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COURSE: LAW OF TORT

COLLEGE: LAW

QUESTIONS:

The tort of trespass to Charttel in is made of: Trespass to Charttels Conversion and Detinue Discuss the above and support with case law. Students may consider the following: define and explain each tort State the elements of Trespass to Charttel, conversion and detinue Explain the concepts of innocent delivery or receipt, lost property rule and give examples of conversion Give examples of persons qualified to sue for Trespass to Charttel Discuss the remedies and defence to Trespass to Charttel, conversion and detinue Differences between conversion and Detinue Suppo References Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

**Definition of law of tort**

Tort law is the area of the law that covers most civil suits. Generally, every claim that arises in civil court, with the exception of contractual disputes, falls under tort law. The concept of this area of law is to redress a wrong done to a person and provide relief from the wrongful acts of others, usually by awarding monetary damages as compensation. The original intent of tort is to provide full compensation for proved harms.

Prof Gilbert kodilinye defined tort as a civil wrong involving a breach of duty fixed by the law, such duty being owed to persons generally and it's breach being responsible primarily by an action for damages.

**Definition of trespass**

Trespass is an area of criminal law or tort law broadly divided into three groups: trespass to the person, trespass to chattels and trespass to land. Trespass to the person historically involved six separate trespasses: threats, assault, battery, wounding, mayhem, and false imprisonment.

Trespass can also be defined as an unlawful act causing injury to the person, property, or rights of another, committed with force or violence, actual or implied.It is an unlawful intrusion and interference with one person or property.

**Definition of chattel**

A chattel is any property other than land and immovable property. A chattel is any moveable property.

Chattel is an item of tangible movable or immovable property except real estate and things (such as buildings) connected with real property

Chattel refers to personal items, as opposed to actual land property. It was once used to describe slaves and cattle, which is why referring to something or someone as chattel isn't very nice.

**Trespass to chattel**

Trespass to chattels is a tort whereby the infringing party has intentionally interfered with another person's lawful possession of a chattel. The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattels.

Trespass to chattel is any direct and unlawful interference with a chattel in possession of another person. It is also the intentional or negligent interference with the possession of the chattel of another person.

Trespass to chattels is an intentional interference with another person's lawful possession of a personal property. A "chattel" refers to any personal property, moving or unmoving. Trespass to chattels does not apply to real property or any interest in land. In order to prove trespass to chattels, you are required to show the following elements:

1. 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.

2.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.

3. Protection of the chattel against unlawful 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

(3) damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

**Elements of trespass to chattel**

Trespass to chattels is a tort whereby the infringing party has intentionally interfered with another person's lawful possession of a chattel (movable personal property). The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattel (whether by taking it, destroying it, or barring the owner's access to it). As opposed to the greater wrong of conversion, trespass to chattels is argued to be actionable.

Trespass to chattels involves the following elements:

1) the plaintiff owns or has the right to possess the personal property at issue;

2) the tortfeasor intentionally interfered with the plaintiff's property;

3) the tortfeasor deprived the plaintiff of possession or use of the property at issue;

4) the interference caused damages to the plaintiff

**Defences for trespass to chattel**

In an action for trespass to chattel, the defendant is allowed to plead for defences which are:

1. Inevitable accident

2. Jus tertii, that is, the title, or better right of a third party, provided that the defendant has the authority of third party

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.

**People who can sue for trespass to chattel**

Anyone who has possession or caretakership of chattel may sue any other person who meddles with the chattel. Any one who has possession or right to immediate possession cab sue.

Some people 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. E.g an employee to whom an employer has given custody of goods, a repairer, care taker, personal representative of a deceased etc.

**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

2. Replacement of the chattel

3. Payment of the market price of the chattel

4. Repair of the damage

**Conversion**

Conversion according to Sir John Salmond is an act of the 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.

Conversion is also any interference, possession or disposition of the property of another person as if it is one's own without legal justification. It is any dealing which denies a person of the title, possession or use of his chattel.

Conversion is an intentional interference with another person's chattel which unlawful deprives the person if title, possession or the use of it.

**North Central wagon & finance Co Ltd V Graham**

Facts: The defendant hire purchaser sold the car in the contravention of the terms of the hire purchase agreement.

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.

**Examples of conversion**

1. Taking

Conversions occurs when they 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 temporarily. The defendant may not be liable if he merely moves the gods without denying the plaintiff of title.

**Fouldes V Willoughby**

**Davies V Lagos City Council**

2. Receiving

Receiving a chattel from a third party who is not the owner is a conversion. It is a wrong act if assisting the other person in the conversion of the chattel or receiving of stolen goods.

3. By wrongful delivery

Wrong delivery of a person's chattel to another person who does not have title or right possession without legal justification is a conversion.

4. Alteration

5. Consumption.

**Detinue**

The tort of detinue is the wrongful detention of the chattel of another person, immediate possession of the person chattel. Detinue is the wrongful retention of a chattel whereby the person entitled to it is denied the possession or the use of it.

**Differences between trespass to chattel conversion and detinue.**

1. In trespass to goods, there is no taking away, stealing, conversion, detinue, detention of the goods from the owner or person entitled to possession.

Conversion is known as stealing or theft in criminal law.

2. In tort of trespass to chattel, the must be some act of interference, meddling, harm, injury, or damage or destruction of the goods against the desire of the owner

3. In conversion, the conduct of the defendant must deprive the owners of the possession of the chattel.

4. The plaintiff need not be in actual possession of the chattel at the time of the interference.

**Fouldes v Willoughby**

**Kirk v Gregory**

**Haydon v Smith**

**Davies v Lagos City Council**

**Differences between conversion and detinue**

Detinue covers the same ground as tort of conversion by detention.

1. The refusal to surrender or return a chattel on demand is the essence of detinue. There must be a demand for return of the chattel.

2. Detinue is a proper remedy where the plaintiff wants a return of the specific goods in question and not merely an assessed market value**.**

Before the common law procedure Act 1854, was enacted a defendant had a choice to either restore the actual chattel or pay market value. The court has discretion to order specific restitution or award the market value of the chattel to the plaintiff or it may award damages alone if the goods can be replaced easily .

Reference:

Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T