

4. Innocent delivery

5. Subsisting bailment

6. Inevitable accident.

REFERENCE:

1. The Law of Tort by Ese Malami