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ASSIGNMENT: 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 OF CHATTEL

A chattel can be defined as a thing that a person can possess in physical form; a tangible, moveable asset. It can also be seen as any property other than land and immovable 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. Examples of chattel include a piece of jewellery, a painting or a car and, in some contexts, goods, equipment or machinery. A trespass to chattels is an intentional interference with another person's lawful possession of a personal property. The tort of trespass to chattel protects the chattels, goods, and all personal properties of a person who has title, possession, or right to immediate possession against meddling, damage, destruction, diminution, conversion or any interference whatsoever, by any other person without lawful justification. Trespass to chattel is actionable Per Se, that is proof of direct and unlawful application of force is enough, there is no need to prove damages. However, the direct application of force does not have to be physical. For example, the driving away of cattle is trespass to chattel. In the case of **Erivo v Obi (1993)** the defendant respondent closed the door of the plaintiff appellant's car and the side windscreen got broken. The defendant respondent alternatively pleaded inevitable accident. On appeal, the Court of Appeal held that the defendant respondent was not liable. Trespass to chattel may be committed in many different ways. However, the trespass must be intentional or negligent. Trespass may be committed by mere removal or any damage and it can be committed when there is no intention to deprive the owner, possessor or custodian permanently of the chattel. Let's say you're watching a movie with your friend, Bob, at his place. After the movie ends, you get up to go home. As you're leaving, you see a laptop sitting on a coffee table and pick it up, thinking it's yours. In fact, the laptop belongs to Bob. His laptop happens to be the exact same model as yours. Even if you genuinely thought the laptop was yours, you're still liable for a trespass to chattels because you intended to take the laptop. As mentioned above, mistake of ownership is not a defense to a trespass to chattels. However, in order to successfully sue you, Bob will have to show that you've done some harm to the laptop or to Bob by taking it. Without showing actual damages, Bob won't be able to recover any compensation. Other examples of trespass to chattel include; Throwing another person's property away such as in annoyance, Scratching or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle, Destruction, or any act of harm or damage, Use, that is, mere using without permission, etc. In the case of *Cresswell v Sirl (1948)*

the defendant shot and killed the plaintiff's dog. The plaintiff claimed damages for trespass to property, the property being the dog. The defense was that the defendant was justified in killing the dog because it was threatening his sheep. The court held that the principle enunciated in Cope was of general application to all justifications for all acts of trespass.

Elements of Trespass to Chattel

These are what a Plaintiff Must Prove to Succeed to succeed, a plaintiff must establish that the act of trespass was:

1. Intentional; or

2. Negligent. See the case of **National Coal Board v Evans & Co. (1951) 2 KB 861** where the defendant contractor was digging on a third party's land when he hit and damaged a power cable. He had no way of knowing that the cable was there (not least because the claimant had trespassed in laying it). It was held that No liability in trespass could be found since the act was involuntary and accidental. The act of Evans was neither negligent nor willful and was "utterly without fault". The liability for negligence and injury lay with the NCB or their predecessors for failing to notify the council when they placed the cable under their land without knowledge or consent from the council. As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort. However, accident, intentional or negligent trespass do not automatically give rise to liability per se, as an appropriate defense, may be pleaded to avoid liability.

Anyone who has possession or is a caretaker of a chattel may sue any other person who meddles with the chattel. This is so for the object of the tort of trespass is to protect possession, or the right to immediate possession. 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, Bailees, Lenders, Assignees, Trustees, Finders, Custodians, Caretakers, Adverse possessors,

because mere possession gives a right to sue to retain possession, Executors, Administrators of estates; etc.

Defenses for trespass of chattel

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

1. Inevitable accident: an inevitable accident is a general defense in the law of tort. The inevitable accident which is also known as unavoidable accident says that a person cannot be held liable for an accident which was not foreseeable despite all care and caution taken from his side. Law states that a high degree of precaution is not required, reasonable care is sufficient. In the case of **Hidasi v. Hidasi**, In this case, the plaintiff is the wife and the defendant is the husband. Both husband and wife were traveling along a mountain road. The defendant was well aware of the slippery road so took all the precautions. He was traveling below 100kmph. But somehow the car lost the balance. The defendant pulled the emergency brakes which couldn't stop the car and the car hit the near barrier, injuring the plaintiff. The plaintiff sued the husband stating that he was rashly driving and didn't take the precautionary measures. The defendant took the pleading of an inevitable accident. The court accepted the defense stating that the car lost the control because of the mechanical failure which was totally out of the scope of the defendant.
2. Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third party. When a tenant or bailee or another in possession of property pleads that the title is in some person other than that person's landlord or bailor, they are said to set up a jus tertii.
3. Subsisting lien: A lien is a form of security interest granted over an item of property to secure the payment of a debt or performance of some other obligation. A subsisting lien is one that is in force or effect.

4. Subsisting bailment: Bailment is a legal relationship in common law, where the owner transfers physical possession of personal property ("chattel") for a time, but retains ownership.
5. Limitation of time, as a result of the expiration of time specified for legal action
6. Honest conversion or acting honestly, etc.

The Remedies for Trespass to Chattel

The remedies available to a person whose chattel has been meddled with are:

1. Payment of damages: If a court of law awards damages to someone, it orders money to be paid to them by a person who has damaged their reputation or property, or who has injured them.
2. Replacement of the chattel: this means that the chattel that has been damaged or injured will be replaced by the person who caused the damage
3. Payment of the market price of the chattel: The damaged chattel will be paid for using the price it is sold at in the market.
4. Repair of the damage: The damaged chattel will be fixed by person that caused said damage.

DETINUE

The tort of detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. Detinue 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, 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: The wrongful detention of the chattel of another person and the immediate possession of which the person is entitled. An action in detinue is a claim for the specific return of a chattel wrongfully retained, or for payment of its current market value and any consequential damages. 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. In the United Kingdom, the Torts (Interference with Goods) Act 1977 has abolished the tort of detinue as a separate tort, and merged it with the tort of conversion where it is now known as conversion by detinue or detention. In Nigeria, it still exists as a separate tort. An example of detinue is where A lends his chairs and tables to B for a one day party, and B neglects, refuses or fails to return the furniture at the end of the day as agreed or after the expiration of a reasonable period of time. Another example is where C gives his radio set to D and pays him to repair it, and D fails or refuses to release or return it after a demand has been made on him for its return. In each of these circumstances, there is a right of action to sue for detinue of the chattel.

ELEMENTS OF DETINUE

1. **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.
2. **Refuse a 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.
3. **Unreasonable Refusal:** Where the chattel is in the defendant's possession, the refusal to return the chattel must be unreasonable.
4. **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.

The plaintiff must have a right to immediate possession at the time of the refusal that derives from some proprietary or possessory interest in the chattel.⁷ the interest in the property must also be a lawful interest.⁸ if the plaintiff does not have an immediate right to possession of the goods or chattels, then the plaintiff cannot sue for detinue. In **Kosile v Folarin (1989) 3 NWLR pt. 107, p. 1 SC**, The defendant motor dealer seized and detained the motor vehicle he had sold to the plaintiff on credit terms, upon delay by the plaintiff to fully pay up. The plaintiff buyer sued for detinue claiming damages. The Supreme Court held: inter alia that the seizure and detention of the vehicle by the defendant was wrong. The plaintiff was entitled to the return of the vehicle

or its value and for loss of the use of the vehicle until the date of judgment at the rate of N20 per day. Also in the case of *Steyr Nig. Ltd v Gadzama* (1995) 7 NWLR pt. 407. p. 305 CA, at the end of their services, the plaintiff appellant company sued the defendant respondents who were former employees of the appellant for detaining official cars and household items which were in their use as top management staff of the company. The Court of Appeal held: that the respondents were to pay reasonable prices for the items in lieu of returning the chattels.

DEFENCES FOR DETINUE

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

1. He has mere possession of the good. The legal ownership of a chattel can be complicated. Registration of a vehicle is not proof of ownership, for example. If someone has purchased a chattel, ownership may be passed to another through it being given as a gift. There may be contractual obligations (in particular for commercial equipment) or other facts that demonstrate that the person demanding the return was not the rightful owner.
2. That the plaintiff has insufficient title as compared to him.
3. The defendant may plead *jus tertii*. *Jus tertii* is a defense, that is, based on ownership by a third party, and it is not pleaded, except the defendant is defending under the right of such third party who has ownership, or paramount title, that will enable him to establish a better title, and the right to possession, than the plaintiff. Otherwise, as *CLEASBY BJ* said in *Fowler v Hollins* (1872) LR 7 QB 616 at 639: “Persons deal with the property in chattels, or exercise acts of ownership over them at their peril”.
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 defense of a person or property, such as when one beats or injures a dog that was attacking him or another person.
10. Enforcement of a court order or other legal process, such as levying of execution of property under a writ of fieri facias, or the police taking away goods they believe to have been stolen for the purpose of use as exhibit in evidence before court, etc.

REMEDIES FOR CONVERSION

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 Chattel: This is a claim for the return of the specific chattel, especially, if the chattel has not changed its character, content, and it has not been damaged nor destroyed during its detention.
2. Replacement of the Chattel: Where possible or appropriate, a defendant may be ordered to replacement the chattel by supplying an identical or similar chattel. This is possible for instance in the case of manufacturers of products, who can easily replace the goods by supplying an identical or similar product.
3. Claim for the Market Value of Chattel: This is a claim for the current market value of the chattel as may be assessed. The measure of damage in detinue is usually the market value of the goods as proved at the time of judgment. The onus is on the plaintiff to prove the market value. Therefore, where there is default of restitution a plaintiff may claim for payment of the value of the chattel.

4. Recapture or Self-help: A person who is entitled to possession of goods of which he has been wrongfully deprived may resort to self-help and retake the goods from the custody of the person detaining it, using only reasonable force after he has made a demand for their return. However, he may not trespass through the land of an innocent party to retake the goods. He may only go on such land with permission.
5. Replevin or Release on Bond: This is a return of the goods on security, pending the determination of the ownership of the chattel. When a third party's goods have been wrongfully taken in the course of levying execution or distress of the movable property of another person or judgment debtor, such third party claiming ownership may recover them by means of an interpleader summons determining their ownership.
6. Damages: When a defendant has been found liable in 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. Also, if the wrongdoer has been making use of the goods for his own purpose, then he must pay a reasonable hire for chattel to the plaintiff.

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.

5.

CONVERSION

According to Sir John Salmond, in his book the Law of Tort, 21st ed. (1996) p. 97-98: "A conversion is an act... of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it". Conversion is often defined as other 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. It is a **tort** which allows the injured party to seek legal relief. Conversion is considered the civil side of larceny, namely the improper taking of non-real property from another without due authority. Conversion is the civil wrong done while larceny is the criminal act. In **Lewis v Averay [1972]** Mr. Lewis sold the car to the rogue, who pretended to be the famous television figure Richard Greene. Fraudster wanted to pay by cheque. When Mr. Lewis asked for some identification, the rogue presented a film studio pass in the name of Richard Greene but with his own photograph. Mr. Lewis accepted the cheque and the rogue drove away. The fraudster then sold the car to Mr. Averay, who made the purchase in good faith. Mr. Lewis discovered that the cheque by the rogue was worthless and brought a claim against Mr. Averay to return back his the car. It was held that the mistake to the real identity of the rogue did not prevent a valid contract being created between him and Mr. Lewis. There was a face to face interaction, where the law presumes contract. However, this was fraud and impersonation by the rogue, which would render a contract voidable and it could be set aside.

Yet, this must be done before a third party acquires the rights. In this case, the contract was not set aside before Mr. Averay, in good faith, purchased the car.

Element of Conversion

To make out a conversion claim, a plaintiff must establish four elements:

1. That the plaintiff owns or has the right to possess the personal property in question at the time of interference
2. That the defendant intentionally interfered with the plaintiff's personal property (sometimes also described as exercising "dominion and control" over it)
3. That the interference deprived the plaintiff of possession or use of the personal property in question
4. That the interference caused damages to the plaintiff.

INNOCENT RECEIPT

Innocent delivery or innocent receipt is 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 **Owena Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd (1993) 4**

NWLR pt. 290, p. 698 CA, The 1st respondent was granted an import license by the Federal Ministry of Trade to import granulated sugar. However, the 2nd respondent opened a letter of credit and imported the sugar. The 1st respondent sued for damages for the wrongful conversion of the import license. On appeal by the bank, the Court of Appeal held: That the defendants were liable for conversion of the import license papers. Thus, an action for conversion will lie in conversion for any corporeal personal property, including papers and title deeds. In conversion, negligence or intention is not relevant, and once the dealing with the chattel of another person is in such a circumstance that the owner is deprived of its use and possession, the tort of committed.

LOST PROPERTY RULE

Common law defines lost property as personal property that was unintentionally left by its true owner. For example, a wallet that falls out of someone's pocket is lost. At common law, a person who found lost personal property could keep it until and unless the original owner comes forward. This rule applied to people who discovered lost property in public areas, as well as to people who discovered lost property on their property. Many jurisdictions have statutes that modify the common law's treatment of lost property. Typically, these statutes require lost personal property to be turned over to a government official, and that if the property is not claimed within a set period of time, it goes to the finder, and the original owner's rights to the property are terminated. 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) 1 AllER 834 CA**. However, the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows: -

1. 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.
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. 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 118 surface were held as belonging to the land owner in the case of **Elwes v Briggs Gas (1886) 33 Ch D 562**.

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.

In the case of **Bridges v Hawkesworth (1851) 21 LJ QB 75**. The plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop was held entitled to the money instead of the shop owner, upon the failure of the rightful owner to come forward to claim the money. As a general rule of law, anybody who has a finder's right over a lost property, has an obligation in law to take reasonable steps to trace the true owner of the lost property, before he may lawfully exercise the rights of an owner over the property he found.

DEFENCES FOR CONVERSION OF A CHATTEL

The defenses for conversion of chattel are almost similar to the defenses of trespass of chattel. In an action for conversion of a chattel, the defendant may plead:

1. Jus tertii, that is, the title or better right of a third party. It is the title or better right of a third party to the chattel, goods, or property in dispute. As a general rule, a defendant cannot plead that a plaintiff 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, that is, the better right of the true owner or third party only when he is acting with the authority of the true owner.

2. Subsisting bailment

3. Subsisting lien

4. 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.

5. Limitation of time.

REMEDIES FOR CONVERSION

1. Order for delivery, return or specific restitution of the goods; or
2. Alternative order for payment of the current market value of the chattel.
3. An order for payment of any consequential damages. However, allowance may be made for any improvement in the goods, such as, where a person honestly in good faith buys and improves a stolen car and is sued by the true owner; the damages may be reduced to reflect the improvements.
4. Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved.
5. General Damages: Furthermore, where for instance, a plaintiff whose working equipment or tools are converted by another person, a plaintiff may sue for the loss of profit, or existing contract or wages for the period of the conversion of the work tools or equipment's.

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