**NAME: INEGBEDION EFE VALERIE**

**COURSE: LAW OF TORTS I (LPB 301)**

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**QUESTION;**

The tort of trespass to Chattel in 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 defense to Trespass to Chattel, conversion and detinue Differences between conversion and Detinue Suppo 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)159 T

**Introduction**

Under common law, there are seven types of intentional torts: assault, battery, false imprisonment, trespass to land, trespass to chattels, conversion, and intentional infliction of emotional distress. Generally, a trespass refers to a wrongful use of another person's property without his or her permission. Under intentional torts, there are two types of trespass: trespass to chattels and trespass to land. Trespass to land is an unlawful entry or use of another person's land without the owner's permission or reasonable excuse.

**TRESPASS TO CHATTEL**

On the other hand, A "chattel" refers to any personal property, moving or unmoving. A trespass to chattel is an intentional interference with another person's lawful possession of a personal property. Trespass to chattels is a tort whereby the infringing party has intentionally negligently interfered with another person's lawful possession of a chattel (movable personal property). The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattel (whether by taking it, destroying it, or barring the owner's access to it). It is actionable per se; proof of direct and unlawful application of force is enough, there is no need to prove damages ***DAVIES v. LAGOS CITY COUNCIL (1973)***. However, the direct application of force does not have to be physical. The origin of the concept comes from the original writ of trespass ***de bonis asportatis.*** In order to prove trespass to chattels, you are required to show the following elements:

* 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.
* 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.
* Interference of chattels: A person commits a trespass to chattel by dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

This tort may be defined as a direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional or negligent. The interest of the plaintiff which the tort protects is:

* Interest in retaining possession of the chattel.
* Interest in protecting the chattel against intermeddling.
* Interest in the physical condition of the chattel.

Mistake of ownership is not a valid defense to a trespass to chattels. In other words, it doesn't matter if the person didn't know the property belonged to you. Possessing or damaging the property itself is enough to show interference. In a trespass to chattels claim, you can only recover actual damages (as opposed to nominal damages). Actual damages are measured by the diminished value of the chattel that resulted from the defendant's actions. Trespass to chattel can take various forms such as destroying ***(SHELDRICK v. ABERY (1793)170 E.R 278)***, damaging ***(FOULDES v. WILLOUGHBY (1841)151 E.R 1153 AT P. 1157)*** or merely moving the goods ***(PENFOLDS WINES PTY LTD v. ELLIOT (1946) 74 C.L.R 204 AT PP. 214,215)***or wrongly moving them from one place to another ***(KIRK v. GREGORY (1876)34 L.T. 488).***

**DEFENCES FOR TRESPASS TO CHATTELS**

* **Necessity:** The defendant may be able to establish a defence to trespass if the inference occurred in circumstances where the interference was necessary, but consent could not reasonably be obtained. The defendant must show that there was an apparent imminent danger to person or property and that the defendant honestly believed on reasonable grounds that the act was necessary for the preservation of the person or property.
* **Consent:** A defendant may be able to establish a defence to trespass if the interference occurred with the plaintiff’s consent. Consent can either be express or implied by conduct; however, it must be genuine and voluntary.
* ***Jus Tertii: Jus Tertii*** means ***‘the right of a third party’***. A cause of action in trespass may fail if the defendant can show that a third party has better rights to the chattel than the plaintiff.
* **Inevitable Accident:** Inevitable accident is a defence that apply in circumstances where the defendant can show that their conduct was involuntary, and accordingly, the defendant is without fault.
* **Mistake:** Mistake is generally not a defence to intentional torts. However, mistake may be a defence to a cause of action in trespass if the defendant can prove that he or she acted with a mistaken belief and the mistake was reasonable. The standard for what is considered ‘reasonable’ is generally fairly difficult to meet.

**REMEDIES FOR TRESPASS TO CHATTEL**

If one wishes to bring a claim for trespass to chattel or land, there are various remedies that may be available to you, including:

**Compensatory Damages**

Compensatory damages apply if damage to the chattel has been sustained or 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**

Trespass is a tort of strict liability, which means that nominal damages (i.e. damages awarded to a person who has suffered a legal wrong) apply even where no actual damage has been sustained by the plaintiff.

**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 damages suffered by the plaintiff are significant (such as where the trespass is ongoing).

**Exemplary Damages**

Exemplary damages, also referred to as punitive damages (i.e. damages awarded in order to punish the defendant and deterring others from engaging in similar conduct) may be awarded in certain circumstances involving trespass to chattels. Exemplary damages (although not traditionally so) are available for any tort.

 **CONVERSION**

Conversion is the deprivation of another’s right to use or possess personal property. It is a tort that exposes you to liability for damages in a civil lawsuit. It applies when someone intentionally interferes with personal property belonging to another person. Conversion is so called because the essential feature of the tort is the denial by the defendant of the possessory interest or title of the plaintiff in the goods. ***(***[***RICHSTEIN v. ROESCH***](https://en.wikipedia.org/w/index.php?title=Richstein_v._Roesch&action=edit&redlink=1)***)***. The defendant is said to convert the goods to his or her own use by manifesting an assertion of rights or dominion over the goods which is inconsistent with the rights of the plaintiff ***KUWAIT AIRWAYS CORP V IRAQI AIRWAYS CO***. It is this conduct by the defendant which is inconsistent or incompatible with a recognition of the plaintiff’s continuing rights in the goods which lies at the heart of conversion. To make out a conversion claim, a plaintiff must establish four elements:

* That the plaintiff owns or has the right to possess the personal property in question at the time of the interference;
* That the defendant intentionally interfered with the plaintiff's personal property (sometimes also described as exercising "dominion and control" over it);
* That the interference deprived the plaintiff of possession or use of the personal property in question
* The interference caused damages to the plaintiff.
* Intent to convert the tangible or intangible property of another to one's own possession and use. ***(ASHBY v. TOLHURST (1937))***
* The property in question is subsequently converted***.(***[***HARTFORD FINANCIAL CORP. V. BURNS***](https://en.wikipedia.org/w/index.php?title=Hartford_Financial_Corp._v._Burns&action=edit&redlink=1)***,*** [***BROWN v. MEYER***](https://en.wikipedia.org/w/index.php?title=Brown_v._Meyer&action=edit&redlink=1)***,***[***GEBHART v. D. A. DAVIDSON & CO.***](https://en.wikipedia.org/w/index.php?title=Gebhart_v._D._A._Davidson_%26_Co.&action=edit&redlink=1)

Conversion requires not merely temporary interference with property rights, but the exercise of unauthorized dominion and control to the complete exclusion of the rightful possessor. The defendant need not know that he or she is acting in violation of the plaintiff’s rights and may be acting in the honest belief that his or her actions are lawful. It does not matter that the defendant could not by the exercise of any reasonable care have known of the plaintiff’s interest in the goods; the duty is absolute and the defendant acts at his or her peril. ***[Marfani & Co v Midland Bank [1968] 1 WLR 956 (CA), Unisys Canada Inc v Imperial Optical Co (1998].*** The intention that is required is to do the act itself, not to challenge the plaintiff’s rights. ***[Helson v McKenzies (Cuba Street) Ltd [195] NZLR 878 (SC & CA), Wilson v New Brighton Panelbeaters Ltd [1989] 1 NZLR 74, Central Acceptance Ltd v Smith Hughes & Robertson [1992] 3 NZLR 413 (CA) ]*** For this reason, one who innocently purchases goods from another in the genuine belief that the seller has a right to sell may be liable in conversion, as may anyone in a previous or subsequent chain of equally innocent buyers and sellers; ***[Elwin v O’Regan and Maxwell [1971] NZLR 1124]*** by definition, each person in a series of conversions wrongfully excludes the owner from possession of his or her goods. ***[Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5) [2002] 2 AC 883, 1093 (HL***)] It follows that the person who innocently hands over goods to the wrong person in the mistaken belief that he or she is delivering the goods to the true owner may be similarly liable. ***[Helson v McKenzies (Cuba Street) Ltd [1950] NZLR 878 (SC & CA)]*** Conversion involves an intentional wrong, which means that the defendant must intend to do the act which constitutes the denial of the plaintiff’s rights. The conduct must therefore be deliberate and not accidental.

**Defenses to Conversion**

Defenses that are normally advanced for conversion are:

* Abandonment of property by plaintiff.
* Authority of law.
* Consent or approval of plaintiff.
* Statutes of limitation.
* Interest of defendant (e.g. Defendant has rights to the property.)
* Lack of value of property.
* Nonexistence or lack of identity of property.
* Privilege.(In certain circumstances and under certain statutes, a defendant has the privilege to claim possession…storage facilities after proceeding along statutory lines, can seize stored property and are privileged to do so, for example.)
* Unlawful and illegal acts.

**Acts of conversion**

* **Conversion by detaining:** Conversion may arise where a defendant who has lawfully obtained possession of goods is shown to have an intention to keep them as against the plaintiff who has an immediate right to possession. ***[Cuff v Broadlands Finance Ltd [1987] 2 NZLR 343, 346 (CA)]*** Detention constitutes conversion only when it is adverse to the person claiming possession, so the person detaining the goods must show an intention to keep them in defiance of the claimant. ***[Marshall v Dibble [1920] NZLR 497, Helson v McKenzies (Cuba Street) Ltd [1950] NZLR 878, 919 (SC & CA)]*** The defendant’s intention, again, is all important; one who innocently comes into possession of the goods of another, not having been the original taker, does not commit conversion, for there is no direct interference in such a case. He or she is a mere custodian of the goods unless and until he or she does some act in relation to the goods which amounts to an assertion of dominion which is inconsistent with the plaintiff’s rights. Simple retention does not in itself amount to such conduct.
* **Conversion by exclusion of another:** Clearly, the physical handling of goods by taking, destroying, or unjustifiably detaining them in defiance of the person entitled to them is conduct which amounts to conversion, as is the transfer, or disposition, of goods without the authority to do so. In such circumstances, a finding of conversion will generally be straightforward enough. However, where there has been an unjustified assertion of a right to possession or control of goods, but no physical dealing with them has occurred, it is not always clear whether conversion is committed or not. ***Club Cruise Entertainment and Travelling Services Europe BV v Department for Transport***.

**Other acts include**: Conversion by using and misusing, conversion by taking possessions and Conversion by transfer to another.

**DIFFERENCE BETWEEN TRESPASS TO CHATTELS AND CONVERSION**

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. The degree of interference for conversion must be so serious that the tortfeasor, or person accused of committing the tort, may be required to pay the full value of the property.

According to the Restatement (Second) of Torts, the court may consider the following factors to determine the seriousness of the interference in a conversion case:

1. The extent and duration of the tortfeasor's exercise of dominion or control
2. The tortfeasor's intent to deprive the owner on possession
3. The tortfeasor's good faith
4. The extent and duration of the resulting interference with the other's right of control
5. The harm done to the chattel.
6. The inconvenience and expense caused

On the other hand, a trespass to chattels is an act that falls short of conversion. The tortfeasor is responsible only to the extent of the damage done (not the full value of the property) from dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or damaging the chattel.

**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.

Detinue was a way for a plaintiff to seek recovery of their specific property in court. It was abolished in 1977 and replaced with interference with property torts such as conversion. Under detinue, the defendant could have taken the property by lawful means, but retains it unlawfully. The plaintiff does not have to ever have the property in their possession to seek recovery of it through detinue.

The tort of detinue occurs when a person wrongfully detains a person’s property and unreasonably refuses to return that property to the rightful owner.1 Detinue is similar to the [Tort of Conversion](https://gibbswrightlawyers.com.au/publications/conversion-tort), except for a specific element: it is a condition of the action of detinue that the plaintiff has made demand for the return of goods, and the demand has been refused.2 The plaintiff must also have a right to immediate possession of the chattels.

**What Were the Requirements for Detinue?**

In order for a plaintiff to recover property under detinue, they were required to show:

1. The property sought must be identifiable in a unique way, and
2. The plaintiff has not made any demands by the defendant to return the property prior to filing the lawsuit.

**Elements of Detinue**

There are four elements required to establish detinue:

1. Make a Demand
2. Refuse a Demand
3. Unreasonable Refusal
4. Consequential damage

**Defences to Detinue**

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

**Consent:**It is a defence to show that there can be no trespass if the interference occurs with the plaintiff’s consent. Consent can either be express or implied.

***Jus Tertii:*** It is a defence 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 (in particular 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 isn’t valid, then a refusal may not have been unreasonable.

**There was no refusal:** If the refusal to return something is not specific, and a sufficient amount of 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 wasn’t reasonable to return the chattel:** There may be a reasonable excuse why the chattel had not been returned in time.

**Remedies and Compensation for Detinue**

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 (Remedy calculated based on the gains of the defendant) where damages are inadequate.

**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 CONVERSION AND DETINUE**

Conversion is when one deals with a chattel in a manner repugnant to the immediate right of possession of the true owner. Subjective intention to convert is unnecessary.

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, but that is not essential. Where the defence shows the defendant would have refused to comply, then a formal demand would have been futile.