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COURSE TITLE: LAW OF TORTS I

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ASSIGNMENT TITLE: TRESPASS TO CHARTEL ASSIGNMENT

QUESTION

The tort of trespass to chattel is made of: trespass to chattels conversion and Detinue. Discuss.

INTRODUCTION

A chattel is any property other than land and immovable property. It is an immovable property. A chattel is any moveable thing which is capable of being owned, possessed or controlled other than a human being, land and immovable property. The tort of trespass to chattel is a kind of tort of trespass to property.

The tort of trespass to chattel is made up of trespass to chattels, conversion and detinue. Trespass to chattel is a direct and unlawful injury done to the chattel in possession of another person. It is actionable per se; there is no need to prove damages. The purpose of the tort of trespass to chattels is to protect all the chattel, goods, or personal properties of a person who has title, or possession by prohibiting all interference without legal justification.

To maintain an action for trespass, the plaintiff must show that he had possession at the time of the trespass or is entitled to immediate possession of the chattel. In the tort of trespass to chattel, injury or wrong is done to the chattel while it is in the possession of the person claiming damages for the injury. In the case of Erivo v Obi, the defendant closed the door of the plaintiff’s car, and the side windscreen got broken. The plaintiff sued for damage to the windscreen and the loss he incurred in hiring another car to attend to his business. The defendant pleaded inevitable accident. It was held: that the defendant was not liable.

Trespass to chattel does not have to be intentional. It can be done unintentionally or negligently. Examples of trespass to chattel includes; taking a chattel away, throwing another person’s property away, killing another person’s animal, using a person’s property without permission, amongst others. Person’s who are eligible to sue for trespass to chattel include: owners of the said property, bailees, lenders, trustees, custodians, caretakers, and so forth.

DEFENCES AND REMEDIES FOR TRESPASS TO CHATTEL

The **defences** that a defendant may plead in an action for trespass to chattel include; inevitable accident, subsisting bailment, limitation of time as a result of the expiration of time specified for legal action, e.t.c.

The remedies that are available to a person who is claiming trespass to chattel include; payment of damages, replacement of chattel, payment of the market price of the chattel, or 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. According to Sir John Salmond, ‘‘a conversion is an act... of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. Conversion is any dealing which denies a person of the title, possession or use of his chattel.

Examples of conversion includes taking, using, alteration, consumption, damaging or destroying it, detention, wrongful delivery, wrongful sale, and so forth. 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. Also, using a plaintiff’s chattel as if it is one’s own is a conversion of such chattel.

In the case of Armory v Delamirie, a chimney sweep’s boy found a jewel and gave it to a jeweller for valuation. The jeweller knowing the circumstances, took the jewel, detained and refused to return it to the boy. The boy then sued the jeweller for conversion and for an order for return of the jewellery to him. It was held: that the jeweller was liable for conversion, as regards detention.

Persons who are liable to sue for conversion include: owners of the said property, bailees, holders of lien and pledge, finders, buyers, trustees, among others.

DEFENCES AND REMEDIES FOR CONVERSION OF A CHATTEL

In an action for conversion of a chattel, the defendant may plead; the title or right of a third party, subsisting bailment, temporary retention, limitation of time, e.t.c. a defendant may only plead the right of a third party (jus tertii) when he is acting with the authority of the true owner. In C.O.P v Oguntayo, Ogwuegbu Jsc stated that ‘‘a person cannot plead jus tertii of a third party, unless the person is defending on behalf of, or on the authority of the true owner’’.

The following remedies are available to the plaintiff in a claim for the conversion of a chattel; 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, e.t.c.

DETINUE

Detinue is defined as the unlawful detention of a personal chattel from another. The tort of detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person is entitled. It is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it.

In the case of Kosile v Folarin, the Supreme Court emphasised 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.

DEFENCES AND REMEDIES FOR DETINUE

In an action for detinue, a defendant may plead that: he has mere possession of the goods; that the plaintiff has insufficient title as compared to himself; that he is a third party(jus tertii); innocent delivery; subsisting bailment; inevitable accident, and so forth.

The following remedies are available to the plaintiff in a claim for detinue: claim for return of the specific chattel, claim for replacement of the chattel, claim for the current market value of the chattel, damages, and so forth.

DIFFERENCES BETWEEN CONVERSION AND DETINUE

The torts of conversion and detinue are very similar. However, there are some differences between them. They are:

1. The refusal to return or surrender a chattel on demand is the essence of detinue. There must have been a demand for the return of the chattel, unlike in the case of conversion.
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 will not be possible, an award of the current market value of the chattel is usually made to the plaintiff.

THE CONCEPT OF INNOCENT RECEIPT OR DELIVERY

Generally, innocent receipts or innocent delivery are not torts, nor criminal offences. Thus, innocent delivery is not conversion. Therefore, when 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 RULES GOVERNING FINDING LOST PROPERTY

The rules governing the finding of a lost property were settled and established in the case of PARKER V BRITISH AIRWAYS. In this case, the plaintiff was waiting in the defendants airway lounge at Heathrow Airport, London, 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 sale belonged to the plaintiff who found it.

The rules include:

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 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.
4. However, 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.

REFERENCE

Ese Malemi, Law of Tort, 2nd Edition, Princeton Publishing co. P 209, 211-228.

[www.meriam-webster.com](http://www.meriam-webster.com) (accessed 22nd January 2021)

<https://djetlawyer.com/trespass-to-chattel/> (accessed 22nd January 2021)