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 ASSIGNMENT

The tort of trespass to chattel in law is made of; Trespass to chattel conversion and Detinue. Discuss the above and support it with case law.

A chattel is any property other than land and immovable property. It simply means moveable property. The tort of trespass to chattel protects the rights of ownership or possession of a chattel from all wrongful interferences. It protects chattels against meddling, damage, destruction, diminution, conversion, detinue or any unlawful interference whatsoever, by any other person without lawful
justification.

In Nigeria, the tort of trespass to chattel is made up of three types of torts. They are; Trespass to chattel per se without detinue or conversion, conversion and detinue.

1. 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 a chattel in the possession of the chattel of another person.Trespass to chattel is designed to protect the following interest in personal property or personality;

1. Rights to retain ones chattel
2. Protection of the physical condition of the chattel
3. Protection of the chattel against unlawful interference or meddling

The tort of trespass to chattel is protects possession, that is the right of immediate possession of a chattel, as distinct from ownership. To maintain an action for trespass, the plaintiff must show that he had possession of the chattel at the time of the trespass or is entitled to immediate possession of the chattel. It is also necessary to note that a person who has wrongfully acquired possession may also maintain action against all persons except the owner or agent of the owner of the chattel.

In this tort, injury is done on the chattel while in the possession of the person claiming damages for the injury. The chattel is usually not taken from his possession as we have in conversion or detinue. In the case of Erivo v Obi where the defendant respondent closed the door of the plaintiff appellant’s car and the side windscreen got broken. The plaintiff sued for damage to the windscreen and the loss he incurred in hiring another car to attend to his business. On appeal, the court of appeal held; that the defendant respondent was not liable. He did not use excessive force but only normal force in closing the door of the car. He did not break the windscreen intentionally nor negligently. It was an inevitable accident which the exercise of reasonable care and the normal force used by the respondent could not avert. In this case the court of appeal restated the position of the law that, trespass to chattel is actionable per se that is , without proof of actual damage. 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.

Examples of trespass to chattel include; Taking a chattel away, throwing another person’s property away, such as in annoyance, mere moving of the goods from one place to another, that is, mere asportation etc.

In the case of kirk v Gregory the movement of a deceased persons ring from one room in his house toanother was held to be trespass to chattel and nominal damages was awarded against the defendant. Also in the case of G.W.K v Dunlop rubber co removing a tyre from a car and replacing it with another tyre was held to be trespass.

Elements of trespass to chattel

To be able to succeed in a claim of trespass to chattel, a plaintiff must establish that the act of trespass was;

1. Intentional
2. Negligent

It is important to prove this two elements of trespass to chattel as it is not a strict liability tort. However, they do not automatically give rise to liability per se, as an appropriate defense may be pleaded to avoid liability.

The persons who may sue for trespass to chattel

Anyone who has possession or care-takership of a chattel may sue any other person who meddles with the chattel. In other words, anyone who has possession or right to immediate possession can sue. Also, 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, the persons who may sue for trespass to chattel, provided they have possession at the time of interference include;

* Owners
* Bailees
* Lenders
* Assignees
* Finders
* Custodians
* Caretakers
* Executors

The defenses for trespass to chattel

In an action for trespass to chattel the defendant may plead the following;

1. Inevitable accident. Where the defendant pleads inevitable accident he must prove this on a balance of probability to be able to succeed in the case of trespass to chattel. In the case of national coal board v evans & co where the plaintiff sued claiming damages for trespass to the electricity. The court 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 as the damage was an inevitable accident.
2. Jus tertii. This is a latin maxim meaning the tittle or better right of a third party, provided that he has the authority of such third party, he will be able to avoid liability for trespass to chattel.
3. Limitation of time, as a result of the time specified for legal action. The defendant may plead as a defense that the time was limited
4. Subsisting bailment
5. Subsisting lien
6. Honest conversion.

Remedies for trespass to chattel

The remedies available for a person whose chattel has been interfered with are;

1. Payment of damages. In this situation the defendant is ordered by the court to pay to the claimant for the damage he has suffered as a result of the chattel or the chattel itself
2. Replacement of the chattel. In situations where the chattel has been damaged beyond repair, the court may order the defendant to replace the chattel with a new one
3. Payment of the market price for the chattel. This is most likely to happen in cases where the chattel in question is for sale. The defendant will be asked to pay the market price or value for the chattel.
4. Repair of the damage. Where the defendant happens to interfere with the chattel in such a way it could still be repaired, he is asked by the court to repair for the damage caused to the chattel.
5. Conversion.

According to sir John Salmond, in his book the law of tort, he defined conversion as 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 can also be defined as any interference, possession or disposition of the property of another person as if its one’s own without legal justification. In other words, conversion is any intentional interference with another person’s chattel which unlawfully deprives the person of tittle, possession or use of it. It is enough to prove that the defendant interfered with the goods, it is immaterial that the defendant does not know that the chattel belongs to another person. An owner can sue for conversion likewise, a person who has mere custody, temporary possession or caretakeship can sue any third party who tries to detain, dispose, steal or otherwise convert such chattel. In the case of North Central Wagon & Co. Ltd v Graham. The defendant hire purchaser sold the car in contravention of the terms of the hire purchase agreement. In the circumstances the court held: that the plaintiff finance company was entitled to terminate the hire purchase agreement, and sue the selling hire purchaser in the tort of conversion, for recovery of the car. Also in the case of Youl v Harbottle the defendant carrier of the goods by mistake delivered the plaintiffs goods to the wrong person. He was held liable for conversion, for the loss of the goods. Therefore it follows that if an act of interference with a chattel is intentional or willful, it is not a defense, that the tort was done by mistake, even if the mistake is honest that is in good faith or honest.

Examples of chattels include; Taking, using, alteration, consumption, damaging or destroying it, wrongful delivery, wrongful refusing to return a chattel, receiving and many others.

Innocent delivery or receipt is not conversion.

Innocent delivery or innocent receipt are not torts nor criminal offences. Thus innocent delivery is not conversion. Therefore, when 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 persons 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. In the case of 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 allegedly went elsewhere with the cargo of fuel. The plaintiff appellant unipetrol sued for the conversion and loss of the cargo. The court of appeal held; that the respondents were liable in conversion. The word “loss” is wide enough to include a claim for conversion against a carrier. It is elementary law that in a claim for conversion, the claimant is entitled to the return of the article seized, missing, or in the possession of the party, or reimbursement for its value.

Also in the case of Owena Bank Nig ltd v Nigerian Sweets & Confectionery Co ltd. The 1st respondent was granted an import licence by the federal ministry of trade to import granulated sugar. However, the 2nd respondent opened a letter of credit and imported the sugar. The 1st respondent sued for damages for the wrongful conversion of the imported the sugar. The first respondent sued for damages for the wrongful conversion of the import license. On appeal by the bank, the court of appeal held that the defendants were liable for conversion of the import license papers.

Thus, an action for conversion, will lie in conversion for any corporeal personal property including papers and tittle deeds. Conversion is an injury to the plaintiff’s possessory rights in the chattel converted. Whether an act amounts to conversion or not depends on the facts of each case, the courts have a degree of discretion in deciding whether certain acts amount to a sufficient deprivation of possessory or ownership rights as to constitute conversion

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, the tort is committed.

The rules regarding finding lost property.

The rules of law applicable to finding a lost property were authoritatively settled by the English court of appeal in the case of Parker v British Airways. The plaintiff was waiting in the defendant airways 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. The court held that, the proceeds of the sale belonged to the plaintiff who found it.

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 against all persons, except the true owner, or a person who can assert a prior right to keep the chattel, which was subsisting at the time when the finder took the chattel into his care and control.
2. Any servant or agent who finds a lost property in the course his employment, does so on behalf of his employer, who by law acquires the rights 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. In the case of Elwes v Briggs Gas Co where a pre-historic boat discovered six feet below the surface 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 intention to exercise control over the premises, and things on it.

Who may sue for conversion

1. Owners
2. Bailees
3. Holders of lien and pledge
4. Finders
5. Buyers
6. Assignees licensees
7. Trustees

Defenses for conversion of a chattel

In an action for conversion of chattel, the defendant may plea;

1. Jus terti, that is the tittle or better right of a third party. It is the tittle of better right of a third party to chattel, goods or property in dispute.
2. Subsisting bailment
3. Subsisting lien
4. Temporary retention; to enable steps to be taken to check the tittle of claimant. A defendant may temporarily, refuse to give up goods, while steps are taken to verify the tittle of the plaintiff who is claiming tittle before the chattel is handed over to the plaintiff if he is found to be the owner, or has right to immediate possession.
5. Limitation of time.

The remedies for conversion.

The remedies available for a plaintiff for conversion or the reliefs granted to the plaintiff for conversion include;

1. Order for delivery, return or specific restitution of the goods
2. Alternative order for payment of the current market value of the chattel
3. An order for payment of any consequential damages. However, allowed may be made for any improvement in the goods, such as, where a person honestly in good faith buys and improves a stolen car and is sued by the true owner, the damages may be reduced to reflect the improvements.
4. Recovery of special and general damages. Special damage is recoverable by the plaintiff for any specific loss proved.
5. General damages. Furthermore, where for instance, a plaintiff whose working equipment or tools are converted by another person, a plaintiff may sue for the loss of profit, or existing contract or wages for the period of the conversion of the work tools or equipments.
6. Detinue

The tort of detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. As a general rule, to successfully sue in detinue, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel.

When to sue for detinue

A plaintiff can only maintain an action for the tort of detinue after satisfying two conditions which are;

1. The plaintiff must have tittle that is ownership or right to immediate possession of the chattel
2. The defendant who is an actual possession of the chattel must have failed and or refused to deliver the chattel to the plaintiff after the plaintiff has made a proper demand for the return of the chattel, without lawful excuse. Thus, there must have demand by the plaintiff for the chattel and a refusal or a failure to return them. This making of a demand by the plaintiff on the defendant is a condition precedent which the plaintiff must establish to succeed in his claim for detinue.

In the case of Kosile v Folarin 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 if the defendant persists in keeping the chattel, he is liable for detinue.

Also, in the case of West Africa Examination Council v Koroye the plaintiff sat for an examination conducted by the defendant council. The defendant neglected and or refused to release his certificate. The plaintiff successfully claimed is detinue for his certificate and was award damages im lieu of the release of the certificate by the supreme court.

The defenses for detinue

In an action for detinue a defendant may plead that ;

1. He has mere possession of the good
2. That the plaintiff has insufficient tittle as compared to himself
3. The defendant may plead jus terti, that is, that a third party has a better tittle, provided the defendant is the agent, or has the authority of the third party or is claiming under the third party.
4. Innocent delivery
5. Subsisting bailment
6. Subsisting lien on the chattel
7. Inevitable accident

The remedies for detinue

When a person’s chattel is detained by another person, the person who is denied possession or use of such chattel, has several remedies open to him which include

1. Claim for return of the chattel. This is a claim for return of the specific chattel, especially, if the chattel has not changed its character, content and it has not been damaged nor destroyed during its detention.
2. Replacement of the chattel. Where possible or appropriate, a defendant may be ordered to replacement by supplying and identical or similar chattel. This is possible for instance in the case of manufacturers of products, who can easily replace the goods by supplying an identical or similar product.
3. Claim for the market value of chattel
4. Recapture or self help
5. Replevin or release on bond
6. Damages

The 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 include 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 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 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.

In conclusion, The tort of trespass to chattel seeks to preserve chattels and prevent them from damage and also to protect the interest of the owner or the person or persons in possession of the chattel. The three elements that makeup the tort of trespass to chattel are trespass to chattel, conversion and detinue. These elements have their various elements which have been discussed above and their various defenses which can be pleaded by the defendants including the various remedies or reliefs available for the plaintiffs.

REFERENCE

* ESE MALEMI’S LAW OF TORTS