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**COURSE CODE- LPB 301**

**COURSE- LAW OF TORTS 1**

**QUESTION**

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

**ANSWER**

This question bothers on the tort of trespass to chattel, conversion and detinue. Before discussing the main point of this topic this writer will firstly explain the tort of trespass to chattel an also explain the meaning of chattel.

[[1]](#footnote-2)A chattel in simple terms is any property other than land and immovable property. Also, according to Oxford Dictionary a [[2]](#footnote-3)chattel is an item of property other than freehold land including tangible goods and leasehold interest. There are many examples of chattel and they are; Animal, car, vessel, Sea craft. Etc. For better understanding it is also necessary to know the definition of trespass and this writer will go further to explain the meaning of trespass.. Trespass is the act of knowingly entering another person's property without permission.

Furthermore, this writer will explain the tort of trespass to chattel, detinue destiny and conversion. Trespass to chattel is the intentional interference with the possession of the chattel of another person. It is designed to protect possession. In simple terms trespass to person is the use of property without the permission of the owner. The tort of conversion means interfering with the chattel of another person which illegally deprived the person of title or possession or use of it. Examples of conversion include wrongful detention, wrongful taking, etc. The tort of detinue can be defined as the wrongful detention of goods. It can also simply be defined as [[3]](#footnote-4)the common law action for the recovery of a personal chattel wrongfully detained.

Going further this writer will mention the elements of each of the tort mentioned above starting with trespass to chattel next to conversion and finally detinue.

For a plaintiff to succeed there are certain things that needs to be established and those things are called the elements of trespass to chattel. There are three elements of trespass to chattel and they are;

1. [[4]](#footnote-5)Lack of consent- There must be an illegal interference. This means that’s the trespasser did not get permission from the owner of the property.

* Intention- One only needs to prove that the defendant intended to trespass. Intention- One only needs to prove that the defendant intended to trespass. The plaintiff does not need to prove actual harm.

1. Negligence

Next this writer will proceed to the elements of the tort of detinue. There are some things that need to established for a plaintiff to succeed in a claim for detinue and those elements are:

* 1. [[5]](#footnote-6)Make a demand- This means that the plaintiff ought to make a demand for the chattel to be returned.
  2. Refuse a demand- it must be established that the plaintiff refused the demand.
  3. Unreasonable Refusal- In a situation where the defendant is in possession of the chattel, the refusal to return the chattel must be unreasonable.
  4. Consequential damage- That as a result of he defendants action the plaintiff suffered loss.

In continuation this writer will now list the elements of the tort of conversion. The elements are:

1. [[6]](#footnote-7)Intention to convert
2. That the plaintiff owns the property in question at the time of the interference
3. The interference denied the plaintiff of use of personal property.
4. That the interference causes damage to the plaintiff.

Furthermore ,the this writer will briefly explain the concept of innocent delivery or receipt. [[7]](#footnote-8)It is paramount to firstly understand that innocent delivery is not a tort or a criminal offence nor is it conversion. This concept of innocent delivery occurs where an innocent carrier receives goods in good faith from a person he believes to have lawful possession of them and he delivers them. It is important to know that the receiver must not wilfully damage the goods unless it constitutes a nuisance. In relation to this concept the case of [[8]](#footnote-9)Unipetrol v prima tankers.

Under the tort of conversion there are rules regarding finding lost property and this writer will briefly explain. The case of Parker v British Airways propounded these rules. Some of these rules are :

1. A finder of a chattel has no rights over it unless it is an abandoned property.
2. If a servant finds a lost property during his employment he does so on behalf of his employer.
3. An occupier of a land has higher rights to those of a finder over property attached to the land.

There are specific group I individuals qualified to sue for the tort of trespass to chattel and they are; owners, bailees, lenders, assignees, trustees, finders, custodians, caretakers, etc.

Next, this writer will state the difference between conversion and detinue. Sometimes detinue can cover the same ground as conversion but there are few differences which are: the refusal to surrender or return a chattel on demand. There must have been a demand for chattel in the tort of detinue.

Lastly, this writer will list out the remedies and defences for the tort of trespass to chattel, detinue and conversion.

**Defences for trespass to chattel, detinue and conversion**

1. Inevitable accident
2. Subsisting line
3. Subsisting bailment
4. Limitation of time
5. Jus tertii
6. Innocent delivery

**Remedies for trespass to chattel, conversion and detinue**

1. Payment of damages
2. Repair of the damage
3. Claim for replacement of the chattel.

**REFERENCE**

* 1. **Law of tort (ESE MELAMI)**
  2. **Oxford Dictionary**

1. LAW OF TORTS (ESE MELAMI) pg 209 [↑](#footnote-ref-2)
2. Oxford Dictionary [↑](#footnote-ref-3)
3. Meriamwebster.com date accessed- 25/01/2021 Time assessed- 10:02am [↑](#footnote-ref-4)
4. Findlaw.com date accessed- 26/01/2021 Time accessed- 2:55pm [↑](#footnote-ref-5)
5. Ibbswrightlawyers.com date accessed- 26/01/2021 Time assessed 8:40pm [↑](#footnote-ref-6)
6. Dmlp.org date accessed- 26/01/2021 Time accessed 9:00pm [↑](#footnote-ref-7)
7. LAW OF TORT (ESE MELAMI) [↑](#footnote-ref-8)
8. (1986) 5 NWLR pt42 p532 [↑](#footnote-ref-9)