NAME: AJAYI BISOLA FAVOUR

MATRIC NUMBER: 18/LAW01/024

COURSE TITLE: LAW OF TORTS 1

COURSE CODE: LPB 301

QUESTION

The tort of trespass to Chattel is made of: Trespass to Chattels Conversion and Dentine 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. Support References Kodilinye and Alison the Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Hare wood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

**TRESPASS TO CHATTELS**

Generally, trespass refers to a wrongful use of another person's property without his or her permission. Courts have consistently held that an e-mail service provider's computer network is private property and can be subject to trespassing. Transmission of electrical signals through a computer network is sufficiently 'physical' contact to constitute a trespass to property. The sending of spam to and through an ISP's e-mail servers constitutes the tort of trespass to chattel in the state of Virginia. Unauthorized spam can be a particularly harmful type of trespass to a computer network. ***In the case of National Coal Board V. Evens Co.*** Trespass to chattel is not a strict liability intention or negligence should be proved. An accident cannot arise to trespass to chattel.

Under intentional torts, there are two types of trespass:

1) Trespass to land: Trespass to land is an unlawful entry or use of another person's land without the owner's permission or reasonable excuse.

2) Trespass to chattels: Trespass to chattels is an intentional interference with another person's lawful possession of a personal property. A chattel refers to any personal property, moving or unmoving. Trespass to chattels does not apply to real property or any interest in land. Also, Trespass to chattels "occurs when one party intentionally uses or intermeddles with personal property in rightful possession of another without authorization.

In an action for trespass to chattel, a plaintiff has to show that s/he had either actual or constructive possession of goods at the time of the trespass. It has also to be shown that there was an unauthorized, unlawful interference or dispossession of the property. Actual damage is not necessarily a required element of a trespass to chattels claim. A person may be said to have possession of a chattel if s/he has physical control of the chattel with the intent to exercise such control on one’s own behalf, or on behalf of another.

**ELEMENTS OF TRESPASS TO CHATTEL**

Generally, the basic elements of a claim of trespass to chattels are lack of an owner’s consent to trespass, interference with possessory interest, and intention of the trespasser.

1. **Intent to trespass**: Merely intending to do the act is enough to show this element of trespass. You don't necessarily need to show intent to harm a specific person. In order to constitute a trespass to title an intentional dispossession of a property has to be committed. Intentional dispossession may said to have happened when a person intentionally takes physical control over a chattel and deals with it in a manner affecting the possessory interest of another person. A dispossession may be committed intentionally by taking a chattel from another person without his/her consent, or obtaining possession from another by fraud or duress.

The intention necessary to make a person liable for trespass of or dispossession of a chattel is the intention to deal with the chattel resulting in dispossession. Such person must have knowledge that his/her action is destructive of any possessory right of another person. There must be only an intention to interfere physically with the goods themselves and it need not be a wrongful intent. It is immaterial that a person intermeddles with a chattel under a mistake of law or fact.

1. **Lack of owner's consent**: There must be an unauthorized, unlawful interference, which means the person interfered with or dispossessed the chattel without the owner's permission.
2. **Interference of chattels**: A person commits a trespass to chattel by; dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or damaging the chattel. An interference not amounting to dispossession is not actionable if there is no harm caused to a possessor. Any unlawful interference, however slight, with another’s enjoyment of personal property is a trespass to chattel. Interference can be dispossession of a chattel by taking it, destroying it, or barring the owner’s access to it. A trespass to personal property may be committed with or without the exercise of physical force.

**CONVERSION**

This consists of the willful and wrongful interference with the goods of a person entitled to possession in such a way as to deny him such right or in such a manner inconsistent with his right. The right to immediate possession is the determining factor. That is, if the right exists, actual possession is unnecessary.

In the case of ***North Central Wagon and Finance Co Ltd vs. Graham***, the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus the plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff didn’t have actual possession of the car at the time. Since the rights in the goods were already vested in the plaintiff, there was no need for actual possession.

**INSTANCES OF CONVERSION**

Conversion of goods would arise in the following situation:

1. **Wrongfully Taking the Goods**: This must be accompanied by an **intention to exercise temporary or permanent dominion over the goods.** In the case of ***Fouldes vs Willoughby*** the owner of two horses brought them aboard a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. The horse owner sued for conversion. Judgment was entered in his favor at the trial court. On appeal, the court, in allowing the appeal held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses.

2. **Wrongfully detaining the goods:** This must be accompanied by an intention to keep the goods from the person entitled to possession of the goods. Hence it would not be regarded as conversion if the finder of goods merely refrains from returning such to the owner. It would only be conversion in a situation in which when asked for the goods by the owner, he refuses to release it.

In the case of ***Howard E Perry and Co Ltd vs British Railway Board***, the defendants, who were carriers, held the plaintiff’s steel in depots. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff’s steel to them. It was held that this amounted to conversion on the defendant’s part. For conversion to be committed there has to be some positive denial of possession towards the person entitled to possession.

3. **Wrongfully destroying the goods**: Destruction of goods would amount to conversion in the following situations:

a) One person willfully destroys the chattel of another.

b) If the chattel either ceases to exist or changes its identity.

4. **Wrongfully disposing the goods**: This occurs in a situation in which the defendant attempts to confer title to a third party in a manner inconsistent with the right of the person entitled to possession.

5. **Wrongfully delivering the goods:** This occurs in a situation in which the defendant denies the true owner of the title to the goods by delivering them to another party that has no title.

**DEFENCES TO CONVERSION**

1. **Abandonment**: An action for conversion would not succeed in a situation in which the property in question was abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.
2. **Authority of Law:** Conversion that is done under the authority of law would be justified. For example, the selling of the goods of a defendant by the claimant by an order of court in order to get a judgment debt would be valid.
3. **Consent:** If the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be held to be valid.
4. **Statute of limitations:** If the suit for conversion is not filed after a specified period (ranging from 2-5) years, it would be held to be statute barred. Thus, the suit would not be heard by the court.
5. **Unidentifiable property**: If the property cannot be properly identified, it could also serve as a defense to conversion.

**DETINUE**

Detinue is defined as the wrongful detention of goods, committed when one unreasonably refuses to surrender or return personal property to its rightful owner, only if and when the owner claims the immediate right to possession of these goods. Detinue is only applicable, however, when the owner holds proprietary interest and/or actual possession of the property. In many cases, Detinue is classified within Conversion, as the two only differ in the sense that an act is considered Detinue and not Conversion when the owner specifically asks for property back, and is still refused.

Dating back to the twelfth century, Detinue is one of the oldest forms of action in common law, along with the action of debt a lawsuit for a specific sum of money owed. In Detinue a favorable judgment awarded the plaintiff the actual chattels—items of personal property or their value in money. For example, an action of detinue was available against someone who wrongfully refused to return goods that were held subject to a **BAILMENT,** such as a deposit for safekeeping or repair. It could be used against an executor who refused to turn over a deed for the deceased person's property to the proper heir. Since the plaintiff did not have to show wrongful detention to prove his or her case, the action was appropriate for recovering goods from a thief as well as from someone who first acquired the property lawfully.

In the case of ***Broad St. Auto Sales, Inc. v. Baxter***, in this case, detinue action seeks recovery of specific personal property or its value from one who withholds property from plaintiff who is true owner or lawfully entitled to possession. Under sales contract, dealer had right to repossess in event of default. In the case of ***MacPherson v. Green***, an action for detinue to recover letter and damages on theory that use of letter by defendant had injured plaintiff in his reputation and standing. In such action, damages can only be had for detention of article, and usually are measured by value of its use or hire while detained. This does not include damages caused by misuse of article.

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

The term **Detinue** is derived from the French word ‘detenue’ which means ‘to hold back’. The tort of detinue involves interests in individual property and may be used to protect viable interests in goods and other chattels. It is a legal action where the plaintiff having an absolute right in goods, seeks to recover it from another who is in actual possession and refuses to redeliver them.

Detinue can be distinguished from trespass from the fact that in a case of detinue the defendant is in actual possession of the goods while trespass can be committed to the goods, which are in possession of the plaintiff. Under detinue, the defendant received the property legally and the plaintiff never had to have the property in the first place. In India, means to recover specific movable properties has been incorporated in the Specific Relief Act, 1963. In England, Torts (Interference with Goods) Act, 1977 has abolished the concept of detinue and acts of detinue now fall under the category of tort of conversion.

**Conversion** (or Trover) is the intentional and willful interference with any chattel whereby the plaintiff is deprived from the use and possession of it. It is an interference with another's ownership of property. The essence of conversion is not benefit to the wrongful taker but damage or loss on part of the rightful owner. At the time of conversion the plaintiff must have a right of property in the thing along with the possession of the same or have the right of immediate possession. Even a temporary possession is sufficient to commit the tort of conversion. The remedy for the tort of conversion is damages for the full value of the goods at the time and place of such conversion. While conversion may be described using terms familiar to criminal law such as theft or robbery or burglary, and while conversion may occur by theft, robbery, or burglary, the tort of conversion may occur by other methods. Additionally, while 'wrongfulness' is an element of conversion, it is inaccurate to presume that the wrongfulness must include criminal or illicit intentions. While conversion does require an element of intention, such 'intention' may merely be an action that was an innocent intention; and accordingly, conversion falls within the family of torts known as the strict liability torts whereas even if the conversion, being the wrongful interference, was without nefarious or illicit intentions and purely with innocent intentions, liability may still result. The tort of conversion was well articulated within the case of ***BMW Canada Inc. (Alphera Financial Services Canada) v. Mirzai, (2018)*** the tort of conversion involves the wrongful interference with the goods of another, such as taking, using or destroying those goods in a manner inconsistent with the owner’s right of possession.

**CONCEPT OF INNOCENT DELIVERY, RECEPIT AND LOST PROPERTY RULE**

Lost property refers to a property that the owner has lost due to negligence, carelessness and inadvertence. When an owner of a property losses possession of a property unintentionally and involuntarily and if the owner has no knowledge about it then s/he is said to have lost the property and such property is lost property. The essential test of lost property is whether the owner parted with the possession of the property intentionally or involuntarily. To be a lost property the property must be lost unintentionally and involuntarily. Articles that are lost accidentally in the public place will fall under the category of lost property. At common law, the finder of a lost property can claim the right to possess the item against any person except the true owner or any previous possessors.