NAME: LEAH OSHOKHAI ALEGHE

LEVEL: 300

MATRIC NUMBER: 18/LAW01/033

DEPARTMENT: LAW

COURSE: LAW OF TORTS

TRESPASS TO CHATTEL, CONVERSION AND DETINUE.

Trespass to chattel falls under trespass to personal property as one of the factors under it. Basically a chattel according to Ese Malemi is a property which is not either land or immovable property. A chattel is a moveable property basically. It is any item which has the capability of being owned or controlled other than a human being, land and immovable property and some of the examples are books, furniture, vessel, aircraft, or anything which can moved so basically chattels are innumerable. There are three forms of trespass to chattel which are trespass to chattel per se, detinue and conversion and according to the case of Davies v Lagos, all the forms are actionable per se which means plaintiff doesn’t have to prove damage but this is exceptional in some cases

TRESPASS TO CHATTEL

It is basically the direct interference with a chattel in the possession of another person. It is an intentional interference with the possession of the chattel of another person. The act of interference has to be direct and wrongful so in other words the mere touching of another person’s chattel without the aim of causing harm to it may in appropriate circumstances be actionable and the plaintiff can be entitled to get nominal damages. The tort of trespass to chattel protects the rights of retaining one’s chattel, protecting the physical condition of the chattel and protecting the chattel against unlawful interference or meddling.

The tort protects the right of a person to the control, possession of a chattel against interference by another person without lawful justification. The main way to regain ownership of goods when it’s stolen is probably through criminal law and to maintain an action for trespass, the plaintiff has to show that he had possession at the time of the trespass or and he should prove that is entitled to immediate possession of the chattel and also even if the chattel was borrowed or hired by a bailee or a hirer or a borrower, whoever is in possession of the chattel at the said time can hold an action for trespass and therefore trespass to chattel is any wrong against property whilst in the possession of another person or holder.

For the tort to be valid in trespass, the injury must have been caused to the chattel whilst it was in the possession of the plaintiff who is claiming damages.

The elements of trespass to chattel are basically what make up the trespass and its contents and some of the elements are; that there must be lack of consent, no legal justification and it must be an intentional or negligent act and the chattel should also be in possession by another. It is very important that these two are proven so as to make the action valid for maintenance. This was also established in the case of Erivo v Obi (1993) 9 NWLR PT316, P 60 CA, where the Court of appeal mentioned and stated that for trespass to be actionable, it must have been done intentionally and negligently. Some examples of trespass to chattel are throwing another person’s property away, movement of the chattel from one place to another, scratching or injuring the body of a chattel or inscribing on the dust on the vehicle, killing another’s animal, mere usage without permission, touching a chattel when in fact touching can damage the chattel, driving another person’s car without permission, damage to another chattel either bodily for example hit and run.

TRESPASS TO CONVERSION

In criminal law, conversion is known as stealing. It is a basic injury to the right of the person who has the title.

Conversion is basically any interference with a property of another person as if it’s theirs without any legal justification. It is an act which denies the owner or title holder the opportunity to use his chattel. It is the revoking of the rights of the chattel owner to use his chattel without legal justification. Sir John Salmond defined “A conversion is an act of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, where by that other is deprived of the use and possession.”

It is the handling of another person’s chattel with incompetence and nonchalance. It is literally the wrongful taking, detention, holding and disposition of the property and chattel of another person. It doesn’t have to only be applicable in material goods, conversion also lies in corporate property; lease, title deeds etc. Conversion is any intentional interference with another person’s chattel which unlawfully deprives the person of title, possession or use of it. Facts of the case at hand show if its conversion or not. You don’t actually necessary need to prove that the defendant had any intention of dealing with the said goods, just proving that the defendant interfered with the goods is more than enough proof. Such action can be invalid because most of the times, the defendant is unaware that the chattel belongs to another like when an innocent person buys something from a thief e.g., a car just like the case of *Lewis v Averay*. Also a person who just has mere custody, temporary possession can actually take an action against anyone who tries to inconsistently deal with the said chattel.

Now unlike chattel, negligence and intention are completely irrelevant, because once it is shown that the owner was deprived use, the tort was put in place and this is also similar to detinue. Some of the elements of trespass to conversion is lack of consent. Most of the times, the chattel owner is not aware that his property is being mishandled and the defendant doesn’t ask for it and that’s when it becomes conversion. Another element is lack of legal justification; conversion is an illegal act which is not done without statutory advice.

It was stated that in conversion, there were some specific people who could sue for detention and they were owners, bailees, holders of lien and pledge, finders, buyers, assignees, licenses, and trustees.

TRESPASS TO DETINUE

Detinue is the wrongful detention of another person’s chattel which prevent them from using it in any way. This is when the owner of the chattel is denied usage of the chattel. For action in detinue to be valid, the plaintiff must have possession before the detention occurred or rights were accustomed to possession of the chattel. The tort of detinue is the wrongful detention of the chattel of another person who has entitlement of possession of the chattel. Any action held in detinue is the wanting back of chattel which was wrongfully detained. Anyone who wrongfully detains, takes, deals, with another person’s chattel and fails to return it to the owner should and can be sued for detinue for the sake of recovery. Whilst all this was the law concurrently, the Torts Act 1977 which was based in the United Kingdom then abolished and scrapped the idea of tort of detinue being a separate tort and later conjoined it with tort of conversion so now it is known as conversion by detinue. A person can take legal action for trespass to detinue only on two dominant conditions; the plaintiff should have accustomed rights and ownership and possession over the chattel and secondly, there must have been a demand by the plaintiff to the defendant for return of chattel and a refusal as a counter reply. This demand for return of owned property is a condition precedent which has to be fulfilled in order for the plaintiff to establish his claim for detinue.

The elements of detinue are that; there has to be ownership by the plaintiff, and the plaintiff should have extended a demand for return of detained chattel and there should have been a refusal of recovery. This element was emphasized a lot more in the case of *Kosile v Folarin* by the Supreme Court; if there was a demand by the plaintiff but the defendant is bent on holding on to the chattel then he is liable for detinue.

INNOCENT DELIVERY OR RECEIPT

Innocent delivery is neither tort nor a crime/ criminal offence and it is not conversion. It is not seen as a crime because it is an honest action. From my understanding, In a situation whereby a carrier collected or received goods faithfully or in good faith from another party who he believes to have possession over them legally and he delivers them based on the instructions to another different party, conversion would not have taken place, also as seen in the case of *Unipetrol v Prima*. The only scenario whereby the receiver can legally damage the goods is if the goods was not in its best act or constituting lackadaisical actions.

LOST PROPERTY RULE

It was established by the English court of appeal in the case of *Parker v Britishairways,* and they are included as four important rules and they are;

1. Anyone who finds a chattel has no right over the chattel unless it has been abandoned and the finder decides to take it upon himself and take care of it. The finder then has the right to keep it against anyone except the rightful owner or a person who already had right to it prior to the time the chattel was found by the finder also like in the case of *Parker v Britishairways*, .
2. In an agency, organization, industry or corporation, if a chattel is found by one of the employees during his employment period, it is done on behalf of his employer so the employer automatically becomes the finder.
3. If any chattel is found on a land who has an owner, the rights of a finder are automatically accustomed to such persons be it building, land or property. This is more dominant in the case of *South Staffordshire water co. v Sharman* and *Elwes v Briggs.*
4. Counter to the rule above, an occupier of premises which is a temporary happening does not have the rights to a finder like a land owner does except it was stated that he had control over the premises and things on it prior to the finding of the chattel.

Still under lost property rule, the finder also has the right and obligation in law to take reasonable steps and find the true and rightful owner of the found good before he takes it for his.

EXAMPLES OF CONVERSION

Conversion is a type of tort that has different ways of being committed and some of which are:

1. Taking: this is basically when a chattel is taken away from the plaintiff by a defendant without proper legal justification and having the intention of looming ownership over the taken good permanently but it is not conversion as seen in the case of Fouldes v Willoughby the item was only moved by the defendant without revoking the plaintiff’s title of ownership.
2. Using: this is when the chattel of the plaintiff is being used by someone else as if it was theirs just like in the case of Petre v Heneage. It’s basically trespassing against someone’s chattel privacy without their consent.
3. Alteration: when the chattel has been messed with by maybe inconsistent dealing and the form changes.
4. Consumption: this is an example where the chattel has been consumed maybe by eating or using it completely.
5. Destruction: just a little smear of damage on a chattel isn’t always enough to make the defendant liable for conversion. In law, destruction of a chattel without more damage implicated is a trespass to chattel in tort and this can be explained better in the case of Simmons v Lillystone.
6. Receiving: the receiver of the chattel must not and should not destroy the goods unless the goods in particular is constituting a nuisance just like innocent delivery rule. 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.
7. By detention: this is when the chattel has been detained and can’t be put into use like the case of Armory v Delamirie where the sweeper boy found jewelry and took it to the jeweler who kept it to himself cause he knew the worth whereas the sweeper boy, having finder’s rights was denied having it.
8. By wrongful delivery: this is 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 but it can be pardoned if the deliverer thought it was to the right owner.
9. Purchase: 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 at his ow risk, in accordance with the rule of law that acts of ownership are exercised at the owner’s peril.
10. By wrongful disposition: like by sale, transfer of title or other wrongful disposition for example the case of Chukwuka v C.F.A.O. Motors Ltd.

PEOPLE QUALIFIED TO SUE FOR TRESPASS TO CHATTEL

Basically anyone who has possession of chattel may sue any other person who meddles with the chattel. So therefore the persons who may sue for trespass to chattel are owners, bailees, lenders, assignees, trustees, finders, custodians, caretakers, adverse possessors, executors, and administrators of estates; and so forth.

REMEDIES FOR TRESPASS TO CHATTEL

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

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

DEFENCES FOR TRESPASS TO CHATTEL

Where there is an action for trespass to chattel, the defenses that the defendant can plead is:

1. Inevitable accident
2. Jus tertii
3. Subsisting lien
4. Subsisting bailment
5. Limitation of time
6. An act of honesty or honest conversion

REMEDIES FOR CONVERSION

The remedies available to a person whose chattel has been conversed 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.
4. Recovery of special and general damages.
5. General damages.

DEFENCES FOR CONVERSION

Where there is an action for conversion, the defenses that the defendant can plead is:

1. Jus tertii
2. Subsisting bailment
3. Subsisting lien
4. Temporary retention
5. Limitation of time.

REMEDIES FOR DETINUE

The remedies available for a person whose chattel has been conversed are:

1. Claim for return of the specific chattel
2. Claim for replacement of the chattel
3. Claim for the current market value of the chattel
4. Recapture or self-help to recover the goods
5. Replevin, that is release on bond pending determination of ownership
6. Damages

DEFENCES FOR DETINUE

Where there is an action for detinue, the defenses that the defendant can plead is:

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
4. Innocent delivery
5. Subsisting bailment
6. Subsisting lien on the chattel
7. Inevitable accident
8. Reasonable defence of a person or property
9. Enforcement of a court or other legal process.

DIFFERENCES BETWEEN CONVERSION AND DETINUE

1. The whole concept of demand. The refusal to surrender is the essence of detinue. There must have been a demand for return of the chattel.
2. The best remedy where the plaintiff wants a return of the specific goods is detinue and not merely an assessed market value but 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.