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**LAW OF TORTS ASSIGNMENT**

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**LEVEL: 300L**

**Question**

**The tort of trespass to Chattel in is made of: Trespass to Chattels Conversion and Detinue 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 defence to Trespass to Chattel, conversion and detinue Differences between conversion and Detinue Suppo References Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T**

**Answer**

Trespass to chattels is a tort whereby the infringing party has intentionally interfered with another person's lawful possession of a chattel (movable personal property). The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattel (whether by taking it, destroying it, or barring the owner's access to it). As opposed to the greater wrong of conversion, trespass to chattels is argued to be actionable per se.

The origin of the concept comes from the original writ of trespass de bonis asportatis. As in most other forms of trespass, remedy can only be obtained once it is proven that there was direct interference regardless of damage being done, and the infringing party has failed to disprove either negligence or intent.

Conversion, which is also often mistakenly called trespass to chattels, involves the wrongful interference with a mobile object of another. Such object might be money (see: Wymor Construction Inc. v. Gray, [2012] O.J. 4181), goods, equipment, supplies, or other materially tangible things and possibly, as below, intangible things such as electronic data as information. 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 ONSC 180.

Trespass to chattels and conversion are both intentional torts that refer to a wrongful, intentional interference with the possession of someone's personal property. Trespass to chattels and conversion deal only with personal property. They do not apply to the interference of real property or any interest in land.

Both trespass to chattels and conversion are general intent torts. As opposed to specific intent torts, general intent torts do not consider whether the tortfeasor knew his or her conduct would result in the specific harm. As a result, mistake of ownership is not a valid defense to trespass to chattels and conversion.

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.

Conversion is when one deals with a chattel in a manner repugnant to the immediate right of possession of the true owner. Subjective intention to convert is unnecessary.

Detinue is the wrongful detention of goods, when one refuses to deliver up goods to a person having the immediate right to possession. Often, there is a demand for return, and a refusal, but that is not essential. Where the defense shows the defendant would have refused to comply, then a formal demand would have been futile.

Trespass to chattels is similar to conversion and detinue whereas all three relate to wrongful interference with a chattel; however, the distinguishing nuance with trespass to chattels is that the object remains in possession or control of the owner or person with rightful possession which differs from conversion and detinue where the owner or person with rightful possession is deprived of possession. Perhaps the easiest way to explain the difference is to use the criminal law term in that conversion or detinue may arise from theft (criminal law term) of the objecdt, being interference by removing the chattel from the possession of the rightful owner or person with right of possession and trespass to chattels may arise from vandalism (criminal law term) being interference without removal of the chattel.

Generally, innocent delivery, or innocent receipt are not torts, nor criminal offenses. Thus, innocent delivery is not conversion. Therefore, where an innocent holder of goods, such as, a carrier or warehouseman, 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. Similarly, innocent receipt of goods is not conversion. However the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. See **Unipetrol v Prima Tnaker Ltd**

The following are some rules regarding finding lost property; A finder of a chattel acquires no rights over it, unless it has been abandoned, or lost, and he takes it into his care and control, 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, 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 see **South Staffordshire Water Co. v Sharman**, An occupier only has superior rights in respect of goods found on or in the premises if before the finding, the occupier manifested an intention to exercise control over the premises, and things on it.

Anyone who has possession or caretakers hip of a chattel may sue any other person who meddles with the chattel. This is so for the object of the tort of trespass is to protect possession, or the right to immediate possession. In other words, anyone who has possession or right to immediate possession can sue. Accordingly, some persons 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 instance, an employee to whom an employer has given custody of goods, a repairer, caretaker, personal representatives of a deceased and so forth. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference include: owners, bailees.

Remedies of trespass to chattel are; Payment of damages, Replacement of the chattel, Payment of the market price of the chattel, Repair of the damage. Defenses for trespass to chattel; Inevitable accident, Jus tertii that is 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 and so forth.

Defenses for conversion of chattel; Jus tertii that is the title or better right of a third party, Subsisting bailment, Subsisting lien, Temporary retention, Limitation of time. Remedies for conversion are; Specific restitution of goods, Alternative order for payment of the current market. Slur of chattel, An order for payment of any consequential damages, Recovery of special and general damages, General damages.

Defenses for detinue; If he has mere possession of the goods, That the plaintiff has insufficient title as compared to himself, The defendant may plead jus tertii, Innocent deliverer, Subsisting bailment, Subsisting lien on chattel, Temporary retention of chattel, Inevitable action. Remedies for detinue; Claim for return of the specific chattel, Claim for replacement of the chattel, Claim for the current market value of the chattel, Recapture or self help to recover the goods, Replevin.