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**TORT OF TRESPASS TO CHATTEL**

It has been comprehended prior to recent study on discourse of the law of tort that a tort is committed when an action or omission causes unjustifiable pain, harm, loss or damage to a person which could either through actual intentions or ,in most cases, negligence. However, when dealing with the quagmire of trespass, there is a general notion that trespass is intentional in nature and not committed in negligence.

Trespass is the illegal entry or overstepping of one’s boundary to a property or person.

In pursuance to this write-up, this writer shall dwell richly on trespass to property, specifically to chattel.

A chattel often merely refers to a tangible **movable** personal property. Without any epitome of doubts, every human has innumerable movable property, such as books, vessels, cars, furniture, arts, among several others- the list knows no end.

Trespass to chattel simply means a direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either **intentional** or **negligent**. Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It can be stipulated that 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.

Trespass to chattels may take various forms such as destroying, damaging or merely using goods or wrongfully moving them from one place to another. Whether or not damages can be proven, an action for damages can be successful once it can be proven that a trespass to a chattel was made by the defendant and liable for nominal damages.

The famous case of **Davies v. Lagos City Council**, there was a trespass to property; the defendant wrongfully and unlawfully took the plaintiff’s property (car). This trespass to chattel is equivalently called **conversion by taking**; since trespass to chattel usually encompasses conversion and detinue; such concepts shall be enumerated accordingly.

**CONVERSION** is a tort that applies when someone intentionally interferes with personal property belonging to another. Its equivalents in criminal law includes larceny or theft. Conversion is the intentional dealing with or exercise of control over a chattel, which seriously interferes with the plaintiff’s possession of such chattel. It is dealing with a chattel which belongs to another person in a manner that is inconsistent with the rights if the person. There are different forms of conversion, such as conversion by taking, as portrayed in the previously stated case of **Davies v. Lagos City Council** and the case of **Haydon v. Smith**; conversion by using, as seen in **Agbahowe v. Osayiobasa**; conversion by receiving, detention, wrongful transfer of title, conversion of negotiable and other instruments, among several other forms.

In the natural sense, one may be forced to assume that conversion by detention is akin to detinue, however, there are a few distinctions.

**DETINUE** is the wrongful detention of goods or personal possessions. It does cover the same grounds as conversion by detention; this is why both concepts are merged in the United Kingdom’s **Interference with Goods Act 1997**.

Detinue covers the same ground as conversion by detention; however, there are the following differences between the two causes of action, which shall be discussed.

1. The defendant will not be liable for conversion by t=detention where, prior to thhe demand for their return by the plaintiff, the goods have been lost or destroyed, whether by accident or by the negligence of the defendant.
2. The main factor for detinue is the refusal to surrender on demand, whereas it is only one of several forms of conversion.
3. In detinue, the plaintiff can claim **specific restitution** of goods, but he cannot do so in conversion.
4. In conversion, damages are generally assessed on the value of the goods at the date of conversion, whereas in detinue they are assessed on the value of the goods at the date of the trial.

It can be stated from statements written above that conversion and detinue are elements to the tort of trespass to chattel as it clearly involves the meddling of some sort of a person with another person’s moveable item or property, either negligently or intentionally.

On the forth going, as earlier stated at the onset of this write –up, it was established that trespass as a tort is acknowledged as a tort of intent rather than negligence. Conversely, a few exceptions to this may exclude liability from a defendant who may have committed a tort of trespass to chattel.

Moving on, the concept of **INNOCENT RECEIPT,** which falls under conversion by receiving, may provide for certain exclusion. Where Zack, without lawful authority, transfers Jkenova’s Ferrari to Phoebe, the mere voluntary reception of the Ferrari by Phoebe constitutes conversion as against Jkenova, even though Phoebe may have acted innocently. Therefore, a buyer who receives goods, which the seller has no right to sell, is liable in conversion to the true owner, **unless** he can bring himself within such exceptions:

1. Where goods are sold in market overt according to the usage of the market, the buyer acquires a good title to the goods and does not commit conversion provided he buys them in a good faith and **without** notice of any **defect** of title on the part of the seller.
2. Where a merchantable agent, having authority in the ordinary course of his business to dispose of goods, is in possession of such goods with the consent of the owner, any disposition of them made by him in the course of the business of a mercantile agent to a bona fide purchaser for the value is as valid as if he had the authority of the owner.
3. A person who acquires a negotiable instrument bona fide and for value from a transferor having no title to it does not commit conversion as against the true owner by receiving it from such transferor.
4. When a seller or pledger has a voidable title to goods and his title has not been avoided at the time of the sale or pledge, a buyer or pledgee from him in good faith and without notice of the defect in is title will acquire a good title to the goods and commits no conversion.

Generally, innocent delivery, or innocent receipt are not torts, nor criminal offences. Thus, innocent delivery is not conversion. To this effect, the defendant in the case of **Unipetrol v. Prima Tankers Ltd** could not be held liable for tort of conversion prior to the mistake of delivery.

Moving on, the rules of **FINDING LOST PROPERTY** stipulates:

1. A finder of a chattel acquires no rights over it, unless it has been abandoned, or lost, and he takes it into his care and control.
2. Any agent, 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.
3. An occupier of land has superior rights to those of a finder, over property or goods in, or attached to the land or building.
4. An occupier may have such rights over the finder if he has manifested an intention to exercise control over the premises.

**EXAMPLES OF CONVERSION**

1. Taking
2. Using
3. Alteration
4. Consumption
5. Damaging
6. Receiving
7. Detention
8. Wrongful sale
9. Wrongful delivery
10. Refusal to return a chattel

**PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL**

1. Owners
2. Bailees
3. Lenders
4. Assignees
5. Trustees
6. Finders
7. Custodians
8. Caretakers
9. Executors
10. Administrators of estates

**DEFENCES FOR TRESPASS TO CHATTEL**

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

1. Inevitable accident: This as seen in the case of **Erivo v. Obi,** the defendant could not have been held liable for the very fact that the damage to the windscreen was in no way attributed to him for he applied a reasonable amount of force to the windscreen, and the windscreen was bound to meet such aftermath.
2. **Jus tertii**, that is, the title, or better right of a third party, if he has the authority of such third party.

In the case of **C.O.P. v Oguntayo,** the plaintiff respondent brought action against the defendant appellant police, for the wrongful detention and conversion of his Mitsubishi van, which he drove to a police station on a personal visit to a police officer. The police impounded the vehicle on the allegation that it was a lost but found vehicle. The respondent asserted that he brought the van from a third party who was now deceased. The respondent sued the police claiming for the return of the van. On appeal, the Supreme Court held: that the plaintiff respondent was entitled to the release of the vehicle to him.

1. Subsisting lien.
2. Subsisting bailment
3. Limitation of time, because of the expiration of time specified for legal action.
4. Honest conversion, or acting honestly, and so on

**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. Repair of the damage caused to the chattel.

A frequent demonstration of these remedies is in motor accident cases. Where one vehicle runs into another, damages may be paid, or the parts of the vehicle that are affected may be replaced or repaired.

**DEFENCES FOR CONVERSION OF A CHATTEL**

In an action for conversion of a chattel, the defendant may plead the following;

1. **Jus tertii**, that is, the title or better right of a third party to the chattel or property in dispute. It is a general rule that a defendant cannot plead that a plaintiff is not entitled to possession as against him because a third party is the true owner of the chattel. A defendant can only plead when he or she is acting with the authority of the true owner. Therefore, for a defendant to plead jus tertii, the identity of the true owner must be disclosed, his title or better right to immediate possession must be established and the defendant must be claiming for, on behalf or under the title of the alleged owner or third party.
2. Subsisting bailment
3. Subsisting Lien
4. Temporary retention

To enable steps to be taken in order 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 the right to immediate possession.

**REMEDIES FOR CONVERSION**

In a claim for conversion, several remedies are available to a plaintiff. The court may order any of the following remedies;

1. Order for delivery, return or specific restitution of goods
2. Alternative order for payment of the current market value of the chattel
3. An order for payment of any consequential damages
4. Recovery of special and general damages.

**DEFENCES FOR DETINUE**

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

1. He has mere possession of the goods.
2. The plaintiff has insufficient title as compared to himself.
3. The defendant may plead jus tertii if the defendant is the agent. This defense is based on ownership by a third party and it is not pleaded except the defendant is defending under the right of such third party who has ownership or title that will enable him to establish a better title and the right to possession than the plaintiff.
4. Innocent delivery
5. Subsisting bailment
6. Subsisting lien on the chattel
7. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
8. Inevitable accident
9. Reasonable defense of a person or property, such as when one beats or injures a dog that was attacking him or another person.

**REMEDIES FOR DETINUE**

When another person detains a person’s chattel, the person who is denied possession or use of such chattel has several remedies open to him, which include:

1. Claim for return of the specific chattel
2. Claim for replacement of the chattel.
3. Claim for the current market value of the chattel
4. Recapture or self-help to recover the goods
5. Replevin or release on bond
6. Damages.

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

Detinue covers the same ground as the tort of conversion by detention. However, some differences are to be noted which include the following:

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 to the plaintiff.

Before the Common Law Procedure Act 1854 was enacted, a defendant had a choice to either restore the actual chattel or pay the market value. However, since the enactment of the Act, a 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.