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LAW OF TORT

TRESSPASS TO CHARTTEL

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 receipts, lost property rule and give example 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.

A chattel is any property other than land and immovable 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.

The tort of trespass to chattel consists of **trespass to chattel, conversion, and detinue**. This writer shall begin by discussing trespass to chattel.

The tort of trespass to chattel may be defined as a direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional (the normal case) or negligent. The interest of the plaintiff which the tort protects are:

* His interest in retaining possession of the chattel;
* His interest in in the physical condition of the chattel; and
* His interest in protecting the chattel against intermeddling.

An important factor as regards to this tort is that **Trespass to chattel is actionable per se.**

The three forms of trespass to chattel are each actionable per se upon commission or occurrence without the plaintiff having to prove damage. Explaining the law that trespass to chattel is actionable per se without prove of damage **Adefarasin J**., as he then was, in **Davis v Lagos city Council (1973)**, 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 of 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.”

Although, 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 for it as the case may be. Thus, the mere wrongful moving or touching of a chattel without any harm being caused is actionable, for example, where Mr A contrary to instructions, touches an animal in a zoo or a work of art in a museum, where Mr A wrongfully takes Mr B’s letter and shows it to Mr C, or where Mr A without authority plays Mr B’s record or tape. In all these cases, the plaintiff will be entitled at least to nominal damages.

The tort of trespass to person is actionable if it was done by the wrongdoer either **intentionally**, or **negligently**. Originally, trespass to chattels 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. Thus, a contractor who, in the course of carrying out excavations on land in the possession of a third party, struck and damaged the plaintiff’s underground cable, was held not liable in trespass since he did not know of the presence of the cable and there was no fault on his part. Accidental trespass must be distinguished from cases of trespass by mistake, for if the interference with the chattel is intentional, it is no defence 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 realise that he was committing a trespass. For example, if Mr A uses Mr B’s toothbrush thinking that it is his own, he is liable in trespass since his act in using the tooth brush is intentional, and the fact that he did not realise he was committing a trespass is immaterial; whereas in the case of the interference with the cable, the act of the defendant was entirely unintentional.

In the case of **Erivo v Obi (1993)** The defendant respondent closed the door of the plaintiff 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 defendant 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 care and the normal force used by the respondent could avert.

Again, in the case of **Kirk v Gregory**, the movement of a deceased 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.

In **G.W.K v Dunlop Rubbers Co**, removing a tyre from a car, and replacing it with another tyre was held to be a trespass.

Also, in the case of **Haydon v Smith**, it was held to be a trespass for the defendant to cut and carry away the plaintiff’s trees.

**Elements of trespass to chattel: What a plaintiff must prove to succeed**

To succeed, a plaintiff must establish that the act of trespass was:

* Intentional; or
* Negligent; in **National Coal Board v Evans &Co**

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 defence may be pleaded to avoid liability.

**Examples of persons qualified to sue for trespass to chattel**

Anyone who has possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. This is so because the object of the tort of trespass is to protect possession, or the right to immediate possession. In other words, anyone who has possession or right to immediate possession can sue. 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:

* Bailees
* Owners
* Lenders
* Assignees
* Trustees
* Finders
* Custodians
* Caretakers
* Executors
* Administrators of estates
* Adverse possessors, because mere possession gives a right to sue to retain possession.

**Examples of Trespass to chattel**

Trespass to chattel may be committed in many different ways. However, the trespass must be intentional or negligent. Trespass may be committed by mere removal or any damage and it can be committed when there is no intention to deprive the owner, possessor or custodian permanently of the chattel. Examples of trespass to chattel include:

* Throwing another person’s property away, such as in annoyance
* Taking a chattel away
* Mere moving of the goods from one place to another, i.e., mere asportation. This can be justified in the case of **Kirk v Gregory**.
* Scratching or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle.
* Killing another person’s animal, feeding poison to it, or beating it. This can be seen in the case of **Cresswell v Siri**, where the defendant shot and killed the plaintiff’s dog. The plaintiff claimed damages for trespass to property, the property being the dog. The defence was that the defendant was justified in killing the dog because it was threatening his sheep.
* Destruction, or any act of harm or damage.
* Touching, i.e., mere touching, for instance touching a precious work of art which could be damaged by mere touch.
* Mere use without permission.
* Filling another person’s bottle with anything. This can be seen in the case of **Penfolds Wines pty ltd v Elliott** (1946), where Elliot used the bottles of Penfold to run his own business.
* Throwing something at the chattel.
* Damaging or causing any harm to a chattel, by any bodily or indirect contact, such as, running one’s car into another person’s car.

**Defences for trespass to chattels**

* **Necessity**: The defendant may be able to establish a defence to trespass if the inference occurred in circumstances where the interference was necessary, but consent could not reasonably be obtained. The defendant must show 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.
* **Consent**: A defendant may be able to establish a defence to trespass if the interference occurred with the plaintiff’s consent. Consent can either be expressed or implied by conduct; however, it must be genuine and voluntary. The onus is on the defendant to establish that they interfered with the chattel with the plaintiff’s consent.
* **Jus Tertii:** Jus Tertii means **‘the right 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. This was played out in the case of **C.O.P. v Oguntayo (1993)**
* **Inevitable Accident:** Inevitable accident is a defence that apply in circumstances where the defendant can show that their conduct was involuntary, and accordingly, the defendant is without fault. The onus on establishing this defence is on the defendant, who must show that their conduct was neither intentional nor negligent, and the interference with the chattel was a result of an inevitable accident. Other defences for trespass to chattel include:

1. Subsisting bailment
2. Limitation of time, as a result of the expiration of time specified for legal action
3. Honest conversion, or acting honestly, etc.

**Remedies for trespass to chattel**

The remedies available to a person whose chattel has been meddled with, short of conversion or detinue are:

* **Payment of damages**: In the tort of trespass to chattel there are different types of damages that could be awarded depending on the nature of the trespass. There exist compensatory damages, nominal damages, exemplary damages.
* **Replacement of the chattel**: when a defendant is found guilty of trespass to chattel, he may be told to replace such chattel. This is common in cases where the trespass to chattel is of a nature that the chattel cannot be used again.
* **Payment of the market price of the chattel**: This is when the defendant is required to pay the plaintiff the market value of a chattel which he has trespassed upon.
* **Repair of the damage**: The defendant is required to repair the damage he has done to the chattel of the plaintiff.

A frequent demonstration of these remedies is in car 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**

According to Sir Joh Salmond, in his book ‘the law of tort’,21st ed, “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 of possession of it”. This is evident in the case of **Ihenacho v Uzochukwu (1997).**

Conversion 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 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 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. It is important to add that in criminal law, conversion is known as stealing or theft.

An owner can sue for conversion. Likewise, a person who has mere custody, temporary possession or caretaker ship 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 (1950)**, the defendant hire purchaser sold the car in contravention of the terms of the hire purchase agreement. 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.

**Elements of Conversion**

To make out a conversion claim, a plaintiff must establish four elements:

* First, that the plaintiff owns or has the right to possess the personal property in question at the time of the interference;
* Second, that the defendant intentionally interfered with the plaintiff’s personal property;
* Third, that the interference deprived the plaintiff of possession or use of the personal property in question
* Fourth, that the interference caused damages to the plaintiff.

**Innocent Receipt or Delivery**

Innocent receipt or delivery is not conversion. 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 wilfully damage or destroy the goods unless the goods constitute a nuisance.

In **Unipetrol v Prima Tankers Ltd (1986),** the defendant oil tanker owners had a contract to carry Unipetrol’s cargo of fuel from port Harcourt. The captain of the 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.

In **Owena Bank Nig Ltd v Nigerian sweets & confectionery co. ltd (1993)**, 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.

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 is committed.

**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 (1982)**, where it was held against the defendant that the plaintiff (parker) had the superior right to the chattel (bracelet). The rules applicable to finding lost property may be summarized as follows: -

* 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. 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.
* 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.
* 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 in the case of **South Staffordshire Water Co. v Sharman (1896)** 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 (1886)**.
* 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 the case of **Bridges v Hawkesworth (1851)**, The plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop was held entitled to the money instead of the shop owner, upon the failure of the rightful owner to come forward to claim the money.

Thus, as a general rule of law, anybody who has a finder’s right over a lost property, has an obligation in law to take responsible 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.

**Examples of conversion**

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

* Taking
* Using
* Alteration
* Consumption
* Damaging, or destroying it
* Receiving
* Detention
* Wrongfully refusing to return a chattel
* Wrongful delivery
* Wrongful sale or disposition and so forth.
* Wrongful sale, etc.

We shall now briefly explain these.

* **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. Contrast this proposition with the decisions in the case of **Fouldes v Willoughby**, where the defendant moved the horses out of his ferry and led them ashore. It was held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses. Thus, a defendant may not be liable if he merely moves the goods without denying the plaintiff of title.

* **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 (1701)**, or using the plaintiff’s bottle to store wine as was the case in **Penfolds Wine Ltd v Elliot (supra)** is a conversion of such chattel.

* **Alteration**: By changing its form howsoever.
* **Consumption**: By eating or using it up.
* **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. This was the bone of contention in **Simmons v Lillystone (1853)**.

* **Receiving:**

Involuntary receipt of goods is not conversion. However, the receiver must not wilfully 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. 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.

* **By Detention:**

In **Armory v Delamirie (1722),**

A chimney sweep's boy found a jewel and gave it to a jeweller for valuation. The jeweller knowing the circumstances, took the jewel, detained and refused to return it to the boy. The boy then sued the jeweller for conversion and for an order for return of the jewellery to him. The court held: that the jeweller was liable for conversion. A finder of a property has a good title, and he has a right or interest, to keep it against all persons, except the rightful owner of the property or his agent.

However, a temporary reasonable refusal by the finder or custodian of a property to hand it over to a claimant, in order to verify the authenticity of the title of the claimant. is not actionable, except where the refusal is adverse to the owner's better title.

* **By Wrongful Delivery:**

Wrongfully delivery of a person's chattel to another person who does not have title or right to possession without legal justification is a conversion.

* **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.

* **By Wrongful Disposition**: Such as by sale, transfer of title or other wrongful disposition.

In the case of Chukwuka v C.F .A.O. Motors Ltd, The plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months later the defendant sold the car to a third party who re-registered it in his own name. The plaintiff sued for conversion. The High Court held: that the defendant was liable to the plaintiff for conversion of the car.

**Defences to conversion of a chattel**

* **Abandonment of the property**: Abandoned property refers to any personal property left by an owner who has intentionally relinquished all rights to its control. When property is intentionally abandoned, it belongs to no one until it is found and when it is found, the title (ownership) transfers to whoever finds it with the intent to take ownership. A defendant may claim abandonment of a chattel if the plaintiff intentionally abandoned and relinquished all rights to its control.
* **Jus Tertii**: This is better right of a third party. A cause of action in conversion 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 third party holds a better right to possession.
* **Temporary retention**: 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.
* **Authority of Law**: This refers to when a person operates under authority of law (such as law enforcement officer) or by Court order.

* **Limitation of time**: The statute of limitations on a claim for conversion is four years. The period begins to run when the last element constituting the claim occurs. A defence based on the statute of limitations is typically an affirmative defence which should be pled in an answer. This defence can also be set forth in a motion to dismiss if it appears on the “face of a prior pleading.” Some other defences that can be pleaded includes, subsisting bailment, subsisting lien, etc.

**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:

* Order for delivery, return or specific restitution of the goods; or
* Alternative order for payment of the current market value of the chattel.
* 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.
* Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved.
* 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**

Detinue 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 it. Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. As a general rule, to successfully sue in detinue, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel.

Essentially, the tort of detinue is:

* The wrongful detention of the chattel of another person
* The immediate possession of which the person is entitled.

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.

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:

* Mr David lends his chairs and tables to Mr Bola for a one-day party, and Mr Bola 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.
* Mr John gives his radio set to Mr Dickson and pays him to repair it, and Mr Dickson 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.

In **West Mrica Examinations Council v Koroye (1977)**,

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.

**Elements of Detinue**

When someone commits a tort of detinue, they are considered to be wrongfully withholding goods from a person that has an immediate right of possession.

The other element of detinue is that the person committing the wrongful act is also denying the innocent party rightful possession of their property, and with full knowledge of the person’s rights to their goods. The final element of detinue is if the tortfeasor fails to deliver the goods as required by law.

**Defences to Detinue**

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

* He has mere possession of the goods
* That the plaintiff has insufficient title as compared to himself
* The defendant may plead jus tertii, that is, a third-party 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.

Jus tertii, is the better title of a third party. Jus tertii is a defence, that is, based on ownership by a third party, and it is not pleaded, except the defendant is defending under the right of such third party who has ownership, or paramount title, that will enable him to establish a better title, and the right to possession, than the plaintiff.

* Innocent delivery
* Subsisting bailment
* Subsisting lien on the chattel. See Otubu v Omotayo
* Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
* Inevitable accident, this can be seen in the case of **National Coal Board v Evans (1951)**.
* Reasonable defence of a person or property, such as when one beats or injures a dog that was attacking him or another person.
* Enforcement of a court order or other legal process, such as levying of execution of property under a writ of fifa, or the police taking away goods they believe to have been stolen for the purpose of use as exhibit in evidence before court, etc.

**The remedies for Detinue**

* **Replacement of the Chattel**:

Where possible or appropriate, a defendant may be ordered to replace 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.

* **Claim for Return of the 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.

* **Claim for the Market Value of 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. This option appears to be the best form of action, where the chattel has otherwise been removed from jurisdiction, or hidden, damaged, destroyed or otherwise not found. In such circumstances there is no alternative than to claim for the market value of the chattel as assessed, plus any specific and general damages for its detention.

* **Recapture or Self-help**:

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. This is because self-help is an instance of taking the laws into one's hand. This can be seen in the case of **Agbai v Okogbue (1991).** Therefore, a person may not resort to the option of recapture or self-help except it is safe, expected, and reasonable or if it will not be resisted by the defendant and or persons acting for him.

* **Replevin or Release on Bond:**

This is a return of the goods on security, pending the determination of the ownership of the chattel. When a third party's goods have been wrongfully taken in the course of levying execution or distress of the movable property of another person or judgment debtor, such third-party claiming ownership may recover them by means of an interpleader summons determining their ownership. The registrar will then issue a warrant for the restoration of the goods, to such third party or claimant on bond. Therefore, Replevin is the re-delivery to an owner of goods which were wrongfully seized, the action for such re-delivery, and for any specific and general damages suffered by him as the result of the detention.

* **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.

**Difference between conversion & Detinue**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. While 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 only applicable, however, when the owner holds proprietary interest and/or actual possession of the property. In many cases, detinue is classified within Conversion, as the two only differ in the sense that an act is considered Detinue and not Conversion when the owner specifically asks for property back, and is still refused. In essence, the main difference between the tort of conversion and detinue is:

* 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.
* 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.

[[1]](#endnote-1)

1. **Reference**

   Ese malemi law of tort

   Kodilinye and Aluko: The Nigerian law of torts

   Legal match

   Digital media law

   Gibbswrightlawyers.com

   National open university tort pdf [↑](#endnote-ref-1)