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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.

**ANSWER**

In the law of tort, trespass to property are of two kinds. These are: trespass to chattel, and trespass to land. The focus in this essay is on trespass to chattel. The word **“chattel”** means any article, goods, or personal property, other than land and immoveable property. It is can also be defined as any moveable thing which is capable of being owned, possessed, or controlled. The tort of trespass to chattels protect all the chattels, goods, personal properties of a person who has title, or possession by prohibiting all interference without legal justification.

In Nigeria, the tort of trespass to chattel is made up of three types of torts. These are:

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

The three (3) forms of trespass to chattel are each actionable per se upon commission or occurrence without the plaintiff having to prove damage. Although, trespass to chattel is actionable per se, however it is not a strict liability tort. Furthermore, where a specific damage has been done to a chattel, a plaintiff is entitled to prove it and recover damage, for it as the case may be. This writer will then examine these three types of trespass to chattel.

1. **TRESPASS TO CHATTEL**

Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. 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: right of retaining one’s chattel; protection of the physical condition of the chattel; and protection of the chattel against unlawful interference or meddling. The tort of trespass to chattel prohibits a person from any unlawful interference with a chattel that is under the control, possession or custody of another person. To maintain an action for trespass, the plaintiff must show that he had possession at the time of trespass or is entitled to immediate possession of the chattel. Thus, a borrower, bailee, or hirer of goods, possesses the goods lent, bailed or hired 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.

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. Also, the trespass must be intentional or negligent. ***Erivo v. Obi (1993) 9 N.W.L.R. pt. 316, p. 60 CA***, the defendant close the plaintiff’s car door, and the side windscreen got broken. The appellant plaintiff 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 was not liable. He did not break the windscreen intentionally, or negligently. Thus, in the wider context, the tort of trespass to chattel is closely related to any tort/law which has to do with the protection of interest in personal property; such as: negligence, malicious damage such as arson, and other damage to property or interest in property. Examples of trespass to chattel include: throwing another person’s property away such as in annoyance; mere asportation; mere use without permission; throwing something at the chattel; destruction; etc. In ***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. In ***Haydon v. Smith (1610) 123 ER 970***, it was held to be a trespass for the defendant to cut and carry away the plaintiff’s trees. In ***G.W.K v. Dunlop Rubber Co. (1926) 42 TLR 326,*** removing a tyre from a car and replacing it with another tyre was held to be a trespass. Also, ***Slater v. Swann (1730) 93 ER 906***, beating the plaintiff’s animal was held to be a trespass to chattel.

**ELEMENTS OF TRESPASS TO CHATTEL: WHAT A PLAINTIFF MUST PROVE TO SUCCEED**

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

1. Intentional; or
2. Negligent.

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 defence, may be pleaded to avoid liability.

**THE PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL**

Anyone who has possession or caretakership of a chattel may sue any other person who meddles with the chattel. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference include:

1. Owners,
2. Bailees,
3. Lenders,
4. Custodians,
5. Finders,
6. Trustees, etc.

**THE DEFENCES FOR TRESPASS TO CHATTEL**

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

1. Inevitable accident;
2. Jus tertii, that is, the title, or better right of a third party;
3. Subsisting lien;
4. Limitation of time, as a result of the expiration of time specified for legal action;
5. Honest conversion;
6. Subsisting bailment; 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 the chattel;
3. Repair of the damage;
4. Payment of the market price of the chattel.
5. **CONVERSION**

According to **Sir John Salmond**, in his book the **Law of Tort:**

**“**A conversion is an act… of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.**”**

Conversion is any interference, possession, or disposition of the property of another person, as if it is one’s own legal justification. It is dealing with a chattel which belongs to another person in a manner that 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 immaterial that the defendant does not know that the chattel belongs to another person, for instance where he innocently bought the goods from a thief. In criminal law, conversion is known as stealing or theft. An owner can sue for conversion. Likewise, a person who has custody, temporary possession or caretakership can sue any third party who tries to detain, dispose, steal or otherwise convert such chattel. In ***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. Also, in ***Adamson v. Jarvis (1827) 130 ER 693***, an auctioneer was held entitled to be indemnified by a client who had instructed him to sell goods, to which was later discovered the client had no title.

**EXAMPLES OF CONVERSION**

These include:

1. Taking
2. Using
3. Alteration
4. Consumption
5. Damaging, or destroying it
6. Detention
7. Receiving, etc.
8. Taking: Where a defendant takes a plaintiff ’s chattel possession without lawful justification with the intent of exercising over the goods permanently or even temporarily, there is conversion.
9. Using: Using a plaintiff’s chattels as if it is one’s own, such as, by wearing the plaintiff’s jewellery, as in the case of ***Petre v. Heneage (1701) 88 ER 149***
10. Alteration: By changing its form howsoever.
11. Consumption: By eating or using it up
12. Receiving: Involuntary receipt of goods is not conversion. However, the receiver must not willfully destroy the goods unless the goods constitute a nuisance. Receiving a chattel from a third party who is not the owner is a conversion.

**INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION**

Generally, innocent delivery or 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. In ***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 Unipetrol sued for the conversion and loss of cargo. The Court of Appeal held that the defendant 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 article seized, missing, or in the possession of the other party, or reimbursement of its value.

An action for conversion, will lie in conversion for any corporeal personal property, including paper and title deeds. Thus, there is no difficulty in holding that a negotiable instrument, such as a cheque, bill of exchange or promissory note, is a chattel and therefore can be converted. In ***Owena Bank Nig. Ltd. v. Nigerian Sweets and Confectionary Co. Ltd. (1993) 4 N.W.L.R. 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.

**POSSESSION IS TITLE AGAINST A WRONGDOER OR STRANGER**

At common law, mere de facto possession is sufficient title to support an action for conversion against a wrongdoer. In ***Danjuma v. Union Bank Nig. Ltd. (1995) 5 N.W.L.R. pt. 395 p. 318 CA***, the plaintiff sued the defendant bank claiming for an injunction restraining the defendant from conversion of the plaintiff’s share certificates and dividends or from the wrongful seizure of same. On appeal, the Court of Appeal held that right of action does not lie as it had not been established that the action of the respondent bank amounted to the tort of conversion. The defendant bank did not deny the appellant’s right to take his share certificates, or the dividends on the share certificates and the appellant did not at any time demand the return of the certificate and the respondent refused. There is no evidence that the defendant without authority took possession of the certificates with the intention of asserting a right inconsistent with the right of the plaintiff appellant.

**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) 1 All ER 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 of his employment, does so on behalf of his employer, who by law acquired 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. In ***Elwes v. Briggs Gas Co. (1896) 2 QB 44***, for example, a pre-historic boat discovered six feet below the surface were held as belonging to the land owner.
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, and the occupier has manifested an intention to exercise control over the premises, and things on it. In ***Parker v. British Airways***, 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 defendant 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.

In addition, as a general rule, anybody who has a finder’s rights 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 be sued in the tort of conversion include:

1. Owners,
2. Bailees,
3. Holders of lien and pledge,
4. Trustees,
5. Assignees,
6. Buyers, etc.

**DEFENCES FOR CONVERSION OF A CHATTEL**

1. Subsisting bailment
2. Jus tertii, that is, the title or better right of a third party. This can only be pleaded by a defendant only when he is acting with the authority of the true owner.
3. Subsisting lien
4. Limitation of time
5. Temporary retention; to enable steps to be taken to check the title of the claimant.

**REMEDIES FOR CONVERSION**

In a claim for conversion, the court in its judgment may order any, or the 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 any consequential damages.
4. Recovery of special damages by the plaintiff for specific loss.
5. Recovery of general damages by the plaintiff.

**DIFFERENCES 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 owner of the possession of the chattel, or amount to a denial of the title of the owner. Therefore, mere touching or moving of a chattel and so forth, only amount to trespass.
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.
3. **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 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. Anybody who wrongfully takes, detains, or retains a chattel, and after proper demand for it, refuses or fails to return it to the claimant without lawful excused 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 are many and include the following:

1. C gives his radio to D and pays him to repair it, and D fails to return it after a demand has been made on him for its return.
2. M lend his chairs to S for a one day party, and B fails to return the chairs at the end of the day as agreed or after the expiration of a reasonable period of time.

**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 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.

In ***Koshile v. Folarin (1989) 3 N.W.L.R pt. 107, p. 1 SC***, the defendant motor dealer seized 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 the loss of the use of the vehicle until the date of judgement of the rate of 20 per day. Also, in ***West Africa Examination 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 awarded damages in lieu of the release of the certificate by the Supreme Court.

**DEFENCES 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 many plead *jus tertii*, that is, a third party has a better title. *Jus tertii* is not pleaded, except the defendant is claiming or defending under the right of such third party who has ownership, or paramount title, which will enable him to establish a better title, and the right of possession, than the plaintiff.
4. Innocent delivery
5. Subsisting bailment
6. Subsisting lien on the chattel
7. Inevitable accident
8. 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.

**REMEDIES FOR DETINUE**

Where a person’s chattel is detained by another person, the person who is detained possession or use of such chattel, has several remedies open to him which include:

1. Claim for return of the specific chattel
2. Claim for replacement of the chattel
3. Claim for the current market value of the chattel
4. Recapture or self-help to recover the goods
5. Replevin, that is release on bail bond pending determination of ownership
6. Damages

**THE DIFFERENCES BETWEEN CONVERSION AND DETINUE**

Detinue covers the same ground as tort of conversion by detention. However, some differences are to be noted which include the following:

1. The refusal to surrender or return a chattel on demand is the essence of detinue. 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.

**REFERENCES**

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