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**COURSE TITLE: LAW OF TORT I**

**ASSIGNMENT:** 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:

1. Define and explain each tort
2. State the elements of trespass to chattel, conversion and detinue
3. Explain the concepts of innocent delivery or receipts
4. Explain the lost property rule
5. Give examples of conversion
6. Give examples of persons qualified to sue for Trespass to Chattel
7. Discuss the remedies and defences to each tort and
8. Differences between conversion and detinue.

**Definition of trespass to chattel**

Generally, a trespass refers to a wrongful use of another person’s property without his or her permission. The word “chattel” means any article, goods, or personal property, other than an immovable property. An item of tangible movable or immovable property except real estate and things (such as buildings) connected with real property. Trespass to chattels refers to the use of property without permission. Trespass to chattels refers to a wrongful use of another person’s property without his or her permission. Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. Trespass to chattels is any direct interference with a personal property in the possession of another person without lawful justification. The purpose of this trespass is designed to protect the following interests in personal property or personality:

1. Right of retaining one’s chattel
2. Protection of the physical condition of the chattel
3. Protection of the charge against unlawful interference or meddling.

**Examples of trespass to chattel**

Trespass to chattel may be committed in many different ways;

1. Driving another person’s car without permission
2. Killing another person’s animal
3. Throwing another person’s property away
4. Damaging or causing any harm to a chattel
5. Scratching or making marks on the body of the chattel

In ***Kirk V. Gregory[[1]](#footnote-1)***, the movement of a deceased person’s ring, from one room in his house to another was held to be trespass and nominal damages was awarded against the defendant. In ***Haydon V. Smith[[2]](#footnote-2),*** it was held to be trespass for the defendant to cut and carry away the plaintiff’s trees.

**Elements of trespass to chattels**

In order to prove trespass to chattels, you are required to show the following elements:

1. **Intent to trespass:** merely intending to do the act is enough to show this element of trespass. You don’t necessarily need to show intent to harm a specific person
2. **Lack of owner’s consent:** there must be an unauthorized, unlawful interference, which means the person interfered with or dispossessed the chattel without the owner’s permission
3. **Interference of chattels:** a person commits a trespass to chattel by
4. Dispossessing another of the chattel
5. Using or intermeddling with a chattel in the possession of another,
6. Damaging the chattel.

As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort. Accident, intention or negligent trespass do not automatically give rise to liability per se, as an appropriate defence, may be pleaded to avoid liability.

In the case of ***Erivo V. Obi[[3]](#footnote-3),*** the defendant respondent closed the door of the plaintiff appellant’s car, and the side widescreen got broken. The appellant 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. The Court of Appeal held that the defendant respondent was not liable. He did not use excessive force but only normal force in closing door of the car. He did not break the windscreen intentionally, or negligently. It was an inevitable accident which exercise of reasonable care and the normal force used by respondent could not avert.

**Persons who may sue for trespass to chattel**

Anyone who has possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. Anyone who has possession or right immediate possession can be sue. 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. Lenders
3. Custodians
4. Caretakers
5. Executors
6. Trustee.

**Defences for trespass to chattel.**

1.) **Consent:** this is the most common defence to trespass. If the owner of the property gave you permission to use their personal property. It should be noted that consent can be given through both words and actions. This defence will not work if the consent was induced by fraud or was given by someone who is incompetent, intoxicated or a minor.

2.) Inevitable accident

3.) Limitation of time as a result of the expiration of time specified for legal action.

4.) **Public necessity:** this defence can be used if you intentionally interfere with another person’s chattel to protect the public. If you acted unreasonably when taking another person’s chattel, this defence will not be available to the person.

5.) **Private necessity**: this defence can be used when the purpose of using another person’s chattel is to protect your own interests. If can only be claimed if you were attempting to protect yourself from death or serious bodily harm.

**The remedies for trespass to chattel.**

The remedies available to a person whose chattel has been meddled with are;

1.) Payment of damages

2.) Replacement of the chattel

3.) Payment of the market price of the chattel

4.) Repair of the damage.

**Definition of Conversion**

Trespass as a tort can be committed against property and goods. However, in contrast, the tort of conversion can only be applied to goods. The action for conversion (originally called **TROVER)** developed upon legal fiction. The original form of the pleadings alleged that the defendant had found the claimant’s chattels (hence called the “trover”) and had wrongfully converted them to his. Conversion involves a voluntary act, causing interference against another person’s goods. Conversion can also be committed even when a person has no intention to commit the tort. Conversion is any intentional interference with another person’s chattel which unlawfully deprives the person title, possession or use of it. It includes wrongful taking, wrongful detention and or wrongful disposition of the property of another person. In the case of ***North Central Wagon and Finance Co Ltd V. Graham[[4]](#footnote-4),*** the defendant defaulted payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant without informing the plaintiff auctioned the car. Thus the plaintiff sued the auctioned for conversion. The court held that the plaintiffs could sue in conversion regards 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.

**Who may sue for conversion?**

The tort of conversion, like other trespass to chattel, is mainly an interference with possession. Those who may sue in the tort of conversion include;

1. Owners
2. Bailees
3. Buyers
4. Assignees
5. Trustee
6. finders

**Examples of Conversion**

Conversion of goods would arise in the following situations:

1. **Wrongfully taking the goods:** Where a defendant takes a plaintiff’s chattel out of the plaintiff’s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion. In ***Fouldes V. Willoughby[[5]](#footnote-5),*** the owner of two horses brought them abroad a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. On appeal, the court, in allowing the appeal held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses.
2. **Wrongfully detaining the goods:** This must be accompanied by an intention to keep the goods from the person entitled to possession of the goods. Hence, it would not be regarded as conversion if the finder of goods merely refrains from returning such to the owner. It would only be conversion in a situation in which when asked for the goods by the owner, he refuses to release it. In the case of ***Howard E Perry and Co Ltd V. British Railway Board[[6]](#footnote-6),*** the defendants who were carriers held the plaintiff’s steel in depots. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff’s steel to them. It was held that this amounted to conversion on the defendant’s part.
3. **By wrongfully destroying the goods:** Destruction of goods would amount to conversion in the following circumstances:
4. One person wilfully destroys the chattel of another
5. If the chattel either ceases to exist or changes its identity.
6. **Wrongfully disposing the goods:** this occurs in a situation in which the defendant attempts to confer title to a third party in a manner inconsistent with the right of the person entitled to possession.
7. **By wrongfully delivering the goods:** This occurs in a situation which the defendant denies the true owner of the title to the goods by delivering them to another party that has no title.

In ***Hollins V. Fowler[[7]](#footnote-7),*** cotton broker acting on behalf of a client, for whom he often made purchases, bought cotton from fraudster who had no title to the cotton. The broken then sold it to his client and received only his commission. At the suit of the true owner for conversion sale and loss of the goods. The court held that the broker was liable in conversion for the full value of the goods.

**Defences of Conversion**

In an action for conversion, the defendant may plead;

1.) **Abandonment:** an action for conversion would not succeed in a situation in which the property in question was abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between abandonment and the possession by the new owner.

2.) **Authority of Law:** conversion that is done under the authority of law would be justified. For example, the selling of goods of a defendant by the claimant by an order of court in order to get a judgement debt would be valid.

3.) **Consent:** if the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be held to be valid.

4.) **Statute of limitations:** if the suit for conversion is not field after a specified period (ranging from 2-5 years), it would be held to be statute barred. Thus, the suit would not be heard by the court.

5.) **Unidentifiable property:** if the property cannot be properly identified, it could also serve as a defence of conversion.

**The remedies for conversion**

In a claim for the conversion of a chattel several remedies are available to a plaintiff. The court in its judgement may order any, or a combination of any of the following reliefs:

1.) Alternative order for payment of the current market value of the chattel

2.) An order for payment of any consequential damages.

3.) Recovery of special and general damages

4.) Order for delivery, return or specific restitution of the goods.

**Differences between trespass to chattel and conversion.**

It’s often easy to confuse trespass to chattels with conversion because they both deal with interfering personal property.

1.) 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 consent. The degree of interference for conversion must be serious that the tortfeasor may be required to pay the full value of the property.in trespass to chattel; the tortfeasor is responsible only to the extent of the damage done from intermeddling with a chattel in the possession of another or damaging the chattel.

2.) In conversion, the conduct of the defendant must deprive the owners of the possession of the chattel, or amount to a denial or dispute of the title of the owner. Therefore, mere touching or moving of a chattel and so forth only amount to trespass.

**Definition of Detinue:**

Detinue is defined as the wrongful detention of goods, committed when one unreasonably refuses surrender or return personal property to its rightful owner, only if and when the owner claims the immediate right to possession of these goods. Detinue is only applicable, however, when the owner holds proprietary interest and or actual possession of the property. Detinue is also a tort that can only be committed against a good, rather than property. When someone commits the tort of detinue, they are considered to be wrongfully withholding goods from a person that has an immediate right of possession. In the case of ***Kosile V. Folarin[[8]](#footnote-8)***, the Supreme Court emphasised 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.

In ***Ogiugo & Sons Ltd V. C.O.P[[9]](#footnote-9)***, the lorry of the plaintiff appellant transporter was carrying customer’s goods, when the police intercepted and sized the vehicle on suspicion that the goods were contraband. Representations for its release failed to yield result. The appellant claimed for detinue of the goods of the vehicle. The Court of Appeal held that the appellant was entitled to the immediate release of the vehicle and damages for its unlawful detention. The plaintiff must have title or right to immediate possession to be able to sue successfully for detinue.

A plaintiff can only maintain action for the tort of detinue after satisfying the 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 in 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.

**Innocent receipt or delivery is not conversion**

Innocent delivery or innocent receipt is neither 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 instruction to a third party in good faith, there would be no conversion. Similarly, an innocent receipt of goods is not conversion. However, the receiver must not wilfully damage or destroy the goods unless the goods constitute a nuisance. In ***Unipetrol V. Prima Tankers Ltd[[10]](#footnote-10),*** the defendant’s oil tanker owner had a contract to carry Unipetrol’s cargo of fuel to Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and the loss of the cargo. The Court Of Appeal held that the respondents were liable in conversion.

In conversion, negligence or intention is not relevant, and once the dealing with the chattel of another person is in such circumstances that the owner is deprived of its use and possession, the tort is committed.

**The lost property rules**

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[[11]](#footnote-11).*** 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 right to 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.
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 acquires 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.
4. 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, the occupier has manifested an intention to exercise control over the premises, and things on it.

In ***Parker V. British Airways[[12]](#footnote-12)***, the plaintiff was waiting in the defendants airway lounge at Heathrow Airport London, 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 defendants failed to return it to the finder and sold it. Thee England Court of Appeal held that the proceeds of sale belonged to the plaintiff who found it.

**Defences for detinue**

There are several potential defences available for detinue. These include but are not limited to:

1. **jus tertii:** it is a defence to show that a third party has a better right of possession than the plaintiff.
2. Reasonable defence of a person or property, such as when one beats or injuries a dog that was attacking him or another person.
3. Enforcement of a court order or other legal process, such as levying of execution of property under a writ of fifa.
4. Inevitable accident
5. Innocent delivery.

**The remedies for Detinue.**

1. **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.
2. **Compensatory damages:** Compensatory damages may be awarded if there has been a loss.
3. **Restitution:** the remedy of specific restitution (i.e. remedy calculated based on the gains of the defendant) where damages are inadequate.
4. **Abatement (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.

**Differences between detinue and conversion.**

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

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