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INTODUCTION

Before we delve into the this topic proper, it is pertinent to consider the key factors or rather words we will encounter in the course of writing this work.

1. TRESPASS

Trespass has been defined as a wrongful act done in disturbance of the possession of the property of another or against the person of another, against his will and actionable without prove of damage. *Sec 42 Torts law[[1]](#footnote-1)*

2. CHATTEL

Chattel has been defined by the Black’s Law Dictionary as “Movable or transferable property; personal property; especially a physical object capable of manual delivery and not the subject matter of real property”

In law, there are three (3) distinct types of trespass namely;

1. Trespass to person
2. Trespass to land and
3. Trespass to chattel.

For the purpose of this assignment we will be discussing trespass to chattel.

**TRESPASS TO CHATTEL**

The fact of trespass to chattel consists in committing without lawful justification, any of direct physical interference with the chattel in a possession of another person, *sec66[[2]](#footnote-2)*. From the wordings of this section, it is clear that trespass is a wrong against possession. *Sec67[[3]](#footnote-3)* this was also made clear in the case of *Queen v. Uche[[4]](#footnote-4).* It is noteworthy that trespass to chattel is a direct, intentional, careless or negligent interference of a chattel in possession of another.

Trespass to chattel in Nigeria, is made up of three types of torts. These are:

1. Trespass to chattel
2. Conversion; and
3. Detinue.

TRESPASS TO CHATTEL

This is as explained above. Trespass to chattel is actionable ***per se*** ie without prove of damage as *Adefarasin j* as he then was explained in the case of Davies v. Lagos Council. Therefore it is safe to say that the mere touching of a chattel without prove of actual damage amounts to trespass provided the plaintiff is in possession of the chattel or has a right to possession.

Trespass to chattel is designed to protect the following interest in personal property:

1. Protects the plaintiff’s interest in the retention of the possession of his chattel.
2. Protects the plaintiff’s interest in the physical condition of his chattel, and
3. Protects the chattel against unlawful interference or meddling.

ELEMENTS OF TRESPASS TO CHATTEL

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

1. Intentional; or
2. Negligent

THE RIGHT TO SUE IN TRESPASS TO CHATTEL

Since it is only a person in possession at the time of the alleged act of trespass can maintain an action in trespass, its certain therefore that it is only a person in possession that can sue for trespass to chattel. If the plaintiff is therefore not in possession in the time of the alleged trespass, he cannot sue for trespass, but can sue in any other torts like conversion and detinue. *Sec67(1)[[5]](#footnote-5).* From the foregoing therefore, the following persons can sue for trespass to chattel provided they are in possession at the material time of interference;

1. Owners,
2. Bailees,
3. Lenders,
4. Asignees,
5. Trustees,
6. Caretakers etc.

THE REMEDIES FOR TRESPASS TO CHATTEL

The remedies available for persons whose chattel has been interfered with, short of conversion or detinue are:

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

DEFENSES FOR TRESPASS TO CHATTEL

In an action for trespass to chattel, the defences a defendant may plead includes;

1. Inevitable accident
2. Jus tertii, that is better right of a third party, provided that he has the power of such third party.
3. Subsisting lien
4. Subsisting bailment
5. Limitation of time, as a result of the expiration of time specified for legal action and so forth.

**CONVERSSION**

The tort of conversion can be committed in so many deferent ways so that any comprehensive definition is probably impossible. Conversion therefore have been defined by *Ese Malemi*  in his book *Law of tort* as any interference, possession or dispossession of the property of another person, as if it is one’s own without lawful justification.

The Supreme Court of Nigeria in Ihenacho v. Uzochukwu[[6]](#footnote-6) defined conversion as;

*“…An act or 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 that chattel”.*

Therefore, conversion includes denying a person of the title or possession, or use of his chattel. It is not necessary to prove that the defendant has intention to deal with the goods. It is enough to prove that the defendant interfered with the goods. It is immaterial that the defendant does not know that they belong to another person, for instance, if he innocently bought the goods from a thief.

Essentially, conversion is:

1. Any inconsistent dealing with a chattel
2. To which another person is entitled to immediate possession
3. Where by the person is denied the use
4. Possession or
5. Title of it.

INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION

Innocent delivery or receipt generally is 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 believes to have lawful possession of them, and he delivers them, on the person’s instructions to a third party in good faith, there will be no conversion. Similarly, innocent receipt of goods is not conversion. However, the receiver must not willfully or carelessly damage the goods unless the goods constitute a nuisance.

THE RULES REGARDING FINDING LOST PROPERTY

Authoritatively settled by the English Court of Appeal in the case of *Parker* v. *British Airways.[[7]](#footnote-7)* However, the rules are not often easy to apply. The rules responsible to finding lost property may be summarized as follows:

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 can assert a prior right to keep the chattel, which was subsisting at the time the finder, took the chattel into his care and control.
2. Any servant or agent, who found a lost property in the course his employment, does so on behalf of his employer, who by right acquires the right of a finder.
3. An occupier of land, or building has superior right to those of a finder, over goods or property 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,[[8]](#footnote-8)* and the pre-historic boat discovered six feet below the surface were held as belonging to the land owner in the case of *Elwes v. Gas co.* (1886) 33 Ch D 562
4. However, an occupier of premises does not have superior right 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.

WHO MIGHT SUE FOR CONVEERSION

The tort of conversion like every other trespass to chattel, is mainly an interference with possession.

1. Owner:

An owner in possession, or who has right to immediate possession can sue another for conversion.

1. Bailees:

A bailee of a chattel may sue another 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 action against a bailee for conversion.

Other persons who have right to immediate possession and therefore, may sue another for conversion of a chattel include;

Holder of a lien, finders, buyers, assignees, trustees etc.

DEFENSCES FOR CONVERSION OF CHATTEL

They are as follows;

1. Jus tertii, that is the title or better right of a third party
2. Subsisting lien
3. Subsisting bailment
4. Temporary retention; to enable steps to be taken to check the title of the claimant
5. Limitation of time.

THE REMEDIES FOR CONVERSION

Several remedies are available to the plaintiff in a claim for conversion and they include:

1. Order for delivery, return or specific restitution of the goods; or
2. Alternative order for payment of the current market value of the chattel
3. An order for the payment of any consequential damages.
4. Recovery of special and general damages. Special damages are recoverable by a plaintiff for any special loss proved.
5. General Damages: Furthermore, where for instance, a plaintiff whose working equipment or tool are converted by another person, a plaintiff may sue for the lost of profit, or existing contract or wages for the period of the conversion of the work tool or equipment.

**DETINUE**

An action for detention has the same meaning as an action for detinue as seen in *sec 72(2)[[9]](#footnote-9) .* It refers an action an action in tort for wrongful detention of chattel and refusal to redeliver or return same after demand for return of same has been made. In *julious beger Nig plc v. Omogu[[10]](#footnote-10)* the supreme court defined detinue as ;

… A wrongful retention of the possession of goods and wrong arises upon detention of chattel after demand for its return by the person entitled to its immediate possession has been made.

Essentially, the tort of detinue is:

1. The wrongful detention of the chattel of another person
2. The immediate possession of which the person is entitled.

An action for detinue is a claim for the specific return of a chattel wrongfully retained, or for payment of its current market value and any consequential damages.

Examples of detinue are many and include the following;

1. A lends his chairs and table 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.
2. C gives his radio set to D and pays him to repair it, and D fails or refuse 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.

THE DEFENCES FOR DETINUE

In an action for detinue, a defendant may plea any of the following;

1. He has mere possession of the goods
2. The plaintiff has insufficient title as compare to him himself
3. The defendant may plead jus tertii.
4. Innocent delivery
5. Substantial bailment
6. Substantial lien on the chattel
7. Inevitable accident etc.

REMEDIES FOR DETINUE,

When a person’s chattel is detained by another, the person who is denied possession or use of the chattel, has several remedies open to him this includes;

* CLAIM FOR RETURN OF 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 necessary, a defendant may be ordered to replace the chattel by supplying an identical or similar chattel.

* CLAIM FOR THE MARKET VALUE OF THE CHATTEL

This is the claim for the current market value of the chattel as may be assessed. Measure of damage is usually the market value of the chattel as proved at the time of judgment

* RECAPTURE OF SELF HELP

A person who is entitled to the possession of goods of which he has been wrongfully deprived may resort to self-help and take the goods from the custody of the person detaining it, using reasonable force after he has made demand for its return.

* RELEASE ON BOND

This is a return of goods on security, pending the determination of ownership of the chattel. Etc

THE DIFFERENCES BETWEEN CONVERSION AND DETINUE

Detinue covers the same ground as tort of conversion by detention. However, some differences are to be noted which includes 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 the chattel.
2. Detinue is the proper remedy where the plaintiff wants a return of the specific goods in question, and not merely in assessed market value. However, where specific return of the chattel or replacement will not be possible, an award of the current market value of the chattel is usually made to the plaintiff

1. Torts Law, 1987 Cap 140 [↑](#footnote-ref-1)
2. Torts Law, 1987 Cap 140 [↑](#footnote-ref-2)
3. supra [↑](#footnote-ref-3)
4. (1994)6NWLR Pt 350 Pg 359 [↑](#footnote-ref-4)
5. ibid [↑](#footnote-ref-5)
6. (1997)1 SCNJ 117 act 226 [↑](#footnote-ref-6)
7. (1982)1 All ER 834 CA [↑](#footnote-ref-7)
8. (1896) 2 QB 44 [↑](#footnote-ref-8)
9. Torts Law 1987 [↑](#footnote-ref-9)
10. (2001) FWLR pt 64 pg 205 at 315 [↑](#footnote-ref-10)