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TASK: Discuss the tort of trespass to Chattel, Conversion and Detinue.

A chattel is any property apart from land and any immovable property, it is any moveable thing which is capable of being owned or possessed.

Trespass to chattel in Nigeria is made up of three types of torts. These are;

a. Trespass to chattels

b. Conversion

c. Detinue

TRESPASS TO CHATTEL

Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the intentional or negligent interference with the possession of the chattel of another person. it is actionable per se, that is to say upon commission or occurrence, the plaintiff does not have to prove damage.

Trespass to chattel is designed to protect the right of retaining one’s chattel, to protect the physical condition of the chattel and to protect the chattel against unlawful interference.

Examples of trespass to chattel includes; Taking a chattel away, driving another person’s car without permission, throwing something at the chattel, killing another person’s animal, feeding poison to it or beating it e.t.c

ELEMENTS OF TRESPASS TO CHATTEL

(What a plaintiff must prove to succeed)

A plaintiff must prove the following to succeed;

1. That the act of trespass was intentional

2. That the act of trespass was negligent

THE PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL

Anyone in possession or has right to possession of a chattel may sue any person who meddles with the chattel. Some persons who do not have legal right must have been deemed by lawful authorization to have possession, so that they will be blue to protect chattels left under their care. For instance, a boss gives his apprentice a parcel to keep for him, the apprentice has lawful authority over that parcel so he has “caretakership” of it and can sue if it(the parcel) has been trespassed upon.

Below are the persons who can sue for trespass to chattel.

1. Owners: Owners obviously can sue if their chattels have been trespassed on, they have immediate possession to the chattels therefore they can sue.

2. Bailees

3. Lenders: A person who a parcel or chattel has been lender to is definitely to be returned, it is therefore the duty of the lender to take care of the chattel and sue if it has been trespassed on

4. Assignees

5. Trustees

6. Administrators of estates

7. Caretakers: Caretakers also have the right to sue. They have been given the chattel by the original owner to oversee and look after, if there is any commission of trespass to chattel, he has the right to sue.

DEFENSES FOR TRESPASS TO CHATTEL

1.Inevitable accident: This could be a defense to the defendant if he can prove that the trespass was an inevitable accident.

NATIONAL COAL BOARD v. EVANS & co.

This case considered the issue of trespass and whether or not an excavator was liable in trespass when they accidentally damaged an electrical cable after the owner of the cable had laid it underneath a property without the consent of the local council

HELD: It was held that in the absence of establishing negligence on the part of the defendant contractors, there was no fault and there was no trespass by the defendants. The damage was an inevitable accident.

2. Jus Tertii: This simply means that the defendant(s) has to prove a better title, in the sense that they have to prove a better right of a third party as long as he has lawful authority.

3. Limitation of time; as a result of the expiration of time specified for legal action

4. Honest conversion or acting honestly.

THE REMEDIES FOR TRESPASS TO CHATTEL

The remedies available to a person whose chattel has been tampered with are as follows;

1. Payment of damages

2. Replacement of the chattel

3. Payment of the market price of the chattel

4. Repair of the damage.

CONVERSION

According to SIR JOHN SALMOND in his book LAW OF TORTS

A conversion is an act of willful 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.

Conversion is any possession, interference or disposition of the property of another person, as if it is one’s own without legal justification. It is any intentional interference with another person’s chattel which unlawfully deprives the person of title, possession and use of it. Conversion includes denying a person of the title or possession or use of his chattel.

An owner can sue for conversion. Likewise, a person who has mere custody, temporary possession or caretaker ship can sue any third party who tries to dispose, steal, convert or sell the chattel unlawfully.

NORTH CENTRAL WAGON & FINANCE CO. LTD v. GRAHAM

The defendant hire purchased sold the car in contravention of the terms of the hire purchase agreement

It was HELD: that the plaintiff finance company was entitled to terminate the hire purchase agreement and sue the selling purchase in the tort or conversion for recovery of the car.

EXAMPLES OF CONVERSION

Conversion of a chattel that belongs to another person may be done in different ways. Below are some examples inter Alia

1: TAKING: where a defendant takes a plaintiff’s chattel unlawfully with the intent of exercising dominion over it, there is conversion. On the other hand, the defendant may not be liable if he merely moves the goods without denying the plaintiff as in the case of FOULDES v. WILLOUGHBY

2.USING: Where the defendant uses the plaintiff’s chattel as if it were his own, such as, by wearing the plaintiff’s jewelers as in the case of PETRE v. HENEAGE or using the plaintiff’s bottle to store wine as was in the case of PENFOLDS WINE v. ELLIOT is a conversion of such chattel.

3.DETENTION: In the case of ARMORY v. DELAMIRIE where a Chimney cleaner found a jewel and gave it to a jeweler for valuation, the jeweler knowing the circumstances took the jewel, detained and refused to give it to the cleaner. The cleaner then sure the jeweler for conversion and it was HELD: that the jeweler was liable for conversion as a finder of a property has good title and has a right or interest to keep it against all persons, except the rightful owner of the property or his agent.

4. WRONGFUL DELIVERY: delivery of a chattel to a wrong person without lawful justification is conversion

INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION

In the general sense, innocent delivery or innocent receipt are not torts or criminal offenses therefore, it is not conversion.

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 be no conversion. Same goes to innocent receipt of goods. However, the receiver must not wilfully damage the goods unless the goods constitute a nuisance.

UNIPETROL v. PRIMA TANKERS Ltd.

The defendant oil tanker owners had a contract to carry Unipetrol’s cargo of fuel from Port Harcourt, the captain of the vessel went elsewhere with the cargo of fuel. The plaintiff sued for the conversion of the cargo.

It was HELD: that the respondents were liable in conversion.

THE RULES REGARDING FINDING LOST PROPERTY

The rules of law applicable to finding a lost property were settled by the English court of appeal in the case of PARKER v. BRITISH AIRWAYS. where the plaintiff was waiting in the defendant’s lounge at Heathrow Airport, London, England when he found a bracelet on the floor. He handed it to the employees of the defendant, together with his name and address and a request that it should be returned to him if it was unclaimed . It was not claimed by anybody and the defendants failed to return it to the finder and sold it

It was HELD: that the proceeds of sale belonged to the plaintiff who found it.

However, the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows:

1. 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. He acquires a right to keep it agains all persons, except the true owner.

ARMORY v. DELAMIRIE (Supra)

2. 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

3. An occupier of land, or 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 pool in the case SOUTH STAFFORDSHIRE WATER co v. SHARMAN and a pre-historic boat discovered six feet below the surface in the case of ELWES v. BRIGGS were held as belonging to the land owner.

4. However, an occupier of premises does not have superior rights to those of a finder in 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.

WHO MAY SUE FOR CONVERSION

1. Owners: an owner has the right to sue for conversion because he has the right to immediate possession of the chattel that has been converted.

2. Bailees: a bailee of a chattel May sir another person for conversion of a chattel bailed with him though he has no right to immediate possession.

THE WINKFIELD CASE where a ship ran into another ship. The post-master general though not the owner of the ship that sank was held entitled to sue the owners of the winkfield as a bailee in possession for the value of the ship.

It was HELD: that the owners of the Winkfield were liable and that “as between a bailee and a stranger, possession gives title”

3. Holders of lien and pledge

4. Finders

5. Buyers

REMEDIES FOR CONVERSION

1. Order for delivery, return or specific restitution of goods

2. Alternative order for payment of the current market value of the chattel

3. General damages

DETINUE

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

It is a general rule, that to be successful in a claim for detinue, a plaintiff must have possession before the detention or have right to immediate possession of the chattel.

If when A borrows B his laptop for 24hours and B refuses to return it upon the demand of A and expiration of 24 hours. A has the right to sue for detinue of chattel.

One can only sue for detinue if chattel if he or she has the title of ownership or right of immediate possession of chattel AND the defendant must have refused to return or deliver the chattel upon demand or expiration of the stipulated period of time.

KOSILE v. FOLARIN

The defendant motor dealer seized and detained the motor vehicle he had sold to the plaintiff on credit terms,upon delay by the plaintiff to fully pay up. The plaintiff buyer sued for detinue in chattel claiming damages. It was HELD: that the defendant is liable for detinue in chattel as he was wrong to have detained the vehicle.

In the above case, the SUPREME COURT, emphasized the requirement that in an action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel and of the defendant persists in keeping the chattel, he is liable for detinue.

THE DIFFERENCES BETWEEN CONVERSION AND DETINUE

Detinue and conversion are similar in the sense that they both have to do with unlawful detention, however there are some differences which includes the following;

1. The refusal to surrender a chattel on demand is the essence of detinue, there must have been a demand for return of the chattel.

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

THE DEFENSES FOR DETINUE

In a defense for detinue, the defendant may plead that;

1. Innocent delivery

2. Subsisting bailment

3. Inevitable accident

4. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff

5.He has possession of the goods

6.The defendant may plead JUS TERTII which means that a third party has a better title, provided the defendant is the agent or has the authority of the third party or is claiming under the third party.

REMEDIES FOR DETINUE

Where a plaintiff chattel has been detained, he has remedies open to him, they include;

1. CLAIM FOR RETURN OF THE CHATTEL: this means a claim for the chattel that has been detained to be returned or surrendered to the plaintiff if it has not been destroyed or has not changed its character during its detention.

2. REPLACEMENT OF THE CHATTEL: If the chattel has lost its original character or has been destroyed during detention, the defendant may be asked to replace the chattel with its original self or with something similar, this can be feasible in the case of manufacturers of products, who can easily replace the goods by supplying an identical or similar product.

3. RECAPTURE/SELF HELP: a person who is entitled to possession of goods of which he has been wrongfully deprived may resort to self-help and retake the goods from the custody of the person detaining it, using only reasonable force after he has made a demand for their return.

4. DAMAGES: when a defendant has been found liable for detinue, he cannot deprive the plaintiff of his right to compensation (damages) for detention of the chattel just because he has not been using it or earning from its use. General damages are usually presumed in this action, especially for the loss of the use of the chattel.

5. REPLEVIN/RELEASE ON BOND: this means the return of goods on security, pending the determination of the ownership of the chattel.

6. Claim for the market value of chattel.

REFERENCES:

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\*Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293

\*Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T