NAME: ANYADUBA CHUKWUKASINDU RITA

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COLLEGE: LAW

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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 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 defenses to Trespass to Chattel, conversion and detinue. Differences between Conversion and Detinue, Support 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)159T.

Answer:

**TRESPASS TO CHATTELS, CONVERSION & DETINUE**

TRESSPASS TO CHATTELS

This is any direct, intentional, negligent, and unlawful interference with a chattel which is still in the possession of another person. The interference must be wrongful and direct. Therefore, touching a chattel even without damaging it may in appropriate situations be actionable and entitle the other party to get nominal damages.

Chattels in this sense can be defined as any movable thing which is capable of being owned. This does not encompass a human being, land, and immovable property. Examples of chattels include books, cars, furniture, ships, etc.

The purpose of the tort of trespass to chattels is to protect the chattels, goods and personal properties of people who have title to it from damage, destruction, detinue etc.

The case of *FOULDES v. WILLOUGHBY (1841)*, the defendant was the manager of a ferry. The plaintiff was a passenger on the ferry, and he entered the boat with his horses. The plaintiff and defendant got into a squabble, and to get the plaintiff off the boat, the defendant removed his horses from the boat. The plaintiff who was unfazed remained on the boat and crossed to the other side of the river. The plaintiff then sued the defendant for trespass to chattels (his horses). The court held that the defendant was liable to trespass because he moved the plaintiff’s horses ashore but there was no conversion seeing as the plaintiff still had title to the horses.

Also, in the case of *KIRK v. GREGORY*, it was held that the movement of a deceased person’s rings from one room in the house to another was trespass to chattel and nominal damages were awarded.

**The elements of trespass to chattel** are the things a plaintiff must prove to succeed in a claim for trespass to chattel. To succeed, the plaintiff must prove that the trespass was either intentional or negligent. Proving intention or negligence is especially important in trespass to chattels because this tort is not a strict liability tort. But on the other hand, a proper claim of negligence may be used to absolve the defendant liability.

**PERSONS ENTITLED TO SUE FOR TRESPASS TO CHATTEL**

Anyone who has attained possession of a chattel may sue any other person who meddles with their chattel. Naturally, this is object of the tort od trespass to chattel. Persons entitled to sue for trespass to chattels must have possession at the material time the interference occurred. Such persons include:

* Owners
* Bailees
* Lenders
* Trustees
* Assignees
* Finders
* Custodians
* Caretakers, etc.

CONVERSION

Conversion is any interference, possession, or disposition of the property of another person in a manner that is inconsistent with the rights of the person. This is the interference with another person’s chattel which unlawfully deprives the person of title, possession or use of it.

Conversion is an intentional tort. The intent that must be proven is the intent to exercise dominion and control over the plaintiff’s property in a manner inconsistent with the plaintiff’s rights. However, intent or purpose to do a wrong is not necessary to establish conversion, merely intent to seize the property. In the case of *NORTH CENTRAL WAGON & FINANCE CO LTD v. GRAHAM*, a defendant hire purchaser sold the car in contravention of the terms of the contract. In these circumstances the court held that the plaintiff finance company was entitled to terminate the agreement and sue for tort of conversion and recover the car.

As for the **elements of conversion**, in this tort, it is not necessary to prove that the defendant had intention to the deal with the goods. It enough to prove that the defendant interfered with the goods. It is immaterial that he the defendant did not know the chattel belonged to another person.

**EXAMPLES OF CONVERSION**

* Taking
* Using
* Alteration
* Consumption
* Damaging
* Receiving
* Detention
* Wrongfully refusing to return a chattel.
* Wrongful delivery
* Wrongful sale or disposition

TAKING

This is where a plaintiff’s chattel is taken by the defendant out of his possession without legal justification with the intent of showing dominion over said chattel either temporarily or permanently. The defendant would not be liable in a situation where he only moves the goods without denying the plaintiff ownership.

USING

Using a plaintiff’s chattel as if it is one’s own. A scenario where the defendant took the plaintiff’s clothes and wore it as his own to a function is conversion of the plaintiff’s chattel.

ALTERATION

This is changing the form of the person’s chattel howsoever.

DAMAGE BY DESTRUCTION OR OBLITERATION

Mere damage of a chattel is not sufficient to make one liable for conversion. As a rule of law, mere damage, or destruction of chattel without more, is a trespass to chattel in tort and considered malicious damage in criminal law. Etc.

**PERSONS ENTITLED TO SUE FOR CONVERSION**

This tort is mainly an interference with possession. Those who can sue for conversion are like those who can sue for trespass to chattels, but this tort places more focus on two people.

* Owners: owners are people in possession or who has right to immediate possession to chattels and can sue another person for conversion.
* Bailees: a bailee of a chattel may sue another person for conversion on goods bailed to him. However, a bailor at will has immediate title to immediate possession of a chattel he has transferred to a bailee and can bring an action against a bailee for conversion.

DETINUE

In [tort law](https://en.wikipedia.org/wiki/Tort_law), detinue is an action to recover for the wrongful taking of personal property. It is initiated by an individual who claims to have a greater right to their immediate possession than the current possessor. For an action in detinue to succeed, a claimant must first prove that he had better right to possession of the [chattel](https://en.wikipedia.org/wiki/Personal_property) than the defendant and second that the defendant refused to return the chattel once demanded by the claimant.

Detinue allows for a remedy of [damages](https://en.wikipedia.org/wiki/Damages) for the value of the chattel, but unlike most other interference torts, detinue also allows for the recovery of the specific chattel being withheld.

**Examples of detinue** includes a scenario where ‘A’ lends his chair to ‘B’ for a day party that lasts for one day. At the lapse of the day, ‘B’ refuses to return the borrowed chattel as agreed or after the expiration of a reasonable period. Or where the defendant has actual possession of the chattel (any goods – for example, a lawn mower or excavator) and refuses to return it to the plaintiff on their demand.

Regarding **the elements of detinue**, a plaintiff can only maintain an action for the tort of detinue of after satisfying two conditions:

* The plaintiff must have title that is ownership or right to immediate possession of the chattel.
* The defendant (who is in actual possession of the chattel) must have failed or refused to deliver the chattel to the plaintiff after the plaintiff has made proper demand for the return of the chattel, without lawful excuse.

The case of *KUSILE v. FOLARIN*, 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 that the actions of the defendant were wrong, and that the plaintiff was entitled to the return of the vehicle or its value and for the loss of the use of the of the vehicle until the date of judgement the rate of N20 per day.

This case emphasizes on 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 the defendant further refuses to release said chattel, he would thereby be liable for detinue.

DIFFERENCES BETWEEN CONVERSION AND DETINUE

Detinue and conversion share the same footing as relates to detention. Differences that can be noted include:

* An act is considered Detinue and not Conversion when the owner specifically asks for property back and is still refused.
* Detinue is a remedy where the plaintiff wants a return of specific goods in question, and not merely an assessed market value. However, where specific return of the chattel will simply not be possible, an award of the current market value of the chattel is usually made to the plaintiff.

**DEFENCES & REMEDIES OF TRESPASS TO CHATTEL, CONVERSION, DETINUE**

**Trespass of chattels (Defenses)**

In an action for trespass to chattels, some of the defense’s a defendant may plead include:

* Inevitable accident
* *Jus tertii*, that is, the title of a third party. Provided that he has the authority of said third party.
* Subsisting lien
* Subsisting bailment
* Limitation of time, because of the expiration of time for a specified for legal actions
* Acting honestly (honest conversion).

**Remedies**

The remedies available to someone whose chattel has been meddled with include:

* Payment of damages
* Replacement of the chattel
* Payment of the market price of the chattel
* Repair of damage

**Conversion (Defenses)**

Depending on the circumstances, you may have a defense if you are sued for conversion. Some common defenses to a claim of conversion include:

* [Abandonment of the property](https://www.legalmatch.com/law-library/article/abandoned-personal-property.html);
* Authority of Law: This refers to when a person operates under authority of law (such as a law enforcement officer) or by court order.
* Consent.
* Lack of Value: Some states will not allow a claim of conversion if the property has little to no monetary value; and
* Privilege: In some circumstances, a person may be considered privileged to commit an act that would be considered conversion. An example is if the action was necessary to protect the person’s own property or to avoid physical harm.
* Limitation of time.

**Remedies**

The legal remedies for conversion typically require the interfering party to return the property to the owner, recovery of special and general damages, or to reimburse the owner for the value of the property. Alternatively, the interfering party could be ordered to reimburse the owner for the value of the time the owner was deprived of the property. This is harder to calculate and may even end up being more than the actual value of the property.

**Detinue (Defenses)**

* 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.9
* Jus Tertii: It is a defense to show that a third party has a better right to possession than the plaintiff.
* 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 (for commercial equipment) or other facts that demonstrate that the person demanding the return was not the rightful owner.
* The demand was invalid: If a demand has been made, it may be vague, confusing, or otherwise invalid. If the demand is not valid, then a refusal may not have been unreasonable.
* There was no refusal: If the refusal to return something is not specific, and enough 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.
* It was not reasonable to return the chattel: There may be a reasonable excuse why the chattel had not been returned in time.
* Innocent delivery
* Inevitable accident
* Subsisting lien
* Subsisting bailment
* Reasonable defense of a person or property, such as when a person beats a dog that was attacking him/her in self-defense.

**Remedies**

Remedies for detinue are:

* 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.
* Replevin or release on bond: this is release on bond pending determination of ownership.
* Recapture (also known as Self-Help): 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.

**INNOCENT RECEIPT OR DELIVERY AND LOST PROPERTY RULE**

Innocent delivery is generally not considered to be conversion. Innocent receipt/delivery are not torts nor criminal offences thus this cannot be called conversion. When an innocent holder of goods receives goods in good faith from another person who he honestly believes to have lawful possession of them, and he delivers them on the persons request to a third party while still in good faith, the holder will not be liable for conversion of chattel. Similarly, innocent receipt of goods is not to be considered as conversion. Also, the receiver of the chattels must not damage them unless they happen to constitute a nuisance.

In the case of *UNIPETROL v. PRIMA TANKERS LTD (1986)*, 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.

**LOST PROPERTY RULE**

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*.

In this case, a passenger found a gold bracelet on the floor of an executive lounge at Heathrow airport. He handed it to the owners of the land (British Airways Board) for them to attempt to find the true owner; requesting that the item be returned to him should the original owner not be found. When British Airways Board sold the unclaimed bracelet for £850, Mr. Parker challenged their claim to the bracelet. The court upheld Mr. Parker's claim, as the bracelet had been found in an area frequented by the public that British Airways Board did not exercise sufficient control over. British Airways Board were thus unable to assert superior title over the bracelet.

The rules applicable to lost property are as follows:

* 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 the 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 establishing at the time when the finder took the chattel into his care and control.
* 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.
* 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.
* However, an occupier of premises does not have superior rights to 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.

As a rule of law, anybody who has a finder’s right over a lost property, has an obligation in law to make reasonable steps to trace the true owner of the lost item before he exercises rights.

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