**NAME: Abdulazeez A. Abiodun**

**MARIC NO: 18/SMS08/001**

**COURSE TITLE: Law of Tort I**

**COURSE CODE: LPB 301**

**LECTURER: Ms. Omomen M.**

**DATE: January 20, 2021**

**Assignment;** The tort of trespass to chattel in is made of: Trespass to chattel conversion and Detinue discuss the above support with case law.

***Content;***

* Definition
* Elements of trespass to chattel
* Conversion and detinue explain the concepts of innocent delivery or receipt
* Lost property rule and give examples of conversion
* Gives examples of persons qualified to sue for trespass to chattel
* Discuss the remedies and defenses to trespass to chattel
* Conversion and detinue differences between conversion and detinue .

**Answer**

* **Definition**

Trespass to chattel is under the law of tort. 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: (1) trespass to chattels and (2) 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. A chattel is any movable property. The word chattel means any article, goods or personal property other than land and immovable property. It is any personalty. Examples of chattel or goods are innumerable, and as many as can be named[[1]](#footnote-0)1.

On the other hand, a trespass to chattels is an intentional interference with another person's lawful possession of a personal property. A "chattel" refers to any personal property, moving or unmoving. Trespass to chattels does not apply to real property or any interest in land. 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 (1) dispossessing another of the chattel, (2) using or intermeddling with a chattel in the possession of another, or (3) damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversions..

Keep in mind that 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. The list of chattel has no limit. A chattel is any movable things which can be owned, Possessed, or control other than human being.. example of chattel includes cars, a book, furniture, animals, vessel, aircraft, sea craft, and any other movable things.

Trespass to Chattel is a direct and unlawful injury done to the chattel in possession of another person. It is actionable per se[[2]](#footnote-1); proof of direct and unlawful application of force is enough, there is no need to prove damages. However, the direct application of force does not have to be physical. For example, the driving away of cattle is trespass to chattel.

* **The purpose of the tort of trespass to chattel**

The tort of trespass to chattels protects all the chattel, goods, or personal properties of a person who has title, or possession by prohibiting all interference without legal justification. The tort of trespass to chattel protects the rights of ownership or possession of a chattel from all wrongful interference. Thus, the tort of trespass to chattel protects the chattels, goods, and all personal properties of a person who has title, possession, or right to immediate possession against meddling, damage, destruction, diminution, conversion[[3]](#footnote-2)3, detinue, or any interference whatsoever, by any other person without lawful justification. Trespass to chattel is designed to protect the following interests in personal property or personalty. Right of retaining one’s chattel, protection of the physical condition of the chattel and protection of the chattel against unlawful interference or meddling.

* **Elements of trespass to chattel**

It is generally known in trespass that trespass to chattel is **actionable per se**. It is not necessary for the plaintiff to proof damage in trespass. In the case of **Erive v. Obi[[4]](#footnote-3)4**, the defendant closed the door of the plaintiff’s car, and the side windscreen got broken, the plaintiff sued inter alia for damage to the windscreen and the loss incurred in hiring another car for his business, the court of Appeal held that the defendant was not liable[[5]](#footnote-4)5. The defendant did not used excessive force to closed the door. So therefore he did not break the windscreen intentionally nor negligently. In this case, the Court Of Appeal restated the position of the law that, trespass to chattel is actionable per se, that is, without proof of actual damage. Any unauthorized touching or moving of a chattel is actionable at the suit of the possessor of a chattel, even though no harm has been done to the chattel. Therefore, for trespass to chattel to be actionable, it must have been done by the wrongdoer;Intentionally or Negligently.

* **Conversion and detinue explain the concepts of innocent delivery or receipt**

**Generally, innocent delivery,**or innocent receipt are not torts, nor criminal offenses. 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 instructions to a third party in good faith, there would be no conversion, similarly, innocent receipt of goods is not conversion[[6]](#footnote-5)6. However, the receiver must not wilfully damage or destroy the goods unless the goods continue a nuisance. In the case of **Unipetrol v. Prima Tankers ltd[[7]](#footnote-6)7.** The oil tanker had a contract with the Unipetrol to cargo of fuel from port Harcourt. The captain of the vessel alleged went else where with the cargo of fuel. The plaintiff Unipetrol sued for conversion and loss of the cargo. The Court of Appeal held that, the respondent were liable in conversion. The word loss is wide enough. Also in the case of **Danjuma v. Union Bank Of Nigeria plc.**

* **Lost property rule and give examples of conversion**

**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. Britishairways[[8]](#footnote-7)8, in this case t**he plaintiff was waiting in the defendant airways lounge at heathrow Airport, London, England where he found a bracelet on the floor and handed over to the employees of the defendant and stated that if the owner did not come for it that is should be return back to him and he put his name and address down. It was not claimed by the owner and the defendant sold it. The English Court Of Appeal held that the proceeds of sale belongs to the plaintiff who find it. Also in the case of **Bridges v. Hawkesworth[[9]](#footnote-8)9**, the plaintiff finder of a packet of bank note lying on the floor in the public part of a shop was held entitled to the money instead of the shop owner since the rightful owner did not claimed it. However, the rules are not that easy to apply. The rules applicable for finding lost is as follow.

1. A finder of a chattel does not have right of the lost chattel than to keep it for the owner and hand it over to the rightful owner.
2. Any servant or agent who finds a lost property in the course of 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 the finder over property or goods attached to the land or find in the land. In the case of **south staffordshire water Co. V. Sharman[[10]](#footnote-9)10.** Where a prehistoric boat discovered six feed below the surface were held as belonging to the land owner also in the case **of Elwes v. Briggs Gas Co[[11]](#footnote-10)11.**
4. An occupier of a 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

* **Persons qualified to sue for trespass to chattel with examples**

In trespass to chattel not everybody have right to sue for trespass to chattel most time when that person is not the rightful owner of the chattel. But in a case where by the conversion of a chattel follows the rightful procedure, if anything happened to that chattel, the owner can sue for trespass to chattel. any rightful person in charge of a chattel can sue any other person who meddles with the chattel. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference include; owners, bailees[[12]](#footnote-11)12, lenders, assignees, trustees, finders, custodians, caretakers, adverse possessors, executors, administrators of estates. Following the case of **National Coal Board v.Evans & Co[[13]](#footnote-12)13.** The defendant contractors were employed by a county council to work on land on land owned by the defendant council. A trench had to be dug, which the defendant employed a sub-contractor to do. An electric cable pass under the land, but neither the council nor Evans & Co. Who were head contractors nor the sub-contractor knew this and the cable was damaged and water seeped into it causing explosion and there by cutting the cable off electric supply to the plaintiff coal mine[[14]](#footnote-13)14. 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 defendant. The damage was an inevitable accident.

* **Remedies and defenses to trespass to chattel**

**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.

A good example 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.

* **Defenses to trespass to chattel.**

In an action for trespass to chattel the defenses a defendant can plead include, inevitable accident, jus tertii, that is, the title or better right of a third party provided that he has the authority of such third party, subsisting lien, limitation of time, honest conversion.

* **Conversion and detinue differences between conversion and detinue .**

**Conversion**

According to **SIR JOHN SALMOND** in his book “Law of Tort*” a conversion is an act of wilful interference without lawful justification with any chattel in a manner in-consistence with the right of another whereby that other is deprived of the use and possession of it.* Conversion is any interference, possession, or disposition of the property of another person, as if it is one’s own without legal justification. In a nutshell, conversion is dealing with another person;s property as if it is one’s own. Therefore, conversion is the act of denying someone’s right to property without legal justification. Essentially, conversion is any inconsistent dealing with a chattel, to which another person is entitled to immediate possession, whereby the person is denied the use, possession,title to it. Thus, an owner can sue for conversion. A person who has mere custody, temporary possession or caretaker-ship can sue any third party who tries to detain, dispose, steal or otherwise convert such chattel. In the case of **North Central Wagon & Finance Co. Ltd v. Graham[[15]](#footnote-14)15.** 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;** taking, using, alteration, consumption,damaging or destroying it, receiving, detention, wrongfully refusing to return a chattel, wrongful delivery, etc.

**Differences between conversion and trespass**

Trespass to Chattels vs. Conversion

If someone wrongfully took your personal property, you may be able to bring an intentional torts claim against the person. But which type of tort would be a valid cause of action? Both trespass to chattels and conversion deal with wrongfully interfering with a person's personal property. Although they are similar in a way, there are significant differences that you should know before filing a lawsuit. Read on to learn about the similarities and differences between trespass to chattels and conversion.

What Are Trespass to Chattels and Conversion?

Trespass to chattels and conversion are both intentional torts that refer to a wrongful, intentional interference with the possession of someone's personal property. Trespass to chattels and conversion deal only with personal property. They do not apply to the interference of real property or any interest in land.

Both trespass to chattels and conversion are general intent torts. As opposed to specific intent torts, general intent torts do not consider whether the tortfeasor knew his or her conduct would result in the specific harm. As a result, mistake of ownership is not a valid defense to trespass to chattels and conversion.

Difference Between Trespass to Chattels and Conversion

It's often easy to confuse trespass to chattels with conversion because they both deal with interfering personal property. Here's a look at the differences between the two torts:

The Degree of Interference

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:

The extent and duration of the tortfeasor's exercise of dominion or control

The tortfeasor's intent to deprive the owner on possession

The tortfeasor's good faith

The extent and duration of the resulting interference with the other's right of control

The harm done to the chattel.

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.

Elements of Trespass to Chattels and Conversion

Proving trespass to chattels and conversion involve the following elements: (1) the plaintiff owns or has the right to possess the personal property at issue; (2) the tortfeasor intentionally interfered with the plaintiff's property; (3) the tortfeasor deprived the plaintiff of possession or use of the property at issue; and (4) the interference caused damages to the plaintiff.

Remedies: Trespass to Chattels vs. Conversion

As mentioned above, an ordinary conversion case will require the tortfeasor to pay the full market value of the property to its owner. If the owner is not fully deprived of the property, and it can be returned to the owner, the tortfeasor would be liable for the actual damage, which is the usual remedy for trespass to chattels. As opposed to paying the full value of the property, the tortfeasor will pay the diminished value of the chattel.

Conversion is different from trespass to chattels in two main respects, these are;

1. 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. Conversion is known as stealing or theft in criminal law, so therefore, mere touching of chattel and so forth only amount to trespass.
2. To maintain an action in conversion, the plaintiff need not be in actual possession of the chattel at the time of the interference. It is enough if the plaintiff has right to immediate possession of the chattel, that is, the right to demand for immediate possession of the chattel. The following cases explained this point further through the decision of the court. **Ashby v. Tolhurst, city motor properties ltd v. southern Aerial Service, Youl v. Harbottle., consolidated co. Ltd v. curtis & son., Adamson v. Jarvis.**

* **A finder has a duty to trace the true owner.**

As a general rule of law, anybody who has a finder’s right over a lost property, has an obligation in law to take reasonable steps to trace the true owner of the lost property, before he may lawfully exercise the rights of an owner over the property he found.

Who may sue for conversion

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

Defenses for conversion of a chattel

Jus tertii, subsisting bailment, subsisting lien, temporary retention, limitation of time.

* **Remedies for conversion**

In a claim for conversion of chattel several remedies are available to a plaintiff. The court may order for any of the following reliefs. Order for delivery, return or specific restitution of the goods or alternative order for payment of the current market value of the chattel.an order for payment of any consequential damages, recovery of general and specific damages, general damages.

* **Detinue**

The tort of detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. Detinue is the wrong detention or retention of a chattel whereby the person entitled to it denied possession or use of it. Essentially, the tort of detinue is;

1. The wrongful detention of the chattel of another person.
2. The immediate possession of which the person is entitled.

In detinue, the person detaining the chattel of another person can be sued. In United Kingdom the tort of detinue and the tort of conversion are not separated, it is called conversion of detimue, but in Nigeria, it is being separated. The tort of detinue and the tort of conversion. Example of deniue that is detention of goods are many, they include, A lends his chairs and tables to B for a day party, B refused to returned the furniture back to A at the day as agreed or after expiration of a reasonable time.

* **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 here, which are as follows.

1. The refusal to surrender or return 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 marked value.

* **The defenses for detinue**

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

He has mere possession of the goods, That the plaintiff has insufficient title as compared to himself, The defendant may plead jus tertii, that is, that a third party has a better title, provided the defendant is the agent or has the authority of the third party, or is claiming under the third party. In the case of **Fowler v. Hollins.** The learned judge CLEASBY BJ said “persons deal with the property in chattels or exercise acts of ownership over them at their peril”, innocent delivery, inevitable accident, etc.

**Remedies for detinue**  
1. **claim for return of the chattel**: this is a claim for return of chattel provided that the chattel has not being destroyed or damage in the detention.

1. **Replacement of chattel**: where possible and appropriate, a defendant may ordered for another identical chattel if found out that the chattel has been destroyed or damaged in one way or the other.
2. **Claim for the market value of the chattel:** this is a claim for the current market value of the chattel as may be assessed. The measure of damage in detinue is usually the market value of the goods proved at the time of judgement.
3. Recapture or self help
4. Replevin or release on bond[[16]](#footnote-15)16
5. Damages

* **Conclusion**

The above write up explained in details what trespass to chattel is, Trespass to chattel is under the law of tort which is known as civil wrong. Trespass in this sense means an unwanted infringement, it may be to property, person’s rights, land e.t.c. A Chattel is any property other than land and immovable property. conversion and detinue. It can be deduced from the above write up that conversion and detinue are similar in nature but they have some differences which distinguished one from another.

**Bibliography**

* ESE MALEMI, Law of Torts; 5th edition,( ikeja Princeton Publishing Co. 2008)159
* Kodilinye and Alison, The Nigeria Law Of Torts Spectrum law publishing, 1999) 195
* [www.findlaw.com/injury/torts-and-personal-injuries/trespass-to-chattels-vs-conversion.html](http://www.findlaw.com/injury/torts-and-personal-injuries/trespass-to-chattels-vs-conversion.html) accessed on 20th of January, 2021,@04:21pm.

1. 1 ESE MALEMI, Law Of Tort; 4th edition, page 209. [↑](#footnote-ref-0)
2. ibid [↑](#footnote-ref-1)
3. 3 ibid [↑](#footnote-ref-2)
4. 4 (1993) 9 NWLR pt 316, p. 60 CA [↑](#footnote-ref-3)
5. 5 ESE MALEMI, Law of tort; 4th edition, page 211. [↑](#footnote-ref-4)
6. 6 ESE MALEMI, Law of Tort; 4th edition, pg 222 [↑](#footnote-ref-5)
7. 7 (1986) 5 NWLR pt 42 p. 532 CA. [↑](#footnote-ref-6)
8. 8 (1982) 1 All ER 834 CA. [↑](#footnote-ref-7)
9. 9 (1851) 21 Lj QB 75. [↑](#footnote-ref-8)
10. 10 (1896) 2 QB 44 [↑](#footnote-ref-9)
11. 11 (1886) 33 Ch D 562 [↑](#footnote-ref-10)
12. 12 ESE MALEMI, Law of Tort; 4th edition, pg 215 [↑](#footnote-ref-11)
13. 13 Ibid [↑](#footnote-ref-12)
14. 14 Kodilinye and Alison, The Nigeria Law Of Torts, pg 254 [↑](#footnote-ref-13)
15. 15 (1950) 1 All ER 780 [↑](#footnote-ref-14)
16. 16 ibid [↑](#footnote-ref-15)