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Course: Law of Tort

1. The tort of trespass to chattel in is made of; trespass to chattels, conversion and detinue. Discuss the above and support with case law.

**Tresspass to chattel;**

 Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the unlawful interference of someone’s property without lawful justification, thus one can charge another for nominal damage once trespass to chattel is established. In the tort of trespass to chattel there must be some act of interference, harm or damage of the goods against the desire of the owner or caretaker.

 The tort of trespass to chattel is there to protect one’s property and 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. In order to prove an action against another in trespass to chattel, one must prove that the property in question was in ownership as when the trespass was established. That is to say a person who has wrongfully acquired possession may also maintain action against all persons except the owner or agent of the owner of the chattel. To succeed, a plaintiff must establish that the act of trespass was done negligently or intentional. Anyone who has possession may sue any other person who interferes with his chattel.

In this type of tort, injury is done to the chattel while it is in the possession of the person claiming damages for the injury. The chattel is not taken from his ownership or possession. Examples of some trespass to chattel include; killing another person’s animal, mere touching someone’s chattel, driving another person’s car without permission. In the case of **Erivo v Obi,** the defendant closed the plaintiff’s car and the side windscreen got broken. The plaintiff sued fir the damage he incurred in hiring another car to attend to his business. The defendant pleaded inevitable accident. The court held that the defendant is not liable and that he did not use excessive force but only normal force in closing the door. In this case the court of appeal restated the position of the law that trespass to chattel is actionable per say. That is, without proof of actual damage, any unauthorized touching or moving of chattel is actionable at the suit of the possessor of a chattel, even though harm hasn’t been done to the chattel. Also in the case of **Kirk v Gregory,** the movement of a deceased person’s ring from one room in his house to another was held to be trespass to chattel and damages was awarded against the defendant. **Davies v Lagos City Council,** the defendant city council granted a hackney permit to the plaintiff. The plaintiff transferred the permit to the third party, whereupon the defendant council seized the plaintiff’s taxi cab. It was held that although the defendant council was entitled to revoke the permit for non compliance with regulations, however it was not entitled to seize nor take possession of the plaintiff’s vehicle. The defendant was liable for trespass. **National Coal Board v Evans & Co,** the defendant contractors were employed by the council to work on land owned by the defendant council. A trench had to be dug, which the defendants employed sub contractors to do. An electric cable passed under the land, but neither the council nor Evan & Co who were head contractors nor the sub contractors knew this and the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable and the water seeped into it causing an explosion and thereby cutting off electricity supply to the plaintiff’s coal mine. The plaintiff used for trespass to chattel and the court held that in the absence of establishing negligence on the part of the defendant contractor that the damage was inevitable accident.

A defendant can claim a defences in trespass to chattel by proving such action is inevitable accident; that is to say such action performed by the defendant is simply a mistake and such damage can occur without having intention to do it **( Erivo v Obi).** Another defence include;honest conversion, limitation of time; as a result of the expiration of time specific for legal action, subsisting bailment.

The remedies for trespass to chattel include; payment of damags, replacement of chattel, repair of the damage and payment of the market price of the chattel.

**Conversion**

Is any interference of another person’s property as if it is one’s own without legal justification. Conversion simply means wrongful detention or disposition of another’s chattel; it equally means denying the right of the owner of the chattel or the use of his chattel. In conversion, the conduct of the defendant must deprive the owners of the possession of the chattel. Conversion is known as stealing in criminal law. To maintain an action in conversion, the plaintiff needs not to be in actual possession of the chattel at the time of the interference. Examples of conversion include; taking, wrongfully refusing to return a chattel, using, detention (**Armory v Delamire),** by wrongful delivery; wrongful delivery of a person’s chattel to another person who does not have title or possession is a conversion.

**The innocent receipt or delivery;** when an innocent holder of goods such as a carrierman receives foods in good faith from a person he believes to have lawful possession of them and he delivers them on the person’s instruction to the third party, there would be no conversion. In the case of **Unipetrol v Prima Tankers Ltd.**

Conversion is when another person is entitled to immediate possession whereby the real owner is denied usage or title to that chattel. In the case of **Youl v Harbottle,**  the defendant carrier of goods by mistake delivered the plaintiff’s goods to a wrong person. He was held liable in conversion, for the loss of the goods. **Hollins v Fowler** a cotton broker acting on behalf of a client, for whom he often made purchases, bought cotton from a fraudster who had no title to the cotton. The broker then sold it to his client and received only his commission. At suit of the true owner for conversion sale, and loss of the goods. The court held that the broker was liable in conversion for the full value of the goods.

In conversion, there is a rule regarding finding **lost property**; it is said that anyone who finds a chattel has no rights over t unless it has been abandoned or lost and he takes it into his care until the real owner comes for it. Any employee who finds a lost property in the course of his employment, does so on behalf of his employer who by law acquires the rights of a finder. **Parker v British Airways,** the plaintiff was waiting in the defendant airways lounge at the airport when he found a bracelet on the floor. He handed it to the employees of the defendant, together with his name and address and a request that it should be returned to him if it was unclaimed. It was not claimed by anybody and the defendants afiled to return it to the finder and sold it. The court held that the proceeds of sale belonged to the plaintiff who found it.

The question of who may sue is also asked in conversion, and it is said that the owner in possession or that has right to immediate possession may sue another for conversion. Also, a bailee of a chattel may sue another person for conversion of goods bailed with him/her.

**Defences for conversion** includes Temporary retention; to five steps to check the title of the claimant. A person may refuse to give up goods, steps can taken to verify the rightful owner of such chattel. Jus tertii; which is the right of a third party to the chattel. A defendant cannot plead that a plaintiff is not entitled to possession as against him because a third party is the trueowner of the chattel.

**Remedies for conversion** are available to plaintiff and anyone who is suing another under the tort of conversion. These remedies include; recovery of special and general damages, order for delivery, return of goods.

**Detinue**

Is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is a claim for the specific return, delivery or surrender of a chattle to the plaintiff who is entitled to it. Anybody who wrongfully takes, detains or retains a chattel and after proper demand for it refuses or fails to return it to the claimant without lawful excuse such person maybe sued in detinue to recover it or its value. A plaintiff can maintain an action in detinue after satisfying two conditions; the plaintiff must have title and the defendant who is in actual possession of the chattel must have failed or refused to deliver the chattel to the plaintiff after the plaintiff must have demanded for the return of the chattel. **West African Examinations Council v Koroye,** the plaintiff sat for an examination conducted by the defendant council. The defendant neglected and refused to release his certificate. The plaintiff successfully claimed in detinue for his certificate and was awarded damages. In the case of **Kosile v Folarin,** the supreme court emphasized the requirement that an action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable for detinue.

**Defenses for Detinue** includes that a defendant can claim he has mere possession of the goods, thst the plaintiff has insufficient title compared to himself. The defendant can also claim jus tertii, inevitable accident.

**Remedies for Detinue** are open to may who seek to recover from such breach, these includes; Claim for return; this is the return of the chattel especially if the chattel has not changed it form or nature during its detention Replacement of the chattel; where seem fit, the defendant can replace the chattel by bringing a similar chattel which is identical to the other chattels. Damages; a plaintiff can get damages from the defendant when suing in detinue. He must pay a reasonable amount to the plaintiff.