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18/LAW01/050

LAW OF TORTS

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.

Chattel is a moveable property. It is a property that is not land or immoveable property. The tort of trespass to chattel is actionable per se. In Nigeria, the tort of trespass to chattel is made up of three torts- Trespass to Chattel, Conversion and Detinue.

The tort of trespass to chattel is an intentional or negligent interference with a chattel possessed by the plaintiff. Trespass to chattel is created to protect these interests of the plaintiff;

* Right to retain one’s chattel
* Protection of the physical condition of the chattel
* Protection of the chattel against unlawful interference or meddling[[1]](#endnote-1)

Trespass to chattel can be committed in several ways. Examples of trespass to chattel could include; taking a chattel away, throwing another person’s chattel away, moving of another’s goods from one place to another, harming another person’s animal, destruction of chattel, use without permission, etcetera.

Eriro v. Obi

The defendant closed the door of the plaintiff’s car and broke the side windscreen of the car. The plaintiff sued the defendant for the damage caused- the damage to the windscreen and the loss incurred as he hired another car to attend to his business. The defendant pleaded that the accident was inevitable. On appeal, the Court of Appeal held that the defendant respondent was not liable because he did not use excessive force but only normal force in closing the door of the car, he did not break the windscreen intentionally, or negligently. In this case the Court of Appeal restated the position of the law that trespass to chattel is actionable per se. Hence, for trespass to chattel to be actionable, it must have been done by the wrongdoer intentionally or negligently. i

DEFENCES FOR TRESPASS TO CHATTEL

In an action for trespass to chattel, the defences a defendant may plead include:

* Inevitable accident
* Jus tertii, that is, the title or better right of a third party, provided that he has the authority of such third party
* Subsisting lien.
* Subsisting bailment
* Limitation of time, as a result of the expiration of time specified for legal action.
* Honest conversion i

THE REMEDIES FOR TRESPASS TO CHATTEL

The remedies available to a person whose chattel has been meddled with, short of conversion or detinue are:

* Payment of damages.
* Replacement of the chattel
* Payment of the market price of the chattel
* Repair of the damage. i

Conversion

Conversion is the act of depriving another of the right to use or possess personal property. Conversion is defined as another’s interference of a person’s right to property without the owner’s consent and without lawful justification. A conversion occurs when a person without authority or permission intentionally takes the personal property of another or deprives another of possession of personal property. The tort of conversion allows the injured party to seek legal relief.[[2]](#endnote-2)

Conversion, while similar to trespass is not the same as trespass as;

* The interference must be intentional in conversion, while it may be negligent, as well in trespass.
* In conversion, it is sufficient for the plaintiff to have just the immediate right to possession without actual possession of the goods at the time of interference unlike in negligence.
* It is not conversion to merely move the owner’s property from one place to another without intentions to take possession or dispute the owner’s title, while this will amount to trespass.[[3]](#endnote-3)

Examples of Conversion

* Taking
* Using
* Destruction, consumption or alteration
* Receiving
* Wrongful transfer of title or possession
* Detention
* Negotiable and other instruments iii

Who may sue for conversion?

* Owners
* Bailees
* Holders of lien and pledge
* Finders
* Buyers
* Assignees
* Licensees

Trustees

i Defenses for Conversion:

* Abandonment of property by plaintiff.
* Authority of law.
* Consent or approval of plaintiff.
* Statutes of limitation.
* Interest of defendant - defendant’s rights to the property.)
* Lack of value of property.
* Nonexistence or lack of identity of property.
* Privilege
* Unlawful and illegal acts
* Waiver, ratification and estoppel.ii

A plaintiff is entitled to damages equal to the full value of the chattel at the time and place of conversion. The measure of damages in conversion is the fair market value of the property at the time and place of the conversion.ii

Remedies for Conversion

In a claim for the conversion of a chattel, the court may order any of the following reliefs;

* 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 for any consequential damage.
* Recovery of special and general damages.
* General damages.

Detinue

In tort law, detinue is an action to recover for the wrongful taking of personal property. It is initiated by an individual who claims to have a greater right to their immediate possession than the current possessor. Detinue allows for a remedy of damages for the value of the chattel, but unlike most other interference torts, detinue also allows for the recovery of the specific chattel being withheld. [[4]](#endnote-4)

It is a claim for a specific return, delivery or surrender of a chattel to a plaintiff who is entitled to it. To successfully sue in detinue, it must be proven that the plaintiff had possession before the detention – the right to immediate possession of the chattel. The tort of detinue is essentially; wrongful detention of the chattel of another person or immediate possession of which the person is entitled. i

WHEN TO SUE FOR DETINUE

* The plaintiff must have title that is ownership or right to immediate possession of the chattel.
* The defendant who is in actual possession of the chattel must have failed, and or refuse to deliver the chattel to the plaintiff after the plaintiff has made a proper demand for the return of the chattel, without lawful excuse.

Kosile v Folarin:

The defendant who was a motor dealer seized the good he had initially sold to the plaintiff buyer on credit, demanding for full payment from the plaintiff. The plaintiff sued for detinue claiming damages. The Supreme Court held that the seizure and detention by the defendant was in fact wrong and the plaintiff was entitled to the return of the vehicle and damages for the loss incurred while the vehicle was held. Hence, the defendant was held liable for detinue. i

Stitch v A.G Federation

The Plaintiff imported a car from overseas. The Board of Customs and Excise detained the car at the sea port. The customs then sold it to the fourth defendant who cannibalized and sold his car. On Appeal, the Supreme Court held that the plaintiff appellant was entitled to possession of the car. However, due to the car wreck as a result of the cannibalism, the court that the trial court should take evidence as to what a fairly used car similar to the appellant’s car will cost and award the purchase price to the appellant in lieu of the return of the car. i

Shuwa v Chad Basin Development Authority

A third party sold a bulldozer to the plaintiff. The seller had no authority to sell the bulldozer. The bulldozer was in custody of the defendant who had alien on it. The defendant refused to release the bulldozer to the plaintiff unless the third party paid the money due on it to the respondent authority. The buyer sued for the detention of the bulldozer. On appeal, the Court of Appeal held that the action of the plaintiff would fail as the plaintiff must prove that he is the owner of the property (And he no longer had a title to the property.)

As a general rule, where there is subsisting lien on a property, a claim for detinue will not succeed. i

Remedies for Detinue

When a person’s chattel is denied by another, the denied part can make claims which include:

* Return of the chattel
* Replacement of the chattel
* The market value of chattel
* Recapture or self help
* Replevin or release on bond
* Damages

THE DEFENCES FOR DETINUE

In an action for detinue, a defendant may plead that:

1. He has mere possession of the goods.

2. That the plaintiff has insufficient title as compared to himself.

3. The defendant may plead jus tertii that is, that a third party has a better title.

4. Innocent delivery.

5. Subsisting bailment.

6. Subsisting lien on the chattel.

7. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff.

8. Inevitable accident.

9. Reasonable defence of a person or property.

10. Enforcement of a court order or other legal process.

Jus Tertii

Jus tertii - “third party rights” is the legal classification for an argument made by a third party (as opposed to the legal title holder) which attempts to justify entitlement to possessory rights based on the showing of legal title in another person. By showing legitimate title in another person, jus tertii arguments imply that the present possessor’s interest is illegitimate or that the present possessor is a thief.iv

Innocent Receipt or Delivery

Generally, innocent delivery or innocent receipts are not torts, nor criminal offences. Therefore, innocent delivery is not considered to be conversion. 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 seen as conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance.i

Unipetrol v Prima Tankers Ltd

The defendants, who were oil tanker owners had a contract to carry the Unipetrol- plaintiff’s cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo. The plaintiff sued for conversion and loss of the cargo. On Appeal, the court of Appeal held that the defendant respondents were liable in conversion.

Lost Property

The rules of laws applicable to finding a lost property were authoritatively settled by the English Court of Appeal in the case of Parker v. British Airways. In this case, while the plaintiff was waiting in the defendants airway lounge at Heathrow Airport, London, England, he found a bracelet. He handed it over to the employees of the defendant alongside his name and address, and a request that it should be returned to him if it was unclaimed. It was not claimed by anyone and the defendants sold the bracelet contrary to the request of the finder. The English Court of Appeal held that the proceeds of the sale of the bracelet belonged to the plaintiff who found it.

* A finder of a chattel hass 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 of the chattel 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.
* Any servant or agent, who finds a lost property in the course of his employment, does so as a representative 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 building. In the case of South Staffordshire Water Co. v Sharman, the court held that the rings found in the mud of a pool were belongings of the land owner.
* However an occupier of premises does not have superior right 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.

However, a finder is tasked with the duty to find the owner of the lost property before he can lawfully claim ownership of the property he found. i

The Differences between Conversion and Detinue

Detinue covers the same grounds as tort of conversion by detention; however there are some differences which include the following:

* The refusal to surrender or return a chattel on demand is the essence of detinue, or detention. There must be a demand for return of the chattel for an act to count as detinue.
* Detinue is the proper remedy where the plaintiff wants a return of the specific goods in question, and not merely an assessed marker 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. i
* In conversion, damages are generally assessed on the value of the goods at the time of conversion while in detinue; damages are assessed on the value of the goods at the time of trial. iii

1. Ese Malemi, Law of Torts [↑](#endnote-ref-1)
2. Law Offices of Stimmel, Stimmel and Roeser- https://www.stimmel-law.com/en/articles/conversion-basic-tort [↑](#endnote-ref-2)
3. Kodilinye and Aluko, The Nigerian Law of Torts [↑](#endnote-ref-3)
4. Wikipedia [↑](#endnote-ref-4)