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**QUESTION**

1. The tort of trespass to chattel is made up of trespass to chattel conversion and Detinue. Discuss the above and support with case law.

 **ANSWER**

In torts law, we have two trespass to property and they are:

* Trespass to personal property, also known as trespass to chattel, or trespass to goods.
* Trespass to land.

In this specified area, we shall be focusing mainly on trespass to chattel.

**What is a Chattel**? It is any property other than land and immovable property. It means any moveable property, the word chattel means articles, goods, or personal property, other than land and immoveable property. This tort may also be defined as a direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional or negligent. The interests of the plaintiff which the tort protects are his interest in retaining possession of the chattel, his interest in the physical condition of the chattel, his interest in protecting the chattel against intermeddling. Chattel is also an item of property other than freehold land, including tangible goods (chattels personal) and leasehold interests (chattel reals). Chattel comes from the French word “chattel”, which comes from the Latin word “capitale”. A chattel is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land and immoveable property. Examples of chattel include a book, cars, furniture, aircraft, sea craft, and any other thing that is capable of being owned.

**PURPOSE OF TORT OF TRESPASS TO CHATTEL**

The torts of trespass to chattels, protects all the chattel, goods, or personal properties of a person who has title or possession by prohibiting all interference without legal justification. It also protects the rights of ownership or possession of a chattel from all wrongful interferences. It also protects the chattels, goods, all personal properties of a person who has title, possession, or right to immediate possession against meddling, damage, destruction, diminution, conversion, detinue, or any interference by any other person without lawful justification.

**TRESPASS TO CHATTEL IS ACTIONABLE PER SE**

Trespass to chattel, conversion and detinue are each actionable per se upon commission without the plaintiff having to prove damage. Explaining this statement, we shall examine the case of ***Davies v Lagos city council*** which held that the plaintiff is entitled to succeed in trespass, there may be a trespass without the infliction of any material damage by a mere taking or asportation. In this case, the defendant council had granted the plaintiff a hackney carriage license to operate a taxi in the Lagos area. The plaintiff was aware that the permit was for his exclusive use and was not transferable, but instead he caused it to be transferred to a third party, who operated a taxi cab on the strength of it. On learning of this, certain officials of the council, in the exercise of their power to revoke the permit, seized the plaintiffs taxi and detained it at the L.C.C pound. In an action for trespass brought by the plaintiff, the court held that the council was entitled to revoke the plaintiffs permit for non-compliance with the regulations governing the use of hackney carriage licenses, but it was not entitled to seize the vehicle or otherwise take possession of it. The council was therefore liable to trespass. Trespass to chattel is actionable per se, however it is not a strict liability tort, furthermore, where a specific damage has been done to a chattel, a plaintiff is entitled to prove it and recover damage. The mere wrongful moving or touching a chattel without any harm being caused is actionable, for example, where D contrary to instructions, touches an animal in a zoo or a work of art in a museum, where D wrongfully takes P’s letter and shows it to Y. In all this cases, the plaintiff will be entitled to at least nominal damages.

**TRESPASS TO CHATTEL IN NIGERIA**

 In Nigeria, the tort of trespass to chattel is made up of three types of torts and they are:

* Trespass to chattels per se,
* Conversion
* Detinue

We shall look at these three types of trespass to chattel.

**TRESPASS TO CHATTEL**

This is any direct and unlawful interference with a chattel in the possession of another person. It is also an intentional or negligent interference with the possession of the chattel of another person. The interference must be direct and wrongful. Trespass to chattel is designed to protect rights of retaining one’s chattel, protection of the physical condition of the chattel and protection of the chattel against unlawful interference or meddling. This tort is designed to protect possession, that is right of immediate possession of a chattel, as distinct from ownership. Trespass to chattel is any wrong against a chattel, goods or personality, also in the possession or control of another person. In this tort, the injury or wrong is done to the chattel while it is in the possession of the person claiming damages for the injury. In the case of ***Erivo v Obi*** the court stated that for trespass to chattel to be actionable, it must have been done by the wrong doer either intentionally or negligently. In this case the defendant closed the door of the plaintiff’s car and the windscreen broke, the appellant sued for damage to the windscreen but the court held the defendant was not liable because he did not use excessive force. The tort of trespass to chattel has to do with the protection of interest in personal property such as Negligence, malicious damage such as arson, other damage to property or interest in property.

**EXAMPLES OF TRESPASS TO CHATTEL**

Trespass to chattel may be in different forms and it can also be committed when there is no intention to deprive the owner, possessor or custodian permanently of the chattel. Examples include:

* Taking a chattel away
* Throwing another person’s property away in annoyance
* Throwing something at the chattel
* Damaging or causing harm to a chattel, by bodily or indirect contact.
* Touching, mere touching which could lead to destruction of the chattel
* Killing another person’s animal, feeding poison to it or beating it
* Destruction any act of harm or damage
* Scratching or making marks on the body of a chattel, or writing with finger in the dust on the body of a motor vehicle.

**ELEMENTS OF TRESPASS TO CHATTEL: WHAT A PLAINTIFF MUST PROVE TO SUCCEED**

For a plaintiff to succeed under this tort, the plaintiff must prove if the act of trespass was

* Intentional or negligent.

As a general rule, proving this two is very important as trespass to chattel is not a strict liability tort. Trespass to chattel was a tort of strict liability and it was unnecessary for the plaintiff to prove that the defendant’s act was intentional or negligent, but the modern rule is that either intention or negligence must be established, and there is no liability for an interference with goods which is merely accidental. Accidental trespass must be distinguished from cases of trespass by mistake, if the interference with the chattel is intentional, it is no defense that the defendant would not have committed the trespass if he had not been mistaken as to his right to interfere, or that he did not realize he was committing a trespass. For example if A uses B’s toothbrush thinking it’s her own, she is liable in trespass since her act was intentional and the fact that she did not realize she was committing a trespass is immaterial; another principle that the plaintiff must prove intention or negligence is the rule that a person whose chattel is damaged on or near the highway by the defendant’s vehicle must prove that the harm was caused by the negligence of the defendant or of someone for whom the defendant is vicariously liable, and it is not sufficient for him to assert merely that the defendant’s vehicle came into contact with and damaged his property.

**PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL**

Anyone that has possession of a chattel may sue any other person who meddles with the chattel. Persons who may sue for trespass to chattel includes:

* Owners
* Bailees
* Lenders
* Assignees
* Trustees
* Finders
* Custodians
* Caretakers
* Executors
* Administration of estates
* Adverse possessors etc.

**DIFFERENCES BETWEEN TRESPASS TO CHATTEL, CONVERSION AND DETINUE**

The difference between trespass to chattels and conversion is the degree of interference. In the tort of trespass to goods, there is no taking away, stealing, conversion, detention, or detinue of the goods from the owner, or person entitled to possession. However, in tort of trespass to chattel, there must be some act of interference, meddling, harm, injury, damage or destruction of the goods, against the desire of the owner, possessor or caretaker. Conversion occurs when a person uses or alters a piece of personal property belonging to someone else without the owner’s consent.

**DEFENCES FOR TRESPASS TO CHATTEL**

The defenses a defendant may plead may include:

* Inevitable accident
* Jus tertii: the title or better right of a third party, provided that he has the authority of such third party
* Subsisting lien
* Subsisting bailment
* Limitation of time, as a result of the expiration of time specified for legal action
* Honest conversion and acting honestly.

**REMEDIES FOR TRESPASS TO CHATTEL**

Remedies available to a person whose chattel was tampered with, are as follows:

* Payment of damages
* Replacement of the chattel
* Payment of the market price of the chattel
* Repair of the damages.

This often happen in motor accident cases, where one vehicle runs into another.

**CONVERSION**

Conversion occurs when one purposely interferes with another’s personal property. The plaintiff must show that he owns or has the right to have the item at the time it’s interfered with, that the defendant’s interference deprived the plaintiff of possession or use of the item, and that the interference caused damage to the plaintiff. 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 similar to trespass because it primarily protects possession rather than ownership of goods, and there are undoubtedly many acts of interference with goods which will give rise to liability for both torts. According to SIR JOHN SALMOND, 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. In other words, conversion is dealing with one’s property as if it is one’s own. Conversion involves wrongful taking, wrongful detention, and wrongful disposition of the property of another person. It is not necessary to prove that the defendant had intention to deal with the goods, it is enough to prove that the defendant interfered with the goods. In criminal law conversion is known as stealing or theft. Also, conversion can happen if you receive an item from somebody who was not authorized to give it away from you. An owner can sue for conversion. Both a person who has mere custody, temporary possession or care takers can sue any third party who tries to detain, dispose, steal or otherwise convert such chattel. In the case of ***North Central Wagon & Finance*** ***Co. Ltd v Graham:*** the defendant hire purchaser sold the car in contradiction of the terms of the hire purchase agreement. The court held that the plaintiff company was entitled to terminate the hire purchase agreement, and sue the selling hire purchaser in the tort of conversion for recovery of the car.

**DIFFERENCES BETWEEN TRESPASS TO CHATTEL AND CONVERSION**

In conversion, the interference must be intentional, whereas in trespass it may be intentional or negligent. Unlike in trespass, in conversion it is not necessary for the plaintiff to have had actual possession of the goods at the time of the interference, it is sufficient if he had an immediate right to possession. It is not conversion merely to move a chattel from one place to another without any intent to take possession of it or dispute the owner’s title but such act would amount to trespass. Trespass to chattels with conversion are very easy to confuse because they both deal with interfering personal property. The degree of interference for conversion must be so serious that the tortfeasor or person accused of committing the tort may be required to pay the full value of the property. Conversion is different from trespass to chattel in two main ways and they are

* In conversion, the conduct of the defendant must deprive the owners of the possession of the chattel, or amount to a denial or dispute of the title of the owner. Therefore, mere touching or moving of a chattel only amounts to trespass.
* To maintain an action in conversion, the plaintiff need not be in actual possession of the chattel at the time of the interference. It is enough if the plaintiff has right to immediate possession of the chattel, the right to demand for immediate possession of the chattel. We shall look at these cases. In ***Adamson v Jarvis***: an auctioneer was held entitled to be indemnified by a client who had instructed him to sell goods, to which as it was later discovered the client had no title. In ***City Motor Properties. Ltd v*** ***Southern Aerial Services*** An owner of a chattel was held liable in conversion for dispossessing the plaintiff bailee of it, during the subsistence of the bailment, which was not unilaterally determinable at will by the plaintiff owner. In ***Youl v Harbottle:*** the defendant carrier of goods by mistake delivered the plaintiffs goods to a wrong person. He was held liable in conversion, for the loss of the goods. Therefore, it follows that, if an act of interference with a chattel is intentional or willful, it is not a defense, that the tort was done by mistake even if the mistake is honest, that is in good faith or innocently.

**EXAMPLES OF CONVERSION**

* **Taking:** where a defendant takes a plaintiff’s chattel out of the plaintiff’s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion.
* **Using:** using a plaintiff’s chattels as if it is one’s own, such as by wearing the plaintiff’s jewelry or using the plaintiff’s bottle to store wine is a conversion of such chattel.
* **Alteration** by changing its form however you want
* **Consumption** by eating or using it up
* **Damaging** mere damage of chattel is not sufficient to make one liable for conversion, as a general rule of law, mere damages or destruction of a chattel without more is a trespass to chattel in tort and also a malicious damage in criminal law.
* **Receiving** Involuntary receipt of goods is not conversion. The receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Receiving a chattel from a third party who is not the owner is a conversion.
* **Detention**
* **Wrongfully refusing to return a chattel**
* **Wrongful delivery** wrongful delivery of a person’s chattel to another person who does not have title or right to possession without legal justification is a conversion.
* **Wrongful sale or disposition and so forth** such as by sale, transfer of title or other wrongful disposition

**INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION**

 Innocent delivery or innocent receipt are not torts, either are they criminal offences. Innocent delivery is not conversion, where an innocent holder of goods, such as a carrier receives the goods in good faith from a person he believes to have lawful possession of them, and delivers them on the person’s instructions to a third party in good faith, there would be no conversions. In the case of ***UniPetrol v Prima Tankers*** ***Ltd:*** the defendant oil tanker owners had a contract to carry their cargo of fuel from port-Harcourt. The captain of the vessel went somewhere with the fuel, the plaintiff sued for conversion and loss of the cargo. The court held that the respondents were liable in conversion.

**RULES REGARDING FINDING LOST PROPERTY**

This rule was settled by the English court of appeal in the case of ***Parker v British*** ***Airways***. The rules applicable to finding lost property may be summarized as follows:

1. A finder of a chattel acquires no right over it, unless it has been abandoned, or lost, and he takes it into his care and control.
2. 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.
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.
4. An occupier of premises does not have superior rights to those of a finder in respect of goods found on in the premises except before the finding.

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 of an owner over the property he found.

**WHO MAY SUE FOR CONVERSION**

* Owners
* Bailees
* Holders of lien and pledge
* Finders
* Buyers
* Assignees
* Licenses
* Trustees

**DEFENCES FOR CONVERSION**

* Jus tertii: this is the right of a third party. It is the title or better right of a third party to the chattel, goods or property in dispute. A defendant can only plead jus tertii when he is acting with the authority of the true owner.
* Subsisting bailment
* Temporary retention
* Subsisting lien
* Limitation of time

**REMEDIES FOR CONVERSION**

* Order for delivery, return or specific restitution of the goods
* Alternative order for payment of the current market value of the chattel
* Recovery of special damages.
* General damages
* An order for payment of any consequential damages.

**DETINUE**

Detinue seeks recovery of a piece of property that has been wrongfully held or retained, distinguished from replevin which seeks recovery of property that has been wrongfully taken. Under detinue, the defendant received the property legally and the plaintiff never had to have the property in the first place. The tort of detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession to use it. 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. 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. Examples of detinue includes: winner lends her furniture to Tosin for a party, Tosin fails to return it at the end of the day as expected or after the expiration of a reasonable period of time.

**WHEN TO SUE FOR DETINUE**

1. The plaintiff must have title that is ownership or right to immediate possession of the chattel.
2. 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.

In the case of ***West Africa Examination Council v Koroye*** the plaintiff sat for an examination conducted by the defendant council. The defendant neglected and refused to release his certificate. The plaintiff successfully claimed in detinue for his certificate and was awarded damages in lieu of the release of the certificate by the supreme court. Also in the case of ***Steyr Nig. Ltd v Gadzama*** 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.

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

1. In detinue, the plaintiff can claim specific restitution of goods, but he cannot do so in conversion. If the plaintiff wishes to recover the goods *in specie* and not merely their value in the form of damages, he must sue in detinue, however, the courts power to order specific restitution is discretionary and ought not to be exercised.
2. Refusal to surrender on demand is the essence of detinue, but it is only one of several forms of conversion.
3. In conversion, damages are generally assessed on the value of the goods at the date of conversion, whereas in detinue they are assessed on the value of the goods at the date of the trial. Thus, if the value of chattel has increased between the date of the refusal to surrender and the date of the trial, the plaintiff should sue in detinue, but if there has been a decrease in value during the period, he should sue in conversion.

**DEFENCES FOR DETINUE**

1. Innocent delivery
2. Subsisting bailment
3. Inevitable accident
4. Subsisting lien on the chattel
5. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
6. Reasonable defense of a person or property, such as when one beats or injures a dog that was attacking him or another person.

**REMEDIES FOR DETINUE**

1. Claim for return of the specific chattel: this is a claim for the return of specific chattel especially if the chattel has not changed its character and has not been damaged.
2. Damages: general damages may be awarded at least to cover part of the legal action
3. Claim for current market value: this is a claim for the current market value of the chattel as may be assessed
4. Replevin: this is a return of the goods on security, pending the determination of the ownership of the chattel
5. Claim for replacement of the chattel: a defendant may be ordered to replacement the chattel by supplying an identical or similar chattel.
6. Recapture of self -help to recover the goods: 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.

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