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Assignment

A chattel is any property other than land and immovable property, therefore it is any movable property, article, goods or personal property, other than land and immovable property. Examples of chattel goods are many. Chattel is a property that is it can be owned, possessed, or controlled. Some of which are; books, animals, furniture's, cars, boats, among many others.

The purpose of the Tort of trespass to chattel is to protect all goods or properties of a person, prohibiting all interference without legal justification. It protects ownership or possession of chattels from all wrongful interferences. .

There are three (3) form of trespass to chattels and they are each, actionable per se, upon commission or occurrence without the plaintiff having to proof damage. Like in the judgment of ***ADEFARASIN J*** in the case of ***Davies v. Lagos city council.*** Although, trespass to chattel is actionable per se, however it is not a strict liability Tort, Furthermore, where a specific damage has been done to a chattel, a plaintiff is entitled to prove it and recover damage, for it as the case may be.

The three Torts of chattels, Conversion and Detinue protect the possessor of a chattel from wrongful interferences.

Definition of the three forms of torts of chattels

TRESPASS TO CHATTEL; this can be defined as any direct and unlawful interference with a chattel in the possession of another person. It can also be said to be the intentional or negligent interference with the possession of the chattel of another person. The interference must be direct and wrongful. And so, the mere touching of a chattel without causing any harm to it may inappropriate circumstances be actionable and entitle the plaintiff to get nominal damages. In the case of **Erivo v. Obi**, the Court of Appeal restated the position of the law that, trespass to chattel is actionable per se ,i.e., without proof of actual damage. And so, for trespass to chattel to be actionable, it must have been done by the wrong doer either intentionally or negligently. Examples of trespass to chattel include; taking a chattel away, destruction, or any act of harm or damage, throwing something at the chattel and so on.

CONVERSION; this is the interference, possession or disposition of the property of another person as if it is one’s own without legal justification. It is any dealing that denies a person of the title, possession, or use of his chattel. It therefore includes denying a person of the title or possession or use of his chattel. In conversion, it is not necessary to prove that the defendant had intention to deal with the goods; it is enough to prove that the defendant interfered with the goods. Examples of conversion includes taking, using, detention, receiving, consumption, alteration and so on.

DETINUE; this is a claim for the specific return, delivery or surrender of a chattel to the plaintiff who is entitled to it. It is the wrongful detention of the chattel of another person and the immediate possession of which the person is entitled.

***Elements of the torts;***

Tresspass to chattel; the elements of trespass to chattel, i.e. what a plaintiff must prove in order to succeed in a case of trespass include that the act of trespass was intentional or negligent. This is very important as trespass to chattel is not a strict liability tort.

***Concept of innocent 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, 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 not be conversion. Innocent receive of goods is also not conversion. But the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance.

See the case of ***Unipetrol v. Prima Tankers Ltd***. In this case it was made known that it is an elementary law that in a claim for conversion, the claimant is entitled to return of the article, seized, missing or in the possession of the other party, or reimbursement for it's value.

 An action for conversion would lie in conversion for any corporeal personal property, including paper and title deeds. In conversion, negligence or intention is not relevant, and once the dealing with the chattel of another person in such a circumstance that the owner is deprived of its use and possession, tort is committed.

Concept of lost property rule;

The rules of law applicable to finding the lost property were authoritatively settled by the English court of appeal in the case of **Parker vs British** airways. However the rules and not often easy to apply. The rules of the cable to find a lost property maybe summarized as follows.

1. A finder of a chattel or acquires no right over it unless it has been abandoned, or lost, and he takes it into his care and control. He acquires rights to keep it against all persons, except the true owner.

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

3. An occupier of land, or a building has superior rights to those of a finder, over property or goods in, or attached to the land, or building. Based on this rule, rings found in the mud of a pool in the case of ***South Staffordshire v. Sharman*** and the pre-historic boat discovered six feet below the surface was held as belonging to the land owner in the case of ***Elwes vs Briggs Gas and Co.***

4. However, an occupier of premises does not have superior rights to those of a friend finder in a respect of goods found on or in the premises, except before the finding, the occupier has manifested an intention to exercise control over the premises, and things on it.

Also see the cases of ***Parker v. British airways and Bridges v. Hawkesworth.***

***Examples of conversion;***

USING; using a plaintiffs chattel as if it is one’s own, for example by using the plaintiffs bottle to store wine as was seen in the case of ***Penfolds Wine Ltd v. Elliot*.**

ALTERATION; changing the form of the chattel as if it is one’s own is a form of conversion.

RECEIVING; receiving a chattel from a third party that is not the owner of the chattel is a conversion. It is wrong because it can be said to be an act of assisting the other person in the conversion of the chattel.

TAKING; when a defendant takes the chattel of a plaintiff out of his possession without lawful justification and with the intent of exercising dominion over the goods permanently or even temporarily, conversion has taken place. However, a defendant might not be liable if he merely moves the goods without denying the plaintiff the title.

CONSUMPTION; by eating or using up the chattel of the plaintiff, there is conversion.

DETENTION; this is when the defendant is in possession of the plaintiffs chattel without authority and refuses to surrender it to the plaintiff when asked to do so. An example of this can be seen in the case of Armory v. Delamirie.

Wrongful Delivery; wrong delivery of a person’s chattel to another who doesn’t have title or right to possession without legal justification is conversion.

PURCHASE; when a person buys and takes delivery of goods from a seller who has no title to the chattel or right to sell them, conversion is committed.

BY WRONGFUL DISPOSITION; this includes sale, transfer of title or any other wrongful disposition.

EXAMPLES OF PEOPLE QUALIFIED TO SUE FOR TRESSPASS TO CHATTEL.

Anyone with possession or caretaker ship of a chattel may sue any person who meddles with the chattel i.e. anyone who has possession or right to possession can sue. And so, the persons that can sue for trespass to chattel are those that have possession at the material time of the interference and they include; owners, holders of liens, caretakers, Assignees, Lenders, finders, custodians, executors, bailees, adverse possessors, trustees and so on.

***Remedies and Defenses to Trespass to chattel, Conversion and Detinue.***

Trespass to chattel;

Remedies to trespass to chattel include;

* Payment of Damages.
* Replacement of the chattel.
* Payment of the market price of the chattel.
* Repair of the damage.

Defenses for Trespass to Chattel include;

* Inevitable accident.
* Jus tertii, i.e. the title or better right of a third party, provided that he has the authority of such third party.
* Subsisting lien.
* Subsisting bailment.
* Limitation of time, as a result of the expiration of time specified for legal action.
* Honest conversion or acting honestly. among many others

**Conversion;**

Defenses for conversion of a chattel include;

* Jus tertii, i.e. that is the title or better right of a third party
* Limitation of time
* Subsisting Lien and Bailment
* Temporary retention

Remedies for conversion include;

* Order for delivery, return or specific restitution of the goods.
* Order for payment of any consequential damages.
* Recovery of special and general damages. Special damages are recoverable by a plaintiff for any special loss proved.

**DETINUE**

In an action for detinue, the defendant may plead that;

* He just has mere possession of the goods.
* The plaintiff doesn’t have sufficient title compared to him.
* Jus tertii, provided he is the agent, or has the authority of the third party.
* Subsisting Lien on the chattel and bailment.
* Inevitable accident
* Temporary retention of the chattel to enable the title of the plaintiff is checked.
* Innocent delivery
* Reasonable defense of a person or property.

Remedies for Detinue include;

* Claim for return of the specific chattel; this happens especially if the chattel has not its content and it has not been damaged or destroyed during its detention.
* Claim for replacement of the chattel; the defendant may be ordered to replace the chattel by supplying a similar chattel.
* Replevin, i.e. release on bond pending determination of ownership; this is the re- delivery to an owner of goods which were wrongfully seized, the action for such re- delivery, and for any specific and general damages suffered by him as a result of the detention.
* Damages;
* Recapture or self help to recover the goods;
* Claim for the current market value of the chattel;

***Differences between Conversion and Detinue***.

Detinue covers the same ground as the tort of conversion by detention. However, some differences are to be noted which includes the following:

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 return of the chattel.

2. Detinue is the proper remedy where is the plaintiff wants to return of the specific goods in question, and not merely an assessed market value. However, Where Specific return of the Chattel or replacements will not be possible, and award of the current market value of the charter is usually made to the plaintiff.

Before the Common Law Procedure Act 1854, was enacted, a defendant had a choice to either restore the chattel or to pay the market value. However, since the enactment of the Act, a court has discretion to order specific restitution, or award the market value of the chattel to the plaintiff or it may award damages alone if the goods can be replaced easily.

Reference.

Law of torts by Ese Malemi

Kodilinye and Aluko: The Nigerian Law of Torts.