

NAME: SARO-NAENWI MARY.W.

MATRIC NUMBER: 18/LAW01/199

COURSE NAME: LAW OF TORTS

COURSE CODE: LPB 301

LEVEL: 300L

QUESTION:

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 defence to Trespass to Chattel, conversion and detinue Differences between conversion and Detinue

ANSWERS:

Tort is a breach of duty owed by one party to another fixed by law which is redressable by an action of unliquidated damages. **Kodiniye** defined Tort as a civil wrong involving the breach of duty, fixed by law, such duties being owed to people generally.

Trespass is any intentional invasion of something someone or somewhere restricted. This tort is broadly divided into three, **trespass to person, trespass to chattels, and trespass to land**. However, this question bothers on TRESPASS TO CHATTEL.

What is Chattel?

The word "chattel" means any article, goods, or personal property, other than land and immoveable property. It is any property other than land and immovable property. Therefore, A chattel is any moveable property. 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 cars, furniture, animal, vessel, aircraft, sea craft, and anything whatsoever which is moveable and capable of being owned.

What is the tort of trespass to chattel?

Trespass to chattel is a particular type of trespass whereby a person has intentionally interfered with another person's lawful possession of a chattel. Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the intentional or negligent interference with the possession of the chattel of another person. In other words, trespass to chattel is any direct interference with a personal property in the possession of another person without lawful justification.

The tort of 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. The interference must be direct and wrongful. However, the direct application of force does not have to be physical. The three forms of trespass to chattel are each actionable per se upon commission or occurrence without the plaintiff having to prove damage. For example, the driving away of cattle is trespass to chattel. Thus, the mere touching of a chattel without causing any harm to it may in appropriate circumstances, be

actionable and entitle the plaintiff to get nominal damages. This is evident in 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 transportation. In my view, the seizure of the plaintiff’s vehicle without just cause... is a wrongful act, on account of which all the defendants taking part in it are jointly and severally liable.”¹

The Purpose of the Tort of Trespass to Chattel is to protect all the chattel, goods, or personal properties of a person who has title or possession by prohibiting all interference without legal justification. The tort of trespass to chattel protects the rights of ownership or possession of a chattel from all wrongful interferences. Thus, 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, detinue, or any interference whatsoever, by any other person without lawful justification.

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

1. Trespass to chattels *per se*, without a conversion or a detinue of the chattel in question;
2. Conversion; and
3. Detinue.

TRESPASS TO CHATTEL

As said earlier, Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the intentional or negligent interference with the possession of the chattel of another person. In other words, trespass to chattel is any direct interference with a personal property in the possession of another person without lawful justification. In this tort, injury or wrong is done to the chattel while it is in the possession of the person claiming damages for the injury. The interference must be direct and wrongful. Thus, the mere touching of a chattel without causing any harm to it may in appropriate circumstances, be actionable and entitle the plaintiff to get nominal damages.

¹ (1973) 10 CCHJ 151 at 154

Trespass to chattel is designed to protect the following interests in personal property;

- Right of retaining one's chattel
- Protection of the physical condition of the chattel; and
- Protection of the chattel against unlawful interference or meddling.

The tort of trespass to chattel is designed to protect possession, that is, the right of immediate possession of a chattel, as distinct from ownership. It protects the right of a person to the control, possession, retention or custody of a chattel against interference by another person without lawful justification. In other words, it prohibits a person from any unlawful interference with a chattel that is under the control, possession or custody of another person. The strongest way to regain ownership of goods such as when one's property is stolen is perhaps through criminal law. 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. Thus, a borrower, hirer, or a bailee of goods, possesses the goods lent, hired or bailed and therefore he may maintain an action against any person who wrongfully interferes with the goods. Similarly, a person who has wrongfully acquired possession may also maintain action against all persons except the owner or agent of the owner of the chattel.

In the case of *Erivo v Obi*², the respondent closed the door of the appellant's car and the side windscreen got broken. The appellant sued inter alia for damage to the windscreen and the loss he incurred in hiring another car to attend to his business. The defendant respondent alternatively pleaded inevitable accident. On appeal, the Court of Appeal held that the respondent was not liable. He did not use excessive force but only normal force in closing the door of the car. He did not break the windscreen intentionally or negligently. It was an inevitable accident which the exercise of reasonable and the normal force used by the respondent could not avert.

In this case, 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 wrongdoer, either intentionally or negligently.

² (1993) 9 NWLR pt 316, p. 60 CA

This brings us to the elements of trespass to chattel.

Elements of Trespass to Chattel

To succeed in an action for trespass to chattel, a plaintiff must establish that the act of trespass was:

1. Intentional

2. Negligent, as in the case of *National Coal Board v Evans & Co* In *National Coal Board v Evans & Co*, the defendant contractors were employed by a county council to work on land owned by the defendant council. A trench had to be dug, which the defendants employed a sub-contractor to do. An electric cable passed under the land, but neither the council, nor Evan & Co. who were head contractors, nor the sub-contractors knew this, and the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable and water seeped into it causing an explosion, and thereby cutting off electricity supply to the plaintiff's coal mine. The plaintiff sued claiming damages for trespass to the electricity cable. The court held that in the absence of establishing negligence on the part of the defendant contractors, there was no fault and there was no trespass by the defendants. The damage was an inevitable accident.

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.

Examples of Trespass to chattel

Given that the trespass must be intentional or negligent, Trespass to chattel may be committed in many different ways. Examples of trespass to chattel include:

1. Taking a chattel away
2. Throwing another person's property away, such as in annoyance
3. Use, that is, mere using without permission
4. Destruction, or any act of harm or damage
5. Driving another person's car without permission
6. Throwing something at the chattel scratching or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle

7. 7. Mere moving of the goods from one place to another, that is, mere asportation.
8. Damaging or causing any harm to a chattel, by any bodily or indirect contact, such as, running one's car into another person's car¹⁰. Killing another person's animal, feeding poison to it or beating it.

The Persons Who May Sue For Trespass to Chattel

Anyone who has possession or is to take care of a chattel may sue any other person who meddles with the chattel. 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
- Bailee
- Lenders
- Assignees
- Trustees
- Finders
- Custodians
- Caretakers
- Adverse possessors, because mere possession gives a right to sue to retain possession
- Executors
- Administrators of estates

Defenses for Trespass to Chattel

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

1. Inevitable accident
2. Jus tertii: the title, or better right of a third party, provided that he has the authority of such third party.
3. Subsisting lien.

4. Subsisting bailment
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 who are victims of trespass to chattel are,

1. Payment of damages
2. Replacement of the chattel
3. Payment of the market price of the chattel
4. Repair of the damage: A frequent demonstration of these remedies is in motor accident cases. Where one vehicle runs into another, damages may be paid, or the parts of the vehicle that are affected may be replaced or repaired.

CONVERSION

What is Conversion?

Conversion is 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. It is any interference, possession or disposition of the property of another person, as if it is one's own without legal justification. In other words, conversion is dealing with another person's property as if it is one's own. Conversion is any dealing which denies a person of the title, possession, or use of his chattel. According to **Sir John Salmond, in his book the Law of Tort**, *"A conversion is an act... of wilful 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"*³.

³ Law of torts 21st ed. (1996) p. 97-98

It is the assertion of a right that is inconsistent with the rights of the person who has title, possession or right to use the chattel. In other words, conversion is any intentional interference with another person's chattel which unlawfully deprives the person of title, possession or use of it. Conversion includes wrongful taking, wrongful detention, and or wrongful disposition of the property of another person. Therefore, conversion includes denying a person of the title or possession, or use of his chattel. 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. It is immaterial that the defendant does not know that the chattel belongs to another person, for instance, if he innocently bought the goods from a thief.

Thus, an owner can sue for conversion. Likewise, a person who has mere custody, temporary possession or caretakership can sue any third party who tries to detain, dispose, steal or otherwise convert such chattel. This is evident in the case of *North Central Wagon & Finance Co. Ltd v Graham*⁴, where the defendant hire purchaser sold the car in contravention of the terms of the hire purchase agreement. In the circumstances the court held that the plaintiff finance 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.

Examples of Conversion

Conversion of a chattel, belonging to another person may be committed in many different ways. Examples of conversion include:

1. **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. On the other hand, a defendant may not be liable, if he merely moves the goods without denying the plaintiff of title.
2. **Using:** Using a plaintiff's chattels as if it is one's own, such as, by wearing the plaintiff's jewellery, as in the case of *Petre v Heneage*, or using the plaintiff's bottle to store wine as was the case in *Penfolds Wine Ltd v Elliot* is a conversion of such chattel.
3. **Receiving:** Involuntary receipt of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Receiving a

⁴ (1950) 1 All ER 780

chattel from a third party who is not the owner is a conversion. This is wrongful, for it is an act of assisting the other person in the conversion of the chattel, or the receiving of stolen goods

4. **Purchase:** At common law, conversion is committed by a person who bought and took delivery of goods from a seller who has no title to the chattel nor right to sell them. Such as when a thief, steals and sells a chattel. A buyer in such a situation takes possession at his own risk, in accordance with the rule of law that acts of ownership are exercised at the owner's peril.
5. **Destruction:** By damaging or obliterating it. Mere damage of a chattel is not sufficient to make one liable for conversion. As a general rule of law, mere damage or destruction of a chattel without more, is a trespass to chattel in tort and also a malicious damage in criminal law.
6. By Detention
7. Alteration: By changing its form howsoever.
8. Consumption: By eating or using it up.
9. By Wrongful Delivery
10. By Wrongful Disposition: Such as by sale, transfer of title or other wrongful disposition.

In Conversion, there are other examples, they are, INNOCENT DELIVERY AND LOST PROPERTY

Innocent Receipt or Delivery

Generally, innocent delivery, or innocent receipt are 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. This is evident in the case of, *Unipetrol v Prima Tankers Ltd*⁵, where the defendant oil tanker owners had a contract to carry Unipetrol's cargo of fuel from Port Harcourt. The captain of the

⁵ (1986) 5 NWLR pt 42 p. 532 CA

vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of the cargo. The Court of Appeal held: that the respondents were liable in conversion. The word "loss" is wide enough to include a claim for conversion against a carrier. It is elementary law that 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, or reimbursement for its value.

Also, In the case of *Owena Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd*⁶ where The 1st respondent was granted an import licence 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 licence. On appeal by the bank, the Court of Appeal held: That the defendants were liable for conversion of the import licence papers.

Thus, an action for conversion will lie in conversion for any corporeal personal property, including papers and title deeds. Conversion is any dealing with a chattel in a manner inconsistent with another person's right whereby the other is deprived of the use and possession of it. To be liable, the defendant need not intend to question or deny the right of the plaintiff. It is enough that his conduct is inconsistent with the rights of the person who has title, or right to possession, or use of it. Conversion is an injury to the plaintiff's possessory rights in the chattel converted. Whether an act amounts to conversion or not depends on the facts of each case, and the courts have a degree of discretion in deciding whether certain acts amount to a sufficient deprivation of possessory or ownership rights as to constitute conversion. 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.

Possession Is Title against a Wrongdoer or Stranger

At common law, mere de facto possession is sufficient title to support an action for conversion against a wrongdoer. *C.O.P v Oguntayo*⁷. The plaintiff respondent brought action against the defendant appellant police, for the wrongful detention and conversion of his Mitsubishi van, which he drove to a police station on a personal visit to a police officer. The police impounded the vehicle

⁶ (1993) 4 NWLR pt.290, p. 698 CA,

⁷ (1993) 6 NWLR pt 299, p. 259 SC

on the allegation that it was a lost but found vehicle. The respondent asserted that he brought the van from a third party who was now deceased. The respondent sued the police claiming for the return of the van. On appeal, the Supreme Court held: that the plaintiff respondent was entitled to the release of the vehicle to him. To establish conversion, the law is that what is required is proof of *de facto* possession and not proof of ownership. In the instant case, the impounding of the vehicle by the appellants police was unlawful and their failure to deliver it to the plaintiff respondent after demands for it constituted a conversion. The plea of *jus tertii* that is, the plea of the better title of a third party to, was not open to the police as it was not proved. In this case, the court approved the statement of the law as to possession made by **LORD CAMBELL CJ in *Jeffries v Great Western Ry Co*⁸**:

"The law is that a person possessed of goods as his property has a good title against every stranger, and that one, who take them from him having no title in himself is a wrongdoer, and cannot defend himself by showing that there was title in some third party. For against a wrongdoer, possession is title."

In the case of ***Danjuma v Union Bank Nig. Ltd*⁹**, The plaintiff appellant sued the defendant respondent bank claiming for an injunction restraining the defendant from conversion of the plaintiffs share certificates and dividends or from the wrongful seizure of same. On appeal the Court of Appeal held: that right of action does not lie as it had not been established that the action of the respondent bank amounted to the tort of conversion. The respondent bank did not deny the appellant's right to take his share certificates, or the dividends on the share certificates and the appellant did not at any time demand the return of the certificate and the respondent refused. There is no evidence that the respondent without authority took possession of the certificates with the intention of asserting a right inconsistent with the rights of the plaintiff appellant.

⁸ (1856) 119 ER 680 at 681

⁹ (1995) 5 NWLR pt 395, p. 318 CA

The Rules Regarding Finding Lost Property

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*¹⁰. 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 as in the case of *South Staffordshire Water Co. v Sharman*¹¹ and a pre-historic boat discovered six feet below the surface were held as belonging to the land owner in the case of *Elwes v Briggs Gas*¹²
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 *Parker v British Airways*, The plaintiff was waiting in the defendant airways lounge at Heathrow Airport, London, England when he found a bracelet on the floor. He handed it to the employees of the defendant, together with his name and address, and a request that it should be returned to him if it was unclaimed. It was not claimed by anybody and the defendants failed to return it to the finder and sold it. The English Court of Appeal held: that the proceeds of sale belonged to the plaintiff who found it.

¹⁰ (1982) 1 All ER 834 CA

¹¹ (1896) 2 QB 44

¹² (1886) 33 Ch D 562

It is fit to note that 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.

Differences between Conversion and Trespass

Conversion is different from trespass to chattels in two main respects. These are:

1. 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. Conversion is known as stealing or theft in criminal law. Therefore, mere touching or moving of a chattel and so forth, only amount to trespass. In the case of *Fouldes v Willoughby*¹³, the suit for conversion was unsuccessful because the movement of the chattel was not sufficient to establish conversion.
2. 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, that is, the right to demand for immediate possession of the chattel.

In the case of *Ashby v Tolhurst*¹⁴. The defendant car park attendant who negligently allowed a car thief to drive away the plaintiff's car from a car park under his watch was held: not liable in conversion. The driver had possession of the car which he had parked, for he has right to immediate possession. The defendant car park attendant is a bailee who only guarantees the safety of the car that is bailed in the car park as a bailee. The claimant should have sued in the tort of negligence for the loss of the car. Also, in the case of *City Motor Properties Ltd v Southern Aerial Service*¹⁵. 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.

The case of *Youl v Harbottle*¹⁶. 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

¹³ (1841) 151 ER 1153

¹⁴ (1937) 2 KB 242

¹⁵ (1961) CLR 477

¹⁶ (1791) 170 ER 81

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.

Who May Sue For Conversion?

The tort of conversion, like other trespass to chattel, is mainly an interference with possession. Those who may sue in the tort of conversion include:

1. **Owners:** An owner in possession, or who has right to immediate possession may sue another person for conversion.
2. **Bailees:** A bailee of a 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.
3. Holders of lien and pledge
4. Finders
5. Buyers
6. Assignees
7. Licensees
8. Trustees

Defenses for Conversion of a Chattel.

In an action for conversion of a chattel, the defendant may plead:

1. **Jus tertii:** Jus tertii 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. 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. In case of **C.O.P v Oguntayo, OGBUEGBU JSC** stated the law clearly that
“A person cannot plead jus tertii of a third party, unless the person is defending on behalf of, or on the authority of the true owner. In the instant case, the appellant claims title on behalf of an unknown owner, but as the third party is not discoverable and the respondent has made out a good prima facie case of title by possession, the respondent has title as against all other persons including the appellants.”

Therefore, for a defendant to successfully plead *jus tertii*, that is, the better right of a third party who has right to immediate possession, the identity of such true owner, or third party must be disclosed, his title or better right to immediate possession must be established, and the defendant must be claiming for, on behalf, or under the title of the alleged true owner, or third party who has a better right to immediate possession.

2. **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.
3. **Authority of Law:** Conversion that is done under the authority of 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 debt, would be valid.
4. **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.
5. **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 statute barred. Thus, the suit would not be heard by the court.
6. **Unidentifiable property:** If the property cannot be properly identified, it could also serve as a defense to conversion.
7. **Temporary retention:** this is 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.

The Remedies for Conversion

In a claim for the conversion of a chattel several remedies are available to a plaintiff. The court in its judgment may order any, or a combination of any of the following reliefs:

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
5. plaintiff for any specific loss proved.
6. 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 equipments.

DETINUE

What is 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. It 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. To successfully sue in detinue, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel. Detinue is only applicable, however, when the owner holds proprietary interest and/or actual possession of the property.

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.

Example of Detinue:

In Nigeria, it still exists as a separate tort. Examples of detinue, that is, detention or retention of goods are many and include the following:

1. Peter lends his chairs and tables to Sarah for a one day party, and Sarah 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.
2. 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.

When to Sue for Detinue

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

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, and or refused to deliver the chattel to the plaintiff after the plaintiff has made a proper demand for the return of the chattel, without lawful excuse. Thus, there must have been a demand by the plaintiff for the return of the chattel and a refusal or a failure to return them. This making of a demand by the plaintiff on the defendant is a condition precedent which the plaintiff must establish to succeed in his claim for detinue.

In *Kosile v Folarin*¹⁷, 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.

¹⁷ (1989) 3 NWLR pt 107, p. 1 SC

In the above case, the Supreme Court emphasised the requirement that in an action for detinue, there must have been a demand by the plaintiff of the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable for detinue.

Also, In the case of *West Mrica Examinations Council v Koroye*¹⁸, the plaintiff sat for an examination conducted by the defendant council. The defendant neglected and or refused to release his certificate. The plaintiff successfully claimed in detinue for his certificate and was award damages in lieu of the release of the certificate by the Supreme Court.

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.

The Defenses for Detinue

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

1. He has mere possession of the goods
2. That the plaintiff has insufficient title as compared to himself

¹⁸ (1977) 2 SC 45; 11 NSCC 61,

3. The defendant may plead *jus tertii*, that is, a third party, a person has a better title, provided the defendant is the agent, or has the authority of the third party, or is claiming under the third party.
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

The Remedies for Detinue

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 specific 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. **Claim for 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 current market value of the 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 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. 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. However, recapture as a remedy is usually frowned upon by court for the breach of peace and other offences it may occasion.

5. **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 reasonable hire usually includes the wear and tear of the goods. Therefore, as the courts have often affirmed the remedies available for the tort of detinue are an order for specific return of the chattel, or in default, an order for payment of the value and also damages that were suffered due to loss of use by the defendant up to the date of judgment or re-delivery of the chattel to the plaintiff. Also, general damages may be awarded as may be assessed by the court. General damages are usually presumed in this action, especially for the loss of the use of the chattel. As in claims in other areas of law, general damages may be awarded at least to cover part of the cost of the legal action.

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
- www.dejetlawyer.com
- www.trespass.uslegal.com
- www.citilawyers.com.au