

**NAME: ANYANWU MIRIAM CHIDINMA**

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## **TRESPASS TO CHATTEL ASSIGNMENT**

As rightfully established in the given question, the tort of Trespass to Chattel alias Trespass to Personal Property or Trespass to Goods particularly in Nigeria, possesses three branches viz:

- Trespass to Chattels (without conversion or detinue of the chattel)
- Conversion
- Detinue

In this study, the writer shall examine critically, these three torts by poking their definitions, establishing their differences and giving appropriate examples using standing case laws, popular materials authored by professionals and legal instruments.

### **TRESPASS TO CHATTEL**

According to Ese Malemi on “Law of Torts”, the term of concern, ‘Trespass to Chattel’ refers to *any direct and unlawful interference with a chattel in the possession of another person*. The question then is posed, ‘What is a chattel?’. The definition of ‘chattel’ per the 10<sup>th</sup> edition of Black’s Law Dictionary refers to *moveable items of property which are neither land nor permanently attached to land or a building either directly or vicariously through attachment to real property*. In simpler terms, a chattel is basically any moveable property be it article, goods, personal property etc. It can then be inferred from the above definitions that Trespass to Chattel is any direct interference with a personal tangible property in the possession of another person without lawful justification.

**The core purpose of this tort is to protect tangible items of a person who possesses the right title to these items by warding off unlawful interference of these items from external forces.** Thus, to bring an action and be successful against an individual for this tort, the claimant or plaintiff must prove that he had lawful possession of the item(s) in question at the time of interference.

**Some examples of Trespass to Chattel as a tort include; taking another individual’s pen, writing on a person’s book without permission, driving a car of another person, throwing an object at a person’s work of art etc.**

## Elements of Trespass to Chattel

- **Unlawful interference or meddling with another individual's property:** For the tort of Trespass to Chattel to be established, it has to be proven that the interference with the property or item in question was not lawfully justified i.e the tortfeasor was not granted any permission to meddle. This element has to be successfully proven by the claimant or plaintiff.
- **It is actionable per se:** Actual damage or harm does not have to occur or be proven to be successful in a claim for this tort as also said by *THE COURT OF APPEAL* in the case of *ERIVO v. OBI*.
- **Possession is essential:** If the claimant was not in possession at the date of the alleged meddling, he cannot sue for this tort of trespass to chattel. However, he may be able to sue for conversion (*Winfield and Jolowicz on Torts*) which we would look into subsequently. This element of possession has to be proven by the claimant.
- **It is a fault-based tort:** It must be clear that the defendant was at fault by interfering with the chattel. Liability will not arise if the court discovers that the interference was not intentional and the defendant did not act negligently. *ASHBY v TOLHURST*.

## Examples of People who may sue for Trespass to Chattel

Anybody who holds possession of the items at the time of interference has the power and ability to sue for trespass to chattel. Furthermore, caretakers who neither have possession nor own the items but have been deemed to have possession according to the law can sue. In clear terms, individuals who can sue for this tort include:

- Owner of said property
- Caretakers
- Trustees
- Bailees
- Hirers etc.

## Defences For Trespass to Chattel

- **Protection of persons or property:** If trespass to chattel is committed in the process of trying to protect persons or property, the defendant would not be held liable. However, the burden falls on the defendant to prove that he acted reasonably and there was imminent serious danger which necessitated his action. *In the case of CRESSWELL v SIRL, the defendant shot the plaintiff's dog as the dog was seen threatening the defendant's sheep. The court held that the defendant was not liable as his action was reasonable in those circumstances.* This defence largely depends on the facts and merits of the case.
- **Inevitable Accident:** This applies in circumstances where the defendant can show that their action was involuntary and accordingly, the defendant is without fault. The defendant must show that his action was neither negligent nor intentional and the interference with the chattel was an inevitable accident. *In the case of NATIONAL COAL BOARD v EVANS & CO., the defendants were unaware of an electric cable*

*which passed under the land they were working on. During excavation, a mechanical digger damaged the electric cable and water seeped into it causing an explosion and subsequently, cutting off electricity supply to the plaintiff's coal mine. In an action claiming damages for trespass to the electricity cable, the court held that in the absence of establishing negligence on the part of the defendants, there was no fault and no trespass by the defendants. The damage was an inevitable accident.*

- **Consent:** If the defendant is able to establish that he had the plaintiff's consent to interfere with the chattel, then he will not be held liable seeing as an element of this tort is unlawful interference and consent entails lawful interference. Consent might either be implied by conduct or express. However, it has to be voluntary and genuine.
- **Jus Tertii:** This is a Latin term which literally translates into 'rights of a third party'. If it can be established that a third party has better rights to the chattel than the plaintiff, a cause of action in trespass may fail. This was the position of *THE SUPREME COURT* in the case of *C.O.P & ANOR. v OGUNTAYO*.
- **Exercise of a Legal Right:** It will not be counted as trespass to chattel if an action is done in exercising one's legal rights. For example, in a situation where the chattel in question is causing damage to the property of the defendant. In this situation, he has a right to seize them till the plaintiff compensates him for his loss. Also, trespass to chattel can be excused if it occurs in the carrying out of a legal process i.e., an order by the court.

### Remedies for Trespass to Chattel

As in every tort in tort law jurisprudence, a person who wishes to bring a claim for trespass to chattel has these remedies available to him.

- **Payment of Damages:** An individual can be granted damages by the court if his action for trespass to chattel is successful. Some of the damages which can be awarded include: **Compensatory Damages** which applies if damage to the chattel has been sustained or is not capable of being returned. The aim for this type of damages is to put an injured person in the same situation as they would have been in had the trespass not been committed ; **Nominal Damages** which is awarded where no actual damage has been sustained by the plaintiff ; **Exemplary or Punitive Damages** which is damages awarded in order to punish the defendant and preventing others from engaging in similar conduct.
- **Injunctions:** An injunction is a court order preventing a party from doing something, or alternatively, forcing a party to do a specific thing. In order for the court to grant an injunction, the court must be satisfied that the damage suffered by the plaintiff is significant (such as where the trespass is ongoing). The court may give an injunction for the tortfeasor or defendant to repair the damage caused.

## CONVERSION

Paying reference to the lesson of 'Trespass to Chattel' on **dJetLawyer.com**, *this 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*. Generally, conversion involves an interference with the Right of Possession of Property. It basically entails dealing with another person's property as if it is one's own. It is the claim of a right that is inconsistent with the rights of the person who has title, possession or right to use the chattel. There is an intentional interference with another person's chattel which unlawfully deprives the person of title, possession or use his chattel. Due to the nature of the tort of conversion, in criminal law, conversion is referred to as stealing or theft.

Unlike in the tort of Trespass to Chattel, it is irrelevant to prove that the defendant had intention to deal with the goods. **Conversion is a strict liability tort**. It is enough to prove that the defendant only interfered with the good hence it is immaterial that the defendant does not know that the chattel belongs to another person e.g if he innocently bought goods from a thief. A good example was in the case of **NORTH CENTRAL WAGON AND FINANCE CO. LTD. v GRAHAM** where *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 car. The defendant, without informing the plaintiff, auctioned the car thereby spurring the plaintiffs to sue 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.*

**According to Winfield and Jolowicz on Tort, conversion at common law may be committed in so many different ways. A few of these actions which may constitute the tort of conversion include; taking of a chattel which does not belong to one, using of a chattel as seen in the case of PETRE v HENEAGE where the defendant wore the plaintiff's jewelry without her permission, alteration which is changing the form of the chattel, detention of a chattel etc.**

This then leads us to the dissection of the distinction between the tort of Trespass to Chattel and the tort of Conversion.

### Differences Between Conversion and Trespass to Chattel

- According to an article on **FindLaw.com**, the main difference between trespass to chattels and conversion is the degree of interference. Conversion occurs when a person uses or alters a piece of personal property belonging to someone else without the owner's consent whereas in the tort of trespass to chattels, alteration or use of the chattel is not needed. It is referred to as stealing or theft in Criminal Law. A mere interference is not enough to prove the tort of conversion as held in the case of **FOULDES v WILLOUGHBY (1841)**.
- **Prosser** refers to trespass to chattel as the 'younger brother' to conversion in the sense that while conversion is remedied by a full replacement of the item or payment of the

full value of the item no matter how little the damage caused is, trespass to chattel is remedied only based on the extent of the damage caused if any.

- It is enough if the plaintiff has the right to immediate possession of the chattel which is the right to demand for immediate possession of the chattel as he does not need to be in actual possession of the chattel.

### Elements of Conversion

- **Possession of chattel by the plaintiff:** However, the plaintiff may not necessarily have possession at the time of interference. A mere right to possession is enough to sue for conversion *CONSOLIDATED CO. LTD v CURTIS & SON*.
- **Interference with the rights of the plaintiff:** To constitute conversion, the defendant had to have interfered with the rights of possession entitled to the plaintiff or carried out actions which may be inconsistent with those rights.
- **It is intentional:** For one to succeed in a claim for conversion, he has to prove that the action of the defendant was intentional in such a way as to deny him of his rights to the chattel. In the case of *YOUL v HARBOTTLE*, *it was held that if an act of interference with a chattel is intentional or willful, it is not a defense that the tort was done by a mistake though an honest mistake.*
- **It is actionable per se:** The chattel does not have to be destroyed or altered to amount to conversion. A mere taking of the chattel and claiming possession of it can amount to conversion. In the case of *CHUKWUKA v C.F.A.O MOTORS LTD.*, *the court held that the defendant was liable to the plaintiff for conversion of the car due to the fact that they sold it to a third party like it was theirs.*

### The Concept of Innocent Receipt or Delivery

Ese Malemi on “Law of Tort” holds that in the broad sense, innocent receipt or delivery of chattel or goods cannot be said to be a wrong therefore it is also not conversion. Where an individual such as a dispatch rider receives chattel in good faith from a person, he deems to have lawful possession of such an item, and he delivers them to a third party following the instruction of the person, all in good faith, he cannot be charged for conversion. Likewise, an innocent receipt of goods in good faith is not conversion unless the receiver tampers with such goods even when it creates no effects on the receiver.

However according to Winfield and Jolowicz on tort, there is no such term as innocent receipt or delivery except cases where the receipt or delivery was involuntary. In the case of *HOWARD v HARRIS*, *a playwright sent the manuscript of a play to a theatrical producer who never asked for it and later lost it. The producer was not held liable for conversion as he was an involuntary recipient of the manuscript.*

## The Lost Property Rule

The celebrated English Court of Appeal case, *PARKER v BRITISH AIRWAYS* (1982) 1 ALL ER 834 CA -where the plaintiff was waiting in the defendant airways lounge at Heathrow Airport, London when he found a bracelet on the floor and handed it over to the employees of the defendant together with his name and address and a request that it should be returned to him if unclaimed. It was unclaimed but the defendants did not return it to the finder but instead, sold it. The Court of Appeal held that the proceeds of sale belonged to the finder who found it- settled the scores on the rules attached to finding lost property. However, it has been found that these rules are not always straightforward in application. These rules are as follows:

- Any servant or agent who finds a lost property in the course of his employment does so on behalf of his employer and his employer holds rights to the property found as the finder.
- The occupier of the land on which the chattel is found may in some cases, have a title superior to that of the finder. The cases in which the occupier has a superior title include where the finder is a trespasser on the land or building and where the property.
- However, an occupier of a 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. The burden of proof of this rests on the occupier although in some cases, the facts of the case may speak for itself. In the case of *BRIDGES v HAWKESWORTH*, the plaintiff who found a packet of bank notes lying on the public part of a shop held rights to it instead of the shop owner.
- A finder of a chattel has limited rights. These rights only enable to him keep an item found and have rights over it only when it has been lost or abandoned. However, he does not possess the right to keep it from the true owner of the property or a person who had rights which existed at the time which the finder took the chattel into his care and control.
- Generally, the finder has the responsibility and duty of taking reasonable steps to try to trace the owner before he can take it into his care and control.

## Examples of People who can sue for conversion

An **owner of the chattel** or **one who has the right to immediate possession** such as **buyers, trustees, licensees, bailees** as in *THE WINKFIELD CASE* where it was held that the post-master general who was not the owner of mails in the ship that sank was able to sue the ship owners as a bailee. **Finders** also hold immediate rights and so are able to sue as in the case of *PARKER* (supra).

### Defences for Conversion

- **Jus Tertii** can be pleaded by a defendant who posits that a third party hold better rights than the plaintiff. He cannot plead that the plaintiff is not entitled to possession as against him. This was clearly stated in the case of C.O.P v OGUNTAYO.
- **Subsisting bailment**: An individual can claim to be a bailee of the chattel in question at the time he was accused of conversion.
- A defendant has the rights to refuse to give up the chattel until it is certified that the plaintiff holds rights to it. This is referred to as **Temporary Retention**.

### Remedies for Conversion

- **Specific Order**: The courts can grant specific orders for the return of the goods to the owner, delivery of the goods, restitution, payment of the current market value of the chattel, payment of consequential damages etc.
- **Damages**: A plaintiff may be granted General Damages where he is able to prove the severity of the conversion or special damages to recover only the specific loss proved.

### DETINUE

Another aspect of Trespass to Chattels is the tort of Detinue. This tort entails the wrongful detention of the chattel of another person whereby the person who is entitled to it or has immediate possession of it is denied this possession or use of it. Under the Torts (Interference with Goods) Act 1977, the United Kingdom has abolished the tort of detinue and merged it with the tort of conversion earlier discussed. However, in Nigeria, these two torts remain distinct from each other.

To constitute the tort of detinue, the plaintiff must have title or right to immediate possession of the chattel and the defendant must have refused or failed to surrender the chattel to the plaintiff without any lawful justification after the plaintiff has made a demand for the chattel in question. Hence there has to be **demand by the plaintiff** and then **unlawful refusal or failure by the defendant**. If these conditions are proved affirmatively, the plaintiff will succeed in a claim for detinue. This was emphasized by **The Supreme Court** in the case of KOSILE v FOLARIN (1989) *where a motor dealer seized and detained a vehicle he had already sold to the plaintiff on credit terms upon delay by the plaintiff to fully pay up.*

**Some actions which may amount to detinue include; the refusal or failure to return one's chattel after the expiration of a reasonable or stipulated period of time.**

## Differences Between Detinue and Trespass to Chattel

The major distinguishing nuance between the torts of **detinue** and **trespass to chattel** is the **degree of interference**. In trespass to chattel, the owner may still be in possession of the chattel whereas in detinue, the owner is denied or refused the right to possession. A mere interference with the chattel constitutes trespass to chattel whereas an interference with the rights of possession of the owner of the chattel constitutes detinue.

## Differences Between Detinue and Conversion

Although detinue may share similar principles with conversion, there are certain notable differences between the two torts.

- A major difference can be extracted from the definitions of these two torts. Conversion is when one deals with a chattel in a manner repugnant to the immediate right of possession of the true owner whereas 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. The essence of detinue is the **refusal of a demand**. There must have been a demand for the return of the chattel(s).
- Another difference is in the remedies. In the tort of detinue, the tortfeasor has to **return the specific goods** in question and not merely an assessed current market value of the goods. However, a situation where a specific return is by all means impossible, the court may grant an award for the current market value.

## Elements of Detinue

- **Possession of rights by the plaintiff:** Like all other torts under Trespass to Chattels, a plaintiff must actually have title or right to immediate possession to be able to sue successfully for detinue. In the case of *OJIUGO & SONS LTD. v C.O.P*, *the lorry of the plaintiff was carrying a customer's goods when the police intercepted and seized the vehicle on suspicion that the goods were contraband. Efforts to acquire the release of the vehicle failed woefully. The plaintiff then sued for detinue and the court held that the plaintiff was entitled to release of his vehicle and damages for its unlawful detention.*
- **There has to be a detention of the chattel.**
- **A demand for release must have been made which led to a refusal by the defendant.**
- **Like other trespasses, it is actionable per se**
- **It is a fault-based tort.**
- **Unlawful justification for detention**

### Defences for Detinue

- A defendant may claim that he has only **mere possession of the chattel** but it is subject to proof by him.
- **Jus tertii**
- **Subsisting lien on the chattel:** This means an existing claim on someone who owes money. As a general rule, where there is subsisting lien on a property, a claim for detinue will not succeed as was held in the case of *SHUWA v CHAD BASIN DEVELOPMENT AUTHORITY* where it was held that the seller of the bulldozer had no title to the bulldozer as the defendants had an existing lien on it which was yet to be fulfilled by the seller.
- **Unavoidable Accident**
- **Valid Consent from plaintiff for detention of the chattel**
- **Enforcement of a court order i.e., legal justification**

### Remedies for Detinue

- Claim for **return of the chattel** if there has been no alteration during its detention.
- **Replacement** of the chattel
- **Recapture or Self-help** by the use of reasonable force to recover the goods from the tortfeasor. In the case of *AGBAI v OKOGBUE*, the plaintiff had claimed from the defendants, the return of a sewing machine, damages from the resultant loss of the use of the machine and general damages after the defendants' seizure of the sewing machine from the plaintiff's possession and control. In accordance with Alayi custom, membership to the Age Grade is automatic and all members are obliged to pay a levy towards a community development project approved by the group. When the plaintiff refused to pay the levy, citing religious grounds for his refusal to be a member of the group, the defendants seized his sewing machine, in accordance with Alayi custom, with the intention of retaining the machine until such time as the plaintiff had paid the levy. After the plaintiff's initial success in the Magistrate Court, the defendants appealed successfully to the High Court. After that, the plaintiff succeeded in his appeal to the Court of Appeal. Finally, the matter was taken to the Supreme Court, where eventually the appeal was dismissed and costs awarded to the plaintiff.
- **Release on Bond:** A return of goods on security pending the court's decision on the actual owner of the goods.
- **An award for damages** incurred during the period of the detention of the chattel.

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