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MATRIC NO: 18/LAW01/022

COURSE CODE:LPB 301

COURSE TITLE: LAW OF TORT I

QUESTION: The tort of trespass to Chattels in is made of: Trespass to Chattels Conversion and Detinue Discuss the above and support with case law. Students may consider the following: define and explain each tort State the elements of Trespass to Chattels, conversion and detinue Explain the concepts of innocent delivery or receipt, lost property rule and give examples of conversion Give examples of persons qualified to sue for Trespass to Chattels Discuss the remedies and defence to Trespass to Chattels, conversion and detinue Differences between conversion and detinue.

A chattel is any property other than land and immovable property. Chattels are things that a person can possess in physical form; a tangible, moveable asset for example, a piece of jewelry, a painting or a car and, in some contexts, goods, equipment or machinery.

 The tort of trespass to Chattel protects the rights of ownership or possession of a chattel from all wrongful interferences.

The tort of trespass to chattel consists of Trespass to chattel, Conversion and Detinue.

Trespass to Chattels

This is an intentional and wrongful interference with another's possession of property. It is any direct and unlawful interference with a chattel in the possession of another person.

Trespass to chattels can be found where one merely challenges another's right of possession. However, if the offending party exercises "dominion and control" over the item, it's likely conversion.

Conversion

It is an act of willful 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.

Conversion occurs when one purposely interferes with another's personal property. The plaintiff must show that he owns or has the right to have the item at the time it's interfered with, that the defendant's interference with it was intentional, that the interference deprived the plaintiff of possession or use of the item, and that the interference caused damages to the plaintiff.

In the case of North Central Wagon and Finance Co Ltd vs Graham, the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus the plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff didn’t have actual possession of the car at the time. Since the right in the goods were already vested in the plaintiff, there was no need for actual possession.

Detinue

It is an old common law form of action to recover possession of personal property wrongfully detained. See more.

[Detinue](https://definitions.uslegal.com/d/detinue/) seeks recovery of a piece of property that has been wrongfully held or retained (distinguished from replevin which seeks recovery of property that has been wrongfully taken). Under detinue, the defendant received the property legally and the plaintiff never had to have the property in the first place (so, say you have something that I am supposed to receive, but I've never had it and you won't give it to me).

The elements of Trespass to chattel are what the plaintiff must prove to succeed and to succeed, the plaintiff must establish that the act of trespass was intentional or negligent.

The elements of conversion are:

the plaintiff’s ownership or right to possession of the property; the defendant’s conversion by wrongful act inconsistent with the property rights of the plaintiff; and

damages. To establish a conversion claim, a plaintiff must prove that:it had a possessory interest in the property, the defendants intentionally interfered with the plaintiff’s possession, and the defendants’ acts are the legal cause of the plaintiff’s loss of property.

The elements of detinue are:

 Plaintiff must have title and right to immediate possession; Chattel must be of some value; Chattel must be capable of identification; Defendant must have had possession at some time prior to institution of suit.

Innocent delivery or recipient are neither torts nor criminal offenses, therefore it is not a conversion. When an innocent holder of goods, such as a warehouseman or carrier receives goods in good faith from a person he beloved to have lawful possession of them, on the person’s instructions to a third party in good faith, there would no be conversion.

The lost property rule were authoritatively settled by the English Court of Appeal in the case of Parker v British Airways. As a general rule of law, anybody who has a finder’s right over a lost property, has an obligation in law to take 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.

Conversion can occur when someone, acting without your consent, does any of the following with your property: Takes and fails to return your property. Sells your property. Substantially changes your property, like cutting down trees to use the wood in construction. Examples of conversion are taking, using, damaging or destroying it, wrongfully refusing to return a chattel, wrongful delivery, wrongful sale e.t.c.

Examples of persons who may sue for trespass to chattels are those who have possession at the material time of interference and they include; owners, bailees, trustees, custodians, adverse possessors, because mere possession gives a right to sue to retain possession, administrators of estates, e.t.c.

If someone is sued for the charge of trespass to chattel, he may raise the following defenses;

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.

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.

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.

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.

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.

The remedies for trespass to chattel are;

 Compensatory damage

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.

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.

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.

Exemplary Damages

Exemplary damages, also referred to as punitive damages (i.e. 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.

The defenses for conversion are Authority of Law: This refers to when a person operates under authority of law (such as a law enforcement officer) or by court order;

Consent;

Lack of Value: Some states will not allow a claim of conversion if the property has little to no monetary value; and

Privilege: In some circumstances, a person may be considered privileged to commit an act that would be considered conversion. An example is if the action was necessary to protect the person’s own prosperity or to a avoid physical harm.

The legal remedies for conversion typically require the interfering party to return the property to the owner, or to reimburse the owner for the value of the property. Alternatively, the interfering party could be ordered to reimburse the owner for the value of the time the owner was deprived of the property.

The defenses for detinue are;

Consent

It is a defense to show that there can be no trespass if the interference occurs with the plaintiff’s consent. Consent can either be express or implied.

Jus Tertii

It is a defense to show that a third party has a better right to possession than the plaintiff.

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.

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.

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.

It wasn’t reasonable to return the chattel

There may be a reasonable excuse why the chattel had not been returned in time.

The remedies for detinue are;

Delivery Up 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.

Compensatory Damages

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

Restitution

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

Abatement (also known as 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.

Generally, the difference between conversion and detinue is that Conversion Involves Interference With the Right of Possession of Property. Detinue Involves Failure to Return to a Rightful Person Property That Is Wrongfully In the Possession of a Wrongful Person. Trespass to Chattels Involves Harm to Property Without Interference In Possession.