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COURSE: LAW OF TORTS

COLLEGE: LAW

ASSIGNMENT: The tort of trespass to Charttel in is made of: Trespass to Charttels 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 Charttel, 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 Charttel Discuss the remedies and defence to Trespass to Charttel, conversion and detinue Differences between conversion and Detinue.

**TRESPASS TO CHATTEL**

 **Definition of chattel**

 A chattel is any property other than land and immovable property, a chattel is any moveable 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. A chattel is any tangible movable property (furniture or domestic animals or a car etc).

**Trespass to chattel**
This is a direct and unlawful injury done to the chattel in possession of another person. It is
actionable per se; proof of direct and unlawful application of force is enough, there is no need to
prove damages. It is the international or negligent interference with the possession of the chattel of another person .

The tort of trespass to chattel is designed to protect possession, that is the right of immediate possession of a chattel, as distinct from ownership. It protects the right of a person to the control, possession retention or custody of a chattel against interference by another person without lawful justification. A person who wants to sue in trespass to chattel can sue under trespass to goods, conversion and negligence that is involved in the commission of the trespass or conversion.

 These actions are substantiated by the provisions of the **Torts (Interference With Goods) Act 1977.** The act creates a new action called. “Wrongful interference with goods”. It defines it in **S.1** as:
a) Conversion of goods called trover.
b) Trespass to Goods
c) Negligence in so far as it results in damage to goods.
d) Subject to S.2 of the Act, any other tort as far as it results in damage to goods or to an interest
in goods.

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 this tort , injury or wrong is done to the chattel while it is in the possession of the person claiming damages for the injury.

Essentially trespass to chattel is

(1) Any wrong against a chattel, goods or personality

(2) In the possession or control of another person.

In **haydon v smith** it was held to be trespass for the defendant to cut and carry away the plaintiffs tree. Similarly In **Leame v Bray**, the court held that trespass would lie for a highway accident caused by the direct action of the defendant in driving his carriage of the plaintiff, even though that driving was negligent. And also in the case of **slater v swann** beating the plaintiffs animal was held to be trespass to chattel

**ELEMENTS OF TRESPASS TO CHATTEL**

The elements a plaintiff need to prove to succeed in a claim for trespass to chattel are that the act of trespass was

(1) intentional or

(2) Negligent.

**Examples of Trespass to Chattel;**

Trespass to chattel may be committed in many different ways. However, the trespass must be intentional or negligent. They include:

1. Taking a chattel away

2. Throwing another person's property away, such as in annoyance

3. Mere moving of the goods from one place to another, that is, mere asportation. The case of Kirk v Gregory (1878).

4. Scratching or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle.

**Persons who may sue for trespass to chattel.**
The Persons Who May Sue for Trespass to Chattel Anyone who has possession or caretakership
of a chattel may sue any other person who meddles with the chattel. In other words, anyone who has possession or right to immediate possession can sue. Accordingly, some persons who do not have legal right are deemed by law to have possession, so that they will be able to protect chattels left under their care. For instance, an employee to whom an employer has given custody of goods, a repairer, caretaker, personal representatives of a deceased and so forth. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference include:
 Owners, Bailee, caretakers, Assignees, Trustees, Lenders, executors.

**The 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.

**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. repair of damage.
2. Replacement of the chattel
3. Payment of the market price of the chattel
4. Payment of the damages.

**CONVERSION**

Conversion is defined as other interference of a person’s right to property without the owner’s consent and without lawful justification. That is the deprivation of another’s right to use or possess personal property . it is also, the willful and wrongful interference with the goods of a person entitled to
possession in such a way as to deny him such right or in such a manner inconsistent with his
right. The right to immediate possession is the determining factor. That is, if the right exists, actual
possession is unnecessary. 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.

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. 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.

**Examples of conversion include**;

(1) consumption : By eating or using it up .

(2) 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 .

(3) Alteration : By changing its form howsoever

(4) Receiving: involuntary receipt of goods is not conversion. Receiving a chattel from a third party who is not the owner is a conversion.

(5)By wrongful Disposition: such as by sale , transfer of title or other wrongful disposition

**Innocent Receipt or Delivery**
Innocent delivery, or innocent receipt are not torts, nor criminal offences. Thus, innocent
delivery is not conversion. Therefore, 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 willfully damage or destroy the goods
unless the goods constitute a nuisance.

In the case of **Unipetrol v Prima Tankers Ltd**.
the defendants oil tanker owners had a contract to carry Unipetrol's cargo of fuel from Port Harcourt.
The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff
appellant Unipetrol sued for the conversion and loss of the cargo. The Court of Appeal
held: that the respondents were liable in conversion. The word "loss" is wide enough to
include a claim for conversion against a carrier. It is elementary law that in a claim for
conversion, the claimant is entitled to the return of the article seized, missing, or in the
possession of the other party, or reimbursement for its value. Similarly in the case of **owena bank nig ltd v Nigerian sweet and confectionary co. ltd.**

**The Rules Regarding Finding Lost Property**The rules of law applicable to finding a lost property were authoritatively settled by the
English Court of Appeal in the case of Parker v British Airways (1982). However, the
rules are not often easy to apply. The rules applicable to finding lost property may be
summarized as follows:
1. 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. Based on this rule, rings found in the
mud of a pool in the case of South Staffordshire Water Co. v Sharman (1896) 2 QB 44
and a pre-historic boat discovered six feet below the surface were held as belonging to
the land owner in the case of Elwes v Briggs Gas (1886).

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. 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

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.

**DEFENCES FOR CONVERSION OF A CHATTEL**

In an action for conversation of a chattel , the defendant may plead :

(1) subsisting lien

(2) Temporary retention, to enable steps to be taken to check the title of the claimant. A defendant may temporarily, refuse to give up goods , while steps are taken to verify the title of the plaintiff who is claiming title before the chattel is handed over to the plaintiff if he is found to be the owner , or has right to immediate possession

(3) subsisting bailment

(4) jus tertii , that is the title or better right of a third party .

**THE REMEDIES FOR CONVERSION**

 (1) Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved .

(2) order for delivery, return or specific restitution of the goods

 (3) General damages

 (4) An order for payment of any consequential damages.

(5) Alternative order for payment of the current market value of the chattel .

DETINUE

Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. It is also the wrongful detention of the chattel of another person ,the immediate possession of which the person entitled.
As a general rule, to successfully sue in detinue, a plaintiff must have possession before the
detention, or have right to immediate possession of the chattel. Essentially, the tort of detinue
is:
1. The wrongful detention of the chattel of another person
2. The immediate possession of which the person is entitled.

Anybody who wrong fully takes, detains, or retains a chattel, and after a proper demand for it, refuses, or fails to return it to the claimant without lawful excuse may be sued in detinue to recover it or its value.

An Example of detinue is A lends his chairs and tables to B for a one day party, and B neglects, refuses or fails to the furniture at the end of the day as agreed or after the expiration of a reasonable period of time.

**The Differences between Conversion and Detinue**
Detinue covers the same ground as the tort of conversion by detention. However, some
differences are to be noted which include the following:
1. The refusal to surrender or return a chattel on demand is the essence of detinue, or
detention. There must have been 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. Before the Common Law Procedure Act 1854, was
enacted a defendant had a choice to either restore the actual chattel or pay the market value.
However, since the enactment of the Act, a court has discretion to order specific restitution,
or award the market value of the chattel to the plaintiff or it may award damages alone if the
goods can be replaced easily.

**The Defences for Detinue**
In an action for detinue, a defendant may plead that:
1. Inevitable accident
2. That the plaintiff has insufficient title as compared to himself
3. The defendant may plead jus tertii, that is, a third party person has a better title, provided
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. He has mere possession of the goods.

**The Remedies for Detinue**
When a person's chattel is detained by another person, the person who is denied possession
or use of such chattel, has several remedies open to him which include:
1. Claim for return of the specific chattel
2. Claim for replacement of the chattel
3. Claim for the current market value of the chattel

References;

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