**NAME: ODENIRAN OLAWUMI DEBORAH**

**MATRIC NO: 18/LAW01/164**

**COURSE: LAW OF TORT I**

**COURSE CODE: LPB 301**

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

Introduction: Tort is the legal term for wrong doing , misconduct or breach of rights. One of the ways torts are split up is by the mental state of the person that does the wrongdoing; for instance, torts often are caused by someone’s negligence. When the person that acts wrongly actually intends to perform the action, it becomes what is known as “intentional tort”. The following are some of the more common intentional tort claims;

1. Battery: This is the legal term for hitting someone or otherwise touching them in an offensive manner.
2. Assault: An assault is an attempted battery, or threatening injury when no battery takes place. If someone points a gun at a person, he puts fear in the victim, it could be claimed as an assault.
3. False imprisonment: This means confinement without legal authority. Generally, no one is allowed to restrict another person’s movement against her will. There are exceptions to this rule like the police and shopkeepers who can detain someone that is being suspected for shoplifting.
4. Fraud can be charged as a crime and it is the legal term for lying to someone. In order to succeed in a suit for fraud, plaintiff have to prove that the speaker knew it was false and that the other person would rely on the information.
5. Defamation: This is when someone knowingly says something false about someone else, and that lie causes harm. It includes both written (libel) and spoken words.
6. Invasion of Privacy: The exact nature of the invasion of privacy varies by state, but they are generally four types of invasions of privacy:
* Invasion of solitude, in which someone interferes with someone else’s right to be left alone
* Public disclosure of Private facts
* False light, in which someone publishes not true, but not defamatory facts about someone else.
* Appropriation, which is the unauthorized use of someone else’s likeness for profit
1. Trespass: This comes in two forms; trespass to land and chattel, or personal property. In either case, trespass means using the property without the permission of the owner.
2. Conversion: Conversion is when someone takes someone else’s property and “converts” it to their own. In the criminal world, conversion is known as theft.

Trespass to Chattel is an intentional interference with another person’s lawful possession of a personal property. Trespass to Chattels does not apply to real property or any interest in land. In order to prove trespass to chattels, you are required to show the following elements:

* 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.
* Interference of Chattels: A person commits a trespass to chattel by (1) dispossessing another of the chattel, (2) using or intermeddling with a chattel in the possession of another, or (3) damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

A person will be held liable for a trespass to chattels in any of the following situations;

* The Chattel is impaired as to its condition, quality, or value
* The person dispossesses the other of the chattel
* The possessor is deprived of the use of the chattel for a substantial time.
* Bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.

In the case of **Kirk .v. Gregory,** it was held that the movement of a decaeased person’s rings from one room in his house to another was held to be a trespass to chattel and nominal damages was awarded against the defendant.

Defences for Trespass to Chattels

* Consent: A defendant may be able to establish a defence to trespass if the interference occurred with the plaintiff’s consent. The consent should not have been obtained under forceful or unlawful circumstances. The onus is on the defendant to establish that they interfered with the chattel with the plaintiff’s consent.
* Jus Tertii: This means the ‘rights of a third party’. A cause of action in trespass may fail if the defendant can show that a third party has better rights to the chattel than the plaintiff. The onus is on the defendant to establish that a better right to possession is held by a third party in order for the defence to succeed.
* Mistake: Mistake is generally not a defence to intentional torts. However, mistake may be a defence to a cause of action in trespass if the defendant can prove that he or she acted with a mistaken belief, and the mistake was reasonable.
* Necessity: The defendant must prove that there was an apparent imminent danger to person or property and that the defendant honestly believed on reasonable grounds that the act was necessary for the preservation of the person or property.

Remedies for Trespass to Chattels

* Injunctions: An injunction is a court order preventing a party from doing something or alternatively, forcing a party to do a specific thing. It is important to note that the court must be satisfied that the damages suffered by the plaintiff are significant.
* Nominal Damages: Trespass being a tort of strict liability, which means that nominal damages apply even where no damage has been sustained by the plaintiff
* Compensatory Damages: This applies if damage to the chattel has been sustained or not capable of being returned. It aims to put an injured person in the same situation as they would have been had the trespass not been committed

Any person can sue or bring an action for trespass under the provisions of the **Torts (Interference with Goods) Act 1997** in the case of **Armory .v. Delamire,** a boy found a jewel and asked a goldsmith to value it. The goldsmith subsequently refused to return the jewel to the boy. Thus the boy sued. It was held that although the boy was not the true owner, the fact that he has possession of the goods give him the right to sue for trespass.

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 the deprivation of another’s right to use or possess personal property. **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. Conversion is considered the civil side of larceny, namely the improper taking of unreal property from another without due authority. Conversion is the civil wrong done while larceny is the criminal Act.

ELEMENTS OF CONVERSION

* The plaintiff’s ownership
* The defendant’s conversion by wrongful act
* The defendant’s conversion by wrongful act inconsistent with the property rights of the plaintiff; and
* Damages

A person who is not in lawful possession of a chattel may commit conversion by:

* Intentionally using a chattel in his possession without authority so to use it
* Intentionally dispossessing the lawful possessor of the chattel
* Receiving a chattel pursuant to an unauthorized sale to an unauthorized sale with intent to acquire for himself or for another a proprietary interest in it.
* Disposing of a chattel by an unauthorized sale with intent to transfer a proprietary interest in it, or
* Refusing to surrender a chattel on demand to a person entitled to lawful possession.

Examples of conversion includes;

* Taking
* Alteration
* Consumption
* Damaging, or destroying it
* Using
* Detention
* Wrongfully refusing to return a chattel

WHO CAN SUE FOR CONVERSION

* Owners: An owner in possession or who has the right to immediate possession may sue another person for conversion.
* 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. In the **Winkfield’s case**, The winkfield, a ship ran into another ship, a mailship which sank. The Post-Master general though not the owner of the mails in the ship that sank was held entitled to sue the owners of the winkfield, as a bailee in possession for the value of the mails that were lost in the sunk ship.

DEFENCES TO AN ACTION IN CONVERSION

* Authority of law: A conversion cannot occur if its done by authority of law, a court order or valid process
* Abandonment: Abandonment of the property before it was taken by the defendant is a complete defense
* Consent: Consent by the plaintiff can be either express or implied
* Fraud of the plaintiff: Conveying property to a third person for the purposes of evading creditors is a complete defense to subsequent action in conversion
* Interest of defendant: If the defendant has ownership or partial ownership to the property, it cannot be converted. Cases revolve around the specific facts concerning ownership.

REMEDIES TO CONVERSION

* Special Damages: This may be recovered in an action for conversion for any injury proximately resulting from the conversion. The Restatement of Torts indicates these damages can consist of;
1. The additional value of a chattel due to additions or improvements made by the converter not in good faith
2. The amount of any further pecuniary loss of which the deprivation has been a legal cause.
3. Interest from the time at which the value was fixed
4. Compensation for the loss of use not otherwise not compensated.
* Mitigation: The defendant is allowed to show the existence of facts which could make it unjust to allow the plaintiff to recover full value. Return of the property with acceptance by the owner can dismiss the action, or be used as a mitigating fact.
* 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 equipment.

DETINUE

Conversion is when one deals with a chattel in a manner repugnant to the immediate right of possession of the true owner.

Detinue is the wrongful detention of goods to a person, when one refuses to deliver up goods to a person having the immediate right to possession. Often, there is a demand, and a refusal but that is not essential. Where the defence shows the defendant would have refused to comply, then a formal demand would have been futile.

ELEMENTS OF DETINUE

* Make a demand: The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of the demand. The demand is imperative.
* Refuse a demand: The defendant must refuse that demand (whether expressly refusing or failing to respond at all). On some occasions, a defendant who doesn’t have possession of the chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.
* Unreasonable demand: Where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable.
* Consequential demand: As a result of the defendant’s conduct, the plaintiff has suffered loss. This will usually be calculated as the value of the chattel.

HOW CAN DETINUE ARISE?

Detinue can arise in two ways:

* Where the defendant has actual possession of the chattel and refuses to return it to the plaintiff on their demand; or
* Where the defendant was in possession of the plaintiff’s chattel under bailment and has wrongfully parted with that chattel.

DEFENCES FOR DETINUE

There are several potential defences available for detinue. These includes;

* No right to possession: The legal ownership of a chattel can be complicated. Registration of a vehicle is not proof of ownership, for example, If someone purchased a chattel, ownership may be passed through it being a gift. There may be contractual obligations or other facts that demonstrates that the person demanding the return was not the rightful owner.
* Consent: It is a defence to show that there can be no trepass, if the interference occurs with the plaintff’s consent. Consent can either be implied or expressed.
* The demand was invalid: If a demand has been made, it may be vague, confusing or otherwise invalid. If the demand isn’t valid, then a refusal may not have been unreasonable
* There was no refusal: If the refusal to return something isn’t specific, and a sufficient amount of time has not passed to imply that there is a refusal, then the element of refusing the demand to return the chattel may not be met.
* Jus Tertii: It is a defence to show that a third party has a better right to possession than the plaintiff.

REMEDIES FOR DETINUE

* Compensatory Damages may be awarded if there is a loss
* Restitution: The remedy of specific restitution (i.e remedy calculated based on the gains of the defendant) where damages are inadequate.
* Delivery up of Goods: An order of delivery up of goods is available in an action for detinue. It is basically a court order demanding the return of the goods or chattel to the plaintiff
* Abatement: A person maybe entitled to enter the land of another or take other self-help measures, upon giving due notice, to abate a nuisance which substantially interferes with the enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession.

DIFFERENCE BETWEEN TRESPASS TO CHATTEL, CONVERION AND DETINUE

In the tort of trespass to goods, there is no taking away, stealing, conversion, detention or detinue of the goods from the owner. This is the main difference between it and the torts of conversion and detinue. However, in the 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. In the case of **Fouldes .v. Wiloughby**, the defendant was the manager of a ferry boat. The plaintiff who was a passenger entered the boat with horses. The defendant and the plaintiff had a dispute and in order to induce the plaintiff to leave the boat, the defendant disembarked the horses of the plaintiff from the ferry. The plaintiff wasn’t ruffled remained on the boat and crossed over to the other side of the river. The plaintiff then sued the defendant for trespass to the horses. The court held that the defendant was liable for trespass to the horses, by moving them ashore, however, there is no conversion as the plaintiff still had title.

THE CONCEPT OF 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. 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. In the case of **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 wasn’t 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.

**Bridges .v. Hawkesworth,** The plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop owner instead of the shopowner, upon the failure of the rightful owner to come forward to claim the money.

INNOCENT RECEIPT

Generally, innocent delivery is not a tort, nor a criminal offences. The innocent delivery isn’t conversion. Therefore, where an innocent holder of goods, such as, a carrier, or a warehouseman, receives goods in 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 receipts of goods is not converted. However the receiver must not willingly damage or destroy the goods unless the goods constitute a nuisance.

REFERENCES

* Ese Malemi Law of Torts (Princeton Publishing Co. 2008) 159 T
* [www.law.cornell.edu](http://www.law.cornell.edu)
* [www.findlaw.com](http://www.findlaw.com)
* [www.stimmel-law.com](http://www.stimmel-law.com)
* gibbswrightlawyers.com.au
* [www.jstor.org](http://www.jstor.org)
* en.m.wikipedia.org
* www.mondaq.com