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SAAD KAFAYAH BISOLA

LAW OF TORTS

TRESPASS TO CHATTELS

This tort is said to be the direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional or negligent. Generally, a trespass refers to a wrongful use of another person's property without his or her permission. The interest of the plaintiff which the tort protects are:

* His interest in retaining possession of the chattel
* His interest in physical condition of the chattel
* His interest in protecting the chattel against intermeddling.

Under intentional torts, there are two types of trespass:

1. trespass to chattels and
2. trespass to land.

Trespass to land is an unlawful entry or use of another person's land without the owner's permission or reasonable excuse.

On the other hand, a trespass to chattels is an intentional interference with another person's lawful possession of a personal property. A "chattel" refers to any personal property, moving or unmoving.

Trespass to chattels does not apply to real property or any interest in land.

ELEMENTS OF TRESPASS TO CHATTEL

Trespass is actionable per se, that is to say without proof of actual damage which means the mere wrongful moving or touching of a chattel without any harm being caused is actionable. Here a plaintiff is entitled at least to nominal damages.

Intent to trespass: Merely intending to do the act is enough to show this element of trespass. You don't necessarily need to show intent to harm a specific person.

Lack of owner's consent: There must be an unauthorized, unlawful interference, which means the person interfered with or dispossessed the chattel without the owner's permission.

Protect of possession: like trespass to land, trespass to chattels protects possession rather than ownership. The plaintiff in an action for trespass to a chattel must have had actual possession of it at the time of interference by the defendant.

CONVERSATION

Conversion may be defined as an intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiff’s possession or right to possession of such chattel.

Conversion is an intentional tort consisting of "taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession.

Conversion is also the act of the intentional handling of goods that is against or inconsistent with the will of the owner, whether through withholding, misusing, misdelivering, or changing the nature of the goods, or ultimately any action that is so significantly inconsistent with the owner’s right to possession of the goods that it actually attempts to wrongfully deprive the owner of that right to possession.

ELEMENTS OF CONVERSION

Intentional conduct

A defendant will be liable in conversation only where his conduct in relation to the plaintiffs good was intentional. An interference resulting mainly from carless conduct is mor actionable in conversion.

In another formulation, it has been stated that one claiming conversion must show a tortious conversion of the chattel, a right to property in it, and a right to immediate possession which is absolute, unconditional, and not dependent upon the performance of some act.

WHO MAY SUE FOR CONVERSION

The category of people who have legal right to sue in a tort of conversion include:

* OWNERS: an owner in possession or who has right to immediate possession may use another person for conversion.
* BAILERS: a Bailee of chattel may sue another person for conversion of a chattel or goods bailed with him. However, a bailor at will has title to immediate possession of a chattel he has deposited with a bailee and can maintain action against a bailee for conversion.
* Holders of lien and pledge
* Finders
* Buyers
* Assignees
* Licenses
* Trustees

DEFENSES TO CONVERSION

Abandonment: An action for conversion would not succeed in a situation in which the property in question was abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.

Authority of Law: Conversion that is done under the authority law would be justified. For example, the selling of the goods of a defendant by the claimant by an order of court in order to get a judgement debts, would be valid.

Consent: If the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be held to be valid.

Statute of limitations: if the suit for conversion is not filed after a specified period ranging from 2-5 years, it would be held to be statue barred. Thus, the suit would not be heard by the court.

Unidentifiable property: If the property cannot be properly identified, it could also serve as a defense to conversion.

REMEDIES FOR CONVERSION

In a claim for the conversation of a chattel several remedies are available to the plaintiff. The court may grant the following reliefs

1. Order for delivery, return or specific restitution of goods.
2. Alternative order of the payment of the current market value of the chattel
3. An order of payment of any consequential damages. However, allowances may be made for any improvement in the goods such as where a person honestly in good faith buys a stolen car and is sued by the real owner, the damages may be reduced to reflect the improvements.
4. Recovery of special and general damages
5. General damages

DETINUE

The action in detinue lies where;

* The plaintiff has an immediate right to the possession of goods and
* The defendant who is in actual possession of those fails or refuses to deliver them up after them up after the plaintiff has made a proper demand for their return.

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. For an action in detinue to succeed, a claimant must first prove that he had better right to possession of the chattel than the defendant and second that the defendant refused to return the chattel once demanded by the claimant.

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.

Detinue can also be seen as the wrongful detention of goods, committed when one unreasonably refuses to surrender or return personal property to its rightful owner, only if and when the owner claims the immediate right to possession of these goods. Detinue is only applicable, however, when the owner holds proprietary interest and/or actual possession of the property. In many cases, detinue is classified within Conversion, as the two only differ in the sense that an act is considered Detinue and not Conversion when the owner specifically asks for property back, and is still refused.

ELEMENTS OF DETINUE

Public Duty: The common law principle that a party may be liable in for detinue and trespass to chattel by depriving the owner of the chattel of the possession of his chattet is not applicable if the tort of detinue or tresspass to chattel is committed by a person in the course of performance of public duty. ***Igbuya v Deregare & others (1990) 5 NWLR.***

WHO MAY SUE DETINUE

A plaintiff can only maintain action for the tort morning of detinue after satisfying two conditions which are;

1. The plaintiff must have title that the ownership or right to immediate possession of the chattel
2. The defendant who is in actual possession of the chattel must have failed and or refused to deliver the chattel to the plaintiff after the plaintiff has made proper demand for the return of the chattel without lawful excuse. Thus, there must be a demand for the plaintiff requesting for the return of the chattel and a refusal of the defendant to deliver goods. See *West African Examination council v koroye.*

THE DEFENSE TO DETINUE

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

1. He has mere possession of the goods
2. That the plaintiff has sufficient title as compared to himself
3. The defendant may plead jus tertii
4. Innocent delivery
5. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
6. Subsisting bailment
7. Inevitable accident
8. Reasonable defense of a person or property, such as when one beats or injuries a dog that was attacking him or another person.

REMEDIES TO DETINUE

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 is not been damaged nor destroyed during its detention.
2. Replacement of the chattel: where possible or appropriate, a defendant may be ordered to replacement to chattel by supplying an identical or similar chattel. This is possible for instance in the case of manufacturers of products who cam easily replace the goods by supplying an identical or similar product
3. Claim for market value of chattel: this is a claim for the current market value of the chattel as may be assessed. The measure of damage is detinue is usually the market value of goods as proved at the time of judgment.
4. Recapture or selfhelp: a person who is entitled to possession of goods of which he had been wrongfully depeived may resort to self help and retake goods from the custody of the person detaining it, using only reasonable force after he has made a innocent party to retake the goods.

INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION

Generally, innocent delivery or innocent receipts are not tort, nor criminal offenses. Thus, innocent delivery is not conversion. Therefore, where an innocent holder of goods, such as a carrier, or warehouseman, receives goods from a person’s instruction to the third party in good failtg there will be no conversion. However, the receiver must not be willfully damage or destroy the goods constitute a nuisance. UNIPETROL V PRIMER TANTERS LTD. In this case, the defendants oil tanker owners had a contract to carry unipetrol cargo of fuel from port harcourt. The court of appeal held the respondents were liable of conversion. The word loss is a wide enough to include a claim of conversion against the carrier. See also the case of OWENA BANK NIG LTD V NIGERIAN SWEETS & CONFECTIONARIES CO LTD.

DEFFERENCES BETWEEN CONVERSION AND DETINUE

Detinue covers the same ground as tort of conversion by detention. However, some difference include:

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 a na assessed market value. However where specfic 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.

LOST PROPERTY RULE

According to this rule, a person who finds a chattel has no right over it unless it is abandoned or lost, after which, he gains the right to keep it against all person other than the true owner of the chattel. Also, when a servant or employee finds a lost property in the course of his employment, he finds it on behalf of his employer who by law has gains the right of a finder. It is noteworthy that an occupier of land or building, has superior rights to those of a finder over a chattel found or attached to his land or building . In the case of Elwes v. Briggs Gas Co, the court held that a pre-historic boat discovered six feet below the surface belonged to the owner of the land. Similarly also, is the case of South Staffordshire Water Co. V. Sharma where rings discovered in a Mud pool was seen as the land owners belonging. In terms of goods found on or in the premises of an occupier, the finder has superior right except the occupier displays the intention to exercise control over the premise and things found therein. In Bridges v. Hawkesworth , the plaintiff who found a packet of bank notes on the floor, in the public part of a shop was entitled to the money rather than the shop owner due to failure on the part of the rightful owner to claim the chattel.