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**QUESTION:**

The tort of trespass to chattel in Nigeria is made up of:

* TRESPASS TO CHATTELS
* CONVERSION
* DETINUE

Discuss the above and support with case law.

**ANSWER:**

A chattel is any property other than land and immovable property. A chattel is any

moveable property. The word "chattel" means any article, goods, or personal property, other than land and immovable property. Examples of chattel or goods are innumerable. A chattel is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land and immovable property. Examples of chattel include cars, furniture, animal, vessel, aircraft, sea craft, and anything whatsoever which is moveable and capable of being owned. Indeed, the list of chattels cannot be exhausted.

**The Purpose of the Tort of Trespass to Chattel**

The tort of trespass to chattels protects all the chattel, goods, or personal properties of a person who has title or possession by prohibiting all interference without legal

justification. The tort of trespass to chattel protects the rights of ownership or possession of a chattel from all wrongful interference.

IN NIGERIA, THE TORT OF TRESPASS TO CHATTEL IS MADE UP OF THREE TYPES OF TORTS AND THEY ARE:

**TRESPASS TO CHATTELS:** 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 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. **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, a person who hires, 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. So we can say that trespass to chattel is any wrong against a chattel, goods or personality in the possession or control of another person, 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. In the famous case of Erivo v Obi, 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 not avert., The court restated that trespass to chattels is actionable *per se,* therefore for trespass of chattel to be actionable it must have been done by the wrong doer intentionally or negligently.

**CONVERSION:** According to Sir John Salmond, in his book the *Law of Tort,* 21st ed. (1996) p. 97-98: *"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.*

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 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. 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. In criminal law conversion is regarded as stealing or theft. Basically, conversion is any inconsistent dealing with a chattel, which another person is entitled to, immediate possession

whereby the person is denied the use, possession or title to it.

Thus, 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 North Central Wagon & Finance Co. Ltd v Graham (1950) 1 All ER 780,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.

**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. Basically the tort of detinue is essentially the wrongful detention of the chattel of another person and also the immediate possession of which the person is entitled. Anybody who wrongfully 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. For example

Claire lends her chairs and tables to David for a one day party, and David 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 or Obi gives his radio set to Demilade and pays him to repair it, and Demilade 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.

ELEMENTS OF TRESPASS TO CHATTELS: To succeed, a plaintiff must establish that the act of trespass was:

Intentional or

Negligent: In the case of National Coal Board v Evans & Co. (1951) 2 KB 861*,* 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 passeod 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 defence, may be pleaded to avoid liability.

ELEMENTS OF CONVERSION: The succeed, a plaintiff must establish that:

* That he has the right to possess the personal property in question at the time of the interference.
* The defendant intentionally interfered with the plaintiff personal property, sometimes also described as exercising domination and control over it.
* The interference deprived the plaintiff of possession or use of the personal property in question.
* The interference caused damages to the plaintiff.’
* 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 Youl v Harbottle (1791) 170 ER 81.

The defendant carrier of goods by mistake delivered the plaintiffs goods to a wrong person. He was held liable in conversion, for the loss of the goods Therefore, it follows that, if an act of interference with a chattel is intentional or willful, it is not a defence, that the tort was done by mistake, even if the mistake is honest, that is, in good faith or innocently

ELEMENTS OF DETINUE: The person who brings an action in detinue must be able to show in court that he has the right of possession and property in the goods detained.

To successfully sue in detinue, a plaintiff must have possession before the detention, the plaintiff must also have right to immediate possession of the chattel.

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

* The plaintiff must have title that is ownership or right to immediate possession of the chattel.
* 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 the case of Kosile v Folarin (1989) 3 NWLR 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.The Supreme Court emphasised the requirement that in an action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable for detinue.

In West Africa 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, also in Shuwa v Chad Basin Development Authority (1991)

A third party sold a bulldozer which they had no authority to sell to the plaintiff appellant. The bulldozer was in the custody of the defendant respondent authority who had a lien on it. The respondent authority refused to release it to the appellant unless the third party seller paid the money due on it to the respondent authority. The third party who was the owner of the bulldozer had forfeited it to the authority under the terms of an unfulfilled contract. The appellant buyer sued for the detention of the bulldozer. The Court of Appeal held: that the action of the plaintiff appellant must fail. The third party had no authority to sell to the plaintiff as they no longer had title. The plaintiff in a claim for detinue must establish that he is the owner or that he has right to immediate possession of the thing the recovery of which he is seeking. See also *Sodimu v NPA (1975) All NLR 151.* As a general rule, where there is a subsisting lien on a property, a claim for detinue will not succeed as was held in Shuwa v Chad Basin Development Authority.

THE CONCEPT OF INNOCENT DELIVERY OR RECIEPT: Generally, innocent delivery, or innocent receipt are not torts, nor criminal offence. Thus, innocent delivery is not conversion. Therefore, where an innocent holder of goods,

such as, a carrier, or warehouse man, 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. In the case of 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. 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.

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. 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.

THE RULES REGARDING 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) However, the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows:

* 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.
* 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. 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 feed 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.

InBridges 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.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.

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

**Taking:** Where a defendant takes a plaintiffs 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 On the other hand, 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 or using the plaintiff’s bottle to store wine as was the case inPenfolds Wine Ltd v Elliot 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. It should be noted that 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.

**By wrongful delivery:** Wrongful delivery of a person's chattel to another person who does not have title or right to possession without legal justification is a conversion.

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

**disposition.** In Chukwuka v C.F .A.O. Motors Ltd (1967) The plaintiff sent his car to the defendant motor company for repairs.Thereafter, he failed to claim the car. Nine months later the defendants sold the car to a third party who are 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.

EXAMPLES OF PEOPLE QUA;IFIED 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. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference include:

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

We can also go back and look at the facts of *N*ational Coal Board v Evans & Co as mentioned earlier.

DEFENSE AND REMEDIES TO TRESPASS TO CHATTELS:

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

* Inevitable accident
* Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third party. C.O.P. v Oguntayo (1993)
* Subsisting lien.
* Subsisting bailment
* Limitation of time, as a result of the expiration of time specified for legal action.
* Honest conversion, or acting honestly.

The **remedies** available to a person whose chattel has been meddled with are:

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

DEFENSE AND REMEDIES TO CONVERSION:

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

* Jus tertii, that is, the title or better right of a third party
* Subsisting bailment
* Subsisting lien
* 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.
* Limitation of time.

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 equipments.

DEFENSE AND REMEDIES 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.
* Subsisting bailment
* Subsisting lien on the chattel. See *Otubu v Omotayo (supra)*
* Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
* Inevitable accident, National Coal Board v Evans *(1951) 2 KB 816.*
* Reasonable defence of a person or property, such as when one beats or injures a dog that was attacking him or another person.

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:

**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.

**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.

**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.

**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.

**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.

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.

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**Digital Media Law project (element of conversion)**