Vawe Pwanega Ali

18/law01/215

Law of Tort

The tort of trespass to Chattel in is made of: Trespass to Chattels 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 Chattel, 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 Chattel Discuss the remedies and defense to Trespass to Chattel, conversion and detinue Differences between conversion and Detinue Support References Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

The word tort means wrong. Any unjustifiable interference with the right of another person may be a tort. The law of tort deals with a wide variety of wrongs, related and unrelated. Law of tort enforces right and liability and it provides remedy in the areas covered by the law of tort.

**Trespass to chattel** is a tort that happens when there is any direct and unlawful interference with a chattel in the possession of another person. It is an intentional and negligent interference of possession of the chattel of another person. It interference must be direct and wrongful. Trespass to chattel is designed to protect the right of retaining one’s chattel, the physical condition of the chattel, the chattel against unlawful Interference. Essentially, trespass to chattel is any wrong against chattel, goods or personality and the possession or control of another person. In this tort, a wrong is done to the chattel while it is in the possession of the person claiming damages for the injury. The chattel is usually not take from his possession as we have in conversion or detinue. ERIVO V OBI. The court of appeal in this case stated that the defendant was not liable because he did not use force in opening the door but normal force. He did not break the windscreen intentionally; it was an inevitable accident. The law of trespass of chattel is actionable per se, that is, the proof of actual damage, it must have been done by the wrongdoer intentionally or negligently. The **elements of trespass to chattel** is that the plaintiff must establish that the act of trespass was intentional and due to negligence. A general rule, which is proving the intention or negligence is very important as trespass to chattel is not a strict tort liability, however an accident occurring intentionally or negligently does not automatically give rise to liability per se, as an appropriate defense may be pleaded to avoid liability.

**Who may sue for trespass to chattel?** A person who has possession or caretaker ship 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. Persons who do not have legal right are deemed by law to have possession, so that they would be able to protect chattels left under their care. The people who are liable to sue for trespass of chattel are the owners, Bailee’s, lenders, assignees, trustees, finders, custodians, caretakers etc. NATIONAL COAL BOARD V EVANS & CO.

**The defenses for trespass to chattel.** In trespass to chattel, the defenses a defendant may plead includes that; there must be an inevitable accident that was not foreseen by the defendant. Jus tertii C.O.P V OGUNTAYO, that is the title or the right of the third party is provided that he has the authority of such third party. A defendant may also plead defense when there is subsisting lien and subsisting bailment. When there is a limitation of time as a result of expiration of time specified for legal action.

**The remedies to trespass to chattel**: this is available to a person whose chattel has been meddled with, in includes; payment of damages, replacement of the chattel, payment of the market price of the chattel and repair of the damage

**Tort of conversion** is any interference, possession or disposition of the property of another person, as if it one’s own without legal justification. Conversion then is dealing with another person’s property as if it is one’s own and it’s the interference of with another person’s chattel which deprives them of title, possession or use of it. It is the wrong taking, wrongful detention and wrongful disposition of another person’s property. Conversion is denying a person of the title or possession or use of his chattel which makes it enough to prove that the defendant interfered with the goods, it is however immaterial when the defendant does not know the chattel belongs to another person. Essentially conversion is “any inconsistent dealing with a chattel to which another person is entitled to immediate possession where by the person is denied to use possession or title to it.” NORTH CENTRAL WAGON & FINANCE CO. LTD V GRAHAM.

**The Concepts of innocent delivery or receipt, lost property rule;** generally innocent delivery or innocent receipt is not torts nor criminal offences, thus making it not a conversion. Where an innocent holder of goods receives a good from a person he believes to have lawful possession of them and delivers them, on the person’s instructions to the third party, there would be no conversion. Innocent receipt of goods is not conversion; however, the receiver must not willfully damage the goods unless it constitutes nuisance. UNIPETROL V PRIMA TANKERS LTD. In this case an oil tanker owner had a contract with the Unipetrol cargo to carry fuel from Port Harcourt. The captain allegedly went elsewhere with the cargo of fuel. The plaintiff appellant sued for conversion and loss of the cargo. The court of appeal held that the respondent was liable in conversion. The word “loss” is wide enough to include a claim for conversion against carrier. The rule 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. The rules state that a finder of a chattel acquires no right over it, unless it has been abandoned, or lost, and he takes it into his care. Any 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. An occupier of land has superior rights to those of a finder, over property or goods in, or attached to the land, or building. An occupier of premises does not have superior rights to those of a finder in respect of goods found on or in the premises.

**Who may sue for conversion?** The tort of conversion is mainly an interference with possession. Those who may be sued in tort of conversion include; the owners in possession or a person who has the right to immediate possession may sue for conversion. Bailee’s of a chattel may sue another person for conversion of a chattel or goods bailed with him.

**Defenses for conversion of a chattel:** a defendant may plead for defense where; just tertii that is the title or better right of a third party, where there is subsisting bailment and subsisting lien, temporary retention which enables steps to be taken to check the title of the claimant, limitation of time.

**Remedies for conversion:** the remedies of conversion are available to a plaintiff. There must be 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 of any consequential damages, recovery of special and general damages which is recoverable by a plaintiff for any specific loss proved, general damages.

**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 a specific return or delivery of chattel to the plaintiff who is entitled to it. A general rule of sue in detinue is that 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. Any person who wrongfully 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.

**When to sue for detinue?** The conditions a plaintiff must maintain for the tort of detinue is that he must have a 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 or refused to deliver the chattel to the plaintiff after the plaintiff has made a proper demand for the return of the chattel without a lawful excuse. KOSILE V FOLARIN. The defendant motor dealer seized and detained the vehicle he sold to the plaintiff on credit, 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 detainment of the vehicle by the defendant was wrong as the plaintiff was entitled to the return of the vehicle and for loss of the use of the vehicle until the date of judgement at the rate of N20 per day.

**The defense for detinue:** in the action for detinue, the defendant may plead defense when he has mere possession of the goods, when the plaintiff has insufficient title as compared to himself, the defendant may also plead Jus tertii that is that a third party had a better title, innocent delivery, subsisting lien or subsisting bailment, they is temporary retention of the chattel, inevitable accident, a reasonable defense of a person or property.

**Remedies for detinue**: when a person’s chattel is being detained by another person, the one who denied possession or use of such chattel has some remedies to use. The remedies are; claim for return of the specific chattel, claim for replacement of the chattel, recapture of self-help to recover the goods, replevin that is release on bond pending determination of ownership, damages.

**Differences between conversion and detinue:** In trespass detinue covers the same ground as the tort of conversion by detention, however, there are differences which includes the refusal to surrender or to return a chattel on demand is the essence of detinue, or detention. There must have been a demand for the return of chattel. Detinue is a proper remedy where the plaintiff wants a return of the specific goods in question, and not merely an assessed market value. In a case where a return of chattel or replacement will not be possible, an award of the current market value of the chattel is usually made to the plaintiff.

Reference…….

Law of tort Ese Malemi