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**LAW OF TORTS I**

A chattel is any moveable property. It is any property other than land and immoveable property. Examples include books, cars, planes etc. Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the negligent or intentional interference with the personal property in the possession of another person without lawful justification. The tort of trespass to chattel aims to protect all chattels of a person who has title by prohibiting all interference without legal justification. It protects the right of ownership of a person to his goods. The action of trespass to chattel is actionable per se. This means that the person claiming for damages does not have to prove any damage. However, in a situation where damage was actually done to the property, the owner can prove it and recover damage. Trespass to chattel is made up of three types of torts. They include:

1. Trespass to chattels per se
2. Conversion
3. Detinue

**Trespass to chattels**

Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the negligent or intentional interference with the personal property in the possession of another person without lawful justification. The interference must be direct and wrongful. It must also be negligent and intentional as seen in the case of **Erivo v Obi**[[1]](#footnote-1) where the defendant accidentally broke the side windscreen of the plaintiff’s car when he shut the door. The plaintiff sued and the court of appeal held that the defendant was not liable because he did not shut the door with force and what happened was an accident and not intentional or as a result of negligence. The mere touching or moving of a person’s property without the permission of the owner may in appropriate circumstances count as a trespass to chattel and cause the plaintiff to be entitled to nominal damages even if no harm was caused to the property. This can be seen in the case of Foudles v Willoughbury[[2]](#footnote-2) where the defendant in a bid to induce the plaintiff to leave his boat disembarked the horses of the plaintiff from the ferry. The court held the defendant liable for trespass to the horses.

**Purpose of tort of trespass to chattel**

1. The right of retaining one’s chattel
2. Protection of the physical condition of the chattel
3. Protection of the chattel from any unlawful interference.

Basically, the tort of chattel is to protect the right of immediate possession of a chattel, as distinct from ownership. It protects the rights of a person to control, possession, retention or custody of a chattel against interference by another person without lawful justification. To maintain an action for trespass, a person must show that he had possession at the time of the trespass or is entitled to immediate possession or custody of the chattel. As a result of this, someone who borrows or rents a property can maintain an action against anyone who illegally interferes with the property. A person in possession of gods, though not being the true owner can bring an action for trespass as seen in the case of **Armory vs Delamirie** [[3]](#footnote-3)**.** In this case, a boy found a jewel and took it to a blacksmith to know the value of it. The blacksmith refused to return it and the boy sued. The court held that although the boy was not the true owner, he had possession of the good and this entitled him to sue for trespass. In this tort, injury is done to the chattel while it is the possession of the person claiming damages. The property is usually not taken from his possession as we have in the case of conversion or detinue.

Trespass of chattel can be committed in different ways. It can be by taking a chattel away, throwing another person’s property away, mere moving the good from one place to another as in the case of Kirk v Gregory[[4]](#footnote-4) where a woman who moved rings belonging to a dead man from one room to another was held liable in nominal damages for asportation. Another way is by killing another person’s animal. This can be seen in the cases of **Shieldrick v Abery**[[5]](#footnote-5). In **Slater v Swann[[6]](#footnote-6)** the court also held that beating a person’s animal constitutes trespass. Other ways trespass can be committed include throwing something at the chattel, using the chattel without permission, damaging or causing harm to the chattel and even filling another person’s bottle with anything as seen in the case of Penfolds Wines pty Ltd v Elliot[[7]](#footnote-7).

**Elements of trespass to chattel**

To succeed in a claim of trespass the plaintiff must prove two things:

1. Intentional
2. Negligence

To succeed in his claim the plaintiff must prove that the trespass was either negligent or intentional. Even in the case of an accident, if the plaintiff can prove that the accident is as a result of negligence on the part of the defendant, he will be able to maintain an action. In the case of **Leame v Bray**[[8]](#footnote-8), the defendant negligently drove his carriage and collided with the carriage of the plaintiff. The court held him liable for trespass. Also in the case of **National Coal Board v Evans & Co[[9]](#footnote-9)**, an electrical cable was placed under the land of the county council by the NBC without the council’s permission. The council contracted the defendant to excavate a trench on the land and in the process of working they struck a cable. The court held that no liability in trespass can be found because the action was involuntary and accidental and they could not prove negligence. Intention is another thing that must be proven. You must be able to prove that the defendant has the intention of committing the trespass and that it was done intentionally i.e it wasn’t by accident or as a result of negligence on the part of the defendant. In the case of **Davies v Lagos City Council**[[10]](#footnote-10) the seizing of the car was an intentional act. It was not an accident or something that was done negligently. Also in the case of **G.W.K v Dunlop Rubber Co[[11]](#footnote-11)**, the tires were switched intentionally and not by mistake. They were held liable for trespass.

**Persons qualified to sue for trespass to chattel**

Anyone who has possession or ownership of chattel has the right to sue for trespass. It doesn’t matter whether or not the person has a good title as seen in the case of **Armory v Delamirie** (supra) where the defendant was unable to raise the issue of *jus tertii* (better title). All the court cares about is who has possession of the chattel. A person who borrowed a possession or rented a chattel can sue for trespass successfully as long as he has possession as seen in the case of **Davies v Lagos City Council** (supra). In other words, anyone who has immediate posession or right to immediate possession can sue. Also, a person who does not have legal right is deemed to have possession by law so they will be able to protect any chattel left in their care. People who can sue for trespass to chattel include:

1. Owners of properties
2. Caretakers
3. Bailees
4. Assignees
5. Lenders
6. Administrators of estates
7. Trustees etc.

**Defences for trespass to chattel**

1. Protection of persons or property: if a person can prove that a trespass occurred while trying to protect life or property, the defendant will not be held liable. But he must prove that the danger was real and imminent and that he acted reasonably **Cresswell v sirl.**
2. Exercise of a legal right: it would not be counted as trespass if an action is done in levying lawful distress for rent. This usually happens in situations where the chattels are causing damage to the property of the defendant.

Other defences include:

1. Subsisting lien
2. Subsisting bailment
3. Limitation of time as a result of the expiration of time specified for a legal claim
4. Honest conversion
5. Inevitable accident

**Remedies for trespass to chattel**

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

**CONVERSION**

Conversion is the willful interference, possession, or disposition of another person’s property as if it is one’s own without any legal justification. It 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 land. In other words, conversion is any intentional interference with another person’s chattel which unlawfully deprives the person of title, possession or use. 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. And also, whether or not the defendant knew that the chattel belongs to another person is immaterial. In the case of Nort Central Wagon & Finance Co. Ltd v Graham, the defendant hire purchaser sold the car in contravention of the terms of the hire purchase agreement. The court held that the plaintiff was entitled to terminate the agreement and sue the defendant n tort of conversion. In unipetrol v Prima Tankers ltd, the plaintiff had a contract with the defendants and the defendants were meant to carry the defendant’s cargo of feul from port harcourt. The defendant allegedly went somewhere else with the cargo of fuel and the defendant sued. The court held that they wee liable for conversion.

In conversion, negligence or intention is not necessary. At common law, mere de facto possession is sufficient title to support an action of cconversion against a wrong doer

**Examples of conversion**

1. Taking: where a defendant takes a plaintiff’s chattel out of the plaintiff’s possession without lawful justification with the intent of exercising dominion over such good, there is a converson.
2. Using: using a plaintiff’s chattel as one’s own is a conversion. This was established in the case of Petre v Heneage where the defendant wore the plaintiff’s jewelry
3. Alteration
4. Consumption
5. Destruction
6. Receiving: receiving a chattel from a thid party who is not the owner is conversion. For example, when one buys a stolen car it is conversion.
7. By detention: when you knowingly keep someone else’s property.
8. Wrongful delivery
9. Wrongful disposition of someone else’s property

**Innocent receipt or delivery**

Innocent receipt or delivery is not conversion. They are neither torts nor criminal offences. When an innocent carrier of goods receives goods in good faith from a person he believes to have lawful possession of them, and delivers them in good faith to a third party, there is no conversion. Similarly, innocent receipt is not conversion however, the receiver must not willfully damage or destroy the goods unless they constitute a nuisance.

**Rules of lost property**

1. A finder of a chattel acquires no right over it unless it has been abandoned or lost and he takes it into care and control. He acquires the right to keep it against all persons except the real owner.
2. Any servant or agent who finds a lost property in the course of his employment, does so on behalf of his employer, who by law aquires the rights of a finder.
3. An occupier of a land or building acquires the superior rights to those of a finder over property or goods in, or attached to the land or building. In the case of South Staffordshire Water Co v Sharman, the rings found in the mud of a pool were said to belong to the owner of the land
4. However, an occupier will only have superior rights to thiose of a finder if before the finding he has manifested an intention to exercise contrl over the premises and things on it.

Persons qualified to sue for conversion

1. Owners
2. Bailees
3. Holders of lien and pledge
4. Finders
5. Buyers
6. Assignees
7. Licensees
8. Trustees

Defences for conversion of a chattel

1. Better right of a third party
2. Subsisting bailment
3. Subsisting lien
4. Temporary retention
5. Limitation of time

Remedies for conversion

1. Order for return of the goods
2. Alternative order for payment of the current market value of the chattel
3. 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 is entitled. Detinue is a claim for the specific return of a chattel to the plaintiff who is entitled to it. As a general rule, for a person to have a successful claim in detinue, he must have possession before the detention or have right to the immediate possession of the chattel.

**When to sue for detinue**

1. The plaintiff must have title to immediate possession of the chattel
2. The defendant who is in possession of the chattel must have failed or refused to deliver it to the plaintiff after the plaintiff has made a proper demand for the chattel

**Differences between conversion and detinue**

1. The refusal to return a chattel on demand is the essence of detinue. There must have been a demand for return. This was established in the case of Kosile v Folarin
2. Detinue is the proper remedy when a plaintiff wants the actual good to be returned and not just a market value.

**Defences for detinue**

1. He has mere possession of the goods
2. That the plaintiff has insufficient title
3. The defendant may plead jus tertii ( a better title of a third party )
4. Innocent delivery
5. Subsisting bailment
6. Inevitable accident
7. Reasonable defence of property or life

**Remedies for detinue**

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 in its character and it has not been damaged
2. Replacement of the chattel: a defendant may be ordered to replace the chattel where necessary by supplying an identical one
3. Claim for market value of the chattel: this is a claim for the currnt market value f the chattel as it may be assessed

Other defences include:

1. Recapture or self help
2. Release on bond
3. damages

REFERENCE

Malemi E.O (2013). Law of Torts (2nd edition). Lagos, Nigeria: Princeton Publishing Co.

[www.djetlawyer.com](http://www.djetlawyer.com)

1. (1939) 9 NWLR pt 316 p. 60 CA [↑](#footnote-ref-1)
2. (1841) 151 ER 1153 [↑](#footnote-ref-2)
3. (1972) EWHC KB J94 [↑](#footnote-ref-3)
4. (1878) 1 Ex D 55 [↑](#footnote-ref-4)
5. (1793) 170 ER 278 [↑](#footnote-ref-5)
6. 93 ER 906 [↑](#footnote-ref-6)
7. (1946) 74 CLR 204 at 214 -215 [↑](#footnote-ref-7)
8. (1803) 102 ER 724 [↑](#footnote-ref-8)
9. (1951) 2 KB 861 [↑](#footnote-ref-9)
10. (1973) 10 CCHCJ 151 [↑](#footnote-ref-10)
11. (1926) 42 TLR 376 [↑](#footnote-ref-11)