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

I will be guided by the following content

* Definition
* The concept of trespass to chattel
* Concept of conversion
* Detinue and what it entails
* Differences between conversion and detinue

**Definition of trespass to chattel**

The need to define the word trespass to chattel is very important, but before that, the word trespass is an intentional interference into something, so therefore, the word trespass to chattel is an intentional interference into another person’s property. Trespass to chattel in law of tort is an intentional interference into somebody’s property. A chattel maybe property, land, cars. A chattel is any movable things aside money. In law of tort trespass to chattel tries to protect what we called chattel (property). many scholar have different opinion on this. Trespass to Chattel is a direct and unlawful injury done to the chattel in possession of another person[[1]](#footnote-1)1. It is actionable per se; 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.

**Concept of trespass to chattel**

The purpose of trespass to person is to protect the rightful owner of a chattel or property.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[[2]](#footnote-2)2, damage, destruction, diminution, conversion, detinue, or any interference whatsoever, by any other person without lawful justification. So, in a nutshell, the aim of law of tort as to trespass to person is to protect the rightful owner of a chattel or property.

**The Element of trespass to chattel**

The most quality and most important element of trespass is that, trespass is actionable per se. In the case of **Erive v. Obi**, 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. 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.

Therefore, for trespass to chattel to be actionable, it must have been done by the wrongdoer;

1. Intentionally or
2. Negligently.

* **Concept of conversion**

Conversion is based on detention of another person’s property without any legal justification. In the word of **SIR JOHN SALMOND[[3]](#footnote-3)3** 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 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[[4]](#footnote-4)4. 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[[5]](#footnote-5)5.** 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. The reason why the court gave this judgement is because the defendant converted the car that is yet to be his own which is based on hire purchase by selling it to another person. Conversion in law of tort goes a long way because for you to convert a property to yourself, it must legally, legitimately will to you.

* **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[[6]](#footnote-6)6, 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[[7]](#footnote-7)7**, 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[[8]](#footnote-8)8.** 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[[9]](#footnote-9)9.**
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

* **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.

**Differences between conversion and trespass**

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.**

**Detinue and what it entails**

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;[[10]](#footnote-10)10

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.

* **Differences between conversion and detinue**
* **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.

**References**

* Kodilinye and Alison, The Nigeria Law Of Torts Spectrum law publishing, 1999) 195
* Ese malemi; law of tort, fourth edition,

1. 1 Ese Malemi; law of tort. Fourth edition. Page 210. [↑](#footnote-ref-1)
2. 2 ibid [↑](#footnote-ref-2)
3. 3 ibid [↑](#footnote-ref-3)
4. 4 5 ESE MALEMI, Law of tort; 4th edition, page 211 [↑](#footnote-ref-4)
5. 5 (1950) 1 All ER 780 [↑](#footnote-ref-5)
6. 6 (1982) 1 All ER 834 CA. [↑](#footnote-ref-6)
7. 7 (1851) 21 Lj QB 75. [↑](#footnote-ref-7)
8. 8 (1896) 2 QB 44 [↑](#footnote-ref-8)
9. 9 (1886) 33 Ch D 562 [↑](#footnote-ref-9)
10. 10Kodilinye and Alison, The Nigeria Law Of Torts pg 235 [↑](#footnote-ref-10)