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Assignment Question: trespass to chattels, conversion and detinue. Discuss the above and support with case law.

Define trespass to chattels

Chattels conversion

Detinue

Explain the concept of innocent delivery or receipt

Loss of property rule and examples of conversion

Examples of person qualified to sue for trespass to chattel

Discuss the remedies and defense to trespass to chattel, conversion and detinue

Differences between conversion and detinue

**Introduction**

If someone wrongfully took your personal property, you may be able to bring an intentional torts claim against the person. But which type of tort would be a valid cause of action? Both trespass to chattels and conversion deal with wrongfully interfering with a person's personal property. Although they are similar in a way, there are significant differences that you should know before filing a lawsuit. Read on to learn about the similarities and differences between trespass to chattels and conversion.

**What Are Trespass to Chattels and Conversion?**

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 conversions 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.

**Difference between Trespass to Chattels and Conversion**

It's often easy to confuse trespass to chattels with conversion because they both deal with interfering personal property. Here's a look at the differences between the two torts:

**The Degree of Interference**

The main difference between trespass to chattels and conversion is the degree of interference. Conversion occurs when a person uses or alters a piece of personal property belonging to someone else without the owner's consent. The degree of interference for conversion must be so serious that the tortfeasor, or person accused of committing the tort, may be required to pay the full value of the property.

According to the Restatement (Second) of Torts, the court may consider the following factors to determine the seriousness of the interference in a conversion case:

The extent and duration of the tortfeasor's exercise of dominion or control

The tortfeasor's intent to deprive the owner on possession

The tortfeasor's good faith

The extent and duration of the resulting interference with the other's right of control

The harm done to the chattel

The inconvenience and expense caused

On the other hand, a trespass to chattel is an act that falls short of conversion. The tortfeasor is responsible only to the extent of the damage done (not the full value of the property) from dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or damaging the chattel.

**Elements of Trespass to Chattels and Conversion**

Proving trespass to chattels and conversion involve the following elements: (1) the plaintiff owns or has the right to possess the personal property at issue; (2) the tortfeasor intentionally interfered with the plaintiff's property; (3) the tortfeasor deprived the plaintiff of possession or use of the property at issue; and (4) the interference caused damages to the plaintiff.

**Conversion:**    This tort is defined as the unlawful and intentional dealing with the property of another person with the aim of having immediate possession of that chattel. In other words, is the inconsistent dealing with the property of another person with the aim of depriving the person of that property temporarily or permanently? Again, Conversion 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. A defendant would be liable in conversion where his conduct to the plaintiff's goods was intentional. An interference resulting from merely careless conduct is not actionable in conversion. To amount to conversion, the intent of the defendant must be to deal with the plaintiff's goods by exercise dominion over them on his own behalf of someone other than the plaintiff.
    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.
    There are acts that amount to conversion, these kinds of acts are mention and discussed below as follows:
**Conversion by destruction, consumption or alteration**:
    This is the intentional destruction, consumption or alteration of a plaintiff's chattel by the defendant. It is merely trespass to damage someone's chattel, what makes it conversion is the degree of damage, consumption, alteration done to the chattel in question.
Conversion by using:
    This is an act were the defendant uses the plaintiff's chattel as if it were his own. His act is said to be inconsistent with that of the plaintiff and will be liable in conversion. An example is seen were a man takes another man's bottle he uses to store water to store wine. *Agbahowe v. Osayiobasa,*
**Conversion by taking**:
    This act of conversion is when a person without lawful justification takes goods out of the possession of the person entitled to them with the intention of exercising a temporal or permanent dominion of them. Thus, a thief who steals a plaintiff's jewelry. As seen in the case of *Davis v. Lagos city council*, supra. And the Ghanian case of *Tormekpeh v. Ahiabl*.
**Conversion by receiving**:
    This is where a person without lawful authority transfers the chattel of someone else to another. The mere voluntary reception of the chattel by the former constitutes conversion as against the later, even though the former may have acted innocently. An example here is that of a buyer who receives goods which the seller has no right (stolen goods) to sell is liable in conversion to the true owner. As illustrated in the case of *Hollins v Fowler*,
**Conversion by detention**:
    A person is liable in conversion by detention where he is in possession of another person's chattel without authority and refuses to surrender it on the request of the rightful owner. The essence of this type of conversion is that the defendant in refusing to hand over the plaintiff's goods has shown an intention to keep it in defiance of the plaintiff's rights. Thus, where no adverse detention is shown, there will be no liability in conversion. *Ajao v Ashiru (1973)* the plaintiff’s pepper mill was seized by the defendant and the defense of the defendant to the claim of the plaintiff was that the pepper mill was seized by police. The court held the defendant liable on the ground that the police acted at his instance in seizing the pepper mill of the plaintiff. The court emphasized that the law of Nigeria is that those who set a ministerial rather than a judicial officer in motion in this way are as liable for the wrongful seizure of another‘s property as if they had done it themselves.
    The act constituting "conversion" must be an intentional act, but does not require wrongful intent, and is not excused by care, good faith, or lack of knowledge.

**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.
The action in detinue lies where: The plaintiff has immediate right to the possession of goods, and the defendant, who is in actual possession of those goods, fails or refuses to deliver them up after the plaintiff has made a proper demand for their return.

**DIFFERENCES AND SIMILARITIES IN THE TORTS.**

The three (3) torts of trespass to chattels, conversion and detinue protect the possessor of a chattel from wrongful interference therewith. These torts are a bit complex and interwoven as they seem to overlap each other in one way or the other at several points, so therefore they can’t and shouldn’t be treated ordinarily. For the purpose of exposition in the course of this assignment, these torts are going to be considered and treated separately.
Trespass to chattel:
    This tort may simply be defined as very direct and unlawful interference with the chattel of another person (usually the possessor/plaintiff). Or in other words, Trespass to chattel is the intentional and wrongful interference of another person's personal property. Such interference could either be intentional or negligent. This tort was made or aims to protect the;
The plaintiffs interest in retaining possession of the chattel.
His interest in physical condition of the chattel, and
to prevent unlawful inter meddling with chattel of a person.
The acts of trespass to chattels may take various forms such as destroying, damaging or merely using goods or even wrongfully moving them from one place to another. This was illustrated in the Nigerian case of *Davis v. Lagos city council.* There the defendant council had granted the plaintiff a hackney carriage license to operate a taxicab in Lagos area. The plaintiff been aware the permitted was for only his use granted it to a third party. The taxi was seized and detained. The plaintiff sued. It was held that the defendant council was entitled to revoke the license issued the plaintiff but not seize the car, therefore it was liable to trespass.
    The tort of trespass to chattels is actionable per se; this is to mean that without proof of actual damage. thus the mere wrongful moving or touching of someone's chattel without any harm is actionable per se. E.g., it is a trespass to chattel were someone parks his car and another person leans on it or even touch it. This was illustrated in the case of *Ajao v. Ashiru*. The plaintiff's pepper mill was seized by the defendant and the defense of the defendant of the claim of the plaintiff was that the pepper mill was seized by the police. It was held that the defendant was liable on the grounds that the police acted on his instance on seizing the pepper mill of the plaintiff.
    As aforementioned, trespass could be intentional; the intent to use or interfere with the personal property of another. It does not matter that the person interfering with the property did not know that the property belonged to a particular person. Instead, the determining factor is whether the interfering person damaged or possessed personal property that properly belonged to another.
Differences in the three forms of tort:
    The first major distinguishing factor to be noted is that unlike conversion and detinue, in trespass to chattel, the chattel of the plaintiff need not be in direct possession of the plaintiff nor need to be in possession of the defendant for a trespass to be committed, a mere touching or moving of a plaintiff's chattel without actual damage is enough to make the defendant liable in trespass to chattel, for this it is said to be actionable per se.
    Also in trespass to chattel, the intention of the defendant might not need to possess or withhold the plaintiff's chattel as regards to the torts of conversion and detinue.
    In the tort of trespass to chattel, a person who has no rightful ownership of a chattel can sue (excluding the rightful/legal/true owner) provided he is in immediate/actual possession of the chattel in question.
    As regards to the tort of conversion and detinue, in conversion, the defendant has an aim of having immediate possession of the chattel but in detinue, the defendant has actual possession of the chattel and has 'refused' to redeliver it to the rightful possessor.
    It is conversion when the defendant possesses the plaintiff's chattel temporarily or permanently. But it is detinue when the defendant refuses to 'return' the chattel on demand.
    In conversion, a temporary possession is sufficient to commit the tort of conversion.
    While one the other hand, a plaintiff will only be able to institute a case in detinue where he had made actual demand for his chattel which is in actual possession of the defendant who must have refused to return it.
    A suit in detinue will only be successful where the plaintiff has an immediate right to the possession of goods, and the defendant, who is in actual possession of those goods, fails or refuses to deliver them up after the plaintiff has made a proper demand for their return.
    Unlike conversion, a suit in detinue is filed from the actual day of demand and refusal of chattel.
Comparisons/similarities:
    The first and foremost similarity with these three torts is that they seek to compensate damages in monetary form.
    The three torts are made to protect a person’s property from unlawful inter meddling.
    In conclusion, trespass to chattel, conversion and detinue are very much intertwined and can be said to overlap each other in quite a number of ways, so have to be treated not far from each other.

**Remedies:** Trespass to Chattels vs. Conversion

As mentioned above, an ordinary conversion case will require the tortfeasor to pay the full market value of the property to its owner. If the owner is not fully deprived of the property, and it can be returned to the owner, the tortfeasor would be liable for the actual damage, which is the usual remedy for trespass to chattels. As opposed to paying the full value of the property, the tortfeasor will pay the diminished value of the chattel.

Differentiating between trespass to chattels and conversion and applying the relevant elements to a case can be difficult. Professional legal knowledge and skills are often key to evaluating an intentional tort claim. Start working on your case today by speaking with an experienced personal injury attorney in your area.

REFENESES

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