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QUESTION

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

INTRODUCTION

1. Definition of Trespass to Chattel
2. Elements of Trespass to Chattel
3. Explaining the concept of innocent delivery or receipt and lost property rule
4. Examples of persons qualified to sue for Trespass to Chattel/ Remedies and Defense to Trespass to Chattel
5. Definition of Conversion/ Examples/ Elements
6. Remedies and Defense to Conversion
7. Definition of Detinue/ Elements of detinue
8. Remedies and Defense to Detinue
9. Differences between Conversion and Detinue

In Nigeria, the tort of Trespass to Chattel is made up of three types of torts. These are:

- a. Trespass to Chattel
- b. Conversion
- c. Detinue

The three types of Trespass to Chattel shall be examined below.

DEFINITION OF TRESPASS TO CHATTEL

The word “chattel” means any article, goods, or personal property, other than land and immovable property. Examples of chattel or goods are innumerable and are many e.g animal, cars bag, phone, etc and anything which is moveable and capable of being owned. Generally, a trespass refers to a wrongful use of another person's property without his or her permission.

Trespass to chattel refers to the intentional and wrongful interference of another individual’s personal property without their permission. The origin of the concept comes from the original writ of trespass **de bonis asportatis**. It can also be defined as any direct interference with a personal property in the possession of another person without lawful justification. The interference must be direct and wrongful. It is actionable per se; 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. Thus, the mere touching of a chattel without causing any harm to it may in appropriate circumstances be actionable and entitled the plaintiff to get nominal damages. In the case of **Eriro v Obi, the Court of Appeal** restated the position of the law that, trespass to chattel is actionable per se, that is, without proof of actual damage. Any unauthorized touching or moving of a chattel is actionable at the suit of the possessor of a chattel, even though no harm has been done to the chattel. Therefore, for trespass to chattel to be actionable, it must have been done by the wrong doer; **intentionally or negligently**.

The tort of trespass to chattel protects the right of a person to the control, possession or custody of a chattel against interference by another person without lawful justification. It prohibits a person from any unlawful interference with a chattel that is under the control, possession or custody of another person. To maintain an action for trespass, the plaintiff must show that he had possession at the time of the trespass or is entitled to immediate possession of the chattel. Cases on trespass to chattel include; (**Kirk v Gregory, Haydon v Smith, Leame v Bray**)

To make a case for Trespass to Chattels, the plaintiff must show that the defendant made a volitional movement that resulted in either:

- i. Dispossession of the plaintiff's property
- ii. Intermeddling with the plaintiff's personal property

EXAMPLES OF TRESPASS TO CHATTEL

Trespass may be committed by mere removal or any damage on the chattel, and it can be committed when there is no intention to deprive the owner or possessor of the chattel. However, the trespass must be intentional or negligent. Examples of trespass to chattel include;

1. Throwing another person's property away
2. Destruction or any act of harm or damage
3. Taking a chattel away
4. Driving another person's car without permission
5. Throwing something at the chattel
6. Scratching or making marks at the body of the chattel
7. Damaging or causing any harm to a chattel, by bodily or indirect contact, etc

ELEMENTS OF TRESPASS TO CHATTEL

The basic elements of a claim of trespass to chattels are:

1. The lack of the plaintiff's consent to the trespass (negligent)
- 2) Interference or intermeddling with possessory interest.
- 3) The intentionality of the defendant's actions (intentional).

Proving intention or negligence is very important as trespass to chattel is not a strict liability tort. Hence, accident, intentional, or negligent trespass do not automatically give rise to liability per se, as an appropriate defense can be pleaded to avoid liability.

THE CONCEPT OF INNOCENT DELIVERY AND LOST PROPERTY RULE

INNOCENT DELIVERY

Innocent delivery or innocent receipt are not torts, nor criminal offences, thus, innocent delivery is not conversion. Hence, where an innocent holder of goods, such as, a warehouseman or a carrier, receives goods in good faith from a person he believes to have lawful possession of them, and delivers them, on the person's instruction to a third part in good faith, there would be no conversion. Hence, innocent receipt of goods is not conversion. Contrary, in the case of **Unipetrol v Prima Tankers**, The Court of Appeal held that the respondents were liable in conversion. In a claim for conversion, the claimant is entitled to the return of the article seized, missing, or in the possession of the other party.

LOST PROPERTY RULE

Property is generally deemed to have been lost if it is found in a place where the true owner likely did not intend to set it down, and where it is not likely to be found by the true owner. Lost property is typically defined as personal property that an owner unintentionally and involuntarily parts with. At common law, the finder of a lost item could claim the right to possess the item against any person except the true owner or any previous possessors. 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 exceptions may be applied at common law to the rule that the first finder of lost property has a superior claim of right over any other person except the previous owner. The rules of law applicable to finding a lost property were settled by the English Court of Appeal in the case of **Parker v British Airways**. The rule applicable to finding lost property includes the following;

1. Any servant, or agent who finds a lost property in the course of his employment, does so on behalf of his employer, who by law acquires the rights of a finder.
2. A finder of a chattel acquires no rights over it, except it has been abandoned or lost and he takes it into his care and control.
3. An occupier of land, or a building has superior rights to those of a finder, over property or goods.
4. An occupier of premises does not have superior rights to those of a finder in respect of goods found on or in the premises.

PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL

A person who has possession or caretakership of a chattel may sue any other person who meddles with the chattel. Anyone who has possession or right to immediate possession can sue. Therefore, the persons who may sue for trespass to chattel include;

1. Bailees
2. Owners
3. Trustees
4. Executors
5. Custodians
6. Assignees
7. Lenders, etc

REMEDIES TO TRESPASS TO CHATTEL

Remedies available to a person whose chattel has been meddled with include;

1. Replacement of the chattel
2. Payment of damages
3. Repair of the damage
4. Payment of the price of the chattel

DEFENCES TO TRESPASS TO CHATTEL

The defenses a defendant may plead in an action for trespass to chattel include;

1. Jus tertii, (legal classification for an argument made by a third party which attempts to justify entitlement to possessory rights based on the showing of legal title in another person).
2. Subsisting bailment
3. Inevitable accident
4. Honest conversion
5. Subsisting lien

DEFINITION OF CONVERSION

Conversion is often defined as other interference of a person's right to property without the owner's consent and without lawful justification. (**Stevenson v. Economy Bank of Ambridge**) 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.

According to **Sir John Salmond**, he defined conversion as "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." In other words, conversion is any dealing which denies a person of the title, or use of his chattel. It is the assertion of a right that is inconsistent with the rights of the person who has possession or right to use the chattel. Therefore, conversion includes denying a person of the title or possession of his chattel. Thus, an owner can sue for conversion. A person who has mere custody or possession of the chattel can sue any third party who tries to convert such chattel. (**North Central Wagon & Finance Co Ltd**), (**Adamson v Jarvis**): In this case, an auctioneer was held entitled to be indemnified by a client who had instructed him to sell goods, to which it was later discovered the client had no title. Other cases include; (**Ashby v Tolhurst**, **Youl v Harbottle**, **Hollins v Fowler**).

EXAMPLES OF CONVERSION

There are different ways conversion of a chattel can be committed. They include;

1. Alteration: Changing the form of the chattel
2. Using: This involves using a plaintiff's chattel as if it is one's own, such as in the case of **Penfolds Wine v Elliot**.
3. Detention: This involves illegally holding a chattel from the rightful owner of a property. (**Armory v Delamirie**)
4. Consumption: By eating or using up the chattel
5. Receiving; Receiving a chattel from a third party who is not the owner is conversion.
6. Wrongful sale
7. Taking, etc

ELEMENTS OF CONVERSION

The elements of conversion are;

Conversion is a tort that exposes you to liability for damages in a civil lawsuit. It applies when someone intentionally interferes with personal property belonging to another person. To make out a conversion claim, a plaintiff must establish four elements:

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

REMEDIES TO CONVERSION

The remedies available to a plaintiff in a claim for the conversion of the chattel include;

1. Recovery of special and general damages.
2. Alternative order for payment of the current market value of the chattel.
3. Order for delivery, return or specific restitution of the goods.
4. An order for payment of any consequential damages.

DEFENCES FOR CONVERSION

The defendant may plead the following in an action for conversion of a chattel;

1. Subsisting lien
2. Limitation of time
3. Jus tertii (better right of a third party)

DEFINITION OF DETINUE

Detinue is defined 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 a claim for the specific return, delivery or surrender of a chattel to the plaintiff who is entitled to it. Anyone 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. An **example of detinue** is detention and retention of goods. For instance, C lends her pen to D, and D fails or refuses to return the pen at the end of the day as agreed, after a demand has been made for its return. There is a right of action to sue for detinue of the chattel. In the case of **Steyr Nig v Gadzama**, the plaintiff's company sued the defendant who were former employees of the plaintiff for detaining official cars and household items which were in their use. The

Court of Appeal held that the respondents were to pay reasonable prices for the items in lieu of returning the chattels. Other cases include (**Stitch v A,G Federation , Davies v Lagos City Council**).

ELEMENTS OF DETINUE

The elements of detinue include;

1. The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of demand.
2. The defendant must refuse that demand (whether expressly refusing or failing to respond at all).
3. Where the chattel is in the defendant's possession, the refusal to return the chattel must be unreasonable.
4. Consequential damage

REMEDIES TO DETINUE

The remedies to detinue include;

1. Claim for the replacement of the chattel
2. Claim for return of the specific chattel
3. Compensatory damages
4. Abatement

DEFENCES TO DETINUE

There are several defences to detinue. These include;

1. That the plaintiff has insufficient title as compared to himself
2. The defendant may plead jus tertii
3. Enforcement of a court order or other legal process
4. Inevitable accident
5. Subsisting bailment
6. Innocent delivery

DIFFERENCES BETWEEN CONVERSION AND DETINUE

The Tort of conversion and detinue are very similar. 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. 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 and not merely an assessed market value. However, where specific return of the chattel will not be possible, an award of the current market value of the chattel is usually made to the plaintiff.

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