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Question: The tort of Trespass to Chattel is made of Trespass to chattel, Conversion and Detinue. Discuss with aid of aid of relevant case law.

Although there is no universal-recognized definition of tort, Tort can basically be described as a breach of duty owed by one party to another fixed by law and is repressible by an action for liquidated damages. Tort Law is an aspect of law where civil wrongs are addressed. To begin with the meaning of a Chattel: a chattel is any property other land and an immoveable object, it simply means any property owned by a person that is moveable. Trespass to Chattel is made up of three (3) types of torts in Nigeria namely:

- 1) Trespass to Chattel
- 2) Conversion
- 3) Detinue

1. TRESPASS TO CHATTEL.

In an attempt to expound on what Trespass to chattels entails, the word Chattel must first be defined. Chattels generally refer to any personal property, movable or unmovable. Chattels do not include real property. Trespass to chattels is an intentional interference with another person's lawful possession of a personal property. Trespass to chattels does not apply to real property or any interest in land.

In order to prove trespass to chattels, the law requires one(the claimant) to prove its elements. The following are **elements of trespass to chattels**.

- a) Intent to trespass: It is almost an undebatable fact that "a man intends the natural consequences of his actions". Therefore, merely intending to do the act is enough to show this element of trespass. One doesn't necessarily need to show intent to harm a specific person.
- b) Lack of owner's consent: There must be an unauthorized, unlawful interference, which means the person interfered with or dispossessed the chattel without the owner's permission.
- c) Interference of chattels: A person commits a trespass to chattel by, dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or, damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

In summary, a person will be held liable for a trespass to chattels if; i} the person dispossesses the other of the chattel; ii} the chattel is impaired as to its condition, quality, or value; iii} the possessor is deprived of the use of the chattel for a substantial time; iv} Bodily harm is caused to

the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.

REMEDIES OF TRESPASS TO CHATTELS.

In a trespass to chattels claim, one can only recover actual damages (as opposed to nominal damages). Actual damages are measured by the diminished value of the chattel that resulted from the defendant's actions. The following are remedies that are available to the aggrieved party in the event of a trespass (to chattel).

i) Compensatory Damages

Compensatory damages applies if damage to the chattel has been sustained or not capable of being returned. The aim for this type of damages is to put an injured person in the same situation as they would have been in had the trespass not been committed- ab initio.

ii) Nominal Damages

Trespass is a tort of strict liability, which means that nominal damages (i.e. damages awarded to a person who has suffered a legal wrong) apply even where no actual damage has been sustained by the plaintiff.

iii) Injunctions

An injunction is a court order preventing a party from doing something, or alternatively, forcing a party to do a specific thing. In order for the Court to grant an injunction, the Court must be satisfied that the damages suffered by the plaintiff are significant (such as where the trespass is ongoing).

iv) Exemplary Damages

Exemplary damages, also referred to as punitive damages (that is, damages awarded in order to punish the defendant and deterring others from engaging in similar conduct) may be awarded in certain circumstances involving trespass to chattels. Exemplary damages (although not traditionally so) are available for any tort.

DEFENSES TO TRESPASS TO CHATTELS.

Mistake of ownership is not a valid defense to a trespass to chattels. In other words, it doesn't matter if the person didn't know the property belonged to you. Possessing or damaging the property itself is enough to show interference. The following are defences to trespass to chattels.

- i) Necessity : The defendant may be able to establish a defence to trespass if the interference occurred in circumstances where the interference was necessary, but consent could not reasonably be obtained. The defendant must show that there was an apparent imminent danger to person or property and that the defendant honestly believed on reasonable grounds that the act was necessary for the preservation of the person or property.

- This defence is of two types; Public necessity [when one intentionally interferes with another person's chattel to protect the public] and private necessity [when the purpose of using another person's chattel is to protect one's own interests]
- ii) Consent : A defendant may be able to establish a defence to trespass if the interference occurred with the plaintiff's consent. Consent can either be express or implied by conduct; however, it must be genuine and voluntary. The onus is on the defendant to establish that they interfered with the chattel with the plaintiff's consent.
 - iii) Jus Tertii : Jus Tertii means 'the right of a third party'. A cause of action in trespass may fail if the defendant can show that a third party has better rights to the chattel than the plaintiff. The onus is on the defendant to establish that a better right to possession is held by a third party in order for the defence to succeed.
 - iv) Inevitable Accident : Inevitable accident is a defence that apply in circumstances where the defendant can show that their conduct was involuntary, and accordingly, the defendant is without fault. The onus on establishing this defence is on the defendant, who must show that their conduct was neither intentional nor negligent, and the interference with the chattel was a result of an inevitable accident.
 - v) Mistake : Mistake is generally not a defence to intentional torts. However, mistake may be a defence to a cause of action in trespass if the defendant can prove that he or she acted with a mistaken belief, and the mistake was reasonable. The standard for what is considered 'reasonable' is generally fairly difficult to meet.
 - vi) Incapacity : There may be a defence to trespass if the defendant is a minor who can establish their inability to understand the true nature of the act committed. This would seem to indicate that a defence based on incapacity would only cover young children up to about four years of age.
 - vii) Privilege invasion to reclaim property or Retaking Goods : A defendant may be able to establish a defence to trespass if the defendant can prove that reasonable force was used to retake goods to which the defendant has a better right to possession than the plaintiff, or where the goods were wrongfully taken from the defendant by the plaintiff.

CONVERSION

Conversion may be defined as an intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiff's possession or right to possession of such chattel. It is any interference with another person's right to possession of such a chattel as if it's 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 the chattel. If any interference denies the rightful owner of a chattel the right to use such a chattel is conversion. Also a person who has mere custody, temporary possession can sue any party which decides to deny him of the right to use such a chattel.

DIFFERENCES BETWEEN CONVERSION AND TRESPASS

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 of the owner. Conversion can be seen as theft in criminal law so mere touching or moving of a chattel and so forth only amount to trespass. With regards to intentional conduct, a defendant will only be liable in conversion only where his conduct in relation to the plaintiff's good was intentional. An interference resulting from merely careless conduct is not actionable in conversion. For example a car parked at a parking lot and the car park attendant negligently allows a thief to drive away with the car will not be liable for conversion. **Ashby v Tolhurst**; the defendant who negligently allowed a car thief to drive away with the plaintiff's car from a car park which was under his watch was; held not to be liable for conversion. The driver had possession of the car which he had parked, for he has right to immediate possession. The court held that the plaintiff should have sued in the tort of negligence for the loss of the car.

For something to amount to conversion, the intent of the defendant must be to deal the plaintiff's goods by exercising dominion over them on his behalf or on behalf of another person other than the plaintiff. **City Motor Properties Ltd v Southern Aerial Service**; an owner of a chattel was held liable in conversion for dispossessing the plaintiff a bailee during the subsistence of his bailment. Acting in good faith by a defendant thereby leading to a mistake is no defense. **Youl v Harbottle**; the defendant carrier of goods by mistake delivered to the plaintiff's goods; he liable for conversion with the court supporting the fact that an act of interference is done willfully or intentional it is no defense if it was done by mistake or in act of good faith.

2. To maintain an act of conversion, the plaintiff needs not to be in actual possession of the chattel at the time of the interference.

Examples of acts that would amount to Conversion

- **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 temporarily, there is conversion. In the case of **Davies v Lagos City Council**, the defendant council was held liable in both trespass and conversion for the act of its officials in wrongfully seizing the plaintiff's taxi cab. Also in a Ghanaian case of **Tormekpey v Ahiable** where the court held the defendant to be liable for conversion for wrongfully seizing the plaintiff's lorry.
- **Consumption, Altercation or destruction**: To destroy or consume the plaintiff's chattel constitutes conversion. Merely to damage the chattel of another is not conversion but trespass. It is also conversion to change the identity of a chattel when it does not belong to the person without obtaining proper permission.

- **Using:** using a plaintiff's chattel as if it's one's own, his acts will be inconsistent with the rights of the plaintiff and he will be liable for conversion. Where the defendant finds the plaintiff's chattel, he does not commit conversion by merely having it in his possession but he would be liable if he uses it. If a defendant in possession of a chattel as bailee he would be liable for conversion (i) if he uses it contrary to the express terms in the contract of bailment.
- **Receiving:** involuntary receipt of goods is not conversion. However the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Receiving a chattel from a third party who is not the owner is a conversion as it is wrongful for it is an act of assisting the other person in the conversion of the chattel or receiving of stolen goods.
- **Detention: *Armory v Delamirie*;** a chimney sweeper boy found a jewel and gave a jeweler for valuation. The jeweler knowing the circumstances took the jewel and detained it and refused to return it to the boy. The boy then sued the for conversion, the court held the jeweler liable for conversion as the boy who found it was the owner of the jewel unless contested against by the rightful owner and no one else. However a temporary refusal of a finder to give the rightful owner a chattel found in order to authenticate his ownership is valid by law except the refusal is adversely to tell the owner he is not entitled to it ever again.
- **By wrongful delivery:** wrongful delivery of a person's chattel to another person who does not have title or right to possession without legal justification is conversion.
- By wrongful disposition.
- Purchase.

WHO MAY SUE FOR CONVERSION?

- **The Owner:** the owner is the principal individual who can sue for conversion as he has all the legal justification to do so.
- **Bailee:** a bailee of goods has lawful possession and so can maintain an action in conversion against a person who interferes with that possession. If the bailment is at will of the bailor the bailor too may sue as he is the rightful owner of the property. Any act that tramples on the terms set between the bailor and bailee would give the bailor the right to sue for conversion. E.g. selling the property to a third party.

- **Holder of liens:** a holder of lien has the right to possession of goods which are subject to the lien. He may therefore maintain an action of conversion against a person who interferes with them.
- **Finders:** a person who finds a chattel acquires possession and therefore can maintain an action against any person who interferes with such possession except (i) the true owner of the chattel. The finder has a duty to make 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. See **Armory v Delamirie (Supra)**.
- Buyers.
- Assignees.
- Trustees.
- Licenses.

Defenses for conversion of a chattel

- Subsisting bailment.
- Subsisting lien.
- Limitation of time.
- Temporary retention.

Remedies for Conversion

- General damages.
- Recovery of special damages.
- Alternative order for payment of the current market value of the chattel.

▪ DETINUE

The tort of detinue occurs when a person wrongfully detains a person's property and unreasonably refuses to return that property to the rightful owner. Detinue is similar to the tort of Conversion, except for a specific element: it is a condition of the action of detinue that the plaintiff has made demand for the return of goods, and the demand has been refused. The plaintiff must also have a right to immediate possession of the chattels. Detinue is an action to recover for the wrongful taking of personal property. It is initiated by an individual who claims to have a greater right to their immediate possession than the current possessor.

ELEMENTS OF DETINUE.

1)The making of a demand :The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of the demand. The demand is imperative.

2)Refuse a Demand : The defendant must refuse that demand (whether expressly refusing or failing to respond at all). On some occasions, a defendant who does not have possession of the chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.

3)Unreasonable Refusal : Where the chattel is in the defendant's possession, the refusal to return the chattel must be unreasonable.

4)Consequential Damage : As a result of the defendant's conduct, that the plaintiff has suffered loss is an element of detinue. This is usually calculated as the value of the chattel.

REMEDIES OF DETINUE.

i)Delivery/return of goods : 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. This is the common law version of specific restitution – it recognises that the goods are the plaintiff's by right, and their entitlement to receive them back. It is not necessary to prove that damages are inadequate to receive delivery of goods.

ii) Compensatory Damages : Compensatory Damages may be awarded if there has been a loss.

iii)Restitution : The remedy of specific restitution (i.e. remedy calculated based on the gains of the defendant) where damages are inadequate.

iv)Abatement (Self-Help) : A person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with the enjoyment of one's land. A person may lawfully retake goods which have been wrongfully taken out of the person's possession.

DEFENSES TO DETINUE

i)Consent : It is a defence to show that there can be no trespass if the interference occurs with the plaintiff's consent. Consent can either be express or implied.⁹

ii)Jus Tertii : It is a defence to show that a third party has a better right to possession than the plaintiff.

iii)No right to possession : The legal ownership of a chattel can be complicated. Registration of a vehicle is not proof of ownership, for example. If someone has purchased a chattel, ownership may be passed to another through it being given as a gift. There may be contractual obligations (in particular for commercial equipment) or other facts that demonstrate that the person demanding the return was not the rightful owner.

iv)The demand was invalid : If a demand has been made, it may be vague, confusing or otherwise invalid. If the demand isn't valid, then a refusal may not have been unreasonable- thus an acting defence in the event of detinue.

v)There was no refusal : If the refusal to return something is not specific, and a sufficient amount of time has not passed to imply that there is a refusal, then the element of refusing the demand to return the chattel may not be met.

vi)Unreasonableness : That it wasn't reasonable to return the chattel is a defence to detinue. There may be a reasonable excuse why the chattel had not been returned in time.

LOST PROPERTY RULE.

Lost property is typically defined as personal property that an owner unintentionally and involuntarily parts with. Real property may not be lost or mislaid. Common law defines lost property as personal property that was unintentionally left by its true owner. At common law, a person who found lost personal property could keep it until and unless the original owner comes forward. This rule applied to people who discovered lost property in public areas, as well as to people who discovered lost property on their property. Property is generally deemed to have been lost if it is found in a place where the true owner likely did not intend to set it down, and where it is not likely to be found by the true owner. At common law, the finder of a lost item could claim the right to possess the item against any person except the true owner or any previous possessors. The underlying policy goals to these distinctions are to (hopefully) see that the property is returned to its true original owner, or "title owner." Most jurisdictions have now enacted statutes requiring that the finder of lost property turn it in to the proper authorities; if the true owner does not arrive to claim the property within a certain period of time. Typically, these statutes require lost personal property to be turned over to a government official, and that if the property is not claimed within a set period of time, it goes to the finder, and the original owner's rights to the property are terminated. In summary, and basically; the "lost property rule" holds that the first finder of lost property has a superior claim of right over any other person except the previous owner.

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