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ASSIGNMENT

A chattel is any property other than land and immovable property, a chattel is any moveable property. A chattel is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land and immovable property.

**Trespass to chattel**

This is a direct and unlawful injury done to the chattel in possession of another person. It is actionable per se; proof of direct and unlawful application of force is enough, there is no need to prove damages.

A person who wants to sue in trespass to chattel can sue under trespass to goods, conversion and negligence that is involved in the commission of the trespass or conversion. These actions are substantiated by the provisions of the Torts (Interference with Goods) Act 1977. The act creates a new action called. “Wrongful interference with goods”. It defines it in S.1 as:

a) Conversion of goods called trover.

b) Trespass to Goods

c) Negligence in so far as it results in damage to goods.

d) Subject to S.2 of the Act, any other tort as far as it results in damage to goods or to an interest in goods. The tort of trespass to chattel is designed to protect possession which is the right of immediate possession of a chattel, as distinct from ownership. It protects the right of a person to the control, possession retention or custody of a chattel against interference by another person without lawful justification. To maintain an action for trespass, the plaintiff must show that he had possession at the time of the trespass or is entitled to immediate possession of the chattel. Injury or wrong is done to the chattel while it is 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 definite. Thus, in Leame v Bray there was an accident between two horse drawn carriages. The defendant negligently drove his carriage and collided with the carriage of the plaintiff. The court held that the accident was a trespass to chattel and the defendant was liable in damages to the plaintiff for the damage done to the coach of the plaintiff. ELEMENTS OF TRESPASS TO CHATTEL

This requires what a plaintiff need to prove in order to succeed in a claim for trespass to chattel, a plaintiff must establish that the act of trespass was

(a) Intentional

Or

(b) Negligent.

THE PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL

Anyone who has possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. Accordingly, some persons who do not have legal rights are deemed by law to have possession, so that they will be able to protect chattels left under their care. Thus 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, Executors, Administrators of estates etc.

In National Coal Board v Evans & Co. (supra), the defendant contractors were employed by a county council to work on land owned by the defendant council. A trench had to be dug, which the defendants employed a sub-contractor to do. An electric cable passed under the land, but neither the council, nor Evan & Co. who were head contractors, nor the subcontractors knew this, and the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable and water seeped into it causing an explosion, and thereby cutting off electricity supply to the plaintiff’s coal mine. The plaintiff sued claiming damages for trespass to the electricity cable. 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.

**THE DEFENCES FOR TRESPASS TO CHATTEL**

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

(a) Inevitable accident

(b) Subsisting lien.

(c)Honest conversion, or acting honestly.

(d) Subsisting bailment

(e) Limitation of time, as a result of the expiration of time specified for legal action

**REMEDIES FOR TRESPASS TO CHATTEL**

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

(a) Payment of the market price of the chattel

(b) Payment of damages

(c) Replacement of the chattel

(d) Repair of the damage.

**CONVERSION**

This consists of the willful and wrongful interference with the goods of a person entitled to possession in such a way as to deny him such right or in such a manner inconsistent with his right. The right to immediate possession is the determining factor. That is, if the right exists, actual possession is unnecessary.

In the case of North Central Wagon and Finance Co Ltd vs Graham, the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus the plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff didn’t have actual possession of the car at the time. Since the right in the goods were already vested in the plaintiff, there was no need for actual possession.

Examples of conversion include;

(1) Consumption: By eating or using it up.

(2) 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.

(3) Alteration: By changing its form howsoever

(4) Receiving: involuntary receipt of goods is not conversion. Receiving a chattel from a third party who is not the owner is a conversion.

(5)By wrongful Disposition: such as by sale, transfer of title or other wrongful disposition.

**Defenses to Conversion**

a.) Abandonment:

An action for conversion would not succeed in a situation in which the property in question was abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.

b.) Authority of Law:

Conversion that is done under the authority of law would be justified. For example, the selling of the goods of a defendant by the claimant by an order of court in order to get a judgment debt, would be valid.

c.) Consent:

If the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be held to be valid.

d.) Statute of limitations:

If the suit for conversion is not filed after a specified period (ranging from 2-5) years, it would be held to be statute barred. Thus, the suit would not be heard by the court.

e.) Unidentifiable property:

If the property cannot be properly identified, it could also serve as a defense to conversion

**Innocent Receipt or Delivery**

Innocent delivery, or innocent receipt are 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. 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 other party, or reimbursement for its value.

**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 (1982). However, the rules are not often easy to apply. The rules applicable to finding lost property as follows:

(1) 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 right of a finder.

(2) A finder of a chattel acquires no right over it, unless it has been abandoned, or lost and he takes it into 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.

(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.

(4) 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 exercise control over the premises, and things on it .

**DEFENCES FOR CONVERSION OF A CHATTEL**

In an action for conversation of a chattel , the defendant may plead :

(1) 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.

(2) subsisting lien

(3) subsisting bailment

(4) jus tertii , that is the title or better right of a third party .

**THE REMEDIES FOR CONVERSION**

(1) order for delivery, return or specific restitution of the goods

(2) Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved .

(3) General damages

(4) An order for payment of any consequential damages.

(5) Alternative order for payment of the current market value of the chattel .

**DETINUE**

Detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Dentine is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of 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. Essentially, the tort of detinue is:

1. The wrongful detention of the chattel of another person

2. The immediate possession of which the person is entitled

**When to Sue for Detinue**

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

1. The plaintiff must have title that is ownership or right to immediate possession of the chattel.

2. The defendant who is in 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 been a demand by the plaintiff for the return of 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.

**THE DIFFERENCE BETWEEN CONVERSION AND DETINUE**

(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 the 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, 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 in o the plaintiff.

**The Defences for Detinue**

In an action for detinue, a defendant may plead that:

a. He has mere possession of the goods

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

c. 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.

d. Innocent delivery

e. Subsisting bailment

f. Subsisting lien on the chattel. Otubu v Omotayo (supra)

**THE REMEDIES FOR DETINUE**

(1) Damages

(2) Recapture or self help to recover the goods .

(3) claim for the current market value of the chattel

(4) claim for replacement of the chattel

(5) claim for return of the specific chattel.

**REFERENCES**

ESE MALEMI LAW OF TORTS