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**ASSIGNMENT: The tort of trespass to chattel is made of: Trespass to Chattel, Conversion and Detinue. Discuss the above and support with case law.**

Firstly, what is Chattel? Chattel literally means a personal possession[[1]](#footnote-1). A chattel is any property other than land and immovable property. This means any article, goods, or personal property, other than land and immovable property. The tort of trespass to chattel protects all the chattel or personal property of a person who has title, or possession by prohibiting all interference without legal justification. Trespass to chattel is actionable per se that is damage need not be proved. In **Davies v Lagos City Council**[[2]](#footnote-2), **Adefarasin J** said ‘there may be a trespass without the infliction of any material damage by mere taking or asportation’.

There are three types of trespass to chattel in Nigeria. These are;

1. Trespass to chattel
2. Conversion
3. Detinue

**Trespass to chattel**

Trespass to chattel is a tort whereby the infringing party has intentionally or negligently interfered with another person’s lawful possession. This refers to any direct and unlawful interference with a chattel in possession of another person. This is simply any direct interference with a personal property in possession of another person without lawful justification. In order for an action of trespass of chattel to be maintained, the plaintiff must show that he had possession at the time of trespass. It essentially prohibits a person from unlawful interference with a chattel. Trespass to chattel seeks to

* protect right of retaining one’s chattel
* protection of physical condition of the chattel
* protection of the chattel against unlawful interference.

It is an intentional or negligent interference so when it is neither, it is not trespass to chattel. 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.

Basically, trespass to chattel is;

* Any wrong against chattel, goods or personality
* In the possession or control of another person

 In this trespass to chattel unlike conversion and detinue, injury or wrong is done while it is in possession of the person claiming damages for injury therefore it is not usually taken away.

**Elements of trespass to chattel**

They are the following that is for trespass to chattel to be actionable, it must have been done;

1. Intentionally
2. Negligently

Also, some other elements are;

1. Lack of consent; This simply means that the owner’s consent must be lacking that is the defendant did not have the owner’s consent.
2. There must be an interference of the chattel, it may not necessarily be dispossession.

In **Erivo v Obi**[[3]](#footnote-3); here the defendant closed the door of the plaintiff’s car and the side windscreen broke. The plaintiff sued for damage to the windscreen and loss incurred by hiring another car to attend to his business. It was held that the defendant was not liable as he did not do it negligently or intentionally.

In the above case , the Court of Appeal restated the law’s position that trespass to chattel is actionable per se that is an action can arise without proof of actual damage.

**Examples** of trespass to chattel include the following instances;

1. Taking a chattel away
2. Throwing another person’s property away
3. Moving of someone’s goods from one place to another
4. Making marks, scratching, writing with dust on a motor vehicle
5. Driving another person’s car without permission

Who are the people **who can sue** for Trespass to chattel?

1. Owners
2. Bailees
3. Lenders
4. Trustees
5. Custodians
6. Administrators of estates
7. Caretakers, etc.

**Conversion**

It is the intentional tort consisting of taking with the intent of exercising over the chattel an ownership inconsistent with the real owner’s right of possession. This is any interference, possession or disposition of the property of another person as if it is one’s own without legal justification. **Sir John Salmond** defines conversion as ‘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’[[4]](#footnote-4). It is simply dealing with another person’s property as if it is one’s own and this dealing is inconsistent with the rights of that person.

It is not necessary to prove that the defendant had intention to deal with the chattel, simply that he interfered with the goods. In criminal law conversion is referred to as stealing or theft.

The main concepts of conversion are:

* Any inconsistent dealing with a chattel
* To which another person is entitled to immediate possession
* Whereby the person is denied the use
* Possession
* Title to it

**Examples** of conversion are;

1. Taking: This is 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.
2. Using: This is using a plaintiff’s chattel as if it is his own like in the case of **Petre v Heneage[[5]](#footnote-5)**, here using the plaintiff’s jewellery.
3. Alteration: This is by changing the form of the chattel that does not belong to him.
4. By detention: Holding on to a chattel wrongfully is conversion. In **Armory v Delamirie[[6]](#footnote-6)**; a chimney sweep boy found a jewel and gave it to the jeweller for valuation and the jeweller took it and refused to return it. It was held that the jeweller was liable for conversion.
5. Wrongful delivery: delivering a person’s chattel to another person who does not have title or right to possession without legal justification is a conversion.

There are many other examples of conversion.

 **Innocent receipt or delivery is not conversion**;

Simply where an innocent holder of goods probably a carrier, a delivery man etc receives goods in good faith from a person he believes to have lawful possession of them and he delivers them on the person’s instruction to a third party in good faith, it is not conversion. In the case of **Unipetrol v Prima Tankers Ltd[[7]](#footnote-7)**; 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 somewhere else with the cargo of fuel. The plaintiffs sued for conversion and loss of cargo, the court held that there was conversion as the defendants could not prove that it was a mistake or done in good faith.

In conversion negligence or intention is not relevant. Once you are dealing with someone else’s chattel in a way the owner does not subscribe to it, it is conversion. As far as it is not innocent receipt or delivery like in the case of a deliverer, it is conversion.

**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 wrong doer.

In **COP v Oguntayo**[[8]](#footnote-8); the plaintiff brought an action against the defendant police, for the wrongful detention and conversion of his Mitsubishi van when he drove to the police station on a personal visit to a police officer. The police impounded the car on the note that it was a lost but found vehicle. The court held that the plaintiff was to release the vehicle to him.

Simply to establish conversion the law is that what is required is proof of de facto possession and not proof of ownership. In **Jeffries v Great Western Ry Co[[9]](#footnote-9)**, Lord Campbell said ‘the law is that a person possessed of goods as his property has good title against every stranger, and that one who takes them from him having no title in himself is an wrong doer …’

**Danjuma v Union Bank Nig Ltd[[10]](#footnote-10)**; The plaintiff sued the defendant bank for claiming for an injunction restraining the defendant from conversion of the plaintiff’s share certificated and dividends or from the wrongful seizure of same. The action did not lie as it had not been proven that the defendant bank committed conversion, it was not shown that the defendant bank took the property with intention of asserting a right inconsistent with that of the plaintiff.

**Rules regarding lost property**

The rules applicable to finding a lost property were authoritatively settled by the English Court of Appeal in the case of **Parker v British Airways**[[11]](#footnote-11); the plaintiff was waiting in the defendant airways lounge in 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, as a request that it should return to him unclaimed. The defendants did not return it when it was unclaimed rather they sold it. The court held that the proceeds belonged to the plaintiff who found it.

The rules that were summarized are as follows;

1. A finder of a chattel acquires no right over it, unless it has been abandoned or lost and he decides to take it in 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.
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 building has superior rights over it, to those of a finder, over property or goods in, or attached to the land or building. Based on this rule, in the case of **South Staffordshire Water Co v Sharman[[12]](#footnote-12)** rings found in the mud of a pool was held as belonging to the land owner. Also in the case of **Elwes v Briggs Gas Co[[13]](#footnote-13)**.; a pre historic boat discovered six feet below surface was said to belong to the land owner.
4. An occupier of a 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**; 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.

Not everybody has the right to sue for conversion, there are certain people **who can sue for conversion** and these are;

1. Owners; Anybody who is the rightful owner of a chattel can sue another person who has dealt with his chattel wrongfully for conversion.
2. Bailees; A bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him. In **The Winkfield**; The Winkfield, a ship ran into another ship, a mail ship which sank. The Post-Master General though not the owner of the ship that sank was 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. The court held that the owners of Winkfield were liable and the bailee could sue since as a bailee he had possession title.

There are some other people who have right to immediate possession and therefore may be able to sue another person. These are;

1. Holders of lien and pledge
2. Finders
3. Buyers
4. Assignees
5. Licensees

**Detinue**

This is the wrongful detention of the chattel of another person, the immediate possession of which the person is entitled. It is a claim for the specific return, delivery or surrender of a chattel to the plaintiff who is entitled to it. It refers to the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession of it.

Essentially this tort is;

* Wrongful detention of the chattel of another person
* Immediate possession of which the person is entitled

Any person who wrongfully takes, detains, or retains a chattel, and after 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 Act 1977 abolished the tort of detinue as a separate tort and merged it with the tort of Conversion. In Nigeria however, it is still a separate tort.

**Examples** of detinue are;

1. A lends his chairs and tables to B for a one day party and B neglects, refuses or fails to return the furniture at the end of the day as agreed or after 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.

Yes the above has been established, however **when can someone sue for detinue**?

A plaintiff can sue for 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 he has made proper demand for the return of the chattel, without lawful excuse.

The following cases will be discussed in relation to the above;

In **Kosile v Folarin**[[14]](#footnote-14); here 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 court held that the seizure and detention of the vehicle by the defendant was wrong. The Supreme Court emphasized the requirement that in action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel.

In **Stitch v A.G Federation**[[15]](#footnote-15); The plaintiff imported a car from overseas. It was detained by the Board of Customs and Excise at the sea port. The customs sold it to the fourth defendant who started cannibalizing it and selling its part. The plaintiff sued the defendants for the return of the car. The court held that since the car had been cannibalized, the court would take into evidence what the price of a fairly used car similar to that of the plaintiff’s car and award the purchase price as damages.

In **Ogiugo & Sons Ltd v COP**[[16]](#footnote-16); The Lorry of the plaintiff transporter was carrying a customer’s goods when it was intercepted and seized by the police on the suspicion that the goods were contraband. Representations for its release failed to yield result. The plaintiff claimed for detinue of the vehicle. The court held that the plaintiff was entitled to immediate release of the vehicle and damages for unlawful detention. The plaintiff must have title or right to immediate possession to be able to sue successfully for detinue.

In **West African Examinations Council v Koroye**[[17]](#footnote-17); The plaintiff sat for an exam conducted by the defendant council and the defendant refused to release his certificate. The plaintiff successfully claimed detinue for his certificate and was awarded damages in lieu of the release of the certificate.

In **Steyr Nig. Ltd v Gadzama[[18]](#footnote-18)**; The plaintiff appellant company sued the defendant respondents who were former employees of the appellant for detaining official vehicles and household items which were in their use as top management staff of the company. The court held that the defendants should pay reasonable prices for the items in lieu of returning the chattels.

Having discussed the three types of tort of trespass to chattel, the writer will progress to the defences and remedies of these torts.

**Defences and Remedies of Trespass to Chattel**

***Defences***;

1. Inevitable accident; In a case where it is an accident that could not have been prevented, the defendant may give such as a defence.
2. Jus tertii; Here, where better right belongs to the third party and the defendant has authority of this third party, it can be a defence.
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 and so forth

***Remedies***;

1. Payment of damages
2. Replacement of the chattel
3. Payment of the market price of the chattel
4. Repair of the damage

**Defences and Remedies of Conversion**

***Defences***;

1. Jus tertii; This is a claim of better right and who can claim this? It is the right or title of a third party to the chattel, goods, or property in dispute. It is not enough for a defendant to prove that a third party has better right, he has to prove that he is acting in authority of that third party. In **C.O.P v Oguntayo[[19]](#footnote-19)**; **Ogwuegbu J**, a person cannot plead jus tertii of a third party, unless the person is depending on behalf of, or on the authority of the true owner.
2. Subsisting bailment
3. Subsisting lien
4. 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.
5. Limitation of Time

***Remedies;***

The remedies available to a plaintiff are;

1. Order for delivery, return or specific restitution of the goods
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 is honestly in good faith buys and improves a stolen car and is sued by the original owner, the damages may be reduced to reflect improvements.
4. Recovery of special and general damages. Special damage is recoverable by the plaintiff for any special loss proved.
5. General damages;

**Defences and Remedies for Detinue**

***Defences;***

1. He has mere possession of the goods
2. That the plaintiff has insufficient title as compared to himself
3. The defendant may plead jus tertii, that is, that a third party 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. In **Fowler v Hollins[[20]](#footnote-20)**; ‘persons deal with the property in chattel or exercise acts of ownership over them at their peril’
4. Innocent delivery
5. Subsisting bailment
6. Subsisting lien on the chattel
7. Inevitable accident
8. Reasonable defence of a person or property

***Remedies;***

1. Claim for return of the specific chattel; This is a claim for return of special chattel, especially, if the chattel has not changed its character, content and it has not been damaged nor destroyed during its detention.
2. Replacement of the chattel; Where possible or appropriate, the 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.
3. Claim for the market value of chattel; This is a claim for market value. The measure of damage in detinue is usually the market value of the goods as proved at the time of judgement. The plaintiff has to prove the market value.
4. 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.
5. Replevin or Release on Bond; This is a return of the goods on security pending the determination of the ownership of the chattel. When the third party’s goods have been wrongfully taken in the course of levying execution or distress of the moveable property of another person or judgement debtor, such third party claiming ownership may recover them by means of an interpleader summons determining their ownership.
6. Damages; When a defendant has been found to be 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, 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.

It has reemphasized that trespass to chattel, conversion and detinue are all different from one another, therefore the differences will be discussed below.

**Differences between Trespass to Chattel and Conversion**

There are two main differences;

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. Simply mere touching or moving of a chattel only may amount to trespass.
2. To maintain an action in conversion, the plaintiff need not be in actual possession of the chattel at the time of the interference.

In **Ashby v Tolhurst**[[21]](#footnote-21); The defendant carpark attendant who negligently allowed a thief to drive the plaintiff’s car under his watch was held to not be liable in conversion. The driver had possession of the car he parked yes however the car park attendant could be liable under negligence but not under conversion.

In **Youl v Harbottle**[[22]](#footnote-22); the defendant carrier of goods by mistake delivered the plaintiff’s goods to a wrong person. He was held liable for conversion for the loss of goods. If an act was done intentional or wilfully, even if it was an honest mistake it is not a defence.

In **Hollins v Fowler[[23]](#footnote-23)**; a cotton broker acting on behalf of a client, for whom he often made purchases, bought cotton from a fraudster who had no title to the cotton. The broker then sold it to the client and received his commission. The true owner sued for conversion sale and loss of goods. The court held that the broker was liable in conversion for the full value of the goods.

In **City Motor Properties Ltd v Southern Aerial Service[[24]](#footnote-24)**; here an owner of chattel was held liable in conversion for dispossessing the plaintiff bailee of it, which was not unilaterally determinable at will by the plaintiff owner.

**Differences between Trespass to Chattel and Detinue**

Some differences that can be noted are;

1. The refusal to surrender or return a chattel on demand is the essence of detinue. Basically the plaintiff must have demanded the return of the chattel.
2. Detinue is the proper remedy where the plaintiff wants a return of the specific goods in question and not necessarily the assessed market value.

**Differences between Trespass to Chattel, Conversion and Detinue**

In the tort of trespass to chattel, there is no taking away, stealing, conversion, detention or detinue of goods from the owner, or person entitled to possession.

In tort of trespass to chattel there must be some act of interference, meddling, harm , injury, damage or destruction of goods, against the desire of the owner, possessor or caretaker.

In **Kirk v Gregory**[[25]](#footnote-25); the movement of a deceased person’s rings from one room in his house to another was held to be trespass to chattel and nominal damages was awarded against the defendant.

In **Haydon v Smith**[[26]](#footnote-26); it was held to be trespass for the defendant to cut and carry away the plaintiff’s trees.

In **Fouldes v Willoughby**[[27]](#footnote-27); the defendant was a manager of a ferry boat, the plaintiff, a passenger entered the boat with his horses. When a dispute ensued, the defendant disembarked the horses of the plaintiff from the ferry. The plaintiff remained on the boat and crossed to the other side of the river. The plaintiff was able to sue the defendant for trespass to chattel but not conversion as he(the plaintiff) still had title.

In **conclusion**, trespass to chattel encompasses three concepts, trespass to chattel, conversion and detinue. Trespass to chattel being any slight interference to one’s chattel against his will or unlawfully. Conversion being exercising an ownership inconsistent with that of the rightful owner. Detinue being detention of chattel of a person unlawfully. Each of these have their own peculiarities and that is what determines which of them to sue for under trespass to chattel.

1. Oxford Dictionary [↑](#footnote-ref-1)
2. (1973) 10 CCHCJ 151 at 154 [↑](#footnote-ref-2)
3. (1993) 9 NWLR pt 316 p.60 [↑](#footnote-ref-3)
4. Salmond, 21st ed. 1996, p.97-98 [↑](#footnote-ref-4)
5. (1701) 88 ER 149 [↑](#footnote-ref-5)
6. (1722) 93 ER 664 [↑](#footnote-ref-6)
7. (1986) 5 NWLR pt 42 p.532 [↑](#footnote-ref-7)
8. (1993) 6 NWLR pt 299, p.259 [↑](#footnote-ref-8)
9. (1856) 119 ER 680 [↑](#footnote-ref-9)
10. (1995) 5 NWLR pt 395 p.318 [↑](#footnote-ref-10)
11. (1982) 1 All ER 834 [↑](#footnote-ref-11)
12. (1896) 2 QB 44 [↑](#footnote-ref-12)
13. (1886) 33 ChD 562 [↑](#footnote-ref-13)
14. (1989) 3 NWLR pt107 p.1 SC. [↑](#footnote-ref-14)
15. (1986) 5 NWLR pt.47 p.1007 SC. [↑](#footnote-ref-15)
16. (1991) 3 NWLR pt 177 p.46 [↑](#footnote-ref-16)
17. (1977) 2 SC 45 [↑](#footnote-ref-17)
18. (1995) 7 NWLR pt407 p.305 [↑](#footnote-ref-18)
19. (1993) 6 NWLR pt 299 p.259 [↑](#footnote-ref-19)
20. (1872) LR 7 QB 616 at 639 [↑](#footnote-ref-20)
21. (1937) 2 K.B 242 [↑](#footnote-ref-21)
22. (1791) 170 ER 81 [↑](#footnote-ref-22)
23. (1875) LR 7 HLL 757 [↑](#footnote-ref-23)
24. (1961) CLR 477 [↑](#footnote-ref-24)
25. (1878) 1 EX D 55 [↑](#footnote-ref-25)
26. (1610) 123 ER 970 [↑](#footnote-ref-26)
27. (1841) 151 ER 1153 [↑](#footnote-ref-27)