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MATRIC NO: 18/LAW01/011

COURSE: LAW OF TORT ASSIGNMENT

DATE: 23rd January, 2021

Question

The tort of trespass to Chattel in is made of: Trespass to Chattels, Conversion and Detinue. Discuss the above and support with case law.

By way of introduction, a chattel is any moveable property (articles, goods, personal property) other than land and immovable property.

In Nigeria, trespass to chattel is made up of three types of tort. These are:

1. Trespass to chattels per se without a conversion or a detinue
2. conversion
3. detinue

These three forms of trespass to chattel (trespass to chattels per se without a conversion or detine, conversion and detinue) are actionable per se. Actionable per se means upon commission of it, the plaintiff does not need to prove the damage. The purpose of the tort of trespass to chattel is protect all goods, personal property, chattel of a person who has title or possession by prohibiting all interferences without legal justification.

Trespass to chattels per se without a conversion or a detinue

Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. The interference may be intentional or negligent. The tort of Trespass to chattel is designed to protect ones right to retaining his own chattel, protection of the physical condition of the chattel and protection of the chattel against unlawful interference or meddling. Examples of Trespass to chattel are taking someone else chattel, throwing another person property away in annoyance, mere moving of goods from one place to another, killing another person's animal etc. In the case of **HAYDON V SMITH**, it was held to be trespass to

chattel for the defendant who cut and carried away the plaintiff's trees. In **SLATER V SWANN**, beating the plaintiff animal was held to be trespass to chattel. In **G W K V DUNLOP RUBBER CO**, removing a tyre from a car and replacing it with another tyre was held to be trespass to chattel.

In order for a plaintiff to succeed in his claim for trespass to chattel, the plaintiff must establish that the act of trespass was intentional or negligent. In the case of **ERIVO V OBI**, the defendant closed the door of the plaintiff's car and the side windscreen broke. The plaintiff sued for damage to the windscreen and the loss he incurred in hiring another car to attend to his business. It was held that the defendant respondent was not liable as he did not use excessive force but used normal force in closing the car door. He did not also break the windscreen intentionally or negligently.

The difference between trespass to chattel and conversion, detinue is that in tort of trespass to chattel there must be some act of interference, meddling, harm against the desire of the owner, possessor, and custodian. The people who can sue or bring an action for trespass to chattel are owners, bailees, lenders, assignees, trustees, finders, caretakers etc.

The defences for trespass to chattel which a defendant can plead are:

1. Inevitable accident: where the trespass to chattel occurred as a result of an accident one cannot avoid. For example, if one slips on banana peels and falls on someone's portrait and it breaks it is an inevitable accident because he cannot avoid the incident.
2. Jus tertii: this is the title or better right of a third party provided he has the authority.
3. Subsisting lien: This is the legal claim of one person upon the property of another person to secure the payment of a debt or the satisfaction of an obligation.
4. Subsisting bailment: This is a legal relationship where the owner transfers physical possession of personal property (chattel) for a time but retains ownership.
5. Honest conversion: This is where one takes another property (chattel) without knowing or without intention to defraud.
6. Limitation of time for action: This is when a case becomes statute barred. That is the time limit to bring a case before a court has elapsed.

The remedies for trespass to chattel which can be given to a plaintiff are payment of damages, replacement of the chattel, payment of the market price of the chattel, repair of the damage.

Conversion

Conversion is any interference, possession or disposition of the property of another person, as if it is one's own without legal justification. It is dealing with another person's property as if it is one's own. It is not necessary for the plaintiff to prove that the defendant had intention to deal with the goods but it is enough to prove that the defendant interfered with the goods. In the case of **NORTH CENTRAL WAGON & FINANCE CO. LTD V GRAHAM**, The defendant hire purchaser sold the car in contravention of the terms of the hire purchase agreement. It was held that the Plaintiff finance company was entitled to terminate the hire purchase agreement and sue the selling hire purchaser in the tort of conversion, for recovery of the car. In **ADAMSON V JARVIS**, an auctioneer was entitled to be indemnified by a client who had instructed him to sell goods to which as it was later discovered the client has no title. 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 to be liable in conversion.

Examples of conversion include using one's chattel as if it is yours, wearing of plaintiff's jewelry, alteration, consumption, damaging or destroying, detention, receiving, wrongfully refusing to return chattel, wrongful delivery, wrongful sale or disposition. In the case of **PENFOLDS WINE LTD V ELLIOT**, using plaintiff's bottle to store wine was held as conversion of chattel, In **CHUKWUKA V CFAO MOTORS LTD**, The plaintiff sent his car to the defendant motor company for repairs thereafter he failed to claim the car. Nine months later the defendant sold the car to a third party who re-registered it in his own name. The plaintiff sued for conversion. It was held the defendant was liable.

People who can sue in tort of conversion are owners, bailees, holders of a lien and pledge, finders, buyers, assignees, licensees and trustees. The differences between Conversion and trespass is that in conversion the conduct of the defendant must deprive the owners of the possession of chattel or amount to a denial or dispute of the title of the owner but in trespass to

chattel mere touching or moving of one's chattel amounts to trespass. Also, unlike trespass to chattel, to maintain an action in conversion the plaintiff need not be in actual possession of the chattel at the time of interference.

Innocent Receipt or Delivery

Generally, innocent delivery or receipt is neither a tort nor criminal offences. This makes innocent delivery or receipt to not be conversion. Thus, where an innocent holder of goods receives goods in good faith from a person he believes to have lawful possession of them and then delivers them on the persons instructions to a third party in good faith there would be no conversion.

In the case of **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. It was held that the respondents were liable in conversion. Also, in **OWENA BANK NIG LTD V NIGERIAN SWEETS & CONFECTIONARY CO. LTD**, The 1st respondent was granted an import license by the Federal Ministry of Trade to import granulated sugar. However, the 2nd respondent opened a letter of credit and imported the sugar. The 1st respondent sued for damages for the wrongful conversion of the import license. On appeal it was held that the defendant were liable for conversion of the import license papers.

Possession is title against a wrongdoer or stranger

At the common law, mere de facto possession is sufficient title to support an action for conversion against a wrongdoer. In the case of **COP V. OGUNTAYO**, the plaintiff respondent brought an 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 lost but found vehicle. The respondent asserted that he brought the van from a third party who was now deceased. The respondents sued the police claiming for the return of the van. On appeal, it was held that the plaintiff respondent was entitled to the release of the vehicle to him.

In order to establish conversion, the law is that what is required is proof of de facto possession and not proof of ownership. In **DANJUMA V UNION BANK NIG LTD**, the plaintiff appellant sued the defendant respondent bank claiming for an injunction restraining the defendant from conversion of the plaintiff share certificates and dividends or from the wrongful seizure of same. On appeal, it was held that right of action does not lie as it had not been established that the action of the respondent bank amounted to the tort of conversion.

The Rules regarding finding Lost Property

The rules of law applicable to finding lost property were authoritatively settled by the English Court of Appeal in the case of **PARKER V BRITISH AIRWAYS**. The rules are:

1. A finder of a chattel acquires no rights over it unless it has been abandoned, lost and he takes it into his care and control.
2. Any servant or agent, who finds a lost property in the course of employment does so on behalf of his employer who by law acquires the rights of a finder.
3. An occupier of land or 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.

In **PARKER V BRITISH AIRWAYS**, the plaintiff was waiting in the defendant airways lounge at an 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 failed to return it to the finder and sold it. It was held that the proceeds of the sale belonged to the plaintiff who found it. A finder has the duty to trace the true owner. As a general rule of law, anybody who has a finder's right over a lost property has an obligation in law to take reasonable steps to trace the true owner of the lost property, before he may lawfully exercise the rights of an owner over the property he found.

The defenses for conversion of chattel which a defendant can plead in an action for conversion are Jus tertii, subsisting bailment, subsisting lien, temporary retention and limitation

to time. The remedies for conversion are order for delivery, return or specific restitution of the goods, alternative order for payment of the current market value of the chattel, an order for payment of any consequential damages, recovery of special and general damages by plaintiff if his loss is proved.

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, surrender of a chattel to the plaintiff who is entitled to 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.

A plaintiff can only maintain action for the tort of detinue after satisfying:

1. He 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 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.

In the case **KOSILE V FOLARIN**, the defendant motor dealer seized and detained the motor vehicle he had sold to the plaintiff on credit terms, upon delay by the plaintiff to fully pay up. The plaintiff buyer sued for detinue claiming for damages. It was held the seizure and detention of the vehicle by the defendant was wrong. The plaintiff was entitled to the return of the vehicle or its value and for loss of the use of the vehicle until the date of judgment at the rate of N20 per day. Also in **WESTAFRICAN 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 detinue for his certificate and was awarded damages.

The difference between conversion and detinue is that the refusal to surrender or return a chattel on demand is the essence of detinue or detention while conversion essence is where one converts or uses another person's property as his.

The defenses a defendant can plead in an action for detinue are that he has mere possession of the goods, that the plaintiff has insufficient title as compared to himself, *jus tertii*, innocent delivery, subsisting bailment and subsisting lien on the chattel. The remedies for detinue available to a plaintiff are a claim for return of the specific chattel, claim for replacement of the chattel, claim for the current market value of the chattel, recapture or self help, *replevin*; that is release on bond pending determination of ownership, damages.

In conclusion, trespass to chattels *per se* without a conversion or a detinue, conversion and detinue are the forms of the tort of trespass to chattel. These torts are designed for the purpose of protecting ones chattel from unlawful destruction, possession by another and detention.

References

- Malemi, E. (2008) *Law of Tort* (2nd ed., 2017) Princeton publishing Co. Lagos