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QUESTION

The tort of trespass to Chattel in is made of: Trespass to Chattels, Conversion and Detinue Discuss the above and support with case law.

Trespass can be defined as the act of knowingly entering another person's property without permission. It is an unlawful intrusion that interferes with one's person or property. Tort Law originated in England with the action of trespass. Initially trespass was any wrongful conduct directly causing injury or loss; in modern law trespass is an unauthorized entry upon land. A trespass gives the aggrieved party the right to bring a civil lawsuit and collect damages as compensation for the interference and for any harm suffered. Trespass is an intentional tort and, in some circumstances, can be punished as a crime. Tort law is broadly divided into three groups: trespass to the person, trespass to goods and trespass to land.

Chattels, sometimes called choses in possession, in order to distinguish them from choses of action, are any moveable tangible object one can possess in physical form. It is a term used to refer to movable physical objects, which are different from real estate, or anything related to real estate.

Conversion is a form if intentional tort, which consists of the “taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession". It is a civil wrong, where one converts the property of another for his personal use, or enjoyment. It involves the convertor treating the property which accidentally falls into his hands, as if it were his, or giving the impression that they were his. This gives the true owner the right to sue for his/her own property or the value and loss of use of it, law enforcement, can also get involved, as the tort of conversion, usually includes theft. The elements of conversion are: Intent to convert the tangible or intangible property of another to one's own possession and use. The property in question is subsequently converted. The plaintiff has a right to possess the personal property in question. The interference deprived the plaintiff of the use or ownership of the property. The interference caused damage to the plaintiff. A case of conversion, can be seen in the case of Kuwait Airways Corporation v Iraqi Airways Co (Nos 4 and 5) [2002] 2 AC, which concerns the assessment of damage claimed by Kuwaiti airways corporation (KAC), arising from the conversion of six KAC aircraft by the Iraqi Airways Cooperation (IAC), following the invasion of Kuwait by Iraq, during the Gulf war of 1990. It can also be seen in the case of Howard E Perry and Co Ltd vs. British Railway Board. (1980) 1 WLR 1375, the defendant, who were carriers, held the plaintiff’s steel in depots. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff’s steel to them. It was held that this amounted to conversion on the defendant’s part.

Detinue, can be described as the action to recover the wrongful taking of personal property. It is initiated by whomever claims to have greater right to their immediate possession, than the current owner. For the action to succeed, the plaintiff must prove that he has better right to the chattel than the defendant, and that the defendant refused to return the chattel when asked to by the claimant. In essence, it is a common-law action for the recovery of a personal chattel wrongfully detained or of its value, which is proven when the plaintiff proves that he has greater right to the chattel over the defendant, and that the defendant refused to return said chattels when asked to do so by the defendant. Some of the elements of Detinue are: The plaintiff must demand for the chattel, and possession of it to be returned to him. The defendant must refuse the demand of the plaintiff to have the possession of the property, reinstated to him. Reason for refusal to return the chattel back to the plaintiff must be unreasonable. The action of the defendant must cause damage to the plaintiff. A case of Detinue, can be seen in PAUL ORDIA VS PIEDMONT (NIGERIA) LTD. (1995) LCN/2664(SC), where the appellant bought galvanized steel barges from the liquidator of a company that constructed the bridge on Ethiope River. Before he took delivery of the barges, he discovered they had been taken away by the defendant to Ologbo where they were put to use.

Trespass to chattel, can be defined as the direct and unlawful injury of a chattel in possession of another person, it is actionable per se, meaning than one does not need to show evidence of damage, rather proof of direct application of force is enough. Someone who wants to sue for trespass, can sue under trespass to goods, conversion. This is seen in **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.

A case which illustrates trespass to chattel, in seen in the case of Glidden v. Szybiak, 63 A.2d 233 in that case the plaintiff, a four year-old girl, encountered a dog owned by Defendants. She approached the dog, played with him and pulled his ears. The dog bit Plaintiff, and she sued to recover for her injuries. Defendants argued that Plaintiff, in playing with the dog, had committed trespass to chattels and was thus not entitled to recover.

In the tort of trespass to chattel, the tort of trespass to chattels, conversion, and Detinue are all related. This is because, as the chattel of the plaintiff, is being interfered with, and he is deprived of his right of it. The defendant becomes the convertor, because he begins to make use of the chattel, as if it were his own, and give off an illusion of ownership of said chattel, this then becomes the tort of conversion, whereby the defendant converts the chattel of the plaintiff, giving off the illusion that it is his own, and using it as if it were indeed his own, and depriving the plaintiff of his right to his chattel, and enjoyment of said chattel. The way to rectify, the solution is through Detinue, which is an action to recover for the wrongful taking of personal property. 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.

In conclusion, all the above aspects of law, are all interconnected, and can be rectified, through the common law doctrine of Detinue.

SOURCES

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