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COURSE TITLE: LAW OF TORTS

ASSIGNMENT :

The tort of trespass to chattel is made of : trespass to chattels, conversion and detinue. Discuss and support with case laws.

Define and explain each tort,

State the elements to trespass to chattel, conversion and detinue,

Explain the concept of innocent delivery or receipt, lost property rule and give examples of conversion

Give examples of a person qualified to sue for trespass to chattel,

Discuss the remedies and defence to trespass to chattel, conversion and detinue and the difference between conversion and detinue.

ABSTRACT

The three torts of trespass to chattel, conversion and detinue protect the possessor of chattel from wrongful interference therewith. This area of law of torts, is for historical reason, somewhat complex, and it has been rightly said that “we are still called upon to observe distinctions and subtleties that have no substance or justification in them, but are nothing more than an evil inheritance from the days when forms of action and of pleading held the legal system in their clutches.” Therefore, because of the separate development of each tort and the unsystematic way in which the old forms of action were gradually extended to cover novel situations, it can not be said that the three torts can be regarded as watertight compartments as they tend to overlap each other at some point. However, each tort must be considered separately.

TRESPASS TO CHATTEL

This tort may be defined as a direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional (the normal case) or negligent. The interest of the plaintiff which the tort protects are:

1. His interest in retaining possession of the chattel,
2. His interest in the physical condition of the chattel; and
3. His interest in protecting the chattel against intermeddling

ACTS OF TRESPASS

Trespass to chattel may take various forms such as destroying, damaging or merely using goods, or wrongfully moving them from one place to another.

TRESPASS ACTIONABLE PER SE

Like other forms of trespass, trespass to chattel is actionable per se that is to say, without proof of actual damage. Thus the mere wrongful moving or touching of a chattel without any harm being caused is actionable, for example where D, contrary to instructions, touches an animal in a zoo or a work of art in a museum; where D wrongfully takes P's letter and shows it to X; or where D without authority plays P's record or tape. In all these cases the plaintiff will be entitled at least to nominal damages. See a Nigerian case in which there was an actionable trespass to a chattel; **Davies v. Lagos City Council**. There the defendant council had granted the plaintiff a hackney carriage licence to operate a taxi cab in Lagos area. The plaintiff was well aware that the permit was for his exclusive use and was not transferable, but he nonetheless causes it to be transferred to a third party, who operated a taxi-cab on the strength of it. On learning of this, certain official of the council, in the purported exercise of their power to revoke the permit, seized the plaintiff's taxi and detained it at the L. C. C. Pound. In action for trespass brought by the plaintiff, Adefarasin J. Held that the council was entitled to revoke the plaintiff's permit for non-compliance with the regulations governing the use of hackney carriage licences, but it was not entitled to seize the vehicle or otherwise take possession of it. The council was therefore liable to trespass.

It is no defence in an action for trespass to chattels that the tort was committed when carrying out the instructions of the executive arm of government as distinct from judicial act. In **Ajao**

v. *Ashiru* (1973) 1 All NLR part III page 51, the plaintiff's pepper mill was seized by the defendant and the defence of the defendant to the claim of the plaintiff was that the pepper mill was seized by the police. The court held the defendant liable on the ground that the police acted at his instance in seizing the pepper mill of the plaintiff. The supreme court in the case of *Ajao v. Ashiru, supra* emphasised that the law of Nigeria is that those who set a ministerial rather than a judicial officer in motion in this way are as liable for the wrongful seizure of another's property as if they had done it themselves.

INTENTION OR NEGLIGENCE

Originally, trespass to chattels was a tort of strict liability, and it was unnecessary for the plaintiff to prove that the defendant's act was intentional or negligent, but the modern rule is that either intention or negligence must be established, and there is no liability for interference with goods which is merely accidental. Thus a contractor who, in the course of carrying out excavations on land in the possession of a third party, struck and damaged the plaintiff's underground cable, was held not liable in trespass since he did not know of the presence of the cable and there was no fault on his part. But accidental trespass must be distinguished from cases of trespass by mistake, for if the interference with the chattel is intentional, it is no defence that the defendant would not have committed the trespass if he had not been mistaken as to his right to interfere, or that he did not realise he was committing a trespass.

Another manifestation of this principle that the plaintiff must prove intention or negligence is the rule that a person whose chattel is damaged on or near the highway by the defendant's vehicle (e.g. where his car is damaged on the road, or where the good in his shop adjoining the highway are damaged) must prove that the harm was caused by the negligence of the defendant or of someone for whom the defendant is vicariously liable, it is not sufficient for him to assert merely that the defendant's vehicle came into contact with and damaged his property.

PROTECTION OF POSSESSION (Examples of people qualified to sue for trespass to chattel)

Like trespass to land, trespass to chattels protects possession rather than ownership. The plaintiff in an action for trespass to a chattel must have had actual possession of it at the time of the interference by the defendant. Thus principle has the following consequences:

1. Even the owner of a chattel will be liable for trespass if he interferes with it at a time when it is in the lawful possession of another person, such as a bailee. Thus, for example, a finance company which lets out goods on hire purchase will be liable if it wrongfully seizes the goods whilst they are in the possession of the hirer; and the owner of a car who leaves it at a garage for servicing or repairs will be liable if he retakes the car before the bailment has come to an end by completion of the work and settlement of bill;
2. A person who acquires possession of goods wrongfully can maintain an action in trespass against any person who interferes with the goods except the owner or a person acting under the authority of the owner. Thus, for example if X wrongfully takes Y's bicycle and, while it is in X's possession, Z makes away with it, X can sue Z in trespass since he had actual, albeit wrongful, possession at the time of the

interference by Z, and Z cannot plead the *Jus tertii*, That is, that Y and not X was the true owner. But X will not succeed against Z if Z was acting under the authority of Y.

3. The owner of a chattel cannot maintain an action in trespass if he did not have actual possession of it at the time of the interference. Thus, in the above example, X could not sue Z in respect of his tortious act, since he did not have actual possession of the bicycle at the time Z made away with it (though he could of course sue Y in respect of Y's original trespass).

ELEMENTS OF TRESPASS TO CHATTEL

In order to prove trespass to chattels, you are required to show the following elements:

Intent to trespass: Merely intending to do the act is enough to show this element of trespass. You don't necessarily need to show intent to harm a specific person.

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.

Interference of chattels: A person commits a trespass to chattel by (1) dispossessing another of the chattel, (2) using or intermeddling with a chattel in the possession of another, or (3) damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

Keep in mind that mistake of ownership is not a valid defence 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.

DEFENCES OF TRESPASS TO CHATTEL

1. **Consent:** This is the most common defence to trespass. If the owner of the property gave you permission to use their personal property, you can claim consent. Keep in mind that consent can be given through both words and actions. However, this defence will not work if the consent was induced by fraud or was given by someone who is incompetent, intoxicated or a minor.
2. **Public Necessity:** This defence can be used if you intentionally interferes with another person's chattel to protect the public. However, if you acted unreasonably when taking another person's chattel, this defences will not be available to you. An example of when this defence would be available is if you took another person's gun in order to prevent someone else from shooting up an entire building.
3. **Private Necessity:** This defences can be used when the purpose of using another person's chattel is to protect your own interests. Private necessity can only be claimed if you were attempting to protect yourself from death or serious bodily harm. As such, this defences is not as commonly used.
4. **Privileged Invasion to Reclaim Personal Property:** Lastly, if you take someone's personal property because it is actually your own property, you can argue privilege as a defences. In order for this defences to be successful, the defendant must have taken your property or it must be in the defendant's possession because of an act of god, such as a storm or flood.

REMEDIES TO TRESPASS TO CHATTEL

The most basic distinction between trespass to chattels and conversion is that trespass to chattels provides a remedy for damage to personal property, or temporary interference with its use, even though the possessor is not permanently deprived of it. If Carter takes Puso's horse, Flora (conceived in law as a chattel, whatever Flora may think about it) for a three-hour ride, and then returns her to Puso's barn, he has probably committed trespass to chattels, but he is not liable for conversion. Carter has not permanently deprived Puso of Flora's use, nor is she damaged by the interference. Or, if Carter throws a rock at Puso's car, and puts a dent in its door, he has committed trespass to chattels, by damaging the car, but not conversion, since Puso still has the car.

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. Conversion is similar to trespass in that it primarily protects possession rather than ownership of goods, and there are undoubtedly many acts of interference with goods which will give rise to liability for both torts, but conversion differs from trespass in that:

- I) In conversion the interference must be intentional whereas in trespass it may be intentional or negligent;
- II) Unlike in trespass, in conversion it is not necessary for the plaintiff to have had actual possession of the goods at the time of the interference: it is sufficient if he had an immediate right to possession;
- III) It is not conversion merely to move a chattel from one place to another without any intent to take possession of it or dispute the owner's title, but such act would amount to trespass.

Conversion relates to dealing with goods in a manner that is inconsistent with the right of the true owner. To prove conversion, it must be established that there was an intention on the part of the defendant by so doing to deny the owner of his right and assert his ownership as was held in the case of **Lancashire and Yorkshire Railway Company v. McNicoll**. The tort of conversion protects the plaintiff's interest in the control of his goods. Conversion protects the assertion of dominion and control over the goods by the defendant.

EXAMPLES OF CONVERSION

Conversion matters involve dispute as to title. Other examples include selling the goods, destroying them, pledging or altering them. Others include; Alpha cuts down and hauls away trees on land s/he knows is owned by Beta, without permission or privilege to do so; and Gamma takes furniture belonging to Delta and puts it into storage, without Delta's consent (and especially if Delta does not know where Gamma put it). A common act of conversion in medieval times involved bolts of cloth that were bailed for safekeeping, which the bailee or a third party took and made clothes for their own use or for sale.

INTENTIONAL CONDUCT

A defendant will be liable in conversion only where his conduct in relation to the plaintiff's goods was intentional. An interference resulting from merely careless conduct is not actionable in conversion. To amount to conversion, the intent of the defendant must be to deal with the plaintiff's goods by exercising dominion over them on his own behalf or on the

behalf of someone other than the plaintiff. If such intent is present and there is in fact an interference with the plaintiff's rights over the goods, the defendant will be liable in conversion "though he may not know of or intent to challenge the property or possession of the plaintiff." In other words, it is no defence that the defendant acted in good faith or that he was mistaken as to the plaintiff's right.

ACTS OF CONVERSION

The following kinds of act will amount to conversion.

Conversion is usually proved in one of three ways:

By tortuous taking;

By any use or appropriation of the use of the person in possession, indicating a claim of right in opposition to rights of the owner; or

Refusal to give up possession to the owner on demand.

Litzinger v. Estate of Litzinger (In re Litzinger), 340 B.R. 897 (B.A.P. 8th Cir. 2006)

ELEMENTS OF CONVERSION

A conversion may be committed by unreasonably withholding possession from one who has the right to it. 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.

A person not in lawful possession of a chattel (non real property) may commit conversion by:

- intentionally dispossessing the lawful possessor of the chattel,
- intentionally using a chattel in his possession without authority so to use it,
- receiving a chattel pursuant to an unauthorized sale with intent to acquire for himself or for another a proprietary interest in it,
- disposing of a chattel by an unauthorized sale with intent to transfer a proprietary interest in it, or
- refusing to surrender a chattel on demand to a person entitled to lawful possession.

Baram v. Farugia, 606 F.2d 42 (3d Cir. Pa. 1979)

DEFENCES TO CONVERSION

Defences that are normally advanced for conversion are;

- Abandonment of the property before it was taken by the defendant is a complete defences.
- *Authority of law*. A conversion cannot occur if it is done by authority of law, a court order or valid process.
- *Consent or approbation*. Consent by the plaintiff can be either express or implied

- *Delay in bringing action.* Statutes of limitations are defined by legislative jurisdiction. Some cases are based on "reasonable knowledge". Paintings purchased from a third person became the subject of an action in conversion, even though the incident had occurred 30 years prior. The action accrued based on when the plaintiff reasonably knew or should have known the identity of the possessor of the converted paintings. *See also the doctrine of laches.*
- *Fraud of the plaintiff.* Conveying property to a third person for purposes of evading creditors is a complete defence to a subsequent action in conversion.
- *Interest of defendant.* If the defendant has ownership or partial ownership to the property, it cannot be converted. Cases revolve around the specific facts concerning ownership.
- *Value of property.* A provisional defence can be made if the property converted has no value. Nevertheless, it is well established that it is not necessary for property to have a commercial value in order to maintain an action in conversion. This argument can be used to mitigate damages.
- *Writings.* A bill or debt obligation can be converted. However, if it has been paid or otherwise satisfied, then it has neither value nor existence in the eyes of the court.
- *Nonexistence or lack of identity of property.* Something that was not in existence at the time of the alleged conversion cannot be converted.
- *Privilege.* Finders of lost property may be entitled to use or ownership if the real owner cannot be identified. This is an overlap into the rules of trover.
- *Unlawful and illegal acts.* Unlawful contracts, illegal ownership and illegal activities on the part of the plaintiff can be a defence to an action in conversion. A counterfeit coin cannot be converted, nor can a note issued in an illegal manner.
- *Waiver, ratification and estoppel.* An action in conversion can be dismissed if the right to treat the action has been waived by the plaintiff.
- *By receipt of proceeds of a sale.* Accepting the proceeds of a sale of the converted property is a defence against further action.
- *By accepting return of goods.* Once the owner accepts the converted property back, he or she is generally precluded from any further action.

On the issue of abandonment, abandonment is the voluntary relinquishment of ownership so that the property ceases to be the property of any person and becomes the subject of appropriation by the first taker. In some jurisdictions, abandonment of property requires intent plus an act. A sufficient act is one that manifests a conscious purpose and intention of the owner of personal property neither to use nor to retake the property into his possession. The intention to abandon may be inferred from strong and convincing evidence, and may be shown by conduct clearly inconsistent with any intention to retain and continue the use or ownership of the property. *Herron v. Whiteside*, 782 S.W.2d 414 (Mo. Ct. App. 1989)

The fact that the plaintiff abandoned his/her property before the defendant took possession of it makes a complete defence. *Johnson v. Northpointe Apartments*.

DETINUE

Detinue is the tort committed by a person who refuses to return the possession of goods to someone entitled to possession. Its commission is normally established by proof of demand and refusal. Detinue is a form of action which lies for recovery of personal chattel, from someone who acquires possession unlawfully but retains the possession without authority.

The plaintiff is usually entitled to damages and it is he that proves property in himself and possession in the defendant. See the case of **Amira (Nig.) Ltd. V. Mal (Nig.) Ltd. (2001)**

The action in detinue lives where:

- i) The plaintiff has an immediate right to the possession of the goods, and
- ii) The defendant, who is in actual possession of those goods fails or refuses to deliver them up after the plaintiff has made a proper demand for their return.

Detinue thus covers the same ground as conversion by detention; however, there are the following differences between the two causes of action:

DIFFERENCES BETWEEN DETINUE AND COMVERSION

- 1) The defendant will not be liable for conversion by detention where, prior to the demand for their return by the plaintiff, the goods have been lost or destroyed, whether by accident or by the negligence of the defendant. But the defendant will be liable in detinue in such circumstances, unless he proves that the goods were not lost or destroyed through his negligence. In respect, therefore, liability in detinue is stricter than in conversion by detention.
- 2) Refusal to surrender on demand is the essence of detinue, but it is only one of several forms of conversion.
- 3) In detinue the plaintiff can claim specific restitution of the goods, but he cannot do so in conversion. Thus if the plaintiff wishes to recover the goods in *specie* and not merely their value in the form of damages he must sue in detinue for in conversion the defendant always has the option of keeping the goods and paying their value as damages. Even in detinue, however, the court's power to order specific restitution is discretionary and "ought not to be exercised when the chattel is an ordinary article of commerce and of no special value to the plaintiff, and where damages would fully compensate."
- 4) In conversion, damages are generally assessed on the value of the goods at the date of conversion, whereas in detinue they are assessed on the value of the goods at the date of the trial, the plaintiff should sue in detinue, but if there has been a decrease in value during the period, he should sue in conversion.

In other respects, the same principles apply to detinue as apply to conversion by detention. Thus, in both torts the defendant must have shown an intention to keep the chattel in defiance of the plaintiff and in neither tort is it sufficient merely to show that the defendant had the plaintiff's goods in his possession without any withholding of the goods from the plaintiff. In other words, both causes of action are founded on a demand by the plaintiff and a refusal by the defendant. An example of a successful action in detinue is **Udechukwu v. Okwuka**. In that case the plaintiff bought a kit-car from the defendant and, after the sale, left it on the defendant's premises, having told his (plaintiff's) driver to hand over the earnings of the car to the defendant for safekeeping. Later, when the plaintiff went to collect the car, the defendant refused to allow him to take it away until "he (the defendant) saw the driver." One of the arguments of the defendant was that he was not liable in detinue since his refusal to hand over the car was not categorical but merely conditional. De Lestang F. J., delivering the

judgment of the West African Council of Appeal, rejected this contention and held the defendant liable in detinue.

PUBLIC DUTY

The common law principle that a party may be liable in action for detinue and trespass to chattel by depriving the owner of the chattel of the possession of his chattel is not applicable if the tort of detinue or trespass to chattel is committed by a person in the course of performance of public duty. In *Igbuya v. Deregare & others (1990) 5NWLR part 139 page 425*, The plaintiff/appellant claimed in the high court the sum of 25,000naira jointly and severally from the defendants/respondents being general and special damages for trespass into his private and approves abattoir and the removal from the abattoir a whole cow slaughtered for sale. There was no dispute that the 1st defendant/respondent entered the abattoir and removes the cow but the contention if the defendants/respondents is that the cow was seized and removed in exercise of his power as a health officer pursuant to the provision of the Public Health Law of Bendel State. The claim of the plaintiff/appellant was dismissed on the ground that there is no evidence from a veterinary surgeon or officer that the cow is fit for human consumption and that the 1st defendant/respondent was entitled to seize and destroy the cow that he discovered was not fit for human consumption.

ELEMENTS OF DETINUE

There are four elements required to establish detinue:

1. Make a Demand
2. Refuse a Demand
3. Unreasonable Refusal
4. Consequential Damage

Make 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.

Refuse the 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.

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

Consequential damage: As a result of the defendant's conduct, the plaintiff has suffered loss. This will usually be calculated as the value of the chattel.

Once the above elements have been established, an action for detinue can be made out.

REMEDIES TO TRESPASS OF DETINUE

A person who detains goods may be subject to an order for their delivery and/or may be liable in damages for their detention. He may be liable alternatively for their return and/or for the value of the goods, together with damages in either case. Where it is an ordinary item, with no unique characteristic, the power to order delivery is discretionary.

Delivery may not be ordered where the thing concerned is an ordinary item, which can be replaced has no particular value, provided that damages would be adequate. An allowance may be made to the defendant, where he has done works or taken steps which have increased the value of the goods.

Damages for conversion are generally the value of the item or chattel, at the date of conversion. This is assessed in accordance with general principle similar to those applicable in the case of the breach of contract for the sale of goods. Loss of rental value may be allowed.