

The Tort of trespass to Chattel is made up of Trespass to Chattels, Conversion and Detinue.

Discuss the above and support with case law.

DEFINITION

The Tort of trespass as defined by the *BLACKS LAW*¹ a dictionary is an injury or misfeasance to the person, property, or rights of another person, done with force and violence, either actual or implied in law. Trespass in the legal parlance can broadly be divided into 3 categories; Trespass to Goods, Land and Person.

Trespass to goods is also known as trespass to chattel². A chattel is any tangible, movable assets possessed as personal property by a person. Trespass to chattel consists of trespass to chattel perse, conversion and detinue. By reason of this essay, only that of conversion and detinue shall be explored indepthly, making note of their elements and respective distinctions. With the support of judicial as well as statutory authority where applicable, aiming to reach a detailed exploration of what is deemed the tort of trespass to chattel.

ELEMENTS OF TRESPASS TO CHATTEL

The trespass to chattel is one of great importance in tort law as it protects personal property of individuals from unlawful infringement³. As it is actionable per se, it may not need damage to be proved however other elements must be present in order to succeed in an action of the tort of trespass to chattel all of which would be outlined below.

Firstly, being actionable per se; proof of the direct and unlawful application of force is sufficient, it is not necessary to prove damage. However, as posited *ADEFARASIN J*⁴ it is not a strict liability. the direct application of force does not have to be physical. Furthermore, as held in the case of *ERIVO V. OBF*⁵ the court of appeal restated that the trespass to chattel is actionable per se and actionable at the suit of the possessor of the chattel. And must be done by the wrongdoer intentionally. The interference must be intentional. What constitutes intention varies by jurisdiction or negligently. However, the need to prove this likewise varies by jurisdiction.

Secondly, Lack of consent; the interference with property should not be agreed upon. If a claim does not lie, when acquiring the property, the buyer agrees to have some access through the seller in accordance with the contract.

EXAMPLES OF TRESPASS TO CHATTEL

A person commits a trespass to chattel by damaging or dispossessing intermeddling with a chattel in the possession of another. Interference does include dispossession of a chattel, but it must be something short of conversion.

¹ Law Dictionary & Black's Law Dictionary 2nd Ed.

² Thrifty-Tel, Inc., v. Bezenek, 46 Cal. App. 4th 1559

³ Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

⁴ Davies v. Lagos Council (1973) 10 CCHCJ 151 at 154

⁵ (1993) 9 NWLR pt316

DETINUE

This is defined as the unlawful retention of goods, committed when someone unreasonably refuses to surrender or return personal property to the rightful owner, only if and when the owner demands a direct right to possess the goods. It is an action to recover for the wrongful taking of personal property. The tort is committed by the wrongful refusal to return goods to the plaintiff on demand. The Tort of trespass to chattel; detinue is also distinct from many cases of conversion by not carrying the general requirement of an intentional act. An unintentional detinue is possible. To succeed in a claim for detinue a plaintiff must have possession before the detention and right to immediate possession of the chattel.

ELEMENTS OF DETINUE

There are majorly four elements required to establish a claim in detinue firstly, a Demand for the chattel in question must have been made, by one who has right over said good. Such demand must then have been Refused for no just cause or logical reason lastly, a damage must have then resulted as a consequence of this

ABOLISHMENT OF DETINUE

In England and Wales, detinue was abolished from 1 January 1978⁶. However it has been merged with the Tort of conversion. Nonetheless one may only sue in an action for detinue where one has ownership over the chattel in question or the possessor of chattel must have failed to return said chattel when requested for by the plaintiff. Therefore a demand for the chattel must have been made by the plaintiff and refused by the defendant. This is a condition precedent for a claim of tort of detinue therefore form its core elements.

DEFENCES TO DETINUE

There are several defences to detinue. One may plead that he merely has possession of the goods, that in comparison to the defendant the plaintiff does not have sufficient title or that he has no right to possession of the chattel. And lastly, Jus Tertii, which is a defence to show that a third party has a better right to possession than the plaintiff and is acting on behalf of the rights of such person. This was seen in the case of *ARMORY V. 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). One of these defences include the Innocent delivery.

⁶ Torts (Interference with Goods) Act 1977

Generally this does not constitute conversion therefore where an innocent carrier of goods, receives them in good faith believing it does belong to the deliverer whom he believes has lawful possession of the good and delivers them as directed by the other party then there is no conversion. Similarly innocently receiving such goods in good faith does not constitute conversion either unless said recipient willfully damages the chattel in question then it is nuisance. This is seen in the case of *UNIPETROL V PRIMA TANKERS LTD*⁷ The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of the cargo. The Court of Appeal held that the respondents were liable in conversion.

Likewise as seen in *OWENA BANK NIGERIA. LTD V NIGERIAN SWEETS & CONFECTIONERY CO. LTD*⁸, the Court of Appeal held That the defendants were liable for conversion of the import licence papers.

LOST PROPERTY RULE

Traditionally, a conversion occurs when some chattel is lost, then found by another who appropriates it to his own use without legal authority to do so. the rule regarding lost property was established in the case of *PARKER V. BRITISH AIRWAYS*⁹ This case considered the issue of conversion and whether or not an airport lounge was liable for the sale proceeds of a gold bracelet to a man who had found it on the floor of the airport lounge. The case establishes the rights that a person has to a chattel found on the surface of the land. *DONALDSON LJ* held that this was a case of "finders keepers". The defendants could not assert any title to the bracelet based upon the rights of an occupier over chattels attached to a building. This rule established several principles, one being that the finder cannot claim right to a property unless it has been abandoned by the owner, where an employee finds a chattel in the course of his duty he does so on behalf of the employer. And the occupier doesn't have superior rights over the finder

CONVERSION

An intentional tort involving taking ownership of another's real property with the intent to exercise possession that is contrary to the right of possession of the original owner. As held in the leading case of *FOULDES V WILLOUGHBY*¹⁰ wherein Rofle B stated that a taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession constitutes conversion.

⁷ (1986) 5 NWLR pt 42 p. 532 CA.

⁸ (1993) 4 NWLR pt.290, p. 698 CA

⁹ 1 All ER 834

¹⁰ (1841) 8 M&W 540

ELEMENTS OF CONVERSION

The Elements of conversion are majorly two¹¹. Firstly being that there is an intention to convert another's property to their own possession and secondly that there is indeed a subsequent conversion of said property. Both the owner as well as possessor of the chattel may sue a third party for conversion. The plaintiff must have right to the chattel in question and a resultant damage must have occurred from the infringement upon such rights.

EXAMPLES OF CONVERSION

As seen in the case of *FOULDES V WILLOUGHBY*¹² This case considered the issue of conversion and whether or not a ferry driver who removed a man's horses from the ferry and sent them to a hotel for overnight lodging amounted to an act of conversion. The judge at the trial told the jury that the defendant ferryman, by taking the horses from the plaintiff and turning them out of the vessel, had been guilty of a conversion.

DEFENCES TO CONVERSION

These are in an inexhaustive list however some major ones include; Abandonment of property by plaintiff. In the case of *JOHNSON V. NORTHPOINTE APARTMENTS*¹³, The fact that the plaintiff abandoned his/her property before the defendant took possession of it makes a complete defense. Secondly, where there is Privilege. In certain circumstances and under certain statutes, a defendant has the privilege to claim possession...storage facilities after proceeding along statutory lines, can seize stored property and are privileged to do so. Likewise where there is Consent or approval of the plaintiff or a prevailing authority of law or statute which allows the defendant to take possession such as being part owner in right to the chattel in question.

REMEDIES TO TRESPASS TO CHATTEL; CONVERSION & DETINUE

An order for delivery up of goods is available in an action for detinue. It is basically a Court order demanding the return of the goods or chattel to the plaintiff *VAUGHN V. VAUGHN*¹⁴ Compensation in monetary award of damages at the value of the goods lost or damaged.

The remedy of specific restitution (i.e. remedy calculated based on the gains of the defendant) where damages are inadequate. This would be done at the current market price of the goods especially when the specified goods have been damaged. The court may also order for a repair of the destroyed goods as the case may be.

Order of replevin may be issued which originated as a writ which enables a person to recover personal property taken wrongfully or unlawfully, and to obtain compensation for resulting losses.

¹¹ Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery), 317 F.3d 1064 (9th Cir. Cal. 2003)

¹² Supra

¹³ 744 So. 2d 899 (Alabama 1999)

¹⁴ 146 Md. App. 264 (Md. Ct. Spec. App. 2002).

The standard remedy for conversion is a judgment for damages in an amount equal to the fair market value of the property. Punitive damages are also possible, because conversion is an intentional tort. The standard remedy in a detinue action is an order that the property be returned

WHO CAN SUE FOR TRESPASS TO CHATTEL

A person who wants to sue in trespass to chattel can sue under trespass to goods, conversion and negligence that is involved in the commission of the trespass or conversion. These actions are substantiated by the provisions of the *TORTS (INTERFERENCE WITH GOODS) ACT 1977*. In order for one to sue in an action for detinue, The plaintiff must have the right to direct possession of the chattel in question at the time of the denial arising from any proprietary or possessory interest in the movable property. The interest in the property must also be a legal interest before one may sue for impairment.

It is generally those who own the chattel, bailees and also finders and trustees who may sue for both detinue and conversion under trespass to chattel.

DIFFERENCES BETWEEN CONVERSION AND DETINUE

Conversion refers to the treatment of movable property in a way that conflicts with the direct ownership of the real owner. The subjective intention of the conversion is unnecessary.

When someone refuses to deliver the goods to a person with direct ownership, the conviction is illegal detention of the goods and this is Detinue. Usually, there are requests for return and requests for rejection, but this is not required. If the defense indicated that the defendant refused to comply, then the formal request would be futile.

Within Detinue, seeking to recover property that has been wrongfully held or retained (as distinguished from property cancellation aimed at recovering property that has been wrongfully taken). Afterwards, it was determined that the defendant received the property legally, and the plaintiff did not have to own the property first (hence, saying that you should get what I deserve, but I never own it, and you will not give it to me).

During conversion, Reliance occurs when one person deliberately interferes with another person's personal property. The plaintiff must prove that he owned or had the right to own the item at the time of the interference, the defendant intentionally intervened, the interference caused the plaintiff to own or use the item, and the interference caused damages to the plaintiff. However, since the abolishment of Detinue, the two have been merged and now operate as one tort of trespass to chattel.

References

- * Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, (1999)195
- * Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293
- * Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T