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**COURSE TITLE: LAW OF TORTS**

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**ASSIGNMENT:** **THE TORT OF TRESPASS TO CHATTEL IN IS MADE OF: TRESPASS TO CHATTELS CONVERSION AND DETINUE. DISCUSS THE ABOVE AND SUPPORT WITH CASE LAW.**

**TRESPASS OF CHATTEL**

A chattel is something that a person has possession of in physical form. It is known for a tangible asset. Furthermore, it can also be any property except for a property or land. There are different examples of chattel which are cars, a machine, it can also be a piece of jewellery or tools and equipment.  Therefore,Trespass to chattels refers to the use of property without permission of the owner. In the case of **Erivo v Obi (1993)** the defendant respondent closed the door of the plaintiff appellant's car and the side windscreen got broken. The defendant pleaded inevitable accident. On appeal, the Court of Appeal held that the defendant was not Liable. Therefore, Trespass to chattel is actionable that is proof of direct and unlawful use of force is enough to prove trespass to chattel, however, there is no need to prove damages. The use of force does not have to be physical in this situation. However, the trespass must be intentional or negligent.

In order to prove trespass to chattels, you are required to show the following elements:

* Intent to trespass: Merely intending to do the act is enough to show this element of trespass. You don't necessarily need to show intent to harm a specific person.
* Lack of owner's consent: There must be an unauthorized, unlawful interference, which means the person interfered with or dispossessed the chattel without the owner's permission.
* Interference of chattels: A person commits a trespass to chattel by (1) dispossessing another of the chattel, (2) using or intermeddling with a chattel in the possession of another, or (3) damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

DEFENCES FOR TRESPASS OF CHATTELS

**Exercise of a Legal Right:**It would not be counted as trespass to goods if an action is done in levying lawful distress for rent. This occurs in a situation in which the goods in question are causing damage to the property of the defendant. In this situation, he has a right to seize them till the plaintiff compensates him for his loss. Also, trespass to goods can be excused if it occurs in the carrying out of a legal process.

**Protection of persons or property:** If trespass to goods is committed while trying to protect life or property, the defendant would not be held liable. However, the onus is on the defendant to prove that:
a) The danger was real and imminent.
b) He acted reasonably.
In the case of **Cresswell vs Sirl** the plaintiff’s dog was threatening the defendant’s sheep. Subsequently, the defendant shot the dog in order to protect his sheep. In an action for trespass, it was held that the defendant’s action was justified since what he did was in protection of his property threatening the defendant’s sheep. Subsequently, the defendant shot the dog in order to protect his sheep. In an action for trespass, it was held that the defendant’s action was justified since what he did was in protection of his property.

**Consent:** A defendant may be able to establish a defense to trespass if the interference occurred with the plaintiff’s consent. Consent can either be express or implied by conduct; however, it must be genuine and voluntary. The onus is on the defendant to establish that they interfered with the chattel with the plaintiff’s consent.

**Mistake**: Mistake is generally not a defence to intentional torts. However, mistake may be a defence to a cause of action in trespass if the defendant can prove that he or she acted with a mistaken belief, and the mistake was reasonable. The standard for what is considered ‘reasonable’ is generally fairly difficult to meet.

Remedies for trespass of chattels

**Compensatory Damages:** Compensatory damages apply if damage to the chattel has been sustained or not capable of being returned. The aim for this type of damages is to put an injured person in the same situation as they would have been in had the trespass not been committed.

**Nominal Damages:** Trespass is a tort of strict liability, which means that nominal damages (i.e. damages awarded to a person who has suffered a legal wrong) apply even where no actual damage has been sustained by the plaintiff.

**Injunctions:** An injunction is a Court order preventing a party from doing something, or alternatively, forcing a party to do a specific thing. In order for the Court to grant an injunction, the Court must be satisfied that the damages suffered by the plaintiff are significant (such as where the trespass is ongoing).

**Exemplary Damages:** Exemplary damages, also referred to as punitive damages (i.e. damages awarded in order to punish the defendant and deterring others from engaging in similar conduct) may be awarded in certain circumstances involving trespass to chattels. Exemplary damages (although not traditionally so) are available for any tort.

CONVERSION

Conversion is the deprivation of another’s right to use or possess personal property. Note that the property at issue is not **"real property”** which, in turn, is usually defined as land and attached improvements on land. All other property is generally considered “personal property” or “chattels.” Rights to creative property and artistic creations involves protection of “intellectual property” and is discussed in our articles on **copyright.** Conversion is often defined as other interference of a person’s right to property without the owner’s consent and without lawful justification. Stevenson v. Economy Bank of Ambridge, 413 Pa. 442 (Pa. 1964). 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. It is a **tort** which allows the injured party to seek legal relief.

A conversion is usually proved in one of three ways:

* by tortuous taking;
* by any use or appropriation of the use of the person in possession, indicating a claim of right in opposition to rights of the owner; or
* refusal to give up possession to the owner on demand.

*Litzinger v. Estate of Litzinger (In re Litzinger)*, 340 B.R. 897 (B.A.P. 8th Cir. 2006)

Since the act must be knowingly done, neither negligence, active or passive, nor a breach of contract, even though it results in injury to, or loss of, specific property, constitutes a conversion. It follows therefore that mistake, good faith, and due care are ordinarily immaterial and cannot be defenses in an action for conversion. *Taylor v. Forte Hotels Int’l*, 235 Cal. App. 3d 1119 (Cal. App. 4th Dist. 1991). This is important for the defendant to understand. If you knowingly take possession, that constitutes the tort even if you were wrong. It does not matter if you were negligent or if you felt you had a valid right to the property. It is not required to prove you wished to do wrong…only that you intentionally took possession and actually had no right to do so.

The elements of conversion are:

* the plaintiff's ownership or right to possession of the property;
* the defendant's conversion by wrongful act inconsistent with the property rights of the plaintiff; and.
* damages.

Defenses to Conversion

Defenses that are normally advanced for conversion are:

* Abandonment of property by plaintiff.
* Authority of law.
* Consent or approval of plaintiff.
* Statutes of limitation.
* Interest of defendant (e.g. defendant has rights to the property.)
* Lack of value of property.
* Nonexistence or lack of identity of property.
* Privilege (In certain circumstances and under certain statutes, a defendant has the privilege to claim possession…storage facilities after proceeding along statutory lines, can seize stored property and are privileged to do so, for example.)
* Unlawful and illegal acts.
* Waiver, ratification, and estoppel.

Damages for Conversion

A plaintiff is entitled to damages equal to the full value of the chattel at the time and place of conversion. The measure of damages in conversion is the fair market value of the property at the time and place of the conversion. *Vaughn v. Vaughn*, 146 Md. App. 264 (Md. Ct. Spec. App. 2002).

The tort of conversion subjects the wrongdoer to liability to the possessor for the entire value of the chattel in addition to any special damages resulting from the conversion. This liability does not depend on the existence of the possessor’s responsibility to the owner for the loss of the chattel. Although the normal measure of damages for conversion is only the fair market value of the property at the time of the conversion as well as fair compensation for the time and money properly expended in pursuit of the property, emotional distress damages is also allowed in extreme circumstances.

Remedies for Conversiom

1. Alternative order for payment of the current market value of the chattel
2. 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.
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. For any specific Recovery of special and general damages. Special damage is recoverable by a plaintiff loss proved.

Detinue

Detinue was a way for a plaintiff to seek recovery of their specific property in court. It was abolished in 1977 and replaced with interference with property torts such as conversion. Under detinue, the defendant could have taken the property by lawful means, but retains it unlawfully. The plaintiff does not have to ever have the property in their possession to seek recovery of it through detinue.

Element of Detinue

**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

**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

**Unreasonable Refusal:** Where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable

**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.

Defences to Detinue

There are several potential defences available for detinue. These include, but are not limited to:

**Consent:** It is a defence to show that there can be no trespass if the interference occurs with the plaintiff’s consent. Consent can either be express or implied.9

**Jus Tertii:** It is a defence to show that a third party has a better right to possession than the plaintiff.

**No right to possession:** The legal ownership of a chattel can be complicated. Registration of a vehicle is not proof of ownership, for example. If someone has purchased a chattel, ownership may be passed to another through it being given as a gift. There may be contractual obligations (in particular for commercial equipment) or other facts that demonstrate that the person demanding the return was not the rightful owner.

**The demand was invalid:** If a demand has been made, it may be vague, confusing or otherwise invalid. If the demand isn’t valid, then a refusal may not have been unreasonable.

**There was no refusal:** If the refusal to return something is not specific, and a sufficient amount of time has not passed to imply that there is a refusal, then the element of refusing the demand to return the chattel may not be met.

**It wasn’t reasonable to return the chattel:** There may be a reasonable excuse why the chattel had not been returned in time.

Remedies and Compensation for Detinue

Remedies for detinue are:

**Delivery Up of Good:** An order for delivery up of goods is available in an action for detinue. It is basically a Court order demanding the return of the goods or chattel to the plaintiff.

**Compensatory Damages:** Compensatory Damages may be awarded if there has been a loss.

**Restitution:** The remedy of specific restitution (i.e. remedy calculated based on the gains of the defendant) where damages are inadequate.

**Abatement (also known as Self-Help):** A person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with the enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession.