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**TRESPASS TO CHATTEL**

First of all, it is crucial to understand the definition of a chattel. A chattel is any moveable property e.g. article, goods, personal property etc. This was also the definition given in Section 52 of the Sales of Goods Act 1893 under the definition of the term ‘goods’. Hence, it is safe to say that chattel also means goods.

Trespass to Chattel suggests any direct and unlawful interference with a chattel in the possession of another person according to Ese Malemi. It can then be inferred from the above definitions that Trespass to Chattel is any direct interference with a personal tangible property in the possession of another person without lawful justification. Thus, to be successful in a claim against an individual for this tort, the claimant or plaintiff must prove that he had lawful possession of the chattel at the time of interference.

**Examples of Trespass to Chattel**

---Taking a chattel away

---Throwing another person’s property away such as in annoyance

---Killing another person’s animal

---Use without permission

---Driving another person’s car

---Throwing an item at a chattel etc.

Elements of Trespass to Chattel

* **Unlawful interference or meddling with another individual’s property**
* **It is a fault-based tort**: It must be clear that the defendant was at fault by interfering with the chattel.
* **It is actionable per se**: Actual damage or harm does not have to be caused or proven to be successful in a claim for this tort as seen in the case of *ERIVO v. OBI*.
* **Possession of chattel**: If the claimant was not in possession at the date of the alleged meddling, he cannot sue for this tort of trespass to chattel. This element of possession has to be proven by the claimant.

Examples of People who may sue for Trespass to Chattel

Anybody who holds possession of the items at the time of interference has the power and ability to sue for trespass to chattel. Furthermore, caretakers who neither have possession nor own the items but have been deemed to have possession according to the law can sue. In clear terms, individuals who can sue for this tort include:

* Owners
* Lenders
* Finders
* Adverse possessors because mere possession gives a right to sue to retain possession
* Caretakers
* Trustees
* Bailees
* Hirers etc.

Remedies for Trespass to Chattel

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

* Payment of Damages
* Payment of the market price of the chattel
* Repair of damage
* Replacement

Defences For Trespass to Chattel

* **Inevitable Accident**: This applies in circumstances where the defendant can show that their action was involuntary hence the defendant is without fault. In NATIONAL COAL BOARD v EVANS & CO., the defendants were unaware of an electric cable which passed under the land they were working on. During excavation, a mechanical digger damaged the electric cable and water seeped into it causing an explosion and subsequently, cutting off electricity supply to the plaintiff’s coal mine. In an action claiming damages for trespass to the electricity cable, the court held that in the absence of establishing negligence on the part of the defendants, there was no fault and no trespass by the defendants. The damage was an inevitable accident.
* **Jus Tertii**: This means ‘rights of a third party’. If it can be established that a third party has better rights to the chattel than the plaintiff, a claim in trespass may fail. In the case of ARMORY vs DELAMIRIE, a boy found a jewel and asked a goldsmith to value it. The goldsmith subsequently refused to return the jewel to the boy. Thus, the boy sued. The court held that although the boy was not the true owner, the fact that he has possession of the goods gives him the right to sue for trespass. Thus, the goldsmith could not raise the issue of jus tertii (better title).
* Limitation of time as a result of the expiration of time specified for legal action: If the statute of limitation for this tort is over, it can be used as a defense by the defendant. The statute of limitation for this tort in Nigeria is between 2-5 years.
* Honest Conversion or acting honestly

**CONVERSION**

According to SIR JOHN SALMOND, in his book on Law of Tort,

A conversion is an act…of 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 of it.

This definition was re-emphasized in the case of IHEANACHO v UZOCHUKWU (1997) where the court reiterated the manner of recovery of premises from a tenant. Conversion is the claim of a right that is inconsistent with the rights of the person who has title, possession or right to use the chattel. There is an intentional interference with another person’s chattel which unlawfully deprives the person of title, possession or use his chattel.

**Examples of Conversion**

* **Wrongfully Taking the Goods**: This must be accompanied by an intention to exercise temporary or permanent dominion over the goods. In the case of Fouldes vs Willoughby, the owner of two horses brought them aboard a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. The horse owner sued for conversion. Judgement was entered in his favour at the trial court. On appeal, the court, in allowing the appeal held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses.
* **Destruction of Goods**: Destruction of goods would amount to conversion in the following situations:

a) One person willfully destroys the chattel of another.

b) If the chattel either ceases to exist or changes its identity.

* **Consumption**: By eating or using it up
* **Disposing the goods**: This occurs in a situation in which the defendant attempts to confer title to a third party in a manner inconsistent with the right of the person entitled to possession.
* **Wrongfully delivering the goods**: This occurs in a situation in which the defendant denies the true owner of the title to the goods by delivering them to another party that has no title.

**Differences Between Conversion and Trespass to Chattel**

* Conversion occurs when a person uses or alters a piece of personal property belonging to someone else without the owner's consent whereas in the tort of trespass to chattels, alteration or use of the chattel is not needed. It is referred to as stealing or theft in Criminal Law. A mere interference is not enough to prove the tort of conversion as held in the case of FOULDES v WILLOUGHBY (1841).
* It is enough if the plaintiff has the right to immediate possession of the chattel which is the right to demand for immediate possession of the chattel as he does not need to be in actual possession of the chattel. In the case of NORTH CENTRAL WAGON AND FINANCE CO. LTD. v GRAHAM, the court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff did not 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.
* In conversion, the conduct of the defendant must deprive the owners of the possession of the chattel, or amount to a denial or dispute of the title of the owner. Conversion is known as stealing or theft in criminal law. Therefore, mere touching or moving of a chattel and so forth, only amount to trespass.

**Elements of Conversion**

* Possession of chattel by the plaintiff or Rights of Possession
* Unlawful Interference with the rights of the plaintiff in such way that it denies or disputes the rights of the plaintiff
* It is actionable per se
* It is a fault-based tort

Innocent Receipt or Delivery

Generally, innocent receipt or delivery of chattel or goods cannot be said to be a wrong therefore it is also not conversion. Where an individual such as a carrier receives chattel in good faith from a person, he believes to have lawful possession of such an item, and he delivers them to a third party on the instruction of the person, all in good faith, there would be no conversion. Similarly, an innocent receipt of goods in good faith is not conversion unless the receiver tampers with such goods when it does not cause a nuisance.

The Rules Regarding Finding Lost Property

The case of PARKER v BRITISH AIRWAYS (1982) spelled out the rules to be applied when it applies to lost property. In this case, Mr Parker was waiting in the airways lounge at Heathrow Airport, London when he found a bracelet on the floor and handed it over to the employees of the airways together with his name and address and a request that it should be returned to him if unclaimed. It was unclaimed but they did not return it to the Mr Parker but sold it. The Court of Appeal held that the proceeds of sale belonged to the finder who found it*.* These rules include:

* A finder’s rights only enable to him keep an item found and have rights over it only when it has been lost or abandoned. However, he does not possess the right to keep it from the true owner of the property or a person who had rights which existed at the time which the finder took the chattel into his care and control.
* Any servant or agent who finds a lost property in the course of his employment does so on behalf of his employer and his employer holds rights to the property found as the finder.
* The occupier of the land on which the chattel is found may in some cases, have a title superior to that of the finder. The cases in which the occupier has a superior title include where the finder is a trespasser on the land or building and where the property.
* However, an occupier of a 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. In the case of BRIDGES v HAWKESWORTH, *the plaintiff who found a packet of bank notes lying on the public part of a shop held rights to it instead of the shop owner*.

Generally, the finder is saddled with the duty of taking reasonable steps to trace the owner before he can take it into his care and control.

Examples of People who can sue for conversion

* Owners
* Bailees
* Holders of lien and pledge
* Finders
* Trustees

Defences for Conversion

* **Jus Tertii** can be pleaded by a defendant who posits that a third party hold better rights than the plaintiff. He cannot plead that the plaintiff is not entitled to possession as against him. This was clearly stated in the case of C.O.P v OGUNTAYO.
* **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.
* **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 judgement debt would be valid.
* **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.
* **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.
* **Unidentifiable property**: If the property cannot be properly identified, it could also serve as a defence to conversion.

Remedies for Conversion

* **Specific Orders**
* **Special and General Damages**: A plaintiff may be granted General Damages where he is able to prove the severity of the conversion or special damages to recover only the specific loss proved.

**DETINUE**

Detinue is the wrongful detention of the chattel of another person whereby the person who is entitled to it or has immediate possession of it is denied this possession or use of it. Under the Torts (Interference with Goods) Act 1977, the United Kingdom has abolished the tort of detinue and merged it with the tort of conversion earlier discussed. However, in Nigeria, these two torts remain distinct from each other.

To constitute the tort of detinue, the plaintiff must have title or right to immediate possession of the chattel and the defendant must have refused or failed to surrender the chattel to the plaintiff without any lawful justification after the plaintiff has made a demand for the chattel in question. If these conditions are fulfilled, the plaintiff will succeed in a claim for detinue KOSILE v FOLARIN (1989) 3 NWLR pt 107.

**Examples of Detinue**

**The refusal or failure to return one’s chattel after the expiration of a reasonable or stipulated period of time or after demand**

Differences Between Detinue and Conversion

* Often, there is a demand for return, and a refusal. The essence of detinue is the refusal of a demand. There must have been a demand for the return of the chattel.
* In the tort of detinue, the defendant has to return the specific goods in question and not merely an assessed current market value of the goods. However, a situation where a specific return is impossible, the court may grant an award for the current market value.

Defences for Detinue

* **mere possession of the chattel**
* **Jus tertii**
* **Subsisting lien on the chattel**: This means an existing claim on someone who owes money. As a general rule, where there is subsisting lien on a property, a claim for detinue will not succeed as was held in the case of SHUWA v CHAD BASIN DEVELOPMENT AUTHORITY *where it was held that the seller of the bulldozer had no title to the bulldozer as the defendants had an existing lien on it which was yet to be fulfilled by the seller*.
* **Inevitable Accident**
* **Reasonable defence of a person or property such as when one beats or injures a dog that was attacking him or another person**
* **Enforcement of a court order**

Elements of Detinue

* **Possession of rights by the plaintiff**
* **Detention of the chattel**
* **Actionable per se**
* **A demand for release which led to a refusal by the defendant.**
* **It is a fault-based tort.**
* **Unlawful justification for detention**

Remedies for Detinue

* Claim for **return of the chattel** if there has been no alteration during its detention.
* **Replacement of the chattel**
* **Recapture or Self-help** AGBAI v OKOGBUE
* **Release on Bond/Replevin**: A return of goods on security pending the court’s decision on the actual owner of the goods.
* **An award for damages** realized during the period of the detention of the chattel.

**REFERENCES**

* Winfield and Jolowicz on Tort. London: Sweet & Maxwell, 2010.
* Nigerianlawclaz.blogspot.com (2017), Trespass to Chattel in Law of Torts
* Ese Malemi (2008), Law of Tort, Princeton Publishing Co., Ikeja, Lagos
* Olarenwaju Olamide (2015), Trespass to Chattel. dJetLawyer.com
* All Nigerian Law Reports
* Federal Capital Territory High Court Law Reports