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  **TRESPASS TO CHATTEL**

Chattels means all tangible movable property as distinguished from real property (land and immovable property). At Common Law, chattels included all property that was not real estate and not attached to real estate Examples of chattels includes: cars, furniture, and so on as long as that thing is capable of being moved and owned by a person. Trespass to Chattel is any direct and unlawful interference with a chattel in the possession of another person. Such interference being intentional or negligent. The tort of trespass to chattels protects the right of ownership or possession of a chattel from all forms of wrongful interference. It also protects:

1) The right of retaining possession of the chattel

2) The physical condition of the chattel

3) Protection of the chattel against unlawful interference or meddling

Trespass to chattels is an intentional tort. Mistake of ownership is not a valid defense of trespass to chattels which means that even if the trespassing individual did not know that the property belonged to a person, mere possession or damaging or the goods is enough to show interference. Thus, a plaintiff must show that he has possession at the time of the trespass or is entitled to immediate possession of the chattel.

Trespass to chattel does not only involve interference with inanimate objects. Animals are also see as chattels. Thus in the case of **SLATER V. SWANN,** beating of the plaintiffs animal was held to be a trespass to chattel. Also, in the case of **FOULDES V. WILLOUGHBY,** by moving the horses which belonged to the plaintiff by the defendant, the court held that the defendant was liable for trespass to chattel.

**Examples of trespass to chattels includes:**

1) Mere moving of goods which belong to a person from one place to another

2) Taking a chattel away

3) Throwing something at the chattel

4) Beating, killing or doing any form of harm to the animal of another person

5) Driving another person’s car without permission

6) The mere use of another person’s property without permission

 **ELEMENTS OF TRESPASS TO CHATTEL**

1) Lack of owners consent: There must be an unauthorized, unlawful interference which means the person interfered with or dispossessed the chattel without the owner’s permission.

2) Intent to trespass: Merely intending to do the act of trespass is enough to prove trespass. Actual damage to the chattel is not necessary to prove.

3) Interference with the chattel: a person commits trespass to chattels by-

a) Dispossessing another of the chattel.

b) Using or intermeddling with a chattel for possessory interests.

c) Damaging the chattel

 **DEFENCES OF TRESPASS TO CHATTEL**

1) Jus tertii: the Latin maxim means ‘the right of a third party’. A cause of action in trespass may fail if the defendant can show that a third party has better rights to the chattel than the plaintiff. The onus is on the defendant to establish that a better right to possession is held by a third party in order for the defense to succeed. In the case of **COMMISSIONER OF POLICE V. OGUNTAYO,** the identity of the person with a better title must be disclosed. His better right or right to ownership must also be established.

2) Limitation of time: the defendant can prove the expiration of time specified to bring legal actions to court. For example, cases that are statute barred

3) Subsisting lien: the defendant can prove that he has the legal right to hold the chattel for security purposes as required for the performance of his obligation

4) Inevitable accident: this defense can apply in circumstances where the defendant can show that his conduct was involuntary and accordingly, the defendant is without fault. The defendant must show that their conduct was neither intentional nor negligent and the interference with the chattel was as a result of inevitable accident. In the case of **NATIONAL COAL BOARD V. EVANS,** the court held that in the absence of establishing negligence on the part of the defendant, there was no fault and there was no trespass by the defendants. The damage was an inevitable accident.

5) Necessity: where intentional damage is done so as to prevent a greater damage, the defense of necessity can be raised. Sometimes a person can find himself in a position where he has to interfere with the rights of another person so as to prevent harm to himself or his property

6) Temporary retention especially in cases of lost and found items

7) Protection of the plaintiff’s property: if the trespass was committed while trying to protect life or property, the defendant will not be held liable

8) Incapacity: there may be a defense if the defendant is a minor who can establish inability to understand the true nature of the act committed

**PERSONS WHO ARE LEGIBLE TO SUE FOR TRESPASS TO CHATTEL**

Generally, persons who have possession or persons who are assigned to take care of a chattel are qualified to sue for trespass to chattel. Therefore, persons who can sue for trespass to chattel provided they have possession of that chattel at that particular time are:

1) Owners

2) Caretakers

3) Lenders

4) Custodians

5) Trustees and so on

 **REMEDIES OF TRESPASS TO CHATTEL**

1) A claim for the replacement or the current market price especially where the goods have been destroyed

2) Repair of the damaged goods

3) Payment for damages

4) Order for specific restitution: the court may order for specific restitution where damages is not an adequate remedy

5) Recaption: the plaintiff can recapture his goods that have been wrongfully taken away from him.

The Tort of Trespass to Chattel is made up of three torts namely – **Trespass to Chattel *per se*,** **Conversion and Detinue.** For the purpose of exposition, each tort will be examines below.

 **TRESPASS TO CHATTEL *PER SE***

Trespass to chattel is actionable *per se* that is to say that the plaintiff does not have to prove actual physical damage as established in the case of **ERIVO V. OBI.** Any unauthorized touching or moving of a chattel is actionable at the suit of the possessor of a chattel even though no harm has been done to the chattel. Therefore for trespass to chattel to be actionable, it must have been done either intentionally or negligently. The mere wrongful moving or touching of a chattel without any harm can be actionable. In the case of **DAVIES V. LAGOS CITY COUNCIL, ADEFARASIN J** held that: “The plaintiff is entitled to succeed…in trespass…there may be a trespass without the infliction of any infliction of any material damage or mere taking or asportation…”

 **CONVERSION**

Conversion under Common Law was seen as an “intentional dealing with goods which is seriously inconsistent with the possession or right to immediate possession of another person”. According to **SIR JOHN SALMON** in his book titled THE LAW OF TORT, he defined Conversion as “An act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it”. In other words, conversion is dealing with another person’s property as if it is one’s own. Conversion denies a person of title, possession, and or use of his chattel. The general rule is that a person who has the right to sue for conversion of goods is that person who can prove that he had at the time of the conversion, either actual possession or the immediate right to possess the goods. The three categories of persons that have the right to sue for conversion are

1) A person who is the owner and is in possession of the goods

2) A person who is in the possession of the goods even though he is not the owner

3) A person who has the immediate right to possess the goods, but without either ownership or actual possession

It is not necessary to prove that the defendant has the intention to deal with the goods. Mere proof that the defendant interfered with the goods will suffice. It is equally not necessary that the defendant did not know that the chattel belonged to another person.

**Examples of Conversion includes:**

1) Conversion by taking

2) Conversion by using

3) Wrongfully refusing to return a chattel

4) Alteration of the chattel

5) Consumption of the chattel

 **ELEMENTS OF CONVERSION**

a) Ownership or right to possession of the property by the plaintiff.

b) Intentional interference with the property by the defendant.

c) That the defendant’s interference deprived the plaintiff of possession or use of the property.

d) Damages done to the plaintiff as a result of the defendant’s interference.

**PERSONS WHO ARE QUALIFIED TO SUE FOR CONVERSION**

The general rule is that the person who has the right to sue for conversion of goods is that person who can prove that he had at the time of the conversion, either actual possession or the immediate right to possess the goods. The persons qualified to sure for conversion are:

1) A person who is the owner and is in possession of the goods

2) A person who is in the possession of the goods but is not the owner of the goods

3) A person who has the immediate right to possess the goods, but without either ownership or actual possession

 **DEFENCES OF CONVERSION**

1) Abandonment of the chattel by the plaintiff: an action for conversion would not succeed in a situation where the property in question was abandoned by the plaintiff. Also, there should be reasonable time between the abandonment and the possession by the new owner

2) Consent or approval by the plaintiff: 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

3) Limitation of time: if the suit for conversion is filed after a specified period of years, it would be held to be statute barred and it will therefore not be heard by the court

4) Lack of value of the chattel

5) Subsisting bailment

6) Lack of identity of the chattel: if the property cannot be properly identified, it could serve as a defense to conversion

7) The defendant can prove that he has the privilege to claim the goods

8) Subsisting lien: demand and refusal are not considered as evidence of conversion if the party had a lien upon the chattel

9) Temporary retention of the chattel

 **REMEDIES OF CONVERSION**

1) An order for the delivery of the goods, and for payment of any consequential damages

2) General damages

3) An order for the delivery of the goods but giving the defendant the alternative of paying damages by reference to the value of the goods, together in either alternative with payment or any consequential damages

3) Recovery of special and general damages

4) 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. It is also the wrongful act of denying the plaintiff possession of their property with full knowledge of the person’s right to the goods. It occurs when the defendant has possession of the goods and on demand for the return of the chattel by the plaintiff, the defendant withhold it. Detinue was a way for a plaintiff to seek recovery of their specific property in court. It was abolished in the United Kingdom by the Torts (Interference with Goods) Act, 1977 and due to this, the tort of detinue was abolished as a separate tort and it was merged with the tort of conversion where it is now known as Conversion by Detinue and Detention. An example of detinue is the retention of goods. In the case of **KOSILE V. FOLARIN,** the Supreme Court emphasized that the requirement to claim for an action in detinue is demand by the plaintiff on the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable in detinue.

 **ELEMENTS OF DETINUE**

1) Demand of the chattel by the plaintiff: the plaintiff must have made a demand for the chattel to be returned and be entitled at the time of the demand **(case of KOSILE V. FOLARIN supra)**

2) Refusal of the demand by the defendant: the defendant must have reused the demand by the plaintiff whether expressly refusing or failing to refuse at all.

3) Unreasonable refusal by the defendant: where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable

4) Consequential damage: as a result of the defendant’s conduct, the plaintiff must have suffered loss.

 **DEFENCES OF DETINUE**

1) Innocent delivery

2) Subsisting bailment

3) Inevitable accident

4) Temporary retention

5) Subsisting lien on the chattel

 **REMEDIES FOR DETINUE**

1) Claim for value of the chattel as assessed and damages for its detention

2) Claim for the return of the chattel or recovery of its value as assessed and damages for its detention

3) Claim for the return of the chattel and damages for its detention

4) Recapture of the goods

5) Damages

 **DIFFERENCES BETWEEN CONVERSION AND DETINUE**

1) Detinue involves refusal to return a chattel after it must have been demanded by the owner. Conversion involves interference with the property of a person without legal justification

2) In Conversion, damages are generally assessed on the value of the goods at the date of the conversion whereas in detinue they are assessed on the value of the goods at the date of the trial

3) In detinue, the plaintiff can claim specific restitution of the goods whereas he cannot do so in conversion

4) The defendant will not be liable for conversion by detention where prior to the demand for their return by the plaintiff, the goods have been lost or destroyed. However, the defendant will be liable in detinue in such a circumstance, unless he proves that the goods were not lost or destroyed through his negligence

 **THE CONCEPT OF INNOCENT DELIVERY OR RECEIPT**

The concept of innocent delivery is a situation where an innocent holder of goods receives goods in good faith from a person he believes to have lawful possession of them. He then delivers the goods as instructed to a third party in good faith. In this type of situation, the innocent holder of the goods has not committed conversion. Conversion is any dealing with a chattel in a manner inconsistent with another person’s right whereby the person is denied possession and use of a it. For a defendant to not be held liable, he must have not questioned the plaintiff’s right to the goods.

 **LOST PROPERTY RULE**

Lost property means property that an owner unintentionally and involuntarily parts with due to negligence, carelessness or inadvertence. The test for lost property is whether the owner parted with the possession of the property intentionally or involuntarily. The rules applicable to loss of property are cited in the case of **PARKER V. BRITISH AIRWAYS** and they are divided into THE RIGHTS AND OBLIGATIONS OF A FINDER and THE RIGHTS AND OBLIGATIONS OF AN OCCUPIER. They are stated as follows:

**RIGHTS AND OBLIGATIONS OF A FINDER**

1) The finder of a chattel acquires no right over it unless:

(a) It has been abandoned or lost

(b) He takes it into his care and control

2) The finder of a chattel acquires very limited rights over it if he takes it into his care and control with a dishonest intent in the course of trespassing

3) A finder of a chattel whilst not acquiring absolute property or ownership in the chattel, acquires rights to keep it against all but the true owner or those in position to claim through the true owner

4) Any servant or agent who finds a chattel in the course of his employment and not wholly incidentally thereto takes it into his care and control does so on behalf of his employer or principal who acquires the rights of a finder.

5) A person having a finders right has an obligation to take sure measures as in all the circumstances are reasonable to acquaint the true owner of the finding and present whereabouts of the chattel and to take care of it

**RIGHTS AND OBLIGTIONS OF THE OCCUPIER**

1) An occupier has rights superior to those of a finder over chattels attached to that land and an occupier of a building has similar rights in respect of chattels attached to that building

2) An occupier of a building has rights superior to those of a finder over chattels on or in, but not attached to that building if before the chattel is found, he has manifested an intention to exercise control over the building

3) An occupier who manifests intention to exercise control over a building and the things which may be on it so as to acquire rights superior to those of a finder is under an obligation to take such measures in all circumstances reasonable to ensure that lost chattels are found whether by him or by a third party

4) An ‘occupier’ or a chattel – for example, a ship, motorcar, caravan or aircraft – is to be treated as if he were the occupier of a building for the purposes of the foregoing rules.

 **REFERENCES**

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2) Ese Malemi- Law of Torts

3) Vivienne Hardwood Principles of Law of Torts

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5) djetlawyer.com