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Trespass to Chattel

A chattel is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land and immoveable property. Examples of chattel include a piece of jewellery, a painting or a car and, in some contexts, goods, equipment or machinery. Trespass to Chattel is a direct and wrongful damage done to another person's chattel in custody. It is the intentional or negligent interference with the possession of the chattel of another person. It is actionable per se; there is ample evidence of overt and unlawful application of force, no need to prove injury. The actual application of force, however, does not need to be physical. Trespass to chattel, for instance, is the driving away of livestock. Each moveable property is a chattel.The tort of chattel trespass preserves a chattel's rights of ownership or possession from any wrongful interference. Erivo v Obi (1993) In this case Appellant sued inter alia for damage to the windscreen and the loss he incurred in hiring another car. Court of Appeal held that the defendant respondent was not liable as it was not done intentionally or negligently but was an was an inevitable accident.

Other examples of trespass to chattel include; Throwing another person's property away such as in annoyance, Scratching or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle, Destruction, or any act of harm or damage, Use, that is, mere using without permission, etc. In the case of Cresswell v Sirl (1948) the defendant shot and killed the plaintiff’s dog. The plaintiff claimed damages for trespass to property, the property being the dog. The defense was that the defendant was justified in killing the dog because it was threatening his sheep. The court held that the principle enunciated in Cope was of general application to all justifications for all acts of trespass.

Elements of Trespass to Chattels

1. Intentionally; or

2. Negligently. Gaylor & Pope v Davies & Sons (1924)

National Coal Board v Evans & Co. (1951)Where, when reaching and destroying a power cable, the defendant contractor was digging on the property of a third party. He had no way of thinking that there was a cable there (not least because the claimant had trespassed in laying it). Since the act was unintentional and accidental, it was held that no fault for trespass could be found. Evans behavior was neither reckless nor deliberate, and was "completely without fault." The NCB or its successors is responsible for negligence and injuries for failing to advise the council when they put the cable under their land without the council's knowledge or consent. However, accident, intentional or negligent trespass 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, provided they have possession at the material time of the interference include: Owners, Bailees, Lenders, Assignees, Trustees, Finders, Custodians, Caretakers, Adverse possessors, because mere possession gives a right to sue to retain possession, Executors, Administrators of estates; etc. 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 Defenses for Trespass to Chattel

In an action for trespass to chattel, the defenses a defendant may plead include:

1. Inevitable accident

2. Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third party.C.O.P. v Oguntayo (1993)

3. Subsisting lien.

4. Subsisting bailment

5. Limitation of time, as a result of the expiration of time specified for legal action.

6. Honest conversion, or acting honestly, etc.

The Remedies for Trespass to Chattel

The remedies available to a person whose chattel has been meddled with, short of conversion or detinue are:

1. Payment of damages: If a court of law awards damages to someone, it orders money to be paid to them by a person who has damaged their reputation or property, or who has injured them.

2. Replacement of the chattel: this means that the chattel that has been damaged or injured will be replaced by the person who caused the damage

3. Payment of the market price of the chattel: The damaged chattel will be paid for using the price it is sold at in the market.

4. Repair of the damage: The damaged chattel will be fixed by person that caused said damage.

CONVERSION: According to Sir John Salmond, in his book the Law of Tort, 21st ed. (1996) p. 97-98: "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”. A conversion occurs when a person without authority or permission intentionally takes the personal property of another or deprives another of possession of personal property. Conversion is the civil wrong done while larceny is the criminal act. In Lewis v Averay [1972]Mr. Lewis sold the car to the rogue, who pretended to be the famous television figure Richard Greene. Fraudster wanted to pay by cheque. When Mr. Lewis asked for some identification, the rogue presented a film studio pass in the name of Richard Greene but with his own photograph. Mr. Lewis accepted the cheque and the rogue drove away. The fraudster then sold the car to Mr. Averay, who made the purchase in good faith. Mr. Lewis discovered that the cheque by the rogue was worthless and brought a claim against Mr. Averay to return back his the car. It was held that the mistake to the real identity of the rogue did not prevent a valid contract being created between him and Mr. Lewis. There was a face to face interaction, where the law presumes contract. However, this was fraud and impersonation by the rogue, which would render a contract voidable and it could be set aside. Yet, this must be done before a third party acquires the rights. In this case, the contract was not set aside before Mr. Averay, in good faith, purchased the car.

 The elements of conversion are:

1. The plaintiff’s ownership or right to possession of the property;

2. The defendant’s conversion by wrongful act inconsistent with the property rights of the plaintiff;

3. Damages.

Examples of conversion

Conversion of a chattel, belonging to another person may be committed in many different ways. Examples of conversion include:

1. Taking: Where a defendant takes a plaintiff’s chattel out of the plaintiff s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion. Contrast this proposition with the decisions in the cases of Fouldes v Willoughby and Davies v Lagos City Council. On the other hand, a defendant may not be liable; if he merely moves the goods without denying the plaintiff of title.

2. Using: Using a plaintiff’s chattels as if it is one's own, such as, by wearing the plaintiff’s jewelry, as in the case of Petre v Heneage (1701), or using the plaintiff’s bottle to store wine as was the case in Penfolds Wine Ltd v Elliot is a conversion of such chattel.

3. Alteration: By changing its form howsoever.

4. Consumption: By eating or using it up.

5. Destruction: By damaging or obliterating it. Mere damage of a chattel is not sufficient to make one liable for conversion. As a general rule of law, mere damage or destruction of a chattel without more, is a trespass to chattel in tort and also a malicious damage in criminal law. Simmons v Lillystone (1853)

6. Receiving: Involuntary receipt of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Receiving a chattel from a third party who is not the owner is a conversion. This is wrongful, for it is an act of assisting the other person in the conversion of the chattel, or the receiving of stolen goods.

7. By Detention:Armory v Delamirie (1722). A chimney sweep's boy found a jewel and gave it to a jeweler for valuation. The jeweler knowing the circumstances, took the jewel, detained and refused to return it to the boy. They boy then sued the jeweler for conversion and for an order for return of the jewelry to him. The court held: that the jeweler was liable for conversion. A finder of a property has a good title, and he has a right or interest, to keep it against all persons, except the rightful owner of the property or his agent.

Moorgate Mercantile Co v Finch (1962). However, a temporary reasonable refusal by the finder or custodian of a property to hand it over to a claimant, in order to verify the authenticity of the title of the claimant. is not actionable, except where the refusal is averse to the owner's better title.

8. By Wrongful Delivery: Wrongfully delivery of a person's chattel to another person who does not have title or right to possession without legal justification is a conversion.

9. Purchase: At common law, conversion is committed by a person who bought and took delivery of goods from a seller who has no title to the chattel nor right to sell them. Such as when a thief, steals and sells a chattel. A buyer in such a situation takes possession at his own risk, in accordance with the rule of law that acts of ownership are exercised at the owner’s peril.

10. By Wrongful Disposition: Such as by sale, transfer of title or other wrongful disposition. In Chukwuka v C.F.A.O. Motors Ltd (1967), The plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months later the defendants sold the car to a third party who reregistered it in his own name. The plaintiff sued for conversion. The High Court held: that the defendant was liable to the plaintiff for conversion of the car. The Arpad (1934) and Hollins v Fowler (1875).

INNOCENT RECEIPT

Innocent delivery or innocent receipt is not torts, nor criminal offences. 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. In the case of Unipetrol v Prima Tankers Ltd (1986). 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 other party, or reimbursement for its value.

LOST PROPERTY RULE

Common law defines lost property as personal property that was unintentionally left by its true owner. For example, a wallet that falls out of someone's pocket is lost. At common law, a person who found lost personal property could keep it until and unless the original owner comes forward. This rule applied to people who discovered lost property in public areas, as well as to people who discovered lost property on their property.

Bridges v Hawkesworth (1851), the plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop was held entitled to the money instead of the shop owner, upon the failure of the rightful owner to come forward to claim the money.

As a general rule of law, anybody who has a finder's right over a lost property, has an obligation in law to take reasonable steps to trace the true owner of the lost property, before he may lawfully exercise the rights of an owner over the property he found.

PERSONS WHO MAY SUE FOR CONVERSION

1. Owners: An owner in possession, or who has right to immediate possession may sue another person for conversion.

2. Bailees: A bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him. However, a bailor at will has title to immediate possession of a chattel he has deposited with a bailee and can maintain action against a bailee for conversion.

3. Holders of lien and pledge

4. Finders

5. Buyers

6. Assignees

7. Licensees

8. Trustees

DEFENCES FOR CONVERSION OF A CHATTEL

The defenses for conversion of chattel are almost similar to the defenses of trespass of chattel. In an action for conversion of a chattel, the defendant may plead:

1. Jus tertii, that is, the title or better right of a third party. It is the title or better right of a third party to the chattel, goods, or property in dispute. As a general rule, a defendant cannot plead that a plaintiff is not entitled to possession as against him, because a third party is the true owner of the chattel. A defendant can only plead jus tertii, that is, the better right of the 120 true owner or third party only when he is acting with the authority of the true owner.

2. Subsisting bailment

3. Subsisting lien

4. Temporary retention; to enable steps to be taken to check the title of the claimant. A defendant may temporarily, refuse to give up goods, while steps are taken to verify the title of the plaintiff who is claiming title 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.

REMEDIES FOR CONVERSION

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

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

3. An order for payment of any consequential damages. However, allowance 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 a 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 equipment’s.

DETINUE

The tort of detinue is the unlawful detention of another person's chattel, the immediate possession of which entitled the person. .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.

Elements of detinue include:

1. Make a Demand

The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of the demand. The demand is imperative.4

2. Refuse the Demand

The defendant must refuse that demand (whether expressly refusing or failing to respond at all). On some occasions, a defendant who does not have possession of the chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.5

3. Unreasonable Refusal

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 has suffered loss. This will usually be calculated as the value of the chattel.

In the case of Steyr Nig. Ltd v Gadzama (1995) 7 NWLR pt. 407. p. 305 CA, at the end of their services, the plaintiff appellant company sued the defendant respondents who were former employees of the appellant for detaining official cars and household items which were in their use as top management staff of the company. The Court of Appeal held: that the respondents were to pay reasonable prices for the items in lieu of returning the chattels.

Defenses for Detinue

1. He has mere possession of the goods

2. That the plaintiff has insufficient title as compared to himself

3. The defendant may plead jus tertii, that is, a third party person 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.

4. Innocent delivery

5. Subsisting bailment

6. Subsisting lien on the chattel.

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

8. Inevitable accident,

9. Reasonable defense of a person or property, such as when one beats or injures a dog that was attacking him or another person.

10. Enforcement of a court order or other legal process, such as levying of execution of property under a writ of fifa, or the police taking away goods they believe to have been stolen for the purpose of use as exhibit in evidence before court, etc.

REMEDIES FOR CONVERSION

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 the 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 the chattel by supplying an 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: This is a claim for the current market value of the chattel as may be assessed. The measure of damage in detinue is usually the market value of the goods as proved at the time of judgment. The onus is on the plaintiff to prove the market value. Therefore, where there is default of restitution a plaintiff may claim for payment of the value of the chattel.

4. Recapture or 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. However, he may not trespass through the land of an innocent party to retake the goods. He may only go on such land with permission.

5. Replevin or Release on Bond: This is a return of the goods on security, pending the determination of the ownership of the chattel. When a third party's goods have been wrongfully taken in the course of levying execution or distress of the movable property of another person or judgment debtor, such third party claiming ownership may recover them by means of an interpleader summons determining their ownership.

6. Damages: When a defendant has been found liable in detinue, he cannot deprive the plaintiff of his right to damages for detention of the chattel, simply because he has not been using it, nor earning anything .from its use. Also, if the wrongdoer has been making use of the goods for his own purpose, then he must pay a reasonable hire for chattel to the plaintiff.

THE DIFFERENCES BETWEEN CONVERSION AND DETINUE

1. Detinue covers the same ground as the tort of conversion by detention. However, some differences are to be noted which include the following:

2. 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 the chattel.

3. 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. Before the Common Law Procedure Act 1854, was enacted a defendant had a choice to either restore the actual chattel or pay the market value.In any case, since the sanctioning of the Act, a court has tact to arrange particular compensation, or grant the advertise esteem of the chattel to the offended party or it may grant harms alone in the event that the products can be supplanted effortlessly.

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