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 **TRESPASS TO CHATTEL, CONVERSION AND DETINUE**

**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 immoveable property. It is any personalty. Examples of chattel or goods are innumerable.

In Nigeria, the tort of trespass to chattel is made up of three types of tort. These are

1. Trespass to chattels
2. Conversion
3. detinue

**Trespass to chattel** is any direct and unlawful interference with a chattel in possession of another person. It is the intentional or negligent interference with the possession of the chattel of another person. The interference must be direct and wrongful. It is designed to protect the interest in personal property or personalty.

 **ELEMENTS OF TRESPASS TO CHATTEL**

1. The act of trespass must be intentional
2. The act must be negligent
3. There must be wrongful interference
4. Chattel must belong to another party

**Conversion** is any interference, possession, or disposition of the property of another person, as if it is one’s own without legal justification. Conversion is any dealing which denies a person of the title, possession, or use of 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.

 **ELEMENTS OF CONVERSION**

1. Using ones property as if I were his own
2. There is no legal justification
3. Injury of plaintiffs possessory rights

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

 **ELEMENTS OF DETINUE**

1. Wrongful detention of chattel of another person
2. Possession of which the person is entitled

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

**This is the main difference between it and the tort of conversion, and detinue**. However, in the tort of trespass to chattel, there must be some interference, meddling, harm, injury, damage or destruction of the goods, against the desire of the owner, possessor, custodian or caretaker. Therefore, the tort of chattel is made up of chattel s conversion and detinue.

In the case of **kirk v Gregory (1878),** the movement of a deceased persons 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 the case **of Haydon v smith (1610)** it was held to be trespass for the defendant to cut and carry away the plaintiffs tree.

In the case of **leame v bray**, this was an accident between two horse drawn carriages. The defendant negligently drove his carriage and collided with the carriage of the plaintiff. The court held that the accident was a trespass to chattel and the defendant was liable in damages to the plaintiff for the damage done to the coach of the plaintiff.

 **INNOCENT RECEIPT OR DELIVERY**

Generally, innocent delivery, or innocent receipts 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 good in good faith from a person he believes to have lawful possession of them, and he delivers them, on the persons 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. Case of **unipetrol v prima tankers**, the defendant oil tanker owner had a contract to carry unipetrols cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The court of appeal held that the respondents were liable in conversion.

 **THE RULES REGARDING FINDING LOST PROPERTY**

The rule of law for finding a lost property was established by the English court of appeal in the case of **parker v British airways (1982)**, in this case, the plaintiff was waiting in the defendants airways lounge at Heathrow airport, London, England when he found the 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 was not claimed 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. The rules are as listed below

1. 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 has prior right to keep the chattel.
2. Any servant, or agent who finds a lost property in the course of his employment does so on behalf of the employer, by is the finder according to law.
3. An occupier of land, or a building has superior rights to those of a finder, over property or goods in, or attached to land, or building. Case of south Staffordshire water co v Sharman, where rings were found in a pool.
4. However, an occupier of premise 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.

 **EXAMPLES OF CONVERSION**

1. Taking
2. Using
3. Alteration
4. Consumption
5. Receiving

**Taking**: where a defendant takes a plaintiffs chattel out of the plaintiffs possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion.

**Using**: using a plaintiffs chattels as if it one’s own, such as, by wearing the plaintiffs jewelry, as in the case of **petre v heneage**, or using the plaintiffs bottle to store wine as was the case in **penfolds wine v Elliot** is also conversion

**Alteration:** this involves the changing the form of a chattel in any form whatsoever.

Consumption: by eating or using it up

**Receiving:** involuntary receipt of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance, also, receiving chattel from a third party who is not the owner is conversion.

 **PERSONS WHO MAY SUE FOR TRESPASS IN CHATTEL**

Any person who has possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. Also, some persons who do not have legal right are deemed by law to have possession, so they can protect chattels under their care e.g. an employee who an employer has given custody of goods. The individuals who can sue include:

1. Owners
2. Bailees
3. Lenders
4. Assignees
5. Trustees
6. Finders
7. Custodians
8. Caretakers
9. Adverse possessors
10. Executors
11. Administration of state.

 **THE DEFENSES FOR TRESPASS TO CHATTEL**

A defendant may plead the following defenses which include

1. **Inevitable accident**: a defendant may claim that the conversion was a mere accident and that it couldn’t be avoided and he could not have foreseen the accident.
2. Jus tertii, that is, the tittle, or better right of a third party, provided that he has the authority of such third party: if it can be proved that the third part had a right or possession of the chattel, a defendant would not be held liable.
3. Subsisting bailment
4. **Honest conversion**: that there was no ulterior motive in the conversion of chattels.
5. Subsisting lien
6. **Limitation of time:** a defendant may claime that the time limitation for the conversion has exceeded.

 **REMEDIES FOR TRESPASS TO CHATTEL**

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

These remedies can easily be demonstrated in motor accident cases where car parts or the vehicle itself may be damaged and requires a replacement, repair or monetary fee.

 **DEFENSES FOR CONVERSION OF A CHATTEL**

The defendant may plead

1. jus tertii, title or right of a third party
2. limitation of time
3. **Temporary retention**: a defendant may temporary 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 him.
4. Subsisting lien

 **REMEDIES FOR CONVERSION**

1. **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 or profit, or existing contract or wages for the period of the conversion of the work tools or equipment.
2. **Recovery of special and general damage**. Special damage is recoverable by a plaintiff for any specific loss proved.
3. **Order for delivery**, return or specific restitution of the goods
4. **Alternative order for payment** of the current market value of the chattel
5. **An order for payment of 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 sues by the true owner, the damage may be reduced.

 **DEFENSES FOR DETINUE**

1. Innocent delivery
2. He has mere possession of the goods
3. Enforcement of a court order 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 and so forth.
4. Temporary retention: this is to enable steps to be taken to check the title of the plaintiff.
5. Inevitable accident

 **REMEDIES FOR DETINUE**

1. **Claim for return of the chattel**: this is a claim for the return of the specific chattel, especially if the chattel has not changed and the property is still the same
2. **Damages**: when a defendant has been found liable in detinue, he cannot deprive the plaintiff from damages. General damages are usually presumed in this action, especially for the loss of the use of the chattel.
3. **Recapture or self-help**: a person who is entitled to possession of goods which he has wrongfully deprived may resort to self-help and retake the goods from the custody of the person detaining it using reasonable force after making demand for the chattel.
4. **Replacement of the chattel**: a defendant may be ordered to replace the chattel by supplying an identical or similar chattel. This is easier in products.
5. **Release on bond*:*** this is a return of the goods on security, pending the determination of the ownership of the chattel.

 **DIFFERENCE BETWEEN CONVERSION AND DETINUE**

Detinue and conversion are very similar and covers the same ground. It must although be noted, some differences between the two which would be explained below.

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

Conversion is when one deals with a chattel in a manner repugnant to the immediate right of the possession of the true owner. Subjective intention to convert is unnecessary. While detinue is the wrongful detention of goods when one refuses to deliver up goods to a person having the immediate right to possession.

REFERENCE: ESE malemi law of tort (Princeton publishing Co. 2008)