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LAW OF TORT ASSIGNMENT

**TRESPASS TO CHATTEL**

Trespass to chattels is any direct and unlawful interference with a chattel in the possession of another person. In other words, trespass to chattel is any direct interference with a personal property in the possession of another person without lawful justification. The interference must be direct and wrongful.Thus,the mere touching of a chattel without causing any harm to it may in appropriate circumstances be actionable and entitled the plaintiff to get nominal damages .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.in this tort , 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 FOUDLES V WILLOUGHBY

The defendant was the manager of a ferry boat . The plaintiff who was a passenger entered the boat with his hores . The defendant and the plaintiff had a dispute and in order to induce the plaintiff to leave the boat , the defendant disembarked the horses of the plaintiff from the ferry .the plaintiff who was not ruffled remained on the boat ,and crossed over to the other side of the river . The plaintiff then sued the defendant for trespass to the horses . The court held :that the defendant was liable for trespass to the horses, by moving them ashore ,however,there is no conversion as the plaintiff still had title .in HAYDON V SMITH: it was held to be a trespass for the defendant to cut and carry away the plaintiffs trees.

THE PERSONS WHO MAY SUE FOR TRESPASS TO 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 , executors and so forth.

**ELEMENTS OF TRESPASS TO CHATTEL**

The elements a plaintiff need to prove to succeed in a claim for trespass to chattel are that the act of trespass was

(1) Negligent

(2)international .

**THE DEFENCES FOR TRESPASS TO CHATTEL**

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

(1) Jus tertii ,that is ,the title ,or better right of a third party,provided that he has the authority of such third party.

(2)limitation of time ,as a result of the expiration of time specified for legal action .

(3)subsisting lien.

(4)subsisting bailment

(5) Honest conversion,or acting honestly.

**REMEDIES FOR TRESPASS TO CHATTEL**

The remedies available are

(1) payment of the market price of the chattel

(2) Repair of damage.

(3) payment of damages

(4) Replacement of the chattel.

**CONVERSION**

According to SIT JOHN SALMOND 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 .

conversion is any interference, possession,or disposition of the property of another person,as if it ones own without legal justification. Conversion is often defined as other interference of a person’s right to property without the owner’s consent and without lawful justification.in criminal law conversion is know as stealing or theft . Thus an owner can sue for conversion.likewise , a person who has mere custody , temporary possession or caretakership can sue any third party who tries to detain , dispose, steal or otherwise covert such chattel . THUS IN ASHBY V TOLHURST : The defendant car park attendant who negligently allowed a car thief to drive away the plaintiff’s car from a car park under his watch was held : not liable in conversion.in addition 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 . Therefore, it follows that ,if an act of interference with a chattel is intentional or willful,it is not a defence ,that the tort was done by mistake,even if the mistake is honest,that is ,in good faith for innocently.

**EXAMPLES OF CONVERSION**

(1) By wrongful Delivery

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

(2) Destruction: by damaging or obliterating it .mere damage of a chattel is not sufficient to make one liable for conversion.As a general rule of law , mere damage or destruction of a chattel without more ,is a trespass to chattel in tort and also a malicious damage in criminal law .

(3)Alteration: By changing its form howsoever .

(4) Consumption: By eating or using it up

(5)using : using a plaintiff’s chattel as if it is ones own ,such as by wearing the plaintiff’s jewelry.

F **THE RULES REGARDING FINDING LOST PROPERTY**

The rules of law applicable to finding a lost property were authoritatively settled by English court of Appeal in the case of Parker v British Airways .The plaintiff was waiting in the defendant airways lounge when he found a bracelet on the floor.He found a bracelet on the floor.He handed it to the employees of the defendant, together with his name and afresh ,a request that it should be returned to him if it was unclaimed.it was not claimed by anybody and the defendants failed to return it to the finder and sold it . The English court of Appeal held : that the proceeds of sale belonged to the plaintiff who found it. In summary the rules applicable to finding lost property are as follows

(1)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 .

(2) 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 .

(3)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 .

(4)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.

**INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION**

Generally , innocent delivery, or innocent receipts are not torts , nor criminal offenses . 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. In case of OA BANK NIG LTD V NIGERIAN SWEETS &CONFECTIONERY CO .LTD : The 1st respondent was granted an import license by the federal ministry of trade to import granulated sugar .

The 1st respondent sued for damages for the wrongful conversion of the import license. On Appel by the bank , the court of appeal:That the defendants were liable for conversion of the import license papers .

**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 bailment

(3) subsisting lien

(4) limitation of time .

**THE REMEDIES FOR CONVERSION**

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

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

(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**

The tort of 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 chattel to the plaintiff who is entitled to it . An action in detinue is a claim for the specific return of a chattel wrongfully retained,or for payment of its current market value and any consequential damages.

**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 :

(1) Enforcement of a court order or other legal process , such as levying of execution of property under a writ of fifa.

(2) innocent delivery

(3) subsisting lien on the chattel

(4) innocent delivery

(5) He has mere possession of the goods .

**THE REMEDIES FOR DETINUE**

(1) Replevin ,that is release on bond pending determination of ownership.

(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**

LAW TEACHERS

ESE MALEMI LAW OF TORTS (Princeton publishing co 2008) .