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THE TORT OF TRESPASS TO CHATTEL IS MADE UP OF; TRESPASS TO CHATTEL, CONVERSION AND DETINUE. DISCUSS THE ABOVE AND SUPPORT WITH CASE LAW.

TRESPASS TO CHATTEL

Chattel is any personal moveable property other than a human being, land and immovable property, capable of being owned or possessed.¹

Trespass to chattel, is direct, intentional and unlawful interference with another person's personal property. The interference can be intentional or negligent, and such interference has to happen without lawful justification. Thus, taking away of a chattel, Destruction or any act of damage, throwing something at the chattel, use of chattel without permission can amount to Trespass to chattel. The purpose of the tort of trespass to chattel is to protect all the chattel, goods and personal property, of a person who has possession, from all wrongful interferences, damage, destruction etc without lawful justification². The injury done to the chattel must be done while it's in the claimant's possession. It need not leave the claimant's possession, unlike in Conversion and Detinue.

In order to prove trespass to chattel, the claimant must show that, the defendant intentionally or negligently committed the act, even though this trespass is not a strict liability tort. The claimant will also prove that the act was committed without his consent. There must be an unauthorized, unlawful interference. There must have been interference with the chattel.

CONVERSION

Conversion is any interference or dealing which denies a person of his title or possession, or use of his chattel. It is dealing with the chattel of a person in a manner which is inconsistent with the rights of the person. It is intentional interference with the chattel of another person which denies him, his title, possession and use of it. Many consider it to be the civil side of larceny, examples of conversion include, using the plaintiff's chattel as if it were his own³, changing the form of the chattel, taking the chattel out of the plaintiff's possession without lawful justification⁴, wrongful sale, detention, wrongful delivery of chattel etc.

Conversion is different from Trespass because the action of the defendant has to deprive the owner of his possession. It is known as theft or stealing in criminal law⁵.

To establish a conversion claim, a plaintiff must prove that;

¹ Ese Malemi, Law of Tort; 2nd edition, Pg 209

² Ese Malemi, Law of Tort; 2nd edition Pg 211

³ Petre v Heneage (1701) 88 ER 149, Penfolds Wine Ltd v Elliot (1946) 74 CLR 204 at 214-4

⁴ Fouldes v Willoughby(1841) 151 ER 1153, Davies V Lagos City Council(1973) 10 CCHCJ 151

⁵ Hollins v Fouler, Adamson v Jarvis, Youl v Harbottle

It had possessory interest in the property

The defendant intentionally interfered with the plaintiff's possession

The defendant's acts are the legal cause of the plaintiff's loss of prop

DETINUE

Detinue involves the wrongful detention of the chattel of another person, the immediate possession of which the person 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. As a general rule, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel. The tort of Detinue was however abolished in the United Kingdom, through the Torts (Interference with Goods) Act 1977; it was merged with the tort of Conversion. In Nigeria, both torts still operate separately, although a party may claim both torts in a single action⁶. Example of Detinue include detention or retention of goods such as when A lends his chair to B for a one day party, and B refuses to return the chair as agreed, or after the expiration of a reasonable time.

In order to maintain an action for the tort of Detinue, a plaintiff must satisfy two options

- He must have ownership or right to immediate possession of the chattel
- The defendant must have failed or refused to deliver the chattel to the plaintiff, after the plaintiff must have made a proper demand for the return of his chattel. There must have been a demand made by the plaintiff and a refusal by the defendant to return them, **Kosile v Folarin, West Africa Examinations Council v Koroye, Steyr Nig Ltd v Gadazama**

DIFFERENCES BETWEEN CONVERSION AND DETINUE

- In Detinue, there must have been demand for the return of the chattel
- Where the aggrieved party demands for the return of the specific goods, Detinue is the proper remedy. Where the specific return of the chattel or its replacement would not be possible, an award for the current market value of the chattel is usually made to the plaintiff

INNOCENT RECEIPT OR DELIVERY

As a general rule, neither innocent receipt nor innocent delivery can be seen as torts or criminal offences. Where a person in the body of a carrier or warehouseman, collects goods from a first party, whom he believes to have legal possession of them and delivers them to the appropriate party in good faith, he cannot be liable for conversion. In the same vein, where a party receives these goods in the stead of the original owner, he cannot be liable for conversion, provided that he doesn't willingly damage the goods unless they constitute a nuisance.⁷

LOST PROPERTY RULE

⁶Ese Malemi, Law of Tort; 2nd edition Pg 210

⁷ Unipetrol v Prima Tankers Ltd (1986) 5 NWLR pt 42 p. 532 CA.

The decision of the English Court of Appeal, in the case of **PARKER v BRITISH AIRWAYS**⁸, set the case law for rules applicable to finding lost property, they include;

- “A finder of a chattel acquires not right over it unless it has abandoned or lost, and he takes it into his care and control. He acquires the right to keep it against all person except the true owner, or a person who can asserts a prior right to keep the chattel, which was subsisting at a time when the finder took the chattel into his care a control.
- Any servant who finds a lost property in the cause of his employment, does so on behalf of his employer, who by law acquires the rights of a finder.
- 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 building⁹.
- 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 and intention to exercise control over the premises, and things on it.”¹⁰

WHO CAN SUE FOR TRESPASS TO CHATTEL

The main objective of the tort of trespass is to protect possession and the right to immediate possession, this means that anyone who has possession or right to immediate possession can sue. Persons who are deemed by law to have possession, in order for them to protect chattels left under their possession, also have the right to sue. These persons include; Owners, Bailees, Lenders, Assignees, Trustees, Finders etc.¹¹

DEFENSES FOR TRESPASS TO CHATTEL

A defendant may raise up the following defenses;

- Inevitable accident
- Honest conversion
- Jus tertii; better right of a third party
- Subsisting lien; continuous payment of security interest over a property
- Limitation time.

REMEDIES

Remedies available to an aggrieved party include

- Payment of damages
- Replacement of chattel
- Payment of market price

⁸ (1982) 1 All ER 834 CA

⁹ Elwes v Briggs Gas Co (1886) 33 Ch D 562

¹⁰Ese Malemi, Law of Tort; 2nd edition, Pg 224-5.

¹¹ National Coal Board v Evans & Co

- Repair of damages

DEFENSES FOR CONVERSION

- Jus tertii; better right of a third party
- Subsisting lien
- Subsisting bailment
- Temporary retention; to allow steps to be taken to check the title of the claimant. A defendant can temporarily refuse to give up his 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
- Limitation of time

Jus tertii is the right of a third party to the chattel, goods and property in dispute. The general rule states that the defendant cannot plead that the claimant is not entitled to possession as against him, because a third party is the true owner of the chattel. A defendant can only plead Jus tertii, if he's acting under the authority of the true owner. **C.O.P v OGUNTAYO**

REMEDIES FOR CONVERSION

In a claim for conversion of chattel, the court may order any or a combination of the following remedies.

- Order for delivery, return or specific restitution of the goods
- Alternative order for payment of market price
- An order for payment of consequential damages
- Recovery of special and general damage
- General damages

DEFENSES FOR DETINUE

In an action for Detinue, the defendant may plead that;

- He has mere possession of the goods
- The plaintiff had insufficient title compared to himself
- The defendant may plead jus tertii; that is, that a third party 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. It is a defense based on ownership by a third party.
- Innocent delivery
- Subsisting bailment
- Subsisting lien on the chattel
- Inevitable accident
- Reasonable defense of a person or property, such as when one beats or injures a dog that was attacking him or another person

REMEDIES FOR DETINUE

- Claim for return of chattel; the plaintiff may demand a return of the specific chattel, if the chattel has not been damaged in any way

- Replacement of chattel; the defendant may be ordered to replace the chattel by supplying an identical chattel. Manufacturers of products can easily do this by replacing the chattel or supplying a new one.
- Recapture or Self help; a person who has rightful possession to a chattel may resort to self help in order to retrieve his chattel, by use of reasonable force. He must not however trespass through an innocent party's land except with permission. The court usually frowns at the option, because it might lead to breach of peace and other offences. Plaintiffs are thus advised to avoid this option.
- Replevin or Release on bond; here the chattel is released to the authorities, while there is a determination of ownership. It is the re-delivery to an owner of goods which were wrongfully seized, the action for such re-delivery, and specific and general damages suffered by him as a result of the detention
- Damages; where the defendant has been found liable for Detinue, he cannot deprive the plaintiff of his right to damages for detention of the chattel, simply because he has not been using it, nor earning anything from its use. If the wrongdoer has been making use of the goods for his purpose, then he must pay a reasonable hire for chattel to the plaintiff. The reasonable hire usually includes the wear and tear of goods. An order for specific return of the chattel or in default, an order for the payment of the value and also damages that were suffered due to loss of use by the defendant up to date of the judgment or re-delivery of the chattel to the plaintiff can be made. General damages may be awarded as assessed by the court, they may be awarded especially in the case of loss of chattel.