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To understand the tort of trespass to chattel, you must know what 'chattel' means. A chattel can be simply defined as any property other than land and immovable property. That is to say that a chattel is moveable property; a personal property that is moveable. It can be owned, possessed and controlled, examples are a car, an animal, etc. This brings us to the tort of trespass to chattel, this tort protects all chattels, goods and personal properties of a person who has its title and has possession of this property. In Nigeria, there are three recognized torts of trespass to chattel and they are: trespass to chattel per se, conversion and detinue and they will each be considered.

Trespass to chattel can simply be defined as 'any direct and unlawful interference with a chattel in the possession of another person having already established the meaning of chattel in the previous paragraph, we can say trespass to chattel is when the personal moveable property belonging to an individual is interfered directly by another individual who doesn't share in the possession of the property. The interference is direct, unlawful, wrong and unjustified. It is a tort that protects the right to retaining one's chattel, the physical condition of the chattel and the chattel against unlawful interference or meddling. In a nutshell the trespass to chattel is any wrong against a chattel and when the chattel is in possession of another person. In this tort, the injury or damage is not done to the person in possession of the chattel, it is done to the chattel itself. Examples of things that are considered trespass to chattel are as follows:

- a) Taking a chattel away.
- b) Throwing another person's property away.
- c) Mere moving of the goods from one place to another.
- d) Killing another person's animal.
- e) Driving another person's car without permission.
- f) Throwing something at the chattel, etc.

When we bring up elements of trespass to chattel, we consider both 'what a plaintiff must prove to succeed' and 'the persons who may sue for trespass to chattel.' Before the plaintiff can succeed, he or she must prove that the trespass was intentional or negligent as it is very important. An example is the case of *ERIVO V OBI*, whereby the defendant closed the door of the plaintiff's car leading to the side windscreen to break. The defendant was not held liable as it was said that he did not close the door with force but he used normal strength to do the action so the windscreen was not broken intentionally or negligently. Also, for a person to sue for trespass to chattel, he or

she must have possession of the chattel at the time of the interference, which is telling us not just anyone can sue under this tort. Examples of people eligible to sue are: owners, bailees, executors, trustees, lenders, finders, custodians, caretakers, assignees, etc.

When an individual is being sued for trespass to chattel, he or she can plead the following defenses:

- a. Inevitable accident e.g., the case of NATIONAL COAL BOARD V EVANS & CO whereby a mechanical digger damaged a cable which was unknown to the defendant and was also not marked on any available map, causing electricity to be cut off. The court held that the defendant was not liable and the damage was an inevitable accident.
- b. Subsisting lien.
- c. Subsisting bailment.
- d. Limitation of time as a result of the expiration of time specified for legal action.
- e. Honest conversion, etc.

There are also remedies which are available for those whose chattels have been interfered with and they are:

- a) Payment of damages.
- b) Replacement of chattel.
- c) Payment of market price of the chattel.
- d) Repairing of the chattel.

The main difference between trespass to chattel, conversion and detinue is that in trespass to goods, there is no taking away, conversion, stealing or detinue of the goods from the owner or the individual in possession of the goods. In trespass to chattel, there must be an interference, meddling, etc. of the goods of an individual against the person's desire.

Moving on to conversion, Sir John Salmond defined it as 'an act of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby the other is deprived of the use and possession of it.' That is to say that it is the possession or dealing of another person's property and acting like it is your own property thereby denying the

rightful owner, use of the property. It is the dealing of a chattel belonging to another person in a manner that is inconsistent with the rights of the person. Examples of conversion are as follows:

- a. Conversion by ‘taking;’ this is when the defendant takes the chattel from the plaintiff’s possession without lawful justification and also with the intention of dominating or taking permanent possession of the chattel.
- b. Conversion by ‘destruction;’ this is when a defendant destroys the chattel of the plaintiff. However, it is good to note that mere damage of a chattel is not sufficient to make an individual liable for conversion.
- c. Conversion by ‘using;’ this is when the defendant uses the plaintiff’s chattel as if it is his own. The case of *PETRE V HENEAGE* whereby the defendant wore the plaintiff’s jewelry, the defendant was liable for conversion.
- d. Conversion by ‘consumption;’ this is simply when the defendant eats or uses up the property of the plaintiff.
- e. Conversion by ‘wrongful delivery;’ this is simply delivering an individual’s chattel to someone who has no title or possession of the chattel.

It is important to note that innocent receipt or delivery of a chattel is not considered as conversion. Innocent receipt or deliveries aren’t torts as they are not done intentionally therefore, it cannot be seen as a conversion. An example is a situation of a carrier, if he is given a package with good intentions from a person, he believes to have lawful possession of it and delivers this package to a third party as instructed, there is said to be no conversion. In the case of *UNIPETROL V PRIMA TANKERS LTD* whereby the defendant’s oil tankers owner had a contract to take the plaintiff’s cargo of fuel to Port Harcourt, but the captain of the vessel took it somewhere else, the court held that the defendant was liable for conversion.

Regarding the rules applicable for finding of property, these rules were settled in the case of *PARKER V BRITISH AIRWAYS* where the plaintiff while waiting at the defendant’s airways lounge, found a bracelet and handed it over to an employee of the defendant together with his name, address and a request saying that if the owner is not found, the bracelet should be returned back to him. The owner was not found and the defendant failed to return it to the plaintiff but instead sold it. The English Court of Appeal held that the proceeds of the sale belonged to the plaintiff who found it. The rules talked about are summarized as follows:

1. A finder of a chattel has no right 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 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. However, an occupier of premises does not have superior rights to those of a finder in respect of goods 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.

Just like in trespass to chattel which has its remedies, conversion does too. The remedies available for the plaintiff are as follows:

- a. Order for delivery, return or specific restitution of the goods.
- b. Alternative order for payment of the current market value of the chattel.
- c. Recovery of special and general damages.
- d. An order of payment of consequential damages, etc.

There are also defenses for conversion and they are as follows:

- a) Jus tertii.
- b) Subsisting bailment.
- c) Subsisting lien.
- d) Temporary retention.
- e) Limitation of time.

As we know, not just anyone is eligible for suing for conversion. The individuals who can sue are; owners of the possession, bailees, buyers, assignees, trustees, finders, etc.

The main differences between conversion and trespass to chattel is that in conversion, the acts of the defendant must deprive the plaintiff possession of his own goods so mere touching or moving of the chattel does not amount to conversion as it amounts to trespass to chattel. Also, to

maintain an action in conversion, the plaintiff need not be in actual possession of the chattel at the time of the interference as it is in trespass to chattel.

The last trespass to be talked about is detinue, the tort of detinue can be defined as the wrongful detention of the chattel of another person. It is the unlawful detention of a property belonging to an individual whereby the owner is denied the right to use or possess it. The tort of detinue is simply the wrongful detention of the chattel of another person and the immediate possession of which the person is entitled. To rightfully sue under this tort, the plaintiff must have possession before the detention, or have right to immediate possession of the chattel and the defendant must have failed or refused to return the chattel to the plaintiff even after a proper demand has been made for its return. An example can be when an individual gives his car to a mechanic to repair it but the mechanic refuses to return the car to the owner after the owner has demanded for his car back.

Some defenses for detinue are as follows:

- a) Innocent delivery.
- b) Subsisting bailment.
- c) Possession of the goods.
- d) Inevitable accident.
- e) Subsisting lien.

As there are defenses, there are also remedies and they are as follows:

- a. Claim for return of the specific chattel.
- b. Claim for replacement of the chattel.
- c. Claim for the current market value of the chattel.
- d. Damages.
- e. Recapture or self help to recover the goods.

As there is a difference between trespass of chattel and conversion, there is also a difference between conversion and detinue. The refusal to return a chattel to the rightful owner is the main essence of detinue but this is not the case of conversion.

In conclusion, although all of the three torts stated above have to do with chattels, it is important to note and understand that they each have their differences, remedies, elements and defenses. Although some may be the same, the torts are however, not the same.