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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.

**Definition of chattel**

The word chattel can be defined as any article, goods, or personal property other than land and immoveable property. It can also be seen as any moveable item that is capable of being owned, possessed or controlled. Examples of chattel includes cars, furniture, animals, vessels etc. The purpose of the tort of trespass to chattel is to protect all the chattel, goods, or personal properties of a person who has title or possession by prohibiting all interference without legal justification. It protects the rights of ownership or possession of a chattel from all wrongful interferences. In Nigeria, the tort of trespass to chattel is made up of three types of torts.

1. Trespass to chattels
2. Conversion
3. Detinue.

**TRESPASS TO CHATTEL**

Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the intentional or negligent interference with the possession of the chattel of another person without lawful justification. The interference must be direct, physical, intentional or negligent and wrongful, plus, the plaintiff must have possession of the chattel being interfered upon. Touching a chattel without causing any harm to it may, in appropriate circumstances, be actionable and entitle the plaintiff to get nominal damages.

Tort helps in maintaining an action for trespass, the plaintiff must show that he had possession at the time of the trespass or is entitled to immediate possession of the chattel. Thus, a hirer, or a bailee of goods, possesses the goods hired or bailed 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.

Tort also helps in protecting the following interests in personal property; the right of retaining one's chattel; protection of the physical condition of the chattel and protection of the chattel against unlawful interference. It is designed to protect possession, that is, the right of immediate possession of a chattel, which is different from ownership. It is also designed to protect the right of a person to the control, possession, retention or custody of a chattel against interference by another person without lawful justification.

**Element of Trespass to Chattel**

In an action for trespass to chattel, for the plaintiff to succeed he must establish that the trespass was:

1. Intentional
2. Negligent

In the case of Fagan v Metropolitan police commissioner [1969]. Apolice man was giving directions to the defendant to move his car elsewhere when he accidentally drove onto a policeman’s foot. When the police man shouted at the defendant to move the car, the defendant turned off the engine of the car and refused to move. This case makes a point

concerning the requirement of actus reus [act] and mens rea [intention] to be present for a crime to take place. Also,In the case of *National Coal Board v Evans & Co.,[[1]](#footnote-1)*the defendants were employed by a county council to work on land owned by the council. A trench had to be dug, which the defendants employed a sub-contractor to do. An electric cable passed under the land, but neither the council, nor Evan & Co., nor the sub-contractors knew this as the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable, it caused 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 contractors, there was no fault and there was no trespass by the defendants. The damage was an inevitable accident which means there was no intention.

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.

#### Persons who may sue for Trespass to Chattel

#### Anyone that has possession of a chattel may sue a person that meddles with the chattel. This is so for the purpose of the tort of trespass is to protect possession, or the right to immediate possession. In other words, anyone that has possession or right to immediate possession can sue.

Accordingly, some persons who do not have legal right to possession are deemed by law to have possession, so that they will be able to protect chattels left under their care. For instance, an employee to whom an employer has given custody of goods, a repairer, caretaker, personal representatives of a deceased and so forth. 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. Assignees
5. Trustees
6. Custodians
7. Caretakers
8. Administrators of Estates 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, provided that he has the authority of such third party.
3. Subsisting lien.
4. Subsisting bailment
5. Limitation of time, as a result of the expiration of time specified for legal action.
6. Honest conversion, or acting honestly, 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. Payment of the market price of the chattel
4. Repair of the damage caused to the chattel.

A frequent demonstration of these remedies is in motor accident cases. Where one vehicle runs into another, damages may be paid, or the parts of the vehicle that are affected may be replaced or repaired.

**CONVERSION**

According to SIR JOHN SALMOND; 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.

In the case of *North Central Wagon & Finance Co. Ltd v Graham[[2]](#footnote-2),* 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.

**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: A bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him. However, a bailor at will has title to immediate possession of a chattel he has deposited with a bailee and can maintain an action against a bailee for conversion.

In the case of *The Winkfield[[3]](#footnote-3),* 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 entitled to sue the owners of the Winkfield, as a bailee in possession for the value of the mails that were lost in the sunk ship. COLLINS MR in the English Court of Appeal held that the owners of the Winkfield were liable and that “as between a bailee and a stranger, possession gives title”.

1. Holders of Lien and pledge
2. Finders
3. Buyers
4. Assignees
5. Licensees
6. Trustees

**Examples of Conversion**

Examples of conversion include:

1. Taking

Where a defendant takes a plaintiff’s chattel out of the latter’s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily.

1. Using
2. Alteration
3. Consumption: By eating or using up
4. Destruction

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

1. Receiving

Involuntary receipt of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Receiving a chattel from a third party who is not the owner is a conversion. This is wrong for it is an act of assisting the other person in the conversion of the chattel or receiving stolen goods.

1. Detention

In *Armory v. Delamirie[[4]](#footnote-4),* a chimney sweeps boy found a jewel and gave it to a jeweler for valuation. The jeweler knowing the circumstances, took the jewel, detained and refused to return it to the boy. The boy then sued the jeweler for conversion and for an order to return the jewellery to him. The Court held that the Jeweler was liable for conversion. A finder of a property has a good title and he has a right or interest to keep it against all persons except the rightful owner of the property or his agent.

However, temporary refusal by the finder of the property to hand over to the claimant in order to verify the authenticity of the title of the claimant is not actionable except where the refusal is adverse to the owner’s better title.

1. Wrongful delivery

Wrongful delivery of a person’s chattel to another person who does not have right to possession without legal justification is a conversion

1. Purchase

Conversion is committed by a person who bought and took delivery of goods from a seller who has no title to the chattel nor right to sell them. For instance, where a thief steals and sells a chattel, a buyer, in this situation, takes possession at his own risk.

1. Wrongful disposition: such as by sale, transfer of title etc.

In *Chukwuka v. C.F.A.O. Motors Ltd.[[5]](#footnote-5),* the plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months after, the defendants sold the car to a third party who re-registered it in his own name. The plaintiff sued for conversion. The High Court held that the defendant was liable to the plaintiff for conversion of the car.

**DEFENCES FOR CONVERSION OF A CHATTEL**

In an action for conversion of a chattel, the defendant may plead the following;

1. Jus tertii, that it, the title or better right of a third party
2. Subsisting bailment
3. Subsisting Lien
4. Temporary retention

To enable steps to be taken in order to check the title of the claimant, a defendant may temporarily refuse to give up goods while steps are taken to verify the title of the plaintiff who is claiming title before the chattel is handed over to the plaintiff if he is found to be the owner or has the right to immediate possession.

1. Limitation of time

To the chattel or property in dispute, It is a general rule that a defendant cannot plead that a plaintiff is not entitled to possession as against him because a third party is the true owner of the chattel. A defendant can only plead when he or she is acting with the authority of the true owner. Therefore, for a defendant to plead jus tertii, the identity of the true owner must be disclosed, his title or better right to immediate possession must be established and the defendant must be claiming for, on behalf or under the title of the alleged owner.

**Remedies for Conversion**

In a claim for conversion, several remedies are available to a plaintiff. The court may order any of the following remedies;

1. Order for delivery, return or specific restitution of goods
2. Alternative order for payment of the current market value of the chattel
3. An order for payment of any consequential damages
4. Recovery of special and general damages.

**DETINUE**

The tort of detinue is the wrongful detention or retention of the chattel whereby the person entitled to it is denied the immediate possession or use of it. It is a general rule that to successfully sue in detinue, a plaintiff must have possession before the detention or have the right to immediate possession of the chattel.

An action in detinue may be a claim for the specific return of a chattel wrongfully retained or for payment of its current market value and any consequential damage. Anybody who wrongfully takes, detains or retains a chattel and after a proper demand for it by the owner, refuses or fails to return it without a lawful excuse may be sued in detinue to recover it or its value.

A plaintiff can only maintain action for the tort of detinue after satisfying two conditions. These conditions 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 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.

See the case of *Kosile v. Folarin[[6]](#footnote-6), where* 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 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 loss of the use of the vehicle until the date of judgment at the rate of N20 per day. The Supreme court emphasized on the requirement that in an action for detinue, there must have been a demand by the plaintiff, to return the chattel and if the defendant persists in keeping the chattel, he is liable for detinue.

In *West Africa Examinations Council v. Koroye[[7]](#footnote-7),* 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.

**DEFENCES FOR DETINUE**

In an action for detinue, a defendant may plead that;

1. He has mere possession of the goods.
2. The plaintiff has insufficient title as compared to himself.
3. The defendant may plead *jus tertii* provided that the defendant is the agent. This defence is based on ownership by a third party and it is not pleaded except the defendant is defending under the right of such third party who has ownership or title that will enable him to establish a better title and the right to possession than the plaintiff.
4. Innocent delivery
5. Subsisting bailment
6. Subsisting lien on the chattel
7. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
8. Inevitable accident
9. Reasonable defence of a person or property, such as when one beats or injures a dog that was attacking him or another person.

**REMEDIES FOR DETINUE**

When a person’s chattel is detained by another person, the person who is denied 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 or release on bond
6. Damages.

### **The Differences between Conversion and Detinue**

Detinue covers the same ground as the 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, 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.

Before the Common Law Procedure Act 1854 was enacted, a defendant had a choice to either restore the actual chattel or pay the market value. However, since the enactment of the Act, a court has discretion to order specific restitution, or award the market value of the chattel to the plaintiff or it may award damages alone if the goods can be replaced easily.

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2. O.T. Abisoye & Ayodeji E. O. Ige, 2008, LAW 232: LAW OF TORT I

1. 1 [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)