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In law of torts, trespass to property is divided into two parts which are;

- I. Trespass to Chattel
- II. Trespass to land.

The writer shall discuss the latter, which is trespass to chattel also known as trespass to personal property.

Chattel can be defined as any type of property which is movable such as articles, goods, cars, furniture, animals, or any personal property except land. A chattel is a property which is capable of being owned and possessed. It is important to note that human beings are not regarded as a chattel.

The tort of trespass to Chattel is to protect goods of personal properties such as cars and books. Such properties should also possess a title which is right against damage by any person unlawfully.

In Nigeria, the tort of trespass to Chattel is divided into three; which are;

- I. Trespass to Chattel
- II. Conversion
- III. Detinue.

- I. Trespass to Chattel

Trespass to Chattel can be defined as any unlawful interference to a person's property. Such action can either be intentional or negligently. It can also be defined as any unlawful direct interference with a chattel in possession with another person. The aim of trespass to Chattel is to protect the physical condition of a chattel, protection of the chattel against meddling and right to retaining one's chattel. When there is an unlawful interference with a chattel under the possession of another, especially when a good is stolen, goods can be reclaimed through the use of criminal law; the complainant must prove that he was in possession of the chattel or he is entitled to the chattel when the injury or wrong took place.

For a plaintiff to succeed in his claim of trespass to Chattel he must prove that the action was either intentional or negligent.

Trespass to Chattel can be committed in some ways such as

- a. Taking a chattel away
- b. Destruction of a chattel such as scratching, making marks on the chattel
- c. Touching of a chattel which will bring damage to it
- d. Throwing something at a chattel which will cause damage to it.
- e. Driving a person's car or riding a person's bike without adequate permission.
- f. Movement of a chattel without permission. In the case of KIRK V GREGORY where the movement of the deceased person's ring was held as trespass to Chattel.

For a person to be able to sue for trespass to Chattel, the person must have possession of such chattel at the time another person tries to meddle with the chattel. Such people include; Owner of the chattel, executors, lenders, custodian and caretakers, finders and administration of estate.

The defense made by a defendant when be sued for trespass to Chattel includes

- I. Inevitable accident; this simply means that the action or wrong was unavoidable
- II. Jus tertii: This is the right of a third party to possess a chattel
- III. Subsisting ailment
- IV. Limitation of crime
- V. Honest conversion.

The remedies for a plaintiff includes;

- I. payment of damages
- II. Replacement of chattel
- III. Repair of damages
- IV. Payment of market price

2. Conversion

Conversion is a type of trespass to Chattel. It simply means possession of another person's chattel unlawfully. It can also be defined as an act of denying a person his right to have his chattel. Examples of conversion include stealing or taking. In the case of *Youl v Harbottle*, the defendant delivered a plaintiff goods to the wrong address. The defendant was held liable to conversion. This simply means even if the action was not intentional, or was an honest mistake, the defendant is still held liable. The owner and the bailee of the chattel can sue another person for conversion. Other people include the finder.

Actions which are recognized as conversion includes;

- a. Using: using a person's property without permission is regarded as conversion. Like in the case of *Petre v Heneage*.
- b. Taking: taking goods or property without permission or justification can be regarded as conversion.
- c. Detention
- d. Receiving
- e. Consumption
- f. Wrongful sale
- g. Wrongful delivery: wrongful delivery of goods by the defendant is regarded as conversion. Like in the case of *Youl v Harbottle*, were the defendant delivered a plaintiff goods to the wrong address.

So the question arises on how one can discover or find lost property. This rule of law used in finding lost property was derived from the case of PARKER V BRITISH AIRWAYS. The rule includes

- a. A finder of a chattel has no ownership of it unless it has been abandoned. Such a person has the right to keep it against everyone apart from the owner.
- b. If a servant finds a property the master automatically becomes the finder
- c. The owner of a building has more right than the finder over the goods discovered.
The finder has the obligation to look for the owner with reasonable attempts.

There is an exemption to actions regarded as conversion. In a situation when an individual receives good in good faith from a person believed to have ownership of such goods. Such a situation is known as Innocent receipt or delivery. It simply protects an individual who receives goods in good faith, such action cannot be regarded as conversion.

Defence against chattel includes,

- a. Jus tertii; which is the right of a third party.
- b. Limitation of time
- c. Subsisting bailment.

While the remedies of conversion includes;

- a. Restitution; which simply means giving back
- b. Recovery of special damages
- c. Payment of damages

3. Detinue

This is defined as the wrongful detention of a chattel of an individual which denies the owner of his possession.

Before an individual can sue, the plaintiff must be in possession of the chattel before the detention. The plaintiff must have ownership of the chattel and the defendant must have failed to release the chattel after the demand of the plaintiff. In the case of KOSILE V FOLARIN, the supreme court held that there must be a request made by the plaintiff to the defendant to return the goods and if the defendant refuses, the defendant shall be liable to detinue.

There are four elements required to establish detinue:

- I. Make a Demand
- II. Refuse the demand
- III. Unreasonable refusal
- IV. Damages

The defense for detinue includes;

- a. A defendant may plead that he had little or no possession of the goods.
- b. The defendant can also plead that he had the right of a third party called jus tertii. Jus tertii is the right of a third party to a chattel. In the case of C.O.P v OGWUEGBU, it was stated that a person cannot plead jus tertii unless the person is defending on behalf of its original owner.
- c. The plaintiff had no right to own the property
- d. Self defense;when a person's pet tries to attack
- e. Inevitable accident

Remedies available to the plaintiff are;

- I. Damages: when defendant is found guilty, the defendant is liable to pay an amount according to the total damages the defendant caused to the plaintiff. The plaintiff is only liable if only there was a loss.
- II. Restitution: if returning of chattel is possible, it should be done;or the chattel can be replaced with a chattel identical with it which is recognized as another remedy called;
- III. Replacement of chattel.
- IV. Self help: the owner of the chattel can help himself in getting the goods from the defendant using reasonable force after demanding for the goods. The plaintiff must do this action in a legal manner by not trespassing into another's man property.

It is important to note the difference between conversion and detinue;sometimes conversion and detinue are classified together because they both cover detention. The major difference between conversion and detinue is the refusal to hand over the chattel to an owner after requesting reasonably to be given back.

Reference

<https://gibbswrightlawyers.com.au/publications/detinue>

Ese malami(2017). Law of Torts.princeton publishing Co.