

NAME: UMEALOR SABRINA ANGEL

LEVEL: 300

MATRIC NO: 18/LAW01/211

COURSE CODE: LPB 301

COURSE TITLE: LAW OF TORTS 1

ASSIGNMENT TITLE: the tort of trespass to chattel is made up of trespass to Chattels, Conversion and Detinue. Discuss the above and support with case law.

TRESPASS TO CHATTEL

A chattel is any article of tangible property other than land and immovable property. It is any personal property which may also be called personalty. Therefore, Trespass to Chattel is a kind of Trespass to property, the other being trespass to land. **The purpose of the tort of trespass to chattel** is to protect the chattel, goods or personal property of a person who has good title or possession by prohibiting all interference without legal justification. Such tort is actionable *per se*, which means one does not need to prove damage in an action for trespass to chattel. However, it is not a strict liability tort which means that it must have been the fault or negligence of the other party.

In Nigeria, the Tort of Trespass to Chattel is made up of Trespass to Chattels *per se*, Conversion and Detinue. And although all three are similar, as they relate to the wrongful interference with a chattel, **the distinguishing nuance** with trespass to chattels is that the goods remain in possession of the rightful owner which differs from conversion and detinue where the owner is deprived of possession. Simply put, in criminal law terms, conversion or detinue may arise from theft. In addition to that in the case of **Fouldes v Willoughby**¹ the defendant was the manager of a ferry boat and the plaintiff who was a passenger entered the boat with his horses. They both had a dispute and in order to induce the plaintiff to leave the boat, the defendant disembarked the horses from the ferry. The plaintiff, however, remained on the boat and crossed over to the other side of the river. He then sued the defendant for trespass to the horses. The court held that the defendant was liable for trespass to the horses, by moving them; however there is no conversion as the plaintiff still had title.

Trespass to Chattel

Trespass to Chattel is a direct and unlawful interference with a chattel in the possession of another person. It is any direct interference with the personal property of another person without lawful justification. Essentially, trespass to chattel is any wrong against a chattel, good or personalty in the possession or control of another person.

¹ (1841) 151 ER 1153

Examples of Trespass to Chattel include; taking a chattel away, destruction or damage of the chattel, throwing another person's property away and driving another person's car without permission. In **Haydon v Smith**,² it was held to be a trespass for the defendant to cut and carry away the plaintiff's tree. Furthermore, in **Slater v Swann**,³ beating the plaintiff's animal was held to be a trespass to chattel.

Elements of Trespass to Chattel; In order to succeed in an action for this trespass, a plaintiff must establish that the act of trespass was intentional or negligent. Similarly, in **Erivo v Obi**,⁴ the Court of Appeal established that, for a trespass to chattel to be actionable it must have been done by the wrongdoer intentionally or negligently. Proving intention or negligence is essential as trespass to chattel is not a strict liability tort, as earlier mentioned. In broad terms the elements of trespass to chattel are;

- ✓ Interference; the person must have interfered with the chattel either intentionally that is merely intending to do the act or negligently.
- ✓ Lack of owner's consent; the person must have interfered with the chattel without the owner's permission thus, making it unlawful and unauthorized.

Persons qualified to sue for trespass to chattels; anyone who has possession of a chattel may sue another person who meddles with the chattel and this is because the aim of the tort of trespass to chattel is to protect possession or right to immediate possession. Therefore such persons include; Owners, Bailees, Lenders, Assignees, Trustees, Finders, Custodians, Caretakers, Adverse possessors, Executors and Administration of estates, provided they have possession at the material time of the interference.

Defences to Trespass to Chattel

In an action for trespass to chattel, a defendant may plead any of the following;

- ✓ Inevitable accident; this refers to an unavoidable accident and provides that a person cannot be held liable for an accident which was not foreseeable despite all care and caution taken from his side, it is a general defence in the law of tort. In **National Coal**

² (1610) 123 ER 970

³ (1730) 93 ER 906

⁴ (1993) 9 NWLR pt 316, p. 60 CA

Board v Evans & Co,⁵ where during excavation, a mechanical digger damaged an electric cable, which passed under the land (this was unknown to all the parties), and water seeped into it causing an explosion and thereby cutting off electricity supply to the plaintiff's coal mine. The plaintiff sued claiming damages for trespass to the electricity cable. The court held that in the absence of establishing negligence on the part of the defendant, there was no fault and there was no trespass by the defendant. The damage was an inevitable accident.

- ✓ Jus tertii; this means better title of a third party, provided that defendant has the authority of such third party. This disallows the plaintiff from initiating an action against the defendant. Thus, the defendant can plead and establish that he is acting on behalf of a disclosed person with a better title than that of the plaintiff. In the case of **C.O.P v Oguntayo**,⁶ it was held that for a defendant to successfully plead jus tertii, the identity of such true owner or third party must be disclosed, his better title to immediate possession must be established and the defendant must be claiming on behalf of the alleged true owner who has a better right to immediate possession.
- ✓ Subsisting lien; a lien is a form of security interest granted over an item of property to secure payment of a debt or performance of some other obligation, thus if a defendant has such subsisting lien there is legal justification.
- ✓ Limitation of time for example, that the case is statute barred.
- ✓ Honest Conversion or acting honestly
- ✓ Defendant can show that he is enforcing a court order, thus he is acting under authority
- ✓ The defendant can show that he has better title than the plaintiff
- ✓ Temporary retention in cases of lost and found
- ✓ Owner's consent and permission
- ✓ Subsisting bailment; a situation where the owner transfers physical possession of the chattel for a time, but retains ownership.

It is important to note that mistake of ownership is not a valid defense to trespass to chattels.

Remedies to trespass to chattel

⁵ (1951) 2 KB 861

⁶ (1993) 6 NWLR pt. 299, p. 259 SC.

The remedies available include;

- ✓ Payment of damages; this is the monetary compensation to be paid to claimant for loss or damage to the chattel.
- ✓ A claim for replacement of the chattel especially where the goods have been destroyed.
- ✓ Repair of the Damage; here the chattel is repaired and returned to its original state.
- ✓ A claim for the payment of the market price of the chattel especially where it has been destroyed.

Conversion

Conversion 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. It is any interference, possession, or disposition of the property of another person, as if it is one's own without legal justification. Simply put, it is the deprivation of another's right to use or possess personal property. In the case of **North Central Wagon & Finance Co. Ltd v Graham**,⁷ 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.

Examples of conversion;

- ✓ Wrongfully taking the goods; where a defendant takes a plaintiff's chattel out of the plaintiff's possession without justification and with the intent, there is conversion. However, mere moving of the goods without denying the plaintiff of title does not constitute conversion.
- ✓ Wrongfully detaining the goods; this must be accompanied by an intention to keep the goods from the person entitled to possession of the goods. In the case of **Howard E Perry and Co Ltd v British Railway Board**,⁸ the defendants who were carriers, held the plaintiff's steel in depots. Subsequently, there was a strike by steelworkers and due to

⁷ (1950) 1 ALL ER 780

⁸ (1980) 1 WLR 1375

this, the defendants refused to release the plaintiffs steel to them. It was held that this amounted to conversion on the defendant's part.

- ✓ Wrongfully disposing the goods; this could be by sale or transfer of title to a third party in a manner inconsistent with the right of the person entitled to possession. In the case of **Chukwuka v C.F.A.O Motors Ltd**⁹, the plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months later the defendants sold the car to a third party. The plaintiff sued for conversion. It was held that the defendant was liable to the plaintiff for conversion of the car.
- ✓ Using; using a plaintiff's chattels as if it's one's own such as by wearing the plaintiff's jewelry, as in the case of **Petre v Heneage**,¹⁰ is a conversion.
- ✓ By wrongful delivery; wrongfully delivery of a person's chattel to another who does not have title without legal justification is conversion.

Other examples include; alteration, consumption, damaging or destroying, receiving, wrongfully refusing to return a chattel, and purchase.

Key concepts to note in the tort of conversion

- ✓ **Innocent receipt or delivery is not conversion**; Innocent delivery of goods received in good faith from a person believed to have lawful possession and delivered to a third party on instructions does not amount to conversion. Similarly, innocent receipt of goods is not conversion. The receiver must not willfully damage or destroy the goods. In **Unipetrol v Prima Tankers Ltd**,¹¹ 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 sued for conversion and loss of cargo. The court held that the respondents were liable in conversion as a result of the loss of the cargo.
- ✓ Possession is title against a wrongdoer or stranger; at common law mere de facto possession is sufficient title to support in an action for conversion against a wrongdoer. Thus with a better title, conversion is averted.

⁹ (1967) FNLr 168 at 170

¹⁰ (1701) 88 ER 149

¹¹ (1986) 5 NWLR pt. 42 p. 532 CA

- ✓ **The rules regarding finding lost property;** the rules of law applicable were established in the case of **Parker v British Airways**¹², and may be summarized 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 a right to keep it against all persons, except the true owner
 - 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 acquires the rights of a finder.
 - An occupier of a land or 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 the premises does not have superior rights to those of a finder in respect of good 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.
- ✓ Similarly in **Bridges v Hawkesworth**,¹³ the plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop was held entitled to the money instead of the shop owner, upon failure of the rightful owner to come forward to claim the money.
- ✓ In addition to that a finder has a duty to take the necessary steps to trace the true owner of the lost property.

Elements of conversion are; intent to convert the tangible property of another to one's own possession and use and the property in question is subsequently converted.

Persons qualified to sue for conversion;

- ✓ Owners; an owner in possession may sue another person for conversion.
- ✓ Bailees; a bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him. In **The Winkfield**¹⁴, The Winkfield a ship ran into another ship, a mail ship which sank. The Post-Master general though not the owner of the mails in the ship that sank was held entitled to sue the owners of the Winkfield, as a bailee in possession for the value of the mails that were lost. Collins MR in the English Court of Appeal held

¹² (1982) 1 All ER 834 CA

¹³ (1851) 21 LJ QB 75

¹⁴ (1902) p. 42

that the owners of the Winkfield were liable and that “As between a bailee and a stranger, possession gives title.”

- ✓ Others include; Holders of lien and pledge, Finders, Buyers, Assignees, Licensees and Trustees, provided that they have right to immediate possession.

Defences to conversion of a chattel;

- ✓ Temporary retention; in such situation the defendant may temporarily refuse to give up goods while steps are taken to verify the title of the plaintiff who is claiming title or right to immediate possession
- ✓ Authority of law; conversion that is done under the authority of the law would be justified.
- ✓ Consent; if the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be valid.
- ✓ Jus tertii, the title or better right of a third party
- ✓ Other defences include; Subsisting lien, Subsisting bailment, limitation of time which are also common to trespass to chattel.

Remedies to conversion of chattel;

- ✓ Order for delivery, return or specific restitution of the goods; here an order is given by the owner of goods to the person in possession of them, directing that person to deliver the goods to a person named in the order. However in this case, the order is given by the court.
- ✓ Alternative order for payment of the current market value of the chattel
- ✓ An order for the payment of any consequential damage; any damage caused by the conversion of the chattel will be compensated.
- ✓ Recovery of general and special damages; special damages are recoverable by a plaintiff for any specific loss and for general damages; a plaintiff whose tools are converted can sue for the loss of profits for the period of the conversion of the work tools.

Detinue

The tort of Detinue is the wrongful detention of goods or personal possessions. It is the wrongful detention of the chattel of another person. Detinue, itself, is an action to recover for the wrongful taking of personal property. It is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. Essentially, the tort of detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. This tort has been abolished and merged with the tort of conversion in the United Kingdom.

Examples of Detinue; If for instance Sabrina lends her Speakers and boom box to Eseosa for a one day party, and Eseosa neglects, refuses and fails to return the Speakers and boom box at the end of the day as agreed or after the expiration of a reasonable period of time. In essence, detinue is the unlawful retention of the personal property of another thereby, denying them the use of their property. Secondly if after writing an exam your result is seized and upon request for it, it is still withheld.

In the case of **West Africa Examinations Council v Koroye**,¹⁵ the plaintiff sat for an examination conducted by the defendant council. The defendant neglected and 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. Similarly, in *Davies v Lagos City Council*,¹⁶ the defendant city council wrongfully seized and detained the plaintiff's taxi cab. The plaintiff sued claiming damages and it was held that the plaintiff was entitled to a return of the vehicle and loss of earnings on the vehicle as a result of the unlawful detention.

When to sue for Detinue; (Elements of Detinue)

a plaintiff can institute an action for detinue where; the plaintiff has title, ownership or right to immediate possession of the chattel and the defendant who is in actual possession of the chattel must have failed and 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.

¹⁵ (1977) 2 SC 45; 11 NSCC 61

¹⁶ (1973) 10 CCHCJ 151

In the case of **Kosile v Folarin**,¹⁷ the Supreme Court emphasized 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 if the defendant persists in keeping the chattel, he is liable for detinue.

The Difference between Detinue and Conversion;

- ✓ The essence of detinue is the refusal to surrender or return a chattel on demand, in detinue there must have been a demand for the return of the chattel whereas conversion deals with a chattel in a manner repugnant to the immediate right of possession of the true owner.
- ✓ Detinue is in itself a remedy and is the proper remedy where the plaintiff wants a return of the specific goods in question, and not merely an assessed market value.
- ✓ ***Essentially, detinue and conversion only differ in the sense that an act is considered detinue and not conversion when the owner specifically asks for property back, and is still refused.***

The Defences for Detinue;

- ✓ The defendant has mere possession of the goods
- ✓ The plaintiff has insufficient title as compared to himself (defendant)
- ✓ The defendant may plead *jus tertii*, that is, that a third party has better title than the plaintiff provided that he has the authority of the third party.
- ✓ Subsisting lien on the chattel; in **Otubu V Omotayo**,¹⁸ the Court of Appeal held that an action cannot succeed where there is a subsisting lien on the chattel, which is an existing form of security interest granted over an item of property to secure the payment of a debt.
- ✓ Enforcement of a Court order or other legal process such as the police confiscating goods they believe to have been stolen.
- ✓ Temporary retention of the chattel to enable steps to be taken, to check the title of the plaintiff.
- ✓ Other defences include; innocent delivery, subsisting bailment, inevitable accident, all of which are common to the defences of Trespass to chattel and Conversion.

¹⁷ (1989) 3 NWLR pt. 107, p. 1 SC

¹⁸ (1995) 6 NWLR 400, p. 247 CA

Remedies for Detinue

- ✓ Damages; damages refer to the monetary compensation for the loss incurred. Where a defendant has been found liable, he cannot deprive the plaintiff of his right to damages for detention of chattel. Also if the wrongdoer has been making use of the chattel for his personal benefit, then he must pay a reasonable hire for the chattel which includes the wear and tear of the goods.
- ✓ Claim for return of Chattel; this is a claim for the specific chattel especially if the chattel is intact and has not been changed or damaged in any way.
- ✓ Replevin; Replevin is also known as claim and delivery and is an action to recover personal property that was wrongfully taken or detained. Replevin seeks to return the actual chattel itself.
- ✓ Replacement of the Chattel; the defendant may be ordered to replace the chattel, in situations where it is possible. Such as, in the case of manufactured products, where the same or a similar product can be supplied.
- ✓ Claim for the Market Value of the Chattel: this refers to the claim for the current market value of the chattel that was detained. The onus is on the plaintiff to prove the market value of the chattel.
- ✓ Recapture or Self-help.

Conclusion;

Trespass to Chattel which is designed to protect the rights of ownership or possession of a chattel from all wrongful interferences, is made up of three torts; Trespass to Chattels, Conversion and Detinue. The 3 torts although similar are still distinct and are recognized individually in Nigeria as opposed to the United Kingdom where Conversion and Detinue are merged as one.

REFERENCES

Malemi, E. (2017), *LAW OF TORT*, IKEJA: PRINCETON PUBLISHING CO., p. 209-235

Olanrewaju, O. "TRESPASS TO CHATTEL." Accessed January 23, 2021. <https://djetlawyer.com/trespass-to-chattel>

"Trespass to Chattels." FindLaw. Accessed January 23, 2021. <https://www.findlaw.com>

"Tort, defences and remedies to trespass to goods." Accessed January 24, 2021. <https://www.iso-chukwu.com>

"Detinue, Conversion and Trespass to Goods." CITILAWYERS. Accessed January 24, 2021. <https://citilawyers.com.au>

"Conversion- the basic tort." Stimmel Law. Accessed January 24, 2021. <https://www.stimmel-law.com>