**NAME: FEBOKE ELIZABETH DIGHA**

**MATIC NUMBER: 18/LAW01/107**

**COURSE CODE:**

**COURSE TITLE: LAW OF TORT**

**TRESSPASS TO CHATTEL**

Chattel is simply any property other than land and immovable property. It is property which can be owned possessed or controlled other than human beings, land and immoveable property. It is moveable and personal property. Examples include; books, cars, furniture, animals, air and sea craft etc. The purpose of the tort of trespass to chattel protects the rights of ownership or possession of chattel from all wrongful interferences. Trespass to chattel is actionable per say.

There are three types of trespass to chattel in Nigeria-

1. Trespass to chattel per say (without conversion or detinue of the chattel in question)
2. Conversion
3. Detinue

**Trespass to Chattel**

This is the direct and unlawful interference with the chattel in possession of another person without lawful justification. The mere touching of chattel in the right circumstances may be actionable and entitle the plaintiff to damages even if the chattel was not harmed. This trespass may be intentional or negligent. This trespass is designed to protect ;(a) right of retaining ones chattel, (b)protection of the physical condition of one’s chattel and (c) protection of the chattel against unlawful interference.

The tort is designed to protect possession, right of immediate possession of chattel and not ownership. To maintain an action for trespass to chattel the plaintiff must prove that he had possession at the time of the trespass or that he is entitled to immediate possession of the chattel. Thus a bailee, hirer or borrower possesses the goods and can sue for trespass. Also, a person who has wrongfully gotten possession may sue for trespass except against the owner or agent of the owner of the chattel. In this tort, injury to the chattel is done to the chattel while it is in the possession of the person claiming damages for injury. In the case of Erivo v Obi, The court of appeal held that the defendant was not liable because it was an inevitable accident not done intentionally or negligently as normal force was used to close the car door. Another case with a similar judgment is National coal board v Evans and co Some examples of trespass to chattel are; taking chattel away, destruction of chattel, use without permission etc

The elements for trespass to chattel or what a plaintiff must prove to win his claim is that it was intentional or negligent. However, accident, intentional or negligent, does not automatically give rise to liability per say as an appropriate defence, may be pleaded to avoid liability.

The persons who may sue for trespass to chattel are those in possession or caretaker ship of the chattel. Examples of such persons are; owners, bailees, lenders, assignees, trustees, finders, custodians, caretakers, executors, administrators of estates etc

The available defenses to trespass to chattel include: inevitable accident, subsisting lien, subsisting bailment, honest conversion, jus tertii, limitation of time as a result of specific time limit for the legal action.

The remedies available for trespass to chattel are; Payment of damages, replacement of chattel, payment of market price of the chattel, repair of damage. Some cases where it was held to be trespass to chattel and remedies were awarded to the plaintiff are Davies v Lagos city council, Fouldes v Willoughby, Kirk v Gregory, Haydon v Smith, Slater v Swann etc

**Conversion**

According to Sir John Salmond, 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 of it. Conversion is dealing with another’s property as if it is one’s own. It is intentional interference with another person’s chattel which unlawfully deprives them of the title, possession and use of it. It includes wrongful taking, wrongful detention and wrongful disposition. It is not necessary to prove that the defendant had intention to deal with the goods because interference with the goods is enough proof. It is immaterial that the defendant does not know the chattel belongs to another. Some examples of conversion are; Taking or using the chattel (Petre v Heneage, Penfolds wine v Elliot), altercation, consumption, damage, detention (Armory v Delamarie), wrongful sale or delivery of the chattel etc Some other examples of cases where the defendant was held liable for conversion are; City motor properties ltd v Southern Ariel Services, Youl v Hardbottle and Hollins v Fowler.

**Innocent receipt or delivery-** Where an innocent party (carrier, ware house man) receives goods in good faith from a person he believes to have lawful possession and delivers them on the person’s instructions to a third party in good faith, there is no conversion. Similarly, innocent receipt is not conversion as long as the goods are not damaged except they constitute a nuisance. In the case of UniPetrol v Prima Tankers Ltd, The defendants were held liable of conversion.

**Lost Property Rules-** These rules were developed in the case of Parker v British Airways where the English Court of Appeal held that the proceeds of sale belonged to the plaintiff who found the bracelet. The rules are as follows;

1. A finder of chattel has no right over it unless it has been abandoned or lost and he takes it into his care or control.
2. An employee who finds lost property in the course of his employment does so on behalf of his employer who by law acquire finder’s rights.
3. An occupier of land or building has superior rights over the finder of chattel in or attached to his property. (South Staffordshire Water Co v Sharman and Elwes v Briggs Gas Co)
4. However, an occupier of land or building does not have superior rights over the finder in respect of goods found in ore attached to the property unless he declared intent to exercise control over the premises and all things in or attached to it before the finding. In Bridges v Hawkesworth, the finder of bank notes lying in a public part of a shop was held to be the owner of the notes and not the shop owner.

The finder of chattel has the duty to take reasonable steps to find the owner before he can exercise rights of ownership over it. The people who may sue for conversion are; owners, bailees (The Wink field), holders of lien and pledge, finders, buyers, assignees, licensees, trustees etc

The defenses available for conversion are; Subsisting bailment, subsisting lien, limitation of time, temporary retention. The remedies available for conversion are; order for delivery, return or specific restitution of the goods, payment of the market value of the chattel, payment for consequential damages, and recovery of special and general damages.

**Detinue**

This is the tort of wrongful detention of the chattel of another person whereby the person entitled to it is denied possession and use of it. As a general rule, to successfully sue in detinue, a plaintiff must have possession before the detention or have right to the immediate possession of chattel. An action for detinue is a claim for the specific return of chattel wrongfully detained or for payment of its current market value and any consequential damages. Any person who wrongfully retains another’s chattel and after proper demand for it, refuses to return it to the claimant without lawful excuse may be sued in detinue to recover it or its value. In the UK the tort has been merged with conversion by the tort (interference with goods act) 1977 but it remains a separate tort in Nigeria. Some cases where the defendant was held liable for Detinue are; West African Examination Council v Koroye, Steyr Nig.ltd v Gadzama, Ogiugo & son’s ltd v C.O.P

A plaintiff may sue for detinue when;

1. He has title, which is ownership or right to immediate possession of the chattel.
2. The defendant who has actual possession of the goods must have failed to return it after proper demand for the chattel, without lawful excuse.

**The Differences between Conversion and Detinue**

1. The refusal to return chattel on demand is the essence of detinue while it is not necessary for conversion.
2. Detinue is a proper remedy where the plaintiff seeks the return of the specific goods and not the market value. However, if return of specific good is not possible, an award of the current market value is made to the plaintiff. This is not the case for conversion.

Before the Common law procedure act of 1854, a defendant had the choice to either restore the specific good or pay the market value. However, since the act, the court has the discretion to order any of the aforementioned options

The available defenses for Detinue to a defendant are that; He has mere possession of the goods, the plaintiffs title is insufficient compared to his, a plea for jus tertii (a third party has better title and the defendant is the agent of that third party), innocent delivery, subsisting bailment, subsisting lien, inevitable accident, temporary retention, enforcement of court order etc

The available remedies available to the plaintiff are: Damages, claim for return of chattel, claim for replacement of chattel, claim for current market value of chattel, repelvin etc Some case where the defendant was held liable for detinue are; West African Examination Council v Koroye, Steyr Nig.ltd v Gadzama, Ogiugo & sons ltd v C.O.P

Reference;

Ese Malami Law of Torts