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18/LAW01/091

LAW OF TORTS (LPB301)

“Chattel” means any article, goods, or personal property, other than land and immoveable property. Thus Tort of trespass to chattel protects the chattels, goods, and all personal properties of a person who has title, possession, or right to immediate possession against meddling, damage, destruction, diminution, conversion, detinue, or any interference whatsoever, by any other person without lawful justification. It is the intentional or negligent interference with the possession of the chattel of another person.

It is designed to protect the following interests in personal property or personality by Right of retaining one’s chattel, protection of the physical condition of the chattel, protection of the chattel against unlawful interference or meddling. 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 detinue.

The case of ERIVO V OBI the Court of Appeal held that the defendant respondent was not liable because he did not use excessive force but only normal force in closing the door of the car, he did not break the windscreen intentionally, nor negligently. In this case the Court of Appeal restated the position of the law that for trespass to chattel to be actionable, it must have been done by the wrongdoer intentionally or negligently. Examples of trespass to chattel: taking a chattel, throwing another person’s property away, such as in annoyance, mere moving of the goods from one place to another, that is, mere asportation (KIRK V GREGORY) the movement of a deceased person’s rings from one room in his house to another was held to be trespass to chattel and nominal damages was awarded against the defendant., killing another person’s animal by feeding it poison or beating it, destruction or any act of harm or damage.etc.

DIFFERENCES BETWEEN TRESPASS TO CHATTEL, CONVERSION AND DETINUE

Tort of trespass to goods, there is no taking away, stealing, conversion, detention or detinue of the goods from the owner, the main difference between it and the torts of conversion, and detinue. In trespass to chattel there must be some act of interference, meddling, harm, and injury, and damage, destruction of goods, against the desire of the owner, possessor, custodian or caretaker.

The case of *DAVIES V LAGOS CITY COUNCIL* (1973) the Lagos High Court held that the defendant was therefore liable for trespass to chattel by seizing the plaintiff's car. Also the case of *FOULDES V WILLOUGHBY* (1841) 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 the title. We have a similar case of *LEAME V BRAY* the court held that the accident was a trespass to chattel and the defendant was liable in damages to the plaintiff for the damage done to the coach of the plaintiff.

ELEMENTS OF TRESPASS TO CHATTEL

A plaintiff must establish that the act of trespass was intentional or negligent.

Therefore 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, trustees, finders, custodians, caretakers, executors, administrators of estates. The case of *NATIONAL COAL BOARD V EVANS & CO* the court held that in the absence of establishing negligence on the part of the defendant contractors, there was no fault and there was no trespass by the defendants. The damage was an inevitable accident.

DEFENCES FOR TRESPASS TO CHATTEL

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

1. Inevitable accident
2. Jus tertii, that is, the title or better right of a third party, provided that he has the authority of such third party. (*C.O.P V OGUNTAYO*)
3. Subsisting lien.
4. Subsisting bailment
5. Limitation of time, as a result of the expiration of time specified for legal action.

6. Honest conversion, or acting honestly.

THE 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. Payment of the market price of the chattel
4. 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 the assertion of a right that is inconsistent with the rights of the person who has title, possession or right to use chattel. Essentially conversion is any inconsistent dealing with a chattel to which another person is entitled to immediate possession whereby the person is denied the use, possession or title to it.

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 convert such chattel. The case of *NORTH CENTRAL WAGON & FINANCE CO. LTD V GRAHAM* the court 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.

Conversion is different from trespass to chattels in two main respects. These are:

1. In conversion the conduct of the defendant must deprive the owners of the possession of the chattel, or amount to a denial or dispute of the title owner. Conversion is known as stealing in criminal law, therefore, mere touching or moving of a chattel and so forth, only amounts to trespass.
2. To maintain an action in conversion, the plaintiff need to be in actual possession of the chattel at the time of the interference.

The case of *YOUL V. HARBOTTLE* he was held liable for conversion, for the loss of goods. Therefore it follows that, if an act of interference with a chattel is intentional or wilful, it is not a defense that the tort was done by mistake, even if the mistake is honest, that is, in good faith or innocently. *ADAMSON V JARVIS* An auctioneer was held entitled to be indemnified by a client who had instructed him to sell goods, to which it was later discovered the client had no title.

EXAMPLES OF CONVERSION

1. **TAKING:** where a defendant takes a plaintiff's chattel out of the plaintiff's possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion. *FOULDES V WILLOUGHBY*.
2. **USING:** using a plaintiff's chattels as if it is one's own, such as by wearing the plaintiff's jewellery as in the case of *PETRE V HENEAGE*.
3. **ALTERATION:** by changing its form howsoever.
4. **CONSUMPTION:** by eating or using it up.
5. **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.
6. **RECEIVING:** receiving a chattel from a third party who is not the owner is a conversion.
7. **DETENTION:** the case of *ARMORY V DELAMIRIE* the court held that the jeweler was liable for conversion, a finder of a property has a good title, and he has a right or interest, to keep it against all person except the rightful owner of the property or his agent.
8. **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 a conversion.
9. **PURCHASE:** at common law, conversion is committed by a person who bought and took delivery of goods from a seller who has no title to the chattel nor right to sell them.
10. **WRONGFUL DISPOSITION:** such as by sale, transfer of title or other wrongful disposition, the case of *CHUKWUKA V C.F.A.O. MOTORS LTD* the High Court held that the defendant was liable to the plaintiff for conversion of the car.

INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION

Generally, innocent delivery or innocent receipts are not torts, nor criminal offences, thus innocent delivery is not conversion. 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. Similarly, innocent receipt of goods is not conversion, however the receiver must not wilfully damage or destroy the goods unless the goods constitute a nuisance. The case of *UNIPETROL V PRIMA TANKERS LTD, OWENA BANK NIG. LTD V NIGERIAN SWEETS & CONFECTIONERY CO. LTD.*

THE RULES REGARDING FINDING LOST PROPERTY

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

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. 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 of his employment, does so on behalf of his employer, who by law acquires the rights of a finder.
3. 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. The case of *SOUTH STAFFORDSHIRE WATER CO. V SHARMAN*.
4. However an occupier of premises does not have superior right 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. The case of *PARKER V BRITISH AIRWAYS* the English Court of Appeal held that the proceeds of sale belonged to the plaintiff who found it.

WHO MAY SUE FOR CONVERSION?

Owners, bailees, holders of lien and pledge, finders, buyers, assignees, licensees, trustees.

DEFENCES FOR CONVERSION OF A CHATTEL

1. Jus tertii that is the title or better right of a third party
2. Subsisting bailment
3. Subsisting lien
4. Temporary retention, to enable steps to be taken to check the title of the claimant.
5. Limitation of time.

REMEDIES FOR CONVERSION

In a claim for the conversion of a chattel several remedies are available to a plaintiff.

1. Order for delivery, return or specific restitution of the goods or
2. Alternative order for payment of the current market value of the chattel.
3. An order for payment for any consequential damage.
4. Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved.
5. General damages.

DETINUE

Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. As a general rule to successfully sue in detinue, a plaintiff must have possession before the detention, have right to immediate possession of the chattel.

WHEN TO SUE FOR DETINUE

1. The plaintiff 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 or refuse 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 of *KOSILE V FOLARIN* the Supreme Court emphasized the requirement that in an action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable for detinue. We can see a similar case of *SHUWA V CHAD BASIN DEVELOPMENT AUTHORITY* the court held that as a general rule, where there is subsisting lien on a property, a claim for detinue will not succeed.

Also the case of *WEST AFRICA EXAMINATION COUNCIL V KORROYE* the plaintiff successfully claimed in detinue for his certificate and was awarded damages in lieu of the release of the certificate by the Supreme Court.

THE DIFFERENCES BETWEEN CONVERSION AND DETINUE

Detinue covers the same grounds as tort of conversion by detention, however there are some differences which includes the following:

1. The refusal to surrender or return a chattel on demand is the essence of detinue, or detention. There must be 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.

THE DEFENCES FOR DETINUE

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

1. He has mere possession of the goods.
2. That the plaintiff has insufficient title as compared to himself.
3. The defendant may plead *jus tertii* that is, that a third party has a better title, provided that the defendant is the agent, or has the authority of the third party, or is claiming under the third party.
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 defence of a person or property.
10. Enforcement of a court order or other legal process, such as levying of execution of property under a writ of *fieri facias*, or the police taking away goods they believe to have been stolen for the purpose of use as exhibit in evidence before court and so forth.

REMEDIES FOR DETINUE

1. CLAIM FOR RETURN OF THE CHATTEL: this is the claim for the return of the specific chattel, especially if the chattel has not changed its character, content, and it has not been damaged or destroyed during its detention.
2. REPLACEMENT OF THE CHATTEL: where possible or appropriate, a defendant may be ordered to replacement the chattel by supplying identical or similar chattel.
3. CLAIM FOR THE MARKET VALUE OF CHATTEL: this is the claim for the current market value of chattel as may be assessed.
4. RECAPTURE OR SELF HELP: a person who is entitled to possession of goods of which he has been wrongfully deprived may resort to self-help and retake the goods from the custody of the person detaining it, using only reasonable force after he has made a demand for their return.
5. REPLEVIN OR RELEASE ON BOND: This is a return of the goods on security, pending the determination of the ownership of the chattel.
6. DAMAGES: When a defendant has been found liable in detinue, he cannot deprive the plaintiff of his right to damages for detention to chattel, simply because he has not been using it, nor earning anything from its use.

Reference:

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

