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 **QUESTION**

The tort of trespass to chattel is made of: Trespass to chattels Conversion and Detinue Discuss the above and support with case law. Students may consider the following: define and explain each tort state the elements of trespass of chattels, conversion and detinue explain the concepts of innocent delivery or receipt, lost property rule and give examples of conversion give examples of persons qualified to sue for trespass to chattel discuss the remedies and defence to trespass of chattel conversion and detinue. Difference between conversion and detinue support your answers with decided case.

What is Trespass?

 A trespass refers to a wrongful use of another person’s property without his or her permission. Trespass in law is in different diversification, there’s trespass of land and trespass of chattels. But basically today we will focus on Trespass of chattels.

What are chattels?

 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. Examples of chattel or goods are innumerable. A chattel is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land and immoveable property. Examples of chattel include cars, furniture, animal, vessel, aircraft, sea craft, and anything whatsoever which is moveable and capable of being owned. Indeed, the list of chattels cannot be exhausted.

Trespass of chattel: this means the intentional interference with a person’s lawfully personal possession. It just basically means interference, meddling, harm, injury, damage or destruction of the goods, against the desire of the owner, possessor, custodian or caretaker.

Trespass to chattels is very much actionable per. There are three forms of trespass to chattel and they are actionable upon commission without the plantiff having to prove damage. (Adefarasin J) stated in **Davies V lagos City Council.**

*“The plaintiff is entitled to succeed... in trespass... there may be a trespass without the infliction of any material damage by a mere* taking *or transportation. In my view, the seizure of the plaintiff’s vehicle without just cause... is a wrongful act, on account of which all the defendants taking part in it are jointly and severally liable.”*

In trespass to chattels issues of recovering the chattel when is have been damaged requires the plaintiff to prove it and request for payment of damages either by paying the market value of providing a similar chattel which was damaged. Trespass to chattel is made up of three torts

1. Trespass to chattels per se, without a conversion or a detinue of the chattel in question
2. Conversion
3. Detinue

**Trespass to Chattel;**

This means the intentional interference with a person’s lawfully personal possession. It just basically means interference, meddling, harm, injury, damage or destruction of the goods, against the desire of the owner, possessor, custodian or caretaker.The interference must be direct and wrongful. Thus, the mere touching of a chattel without causing any harm to it may in appropriate circumstances, be actionable and entitle the plaintiff to get nominal damages.
Trespass to chattel is designed to protect the following interests in personal property;

1. Right of retaining one's chattel.
2. Protection of the physical condition of the chattel.
3. Protection of the chattel against unlawful interference or meddling.

The tort of trespass to chattel is designed to protect possession, that is, the right of immediate possession of a chattel, as distinct from ownership. It protects the right of a person to the control, possession, retention or custody of a chattel against interference by another person without lawful justification The strongest way to regain ownership of goods such as when one's property is stolen is perhaps through criminal law. 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. Thus, a borrower, hirer, or a bailee of goods, possesses the goods lent, hired or bailed and therefore he may maintain an action against any person who wrongfully interferes with the goods. Similarly, a person who has wrongfully acquired possession may also maintain action against all persons except the owner or agent of the owner of the chattel. **NOTE: trespass mainly about**

1. Any wrong against a chattel, goods
2. 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 Erivo v Obi (1993) 9 NWLR pt 316, p. 60 CA, 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 he 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 or 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 proof of actual damage. Any unauthorized touching or moving of a chattel is actionable at the suit of the possessor of a chattel, even though no harm has been done to the chattel. Therefore, for trespass to chattel to be actionable, it must have been done by the wrongdoer either; **intentionally or Negligently**

**Examples of Trespass to Chattel**

Trespass to chattel may be committed in many different ways. However, the trespass must be intentional or negligent. Trespass may be committed by mere removal or any damage and it can be committed when there is no intention to deprive the owner, possessor or custodian permanently of the chattel. Examples of trespass to chattel include:

1. Taking a chattel away
2. Throwing another person's property away, such as in annoyance
3. Mere moving of the goods from one place to another, that is, mere exportation. See Kirk v Gregory (1878) 1 Ex D 55.
4. Scratching or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle
5. Killing another person's animal, feeding poison to it or beating it. See Shieldrick v Abery (1793) 170 ER 278; Cresswell v girl (1948) 1 KB 241; and Uwabia v Atu (1975) 5 ECSLR 139.
6. Destruction, or any act of harm or damage
7. Touching, that is, mere touching, for instance, touching a precious work of art which could be damaged by mere touch
8. Use, that is, mere using without permission
9. Driving another person's car without permission
10. Filling another person's bottle with anything. See Penfolds Wines Pty Ltd v Elliott (1946) 74 CLR 204 at 214-215.
11. Throwing something at the chattel
12. Damaging or causing any harm to a chattel, by any bodily or indirect contact, such as, running one's car into another person's car.

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

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 torts of conversion, and detinue. However, in the tort of trespass to chattel there must be some act of interference, meddling, harm, injury, damage or destruction of the goods, against the desire of the owner, possessor, or caretaker.

**Kirk v Gregory (1878) 1 EX D 55**, the movement of a deceased person's rings from one room in his house to another was held to be a trespass to chattel and nominal damages was awarded against the defendant.

**Davies v Lagos City Council (1973) 10CCHCJ 151**, the defendant city council granted a hackney permit to the plaintiff to operate a taxi cab, which permit was meant for the exclusive use of the plaintiff. The plaintiff transferred the permit to a third party, whereupon the defendant council seized and detained the plaintiff‘s taxi cab. In an action for trespass to property, Adefarasin J. as he then was in the Lagos High Court held that although the defendant council was entitled to revoke the permit for non-compliance with regulations, however, it was not entitled to seize nor take possession of the plaintiff’s vehicle. The defendant was therefore liable for trespass to chattel by seizing the plaintiff’s car.

**Fouldes v Willoughby (1841) 151 ER 1153**, the defendant was the manager of a ferry boat. The plaintiff who was a passenger entered the boat with his horses. The defendant and the plaintiff had a dispute and in order to induce the plaintiff to leave the boat, the defendant disembarked the horses of the plaintiff from the ferry. The plaintiff who was not ruffled remained on the boat and crossed over to the other side of the river. The plaintiff then sued the defendant for trespass to the horses. The court held: that the defendant was liable for trespass to the horses, by moving them ashore. It was also held that there was no conversion as the plaintiff still had title.

**What a Plaintiff Must Prove To Succeed**

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

1. Intentional
2. Negligent. See National Coal Board v Evans & Co. (1951) 2 KB 861 and Gaylor & Pope v Davies & Sons (1924) 2 KB 75.

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.

The Persons Who May Sue For Trespass to Chattel

Anyone who has possession or custodian of a chattel may sue any other person who meddles with the chattel. This is so for the object of the tort of trespass is to protect possession, or the right to immediate possession. Accordingly, some persons who do not have legal right 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, such person can sue for trespass of chattels. Some are;

1. owners
2. bailers
3. lenders
4. assignees
5. trustees
6. finders
7. custodians
8. caretakers
9. Adverse possessors, because mere possession gives a right to sue to retain possession
10. executors
11. administrators of estates

**In National Coal Board v Evans & Co**. (supra), the defendant contractors were employed by a county council to work on land owned by the defendant council. A trench had to be dug, which the defendants employed a sub-contractor to do. An electric cable passed under the land, but neither the council, nor Evan & Co. who were head contractors, nor the sub-contractors knew this, and the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable and water seeped into it causing an explosion, and thereby cutting off electricity supply to the plaintiff’s coal mine. The plaintiff sued claiming damages for trespass to the electricity cable. The court held that in the absence of establishing negligence on the part of the defendant contractors, there was no fault and there was no trespass by the defendants. The damage was an inevitable accident.

**The Defenses for Trespass to Chattel**

In an action for trespass to chattel, the defenses a defendant may plead include:

1. Inevitable accident
2. Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third party. See C.O.P. v Oguntayo (1993) 6 NWLR pt. 299, p. 259 SC.
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, etc.

**The 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 chattel
3. Payment of market price of the chattel
4. Repair of the damage.

The most suitable scenario to explain this defense is a situation of a hit between two different cars. Damages may be paid, or the parts of the vehicle that are affected may be replaced or repaired.

**REFERENCES**

**Bodunde Bankole Tort: Law of Wrongful Conduct: Lipservice Punishment (1998), Lagos. Fidelis Nwadalo: the Criminal Procedure of the Southern States of Nigeria, Mij Publisher, Ltd, Lagos (1996). John G. Fleming: The Law of Torts (1977), The Law Books Co. Ltd publisher, London. Sweet & Maxwell. A. Street: The Law of Torts Sweet & Maxwell (1977), London G. Kodilinye & Oluwole Aluko: Nigeria Law of Torts. Spectrum Law Publishers, 1999. The Criminal Procedure of the Northern States of Nigeria.**

**CONVERSION**

Conversion 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. 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, 21st ed. (1996) p. 97-98:

"A conversion is 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”. Ihenacho v Uzochukwu (1997) 2 NWLR pt 487. p. 257 SC.

It is dealing with a chattel which belongs to another person in a manner that is is inconsistent with the rights of the person Conversion includes wrongful taking, wrongful detention, and or wrongful disposition of the property of another person. It is not necessary to prove that the defendant had 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 the chattel belongs to another person, for instance, if he innocently bought the goods from a thief**. Lewis v Avery (1972) 1 QB 198**. In criminal law, conversion is known as stealing or theft.

However, an owner can sue for conversion. Likewise, a person who has mere custody, temporary possession can sue any third party who tries to detain, dispose, steal or otherwise convert such chattel.

**In North Central Wagon & Finance Co. Ltd v Graham (1950) 1 All ER 780**, 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.

**Also in; Chubb Cash v Crillery (1983) 1 WLR 599; Wilson v Lombank Ltd. (1963) 1 All ER 740; Greenwood v Bennet (1973) QB 195 CA; and Union Transport Finance v British Car Auctions (1978) 2 All ER 385 CA.**

**Disparity between Conversion and Trespass**

Conversion is different from trespass to chattels in two main respects. These are:

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. Conversion is known as stealing or theft in criminal law .Therefore, mere touching or moving of a chattel and so forth, only amount to trespass. **Fouldes v Willoughby (1841) 151 ER 1153**.
2. To maintain an action in conversion, the plaintiff need not be in actual possession of the chattel at the time of the interference. It is enough if the plaintiff has right to immediate possession of the chattel, that is, the right to demand for immediate possession of the chattel.

**Ashby v Tolhurst (1937) 2 KB 242.** The defendant car park attendant who negligently allowed a car thief to drive away the plaintiff's car from a car park under his watch was held: not liable in conversion. The driver had possession of the car which he had parked, for he has right to immediate possession. The defendant car park attendant is a bailee who only guarantees the safety of the car that is bailed in the car park as a bailee. The claimant should have sued in the tort of negligence for the loss of the car.

**City Motor Properties Ltd v Southern Aerial Service (1961) CLR 477.** An owner of a chattel was held liable in conversion for dispossessing the plaintiff bailee of it, during the subsistence of the bailment, which was not unilaterally determinable at will by the plaintiff owner.

**Examples of Conversion**

1. Taking; where a defendant takes a plaintiffs chattel out of the plaintiff s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion. Contrast this proposition with the decisions in the cases of Fouldes v Willoughby (supra) and Davies v Lagos City Council (supra). On the other hand, a defendant may not be liable; if he merely moves the goods without denying the plaintiff of title.
2. Using: Using a plaintiff’s chattels as if it is one's own, such as, by wearing the plaintiff’s jewelry, as in the scenario Petre v Heneage (1701) 88 ER 149, or using the plaintiff’s bottle to store wine as was the case in Pen folds Wine Ltd v Elliot (supra) is a conversion of such chattel.
3. Alteration: By changing its form howsoever.
4. Consumption: By eating or using it up.
5. Destruction: By damaging or obliterating it. Mere damage of a chattel is not sufficient to make one liable for conversion. As a general rule of law, mere damage or destruction of a chattel without more, is a trespass to chattel in tort and also a malicious damage in criminal law. **Simmons v Lillystone (1853) 155 ER 1417**.
6. 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. Receiving a chattel from a third party who is not the owner is a conversion. 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: **Armory v Delamirie (1722) 93 ER 664**. A chimney sweep's boy found a jewel and gave it to a jeweler for valuation. The jeweler knowing the circumstances took the jewel, detained and refused to return it to the boy. They boy then sued the jeweler for conversion and for an order for return of the jewelry to him. The court held: that the jeweler was liable for conversion. A finder of a property has a good title, and he has a right or interest, to keep it against all persons, except the rightful owner of the property or his agent. Moorgate Mercantile Co v Finch (1962) 1 QB 701. However, a temporary reasonable refusal by the finder or custodian of a property to hand it over to a claimant, in order to verify the authenticity of the title of the claimant. Is not actionable, except where the refusal is adverse to the owner's better title.
8. By wrongful delivery: Wrongfully delivery of a person's chattel to another person who does not have title or right to possession without legal justification is a conversion.
9. Purchase: At common law, 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 as when a thief, steals and sells a chattel. A buyer in such a situation takes possession at his own risk, in accordance with the rule of law that acts of ownership are exercised at the owner’s peril.
10. By Wrongful Disposition: Such as by sale, transfer of title or other wrongful disposition.  **Chukwuka v C.F .A.O. Motors Ltd (1967) FNLR 168 at 170**, The plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months later the defendants sold the car to a third party who reregistered it in his own name. The plaintiff sued for conversion. The High Court held: that the defendant was liable to the plaintiff for conversion of the car. **The Arpad (1934) p. 189 at 234 and Hollins v Fowler (1875) LR 7 HL 757.**

**Innocent Receipt or Delivery Is Not Conversion**

Generally, innocent delivery, or innocent receipt are not torts, nor criminal offenses. 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 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 a nuisance.

**Unipetrol v Prima Tankers Ltd (1986) 5 NWLR pt 42 p. 532 CA.**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 elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of 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, FHA v Sommer (1986) 5 NWLR pt 17, p. 533 CA.

 **In Owena Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd (1993) 4 NWLR pt. 290, p. 698 CA,** 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.

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 Relating To 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 (1982) 1 AllER 834 CA.** 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 (1896) 2 QB 44 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 (1886) 33 Ch D 562.
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.

**In Parker v British Airways (supra),**

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. **South Staffordshire Water Co v Sharman (1896) 2 QB 44 and Waverley Borough Council v Fletcher (1995) 3 WLR 772 CA.**

As a general rule of law, anybody who has a finder's right over a lost property, has an obligation in law to take reasonable steps to trace the true owner of the lost property, before he may lawfully exercise the rights of an owner over the property he found.

**Who May Sue For Conversion?**

Those who may sue in the tort of conversion include:

1. Owners: An owner in possession, or who has right to immediate possession may sue another person for conversion.
2. 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 action against a bailee for conversion.

See The Winkfield (1902) P. 42 at 60.

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 held 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”. See also Kahler v Midland Bank Ltd (1950) AC 24 at 59 and Cooper v Willomatt (1843-60) All ER 556.

Other persons who may have right to immediate possession and therefore, may be able to sue another person for conversion of a chattel include; Holders of lien and pledge, Buyers, Assignees, Licensees, Trustees, Finders, see Armory v Delamirie (1722) 93 ER 664; London Corp v Appleyard (1963) 2 All ER 834 and Hannah v Peel (1945) KB 509.

**Defences for Conversion of A Chattel**

In an action for conversion of a chattel, the defendant may plead:

1. Jus tertii, that is, the title or better right of a third party
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, or has right to immediate possession.
5. Limitation of Time.

 **The Remedies for Conversion**

In a claim for the conversion of a chattel several remedies are available to a plaintiff. The court in its judgment may order any, or a combination of any of the following reliefs:

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 honestly in good faith buys and improves a stolen car and is sued by the true owner; the damages may be reduced to reflect the improvements.
4. Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved.
5. 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 of profit, or existing contract or wages for the period of the conversion of the work tools or equipment.

 **REFERENCES**

**Bodunde Bankole Tort: Law of Wrongful Conduct: Lipservice Punishment (1998), Lagos. Fidelis Nwadalo: the Criminal Procedure of the Southern States of Nigeria, Mij Publisher, Ltd, Lagos (1996). John G. Fleming: The Law of Torts (1977), The Law Books Co. Ltd publisher, London. Sweet & Maxwell.**

**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.

**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 in 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. Anybody who wrong fully takes, detains, or retains a chattel, and after a 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 (Interference with Goods) Act 1977 has abolished the tort of detinue as a separate tort, and merged it with the tort of conversion where it is now known as conversion by detinue or detention.

In Nigeria, it still exists as a separate tort. Examples of detinue, that is, detention or retention of goods are many and include 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 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.

**When to Sue for Detinue**

A plaintiff can only maintain action for the tort of 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 the plaintiff has made a proper demand for the return of the chattel, without lawful excuse. Thus, there must have been a demand by the plaintiff for the return of the chattel and a refusal or a failure to return them. This making of a demand by the plaintiff on the defendant is a condition precedent which the plaintiff must establish to succeed in his claim for detinue.

Kosile v Folarin (1989) 3 NWLR pt 107, p. 1 SC,

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 Supreme Court held: inter alia that the seizure and detention of the vehicle by the defendant was wrong. The plaintiff was entitled to the return of the vehicle or its value and for loss of the use of the vehicle until the date of judgment at the rate of N20 per day.

In the above case, the Supreme Court emphasized the requirement that in an action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable for detinue. See also lhenacho v Uzochukwu (1997) 2 NWLR pt 487, p. 257 SC.

In West Mrica Examinations Council v Koroye (1977) 2 SC 45; 11 NSCC 61,

The plaintiff sat for an examination conducted by the defendant council. The defendant neglected and or refused to release his certificate. The plaintiff successfully claimed in detinue for his certificate and was award damages in lieu of the release of the certificate by the Supreme Court.

**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:

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 return of the chattel.
2. 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.

**The Defenses for Detinue**

In an action for detinue, a defendant may plead that:

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, a third party person 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 defense, that 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 paramount title, that will enable him to establish a better title, and the right to possession, than the plaintiff. Otherwise, as CLEASBY BJ said in Fowler v Hollins (1872) LR 7 QB 616 at 639: "Persons deal with the property in chattels, or exercise acts of ownership over them at their peril”.
4. Innocent delivery
5. Subsisting bailment
6. Subsisting lien on the chattel. See Otubu v Omotayo (supra)
7. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
8. Inevitable accident, see National Coal Board v Evans (1951) 2 KB 816.
9. Reasonable defense of a person or property, such as when one beats or injures a dog that was attacking him or another person.
10. Enforcement of a court order or other legal process, 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, etc.

**The 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:

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 its character, content, and it has not been damaged nor destroyed during its detention.
2. Replacement of the Chattel: Where possible or appropriate, a defendant may be ordered to replacement 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 the current market value of the chattel as may be assessed. The measure of damage in detinue is usually the market value of the goods as proved at the time of judgment. The onus is on the plaintiff to prove the market value. Therefore, where there is default of restitution a plaintiff may claim for payment of the value of the chattel. This option appears to be the best form of action, where the chattel has otherwise been removed from jurisdiction, or hidden, damaged, destroyed or otherwise not found. In such circumstances there is no alternative than to claim for the market value of the chattel as assessed, plus any specific and general damages for its detention.
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, using only reasonable force after he has made a demand for their return. However, he may not trespass through the land of an innocent party to retake the goods. He may only go on such land with permission. However, recapture as a remedy is usually frowned upon by court for the breach of peace and other offenses it may occasion. This is because self-help is an instance of taking the laws into one's hand. See Agbai v Okogbue (1991) 7 NWLR pt 204, p. 391 SC. Therefore, a person may not resort to the option of recapture or self-help except it is safe, expected, and reasonable or if it will not be resisted by the defendant and or persons acting for him.
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 a third party's goods have been wrongfully taken in the course of levying execution or distress of the movable property of another person or judgment debtor, such third party claiming ownership may recover them by means of an interpleader summons determining their ownership. The registrar will then issue a warrant for the restoration of the goods, to such third party or claimant on bond. Therefore, Replevin is the re-delivery to an owner of goods which were wrongfully seized, the action for such re-delivery, and for any specific and general damages suffered by him as the result of the detention.
6. Damages: When a defendant has been found 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 it, 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. The reasonable hire usually includes the wear and tear of the goods. Therefore, as the courts have often affirmed the remedies available for the tort of detinue are an order for specific return of the chattel, or in default, an order for payment of the value and also damages that were suffered due to loss of use by the defendant up to the date of judgment or re-delivery of the chattel to the plaintiff. Also general damages may be awarded as may be assessed by the court. General damages are usually presumed in this action, especially for the loss of the use of the chattel. As in claims in other areas of law, general damages may be awarded at least to cover part of the cost of the legal action.

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