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*Abstract*

*The somewhat complex area of tort law known as tort of trespass to chattel, Conversion and Detinue protect the possessor of a chattel from wrongful interference therewith. This Article undertakes a conceptual analysis of the tort of trespass to chattels, focusing on the* ***definition and explanation of each tort stating the elements of trespass to chattel, conversion and detinue. It then attempts to construct and explain the concepts of innocent delivery or receipt, lost property rule and giving examples of conversion and examples of persons qualified to sue for Trespass to Chattel followed by the discussion of the remedies and defense to Trespass to Chattel, conversion and detinue and lastly, differences between conversion and Detinue.*** *I shall now discuss the following sub headings in seriatim.*

***Trespass to chattel***

*This is any direct and unlawful interference with a chattel in the possession 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 jurisdiction. The interference must be direct and wrongful. Thus, the mere touching of chattel without causing any harm to it may in appropriate circumstances be actionable and entitled the plaintiff to get nominal damages.*

*Trespass to chattel is designed to protect the following interests in personal property or personality;*

*Right of retaining one's chattel, protection of the physical condition of the chattel and protection of the chattel against unlawful interference or meddling. In order words, trespass to chattel is any wrong against a chattel, goods or personality or 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. The chattel is usually not taken from his possession as we have in conversion or detinue. In the 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 h 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, nor negligently. It was an inevitable accident which the exercise of reasonable care and the normal force used by the respondent could not avert. In this case the court of appeal restated the position of the law that, trespass to chattel is actionable per se, that is, without prof of actual damage. Examples of trespass to chattel includes: taking a chattel away, throwing another person's property away, using without permission and so on.***

***ELEMENTS OF TRESPASS TO CHATTEL: what a plaintiff must prove to succeed***

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

1. ***Intentional***
2. ***Negligent***

***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 defense, may be pleaded to avoid liability.***

#### ***Persons who may sue for Trespass to Chattel***

#### ***Anyone that has possession of a chattel may sue a person that meddles with the chattel. This is so for the purpose of the tort of trespass is to protect possession, or the right to immediate possession. In other words, anyone that has possession or right to immediate possession can sue.***

*Accordingly, persons who do not have legal right to possession 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:*

* *Owners*
* *Bailees*
* *Lenders*
* *Assignees*
* *Trustees*
* *Custodians*
* *Caretakers*
* *Administrators of Estates; and so on.*

### ***The Defences for Trespass to Chattel***

*In an action for trespass to chattel, the defences 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.*

*In the case of C.O.P. v Oguntayo, the plaintiff respondent brought action against the defendant appellant police, for the wrongful detention and conversion of his Mitsubishi van, which he drove to a police station on a personal visit to a police officer. The police impounded the vehicle on the allegation that it was a lost but found vehicle. The respondent asserted that he brought the van from a third party who was now deceased. The respondent sued the police claiming for the return of the van. On appeal, the Supreme Court held: that the plaintiff respondent was entitled to the release of the vehicle to him.*

* *Subsisting lien.*
* *Subsisting bailment*
* *Limitation of time, as a result of the expiration of time specified for legal action.*
* *Honest conversion, or acting honestly, and so on*

### ***The 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*
* *Replacement of the chattel*
* *Payment of the market price of the chattel*
* *Repair of the damage caused to the chattel.*

*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.*

***Conversion***

***This 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.***

***According to SIR JOHN SALMOND,in his book the law of tort: ''a conversion is an act...of willful 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''. It is dealing with a chattel which belongs to another person in a manner that is inconsistent with the rights of the person. 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 includes wrongful talking, 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 it. Conversion includes wrongful taking, wrongful detention, and or wrongful disposition of the property of another person. In the case of NORTH CENTRAL WAGON & FINANCE CO. LTD v GRAHAM, 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. Conversion of a chattel, belonging to another person may be committed in many different ways. Examples of conversation include: damaging or destroying it, wrongfully refusing to return a chattel , wrongful sale and so forth.***

***Who may sue for Conversion***

*The tort of conversion, like other trespass to chattel, is mainly an interference with possession. Those who may sue in the tort of conversion include:*

* *Owners*
* *Bailees: A bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him. However, a bailor at will has title to immediate possession of a chattel he has deposited with a bailee and can maintain an action against a bailee for conversion.*
* *In the case of 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 mails in 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. COLLINS MR in the English Court of Appeal held that the owners of the Winkfield were liable and that “as between a bailee and a stranger, possession gives title”.*
* *Holders of Lien and pledge*
* *Finders*
* *Buyers*
* *Assignees*
* *Licensees*
* *Trustees*

***DEFENCES FOR CONVERSION OF A CHATTEL***

*In an action for conversion of a chattel, the defendant may plead the following;*

* *Jus tertii, that it, the title or better right of a third party to the chattel or property in dispute. It is a general rule that a defendant cannot plead that a plaintiff is not entitled to possession as against him because a third party is the true owner of the chattel. A defendant can only plead when he or she is acting with the authority of the true owner. Therefore, for a defendant to plead jus tertii, the identity of the true owner must be disclosed, his title or better right to immediate possession must be established and the defendant must be claiming for, on behalf or under the title of the alleged owner or third party.*
* *Subsisting bailment*
* *Subsisting Lien*
* *Temporary retention*

*To enable steps to be taken in order 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 the right to immediate possession.*

***Remedies for Conversion***

*In a claim for conversion, several remedies are available to a plaintiff. The court may order any of the following remedies;*

* *Order for delivery, return or specific restitution of goods*
* *Alternative order for payment of the current market value of the chattel*
* *An order for payment of any consequential damages*
* *Recovery of special and general damages.*

***Detinue,***

***the tort of 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. In other words, detinue is the wrongful detention of the chattel of another or the immediate possession of which the person is entitled. Examples of detinue, that is, detention or retention of goods are many and includes the following:***

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 the 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 of 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.***

***DEFENCES FOR DETINUE***

*In an action for detinue, a defendant may plead that;*

* *He has mere possession of the goods.*
* *The plaintiff has insufficient title as compared to himself.*
* *The defendant may plead jus tertii provided that the defendant is the agent. This defense 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 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*
* *Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff*
* *Inevitable accident*
* *Reasonable defence of a person or property, such as when one beats or injures a dog that was attacking him or another person.*

***REMEDIES FOR DETINUE***

*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 specific chattel*
* *Claim for replacement of the chattel.*
* *Claim for the current market value of the chattel*
* *Recapture or self-help to recover the goods*
* *Replevin or release on bond*
* *Damages.*

### ***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:*

* *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.*

*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.*

***Innocent delivery or receipt***

***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 belives 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 nuisance.***

***UNIPETROL v PRIMA TANKERS LTD***

***The defendant oil tanker owners had a contract to carry Unipetrol's cargo of fuel from Portharcout. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss f 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.***

***OWENA BANK NIG. LTD v NIGERIAN SWEETS & CONFECTIONERY CO.LTD:***

***The 1st respondent was granted an import license 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 license. On appeal by the bank, the court of appeal held: that the defendants were liable for conversion of the import license 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 weather 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 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. However, the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows:***

1. ***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.***
2. ***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.***
3. ***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, 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 Co.***
4. ***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.***

***PARKER v BRITISH AIRWAYS: the plaintiff was waiting in the defendant airways lounge at Heathrow airport, London, England when he found a bracelet on the floor. He handed it to the employees of the defendant, together with his name and address, and a request that it should be returned to him if it was unclaimed. It was not claimed by anybody and the defendants failed to return it to the finder and sold it. The English Court of appeal held: that the proceeds of sale belonged to the plaintiff who found it.***

***BRIDGES v HAWKESWORTH: the plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop 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.***

***References***

***Law of Tort by Ese Malemi***

***Kodilinye and Aluko: The Nigerian Law of Torts***