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**QUESTION**

The tort of trespass to Chattel in 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 to Chattel, 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 defense to Trespass to Chattel, conversion and Detinue Differences between conversion and Detinue Support with References Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

**INTRODUCTION**

The law of torts is concerned with the allocation of responsibility for certain types of losses. Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages (Jolowicz). A tort occurs when a civil wrong fixed by the law and such duty is being owed to persons generally its breach is redressible primarily by an action for damages (Kodilinye). From the definitions above we can deduce that a tort is a breach of a civil duty imposed by law, which remedy is unliquidated damages, injunction, or other appropriate remedy. The purpose of the law of torts is to prohibit a person from doing wrong to another person and to compensate persons harmed by the wrongful conduct of others.

**Trespass to Chattel**

Generally, trespass refers to a wrongful use of another person’s property without his or her permission. Under intentional torts, there are two types of trespass and they are; trespass to chattels and trespass to land. Trespass to land is an unlawful entry or use of another person’s land without the owner’s permission or reasonable excuse. The word “chattel” means any article, goods, or personal property, other than land and an immoveable property. It is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land and an immoveable property. Examples of chattel include cars, furniture, animals, vessels, aircrafts etc. This tort may be defined as a direct wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional or negligent (Kodilinye). Trespass to chattel may take various forms such as destroying, damaging or merely using the goods or wrongfully moving them from one place to another. The purpose of the tort of trespass to chattel is to protect the chattels, goods, and all personal properties of a person who has the title or possession, or right to immediate possession against meddling, damage, destruction, diminution, conversion, detinue, or any interference whatsoever, by another person without lawful justification or excuse.

The three forms of trespass to chattel are each actionable per se upon commission or occurrence. Thus means that the plaintiff can file a complaint for trespass to chattel without having to prove damage. This principle can be seen in the case of Davies V Lagos City Council where the court held that the defendants (the council) were entitled to revoke the plaintiff’s permit because of his non-compliance with the regulations governing the use of hackney carriage licenses, but the defendants were not entitled to seize the vehicle or otherwise take possession of it. The defendants were therefore liable for trespass to chattel (Kodilinye). We should note that although, trespass to chattel is actionable per se, however the principle of strict liability does not apply to it as a tort. Furthermore, where a specific damage has been done to a chattel, a plaintiff is entitled to prove it and recover damages for it as the case may be. The plaintiff must show that he had in his possession the chattel at the time of the trespass or he is entitled to immediate possession of the chattel. This principle is established in the case of Erivo V Obi (1993) where 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 appeal court held that for trespass to chattel to be actionable it must have been done by a wrongdoer intentionally or negligently, but now the modern rule is that either intention or negligence must be established and there is no liability for an interference with goods which is merely accidental (Kodilinye). An example is when Kiitan is asked to hold onto an antique lamp for another person. They will need the lamp back and it is clear that you are not the owner of the lamp. But out of frustration for the owner of the lamp, you smash it and completely destroy the lamp. Kiitan will have committed a trespass to chattel on the other person’s property.

**Who is qualified to sue for trespass to chattel?**

This question has been critically examined and considered by the courts, and they have come to the conclusion that persons who have possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. Examples of such persons are: Owners, Bailee’s, Lenders, Assignees, Trustees, Finders, Custodians, Caretakers, Adverse possessors, because mere possession gives a right to sue to retain possession and Executors (Kodilinye).

**Defenses to trespass to chattel**

From the example given above, Kiitan committed a trespass to chattel on another person’s property, if he is sued these are the defenses that will be made available to him;

1. Consent: This the most common defense to trespass. If the owner of the property gave you permission to use their personal property, you can claim consent. Keep in mind that consent can be given through both words and actions. However, this defense will not work if the consent was induced by fraud or was given by someone who is incompetent, intoxicated or a minor.
2. Public Necessity: This defense can be used if you intentionally interferes with another person’s chattel to protect the public. However, if you acted unreasonably when taking another person’s chattel, this defense will not be available to you. An example of when this defense would be available is if you took another person’s gun in order to prevent someone else from shooting up an entire building.
3. Private Necessity: This defense can be used when the purpose of using another person’s chattel is to protect your own interests. Private necessity can only be claimed if you were attempting to protect yourself from death or serious bodily harm. As such, this defense is not as commonly used.
4. Privileged Invasion to Reclaim Personal Property: Lastly, if you take someone’s personal property because it is actually your own property, you can argue privilege as a defense. In order for this defense to be successful, the defendant must have taken your property or it must be in the defendant’s possession because of an act of god, such as a storm or flood (Folk).

**Remedies to trespass to chattel**

The remedies to trespass to chattel are;

1. The payment of damages
2. The replacement of the chattel
3. The payment of the market price of the chattel
4. Repair of the damage (Kodilinye).

**Conversion**

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 his chattel (Kodilinye). 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. It consists of the willful and wrongful interference with the goods of a person entitled to possession in such a way as to deny him such right or in such a manner inconsistent with his right. The right to immediate possession is the determining factor. That is, if the right exist, actual possession is unnecessary. In the case of **North Central Wagon and Finance Co Ltd vs Graham*,***the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus the plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff didn’t have actual possession of the car at the time. Since the right in the goods were already vested in the plaintiff, there was no need for actual possession (Olamide).

Conversion includes denying a person of the title or possession, or use of his chattel. 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. This principle is seen in the case of Lewis v Avery (1972). In this tort 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 the case of North Central Wagon & Finance Co. Ltd v Graham (1950)*,* 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 (Kodilinye).

**Examples of the tort conversion**

1. Alpha cuts down and hauls away trees on land s/he knows is owned by Beta, without permission or privilege to do so.

2. Gamma takes furniture belonging to Delta and puts it into storage, without Delta's consent (and especially if Delta does not know where Gamma put it) (Wikipedia).

**Defenses to Conversion**

1. **Abandonment:** An action for conversion would not succeed in a situation in which the property in question was abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.
2. **Authority of Law:** Conversion that is done under the authority of law would be justified. For example, the selling of the goods of a defendant by the claimant by an order of court in order to get a judgement debt, would be valid.
3. **Consent:** If the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be held to be valid.
4. **Statute of limitations:** If the suit for conversion is not filed after a specified period (ranging from 2-5) years, it would be held to be statute barred. Thus, the suit would not be heard by the court.
5. **Unidentifiable property:** If the property cannot be properly identified, it could also serve as a defense to conversion (Olamide).

**Remedies to conversion**

The remedies available to an injured party under the tort of conversion are;

* Order for delivery, return or specific restitution of the goods; or
* Alternative order for payment of the current market value of the chattel.
* 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.
* Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved.

**The Concept of Innocent Delivery or Receipt**.

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 his chattel (Kodilinye). 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 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. This seen in the case of Unipetrol v Prima Tankers Ltd (1986) where 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 (Kodilinye).

**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 (1982) where 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 (Kodilinye). The English Court of Appeal held: that the proceeds of sale belonged to the plaintiff who found it. The rules are;

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)
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 (Kodilinye).

**Detinue**

The tort of detinue occurs when a person wrongfully detains a person’s property and unreasonably refuses to return that property to the rightful owner. Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. This tort is similar to the tort of conversion, except for a specific element: it is a condition of the action of detinue that the plaintiff has made demand for the return of goods, and the demand has been refused. The plaintiff must also have a right to immediate possession of the chattel.

**Element of detinue**

There are four element required to establish detinue and they are;

* Make a demand: The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of demand. The demand is imperative.
* Refuse a demand: The defendant must refuse that demand (whether expressly refusing or failing to respond at all). On some occasions, a defendant who does not have possession of chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.
* Unreasonable Refusal: Where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable.
* Consequential Damage: As a result of the defendant’s conduct, the plaintiff has suffered loss. This will usually be calculated as the value of the chattel.

Once the above elements have been established, an action for detinue can be made out (Gibb Wright). The tort of detinue can arise in two ways; the first way is whether the defendant has actual possession of any chattel and refuses to return it to the plaintiff on their demand. The second way is where the defendant was in possession of the plaintiff’s chattel under bailment (i.e. the good has been temporary provided to the defendant for a particular purpose) and has wrongfully parted with that chattel.

Note: It is important to note that even if there is a case of a wrongful parting with the chattel, there must be a demand and refusal for detinue to arise.

**Defenses to Detinue**

* Consent

It is a defense to show that there can be no trespass if the interference occurs with the plaintiff’s consent. Consent can either be express or implied (Gibb Wright).

### No right to possession

The legal ownership of a chattel can be complicated. Registration of a vehicle is not proof of ownership, for example. If someone has purchased a chattel, ownership may be passed to another through it being given as a gift. There may be contractual obligations (in particular for commercial equipment) or other facts that demonstrate that the person demanding the return was not the rightful owner (Gibb Wright).

### The demand was invalid

If a demand has been made, it may be vague, confusing or otherwise invalid. If the demand isn’t valid, then a refusal may not have been unreasonable (Gibb Wright).

### There was no refusal

If the refusal to return something is not specific, and a sufficient amount of time has not passed to imply that there is a refusal, then the element of refusing the demand to return the chattel may not be met (Gibb Wright).

### It was not reasonable to return the chattel

There may be a reasonable excuse why the chattel had not been returned in time (Gibb Wright).

* Jus Tertii

It is a defense to show that a third party has a better right to possession than the plaintiff (Gibb Wright).

**Remedies to the tort detinue**

### Delivery up of goods:

An order for delivery up of goods is available in an action for detinue. It is basically a Court order demanding the return of the goods or chattel to the plaintiff.

### Compensatory damages:

Compensatory Damages may be awarded if there has been a loss.

### Restitution:

The remedy of specific restitution (i.e. remedy calculated based on the gains of the defendant) where damages are inadequate.

### Abatement:

A person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with the enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession (Gibb Wright).

### **Conversion and detinue**

* Conversion is when one deals with a chattel in a manner repugnant to the immediate right of possession of the true owner. Subjective intention to convert is unnecessary (Stern).
* Detinue is the wrongful detention of goods, when one refuses to deliver up goods to a person having the immediate right to possession. Often, there is a demand for return, and a refusal, but that is not essential. Where the defense shows the defendant would have refused to comply, then a formal demand would have been futile (Stern).

# References

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