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**ASSIGNMENT**

**The tort of trespass to chattel is made of: Trespass to chattel 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 receipts, lost property rule give examples of Conversion. Give 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.**

**INTRODUCTION**

*In the law of torts, there are two kinds of trespass to property, the first is trespass to chattel (or trespass to goods) and the second is trespass to land. Just as rights exist to prevent the interference to land rights, there also exist an action in tort to deal with unwarranted interference with personal property (i.e. the tort of trespass to goods/chattel) without lawful justification*

**TRESPASS TO CHATTEL**

Trespass to chattel is any direct interference with a property in the possession of another person without lawful justification. It is the intentional or negligent interference with the possession of the chattel of another person, which must be direct and wrongful. A chattel is any movable property other than land and immovable property. A chattel is any movable property. Chattel means goods or personal property other than an immovable property. It is a movable thing which is capable of being owned, possessed, or controlled other than a human being, land and immovable property e.g. furniture, cars, books, ship, animal, vessels, etc. In Nigeria, the tort of trespass to chattel is made up of three types of torts which are; trespass to chattels per se; without a conversion or detinue of the chattel in question, conversion and detinue.

The purpose of the tort of trespass to chattel is to protects all the chattels, goods, or personal properties of a person who has title, possession or right to immediate possession against meddling, damages, destruction, conversion, diminution, detinue or any interference whatsoever by any person without lawful justification. Trespass to chattel is made to protect the following interests in personal property such as right of retaining one’s chattel, protection of the physical of the chattel and protection of the chattel against unlawful interference or meddling. The three forms of trespass to chattels are each actionable per se upon commission or occurrence without the plaintiff having to prove damage. It is not a strict liability tort and where special damage has been done to a chattel, a plaintiff is entitled to prove it ad recover damage, for it as the case may be. The mere touching of a chattel without causing any harm to it may in appropriate circumstances be actionable and entitled the plaintiff to get nominal damages. The tort of trespass to chattel is closely related to any tort or law which has to do with the protection of interest in personal property such as; negligence, malicious damage such as arson and other damage to property or interest in property.

**Examples of trespass to chattel include**: damaging or causing any harm to a chattel (by any bodily or indirect contact), touching, driving another person’s car without permission, taking a chattel away, throwing another person’s property away, mere moving of the goods from one place to another, scratching, or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle, killing another’s animal, etc.

**Davies v. Lagos City Council**

The defendant city council granted a hackney permit to the plaintiff to operate a taxi cab, which permit was meant for the exclusive use of the plaintiff. The plaintiff transferred the permit to a third party, whereupon the defendant council seized and detained the plaintifff’s taxi cab. In an action for trespass to property. It was held by Adefarasin that although the defendant council was entitled to revoke the permit for non-compliance with regukations, however, it was not entitled to seize nor take possession of the plaintiff’s vehicle. The defendant was therefore liable for trespass to chattel by seizing the plaintiff’s car.

**Kirk v. Gregory**

The movement of a deceased person’s rings, from one room in his house to another was held to be a trespass to chattel and nominal damages was awarded against the defendant.

**Slater v. Swann**

Beating the plaintiff’s animal was held to be a trespass to chattel.

**G.W.K v. Dunlop Rubber Co**

Removing a tyre from a car and replacing it with another tyre was held to be trespass.

**ELEMENTS OF TRESPASS TO CHATTEL**

As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort. What a plaintiff must establish to succeed that the act is trespass;

1. Intentional
2. Negligent.

**PERSONS QUALIFIED TO SUE FOR TRESPASS TO CHATTEL**

Anyone who has possession or caretakers of a chattel may 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, Bailee’s, lenders, assignees, trustees, finders, custodians, caretakers, adverse possessors, executors, administrators of estates, etc.**

**DEFENCES FOR TRESPASS TO CHATTEL**

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.

**THE REMEDIES FOR TRESPASS TO CHATTEL**

1. Payment of damages; the plaintiff may want to be paid for the damages incurred on her/ his property by the party responsible for the damage.
2. Replacement of the chattel; the defendant may have to replace the chattel.
3. Payment of the market price of the chattel
4. Repair of the damages.

**CONVERSION**

**Conversion may be defined as an intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiff’s possession or right to possession of such chattel. According to SIR JOHN SALMOND in his book**

*“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”.*

Conversion include wrongful taking, wrongful detention, and or wrongful disposition of the property of another person it is enough to prove that the defendant interfered with the good. It is immaterial that the defendant does not know that the chattel belongs to another person. Thus an owner can sue for conversion. Likewise a person who has more custody, temporary, possession or caretakership can sue any third party who tries to detain, dispose, steal or otherwise convert such chattel. Conversion is similar to trespass in that it primarily protects possession rather than ownership of goods, and there are undoubtedly many acts of interference with goods which will give rise to liability in both torts.

**ELEMENTS OF CONVERSION**

1. **Intentional conduct:**

A defendant will be liable in conversion only where his conduct in relation to the plaintiff’s goods was intentional. An interference resulting from merely careless conduct is not actionable in conversion. This principle means that a man is presumed to intend the natural and probable consequences of his act, if the defendant deals with the plaintiff’s chattel in circumstances in which there is a serious risk of loss, he will be liable in conversion if the loss in fact occurs, and he cannot be heard to say that the result was unintended by him.

**EXAMPLES OF CONVERSION**

1. Taking: where a defendant takes a plaintiff’s chattel out of the plaintiff’s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion. A defendant, may be liable, if he merely moves the goods without denying the plaintiff of title. In the case of **Davies v. Lagos City Council** were the defendant council was held liable in both trespass and conversion for the act of its officials in wrongfully seizing the plaintiff’s taxi cab.
2. **Using**: using a plaintiff’s chattel as if it id one’s own, such as, by wearing the plaintiff’s jewellery, as in the case of **Petre v. Heneage**, or using the plaintiff’s bottle to store wine as was the case of in **Penfolds Wine ltd v. Elliot.**
3. **Alteration**: by changing its form.
4. **Consumption**: by eating or using it up.
5. **Destruction**: by damaging or obliterating. In mere damage is not sufficient to make one liable for conversion. Mere damage or destruction of a chattel without more, is a trespass to chattel in tort and also a malicious damage in criminal law. Intentionally to destroy or consume the plaintiff’s chattel constitute conversion
6. **Receiving**: receiving a chattel from a third party who is not he owner is a conversion, this is wrongful, for it is an act of assisting the other person in the conversion of the chattel, or the receiving of stolen goods.
7. **By Detention**: where the defendant is in possession of the plaintiff’s chattel without authority and refuses to surrender it to the plaintiff when asked to do so, he commits conversion. In the case of **Ajao v. Ashiru** where the defendant was held liable I conversion for the seizure of the pepper mill of the plaintiff. The following principles have been established;
8. There is no obligation to take chattel to the owner, in the absence of any contractual term to that effect.
9. To be actionable, the refusal to surrender the goods must be categorical.
10. No demand is necessary where conversion can be established in some other way.
11. As in cases of failure to deliver goods, the defendant will not be liable in conversion for failure to return a chattel if such return is impossible by reason of fact that the chattel has been lost or destroyed, whether or not such loss or destruction is due to his own carelessness.

Also in the case of **Armory v. Delamirie**, a chimney sweep’s boy found a jewel and gave it ti a jeweler foe 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 for return of the jewelry to him. The court of appeal held that the jeweler was liable for conversion. A finder of a property has 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.

1. **By wrongful delivery**: wrongful delivery of a person’s chattel to another person who does not have title or right to possession without legal justification is a conversion.
2. **By wrongful disposition**: such as by sale, transfer of title or other wrongful disposition.

In the case of **Chukwuka v. C.F.A.O Motors Ltd**, the plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months later the defendant sold the car to a third party who 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.

**INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION**

Innocent delivery is not conversion. 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.

Innocent receipt of goods is not conversion. The receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. We can see these in the cases below.

**Unipetrol v. Prima Tankers Ltd**

The defendant oil tanker owners had a contract to carry Unipetrol’s cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of the cargo. The court of appeal held that the respondents were liable for conversion.

**Owena Bank Nig Ltd v. Nigerian Sweets &Confectionery Co. Ltd**

The 1st respondent was granted an import license by the Federal Ministry Of Trade to import granulated sugar. However, the 2nd respondent opened a letter of credit and imported the sugar. The 1st respondent sued for damages for the wrongful conversion of the import license. On appeal by the bank, the Court Of Appeal held that the defendants were liable for conversion of the import license papers.

**RULES REGARDING FINDING LOST PROPERTY**

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. British Airways,** (below). The rules are not easy to apply and they include the following:

1. A finder of a chattel acquires no rights over it, unless it has been abandoned, or lost, and he takes it into his care and control. He acquired a right to keep it against all persons, except the true owner; or a person who can assert a prior right to keep the chattel, which was subsisting at the time when the finder took the chattel into his care and control.
2. Any servant, or agent who finds a lost property in the course of his 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 a finder, over property or goods in, or attached to the land, or building. Based on this rules, rings found in the mud of a pool in the case of **South Staffordshire Water Co. v. Sharman**, and a pre-historic boat discovered six feet below the surface were held as belonging to the land owner in the case of **Elwes v. Briggs Gas** Co.
4. An occupier of 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.

**Parker v. British Airways**

The plaintiff was waiting in the defendant airways lounge at Heathrow Airport, London, England when he found a bracelet on the floor. He handed it to the employees of the defendant, together with his name and address and a request that it should be returned to him if it was unclaimed. It was not claimed by anybody and the defendant failed to return it to the finder and sold it. The English Court Of Appeal held that the proceeds of sale belonged to the plaintiff who found it.

**Bridges v. Hawkesworth**

The plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop was held entitled to the money instead of the shop owner, upon the failure of the rightful owner to come forward to claim the money.

**A FINDER HAS A DUTY TO TRACE THE TRUE OWNER**

A general rule is that 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 found.

**PERSONS QUALIFIED TO SUE FOR CONVERSION.**

1. **Owners**: an owner in possession or who has right to immediate possession may sue another person for conversion.
2. **Bailees**: a bailee of goods has lawful possession and so can maintain an action in conversion against any person who interferes with that possession. The bailor at will has title to immediate possession of the chattel ha has deposited with the bailee and can maintain action against a bailee for conversion. In the case of **Manders v. Williams**, the plaintiff brewer supplied porter (stout) in casks to a publican on condition that he was to return empty casks within six months; it was held that the plaintiff could sue a sheriff who seized some empty casks in execution for a debt of the publican, because, once the casks were empty, the effect of the contract was to make the publican a bailee at will, whereupon the plaintiff was entitled to immediate possession.
3. **Holders of liens**: in certain limited cases where goods are entrusted to another to carry out certain services, the person in possession of those goods acquire a lien over the goods, that is to say a right to retain the goods until he is paid for his services. The holder of a lien has a right to possession of the goods which are subject to the lien. He may therefore maintain an action in conversion against any person who interferes with them, however, if he wrongfully parts with the possession of the goods he loses his lien and he will himself be liable to the owner in conversion.
4. **Finders**: a person who finds a chattel acquires possession and therefore can maintain an action against any person who interferes with such possession except the true owner and probably the of the land on which it was found, who have a better title and right to possession than the finder. In the case of **Bridges v. Hawkesworth** (supra)
5. Other persons who may have the right to immediate possession and therefore, may be able to sue another person for conversion may include: **buyers, assignees, licensees and trustees.**

**DIFFERENCES BETWEEN CONVERSION AND TRESPASS TO CHATTEL**

There are two main aspect which conversion is different from trespass to chattel. 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. While in trespass to chattel, the mere touching or moving of a chattel from one place to another without intent to take possession of it or dispute the owner’s title, amounts to trespass.
2. In conversion it is not necessary for the plaintiff to have had actual possession of the goods at the time of the interference; it is sufficient if he had an immediate right to possession. In trespass, it is necessary.
3. In conversion, the interference must be intentional whereas in trespass it may be intentional or negligent.

**Ashby v. tolhurst**

The defendant car park attendant who negligently allowed a car thief to drive away the plaintiff’s car from a car park under his watch was held not liable for conversion. The driver had possession of the car which he had parked for he has right to immediate possession. The defendant car park attendant is a bailee who only guarantees the safety of the car that is bailed in the car park as a bailee. The claimant should have sued in tort of negligence for the loss of the car.

**DEFENCES FOR CONVERSION OF A CHATTEL**

1. Jus tertii, that is the title or better right of a third party.
2. Subsisting bailment
3. Subsisting lien
4. Temporary retention: to enable steps to be taken to check title of the claimant.
5. Limitation of time.

Who can plead jus tertii? A defendant can plead jus tertii, that is the better right of the true owner or third only when he is acting with the authority of the true owner. In the case of C.O.P v. Oguntayo supra.

**THE REMEDIES FOR CONVERSION**

The court in its judgment may order any or a combination of the following remedies:

1. **Order for delivery**; return or specific restitution of the goods
2. **Alternative order for payment of the current market value of the chattel**: the court may order for payment of the current market value of the chattel as may be assessed. The measure of damage is usually the market value of the goods as proved at the time of judgment.
3. **An order for payment of any consequential damages**: Allowance may be made for any improvement in the goods.
4. **Recovery of special and general damages**: Special damages is recoverable by a plaintiff for any specific loss proved. General damages, may be awarded at least to cover part of the cost of the legal action.

**DETINUE**

Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. Detinue is a claim for the specific return, delivery or surrender of a chattel to the plaintiff who is entitled to it. An action in detinue is a claim for the specific return of a chattel wrongfully retained or for payment of its current market value and any consequential damages.

In the United Kingdom, the tort (interference with goods) act 1977 has abolished the tort of detinue as a separate tort, and merged it with the tort of conversion where it is now known as conversion by detinue or detention. In Nigeria, it still exists as a separate tort

**EXAMPLES OF DETINUE**

Examples of detinue may include:

1. A lends hos chairs and tables to B for a one day party and B neglects, or fails to return the furniture at the end of the day as agreed or after the expiration of a reasonable period of time.
2. C gives his radio set to D and pays him to repair it, and D fails or refuses to release it after a demand has been made on him for its return. In each of these circumstances, tthere is a right of action to sue for detinue of the chattel.

**PERSON QUALIFIED TO SUE FOR DETINUE**

There are two conditions that a plaintiff is to satisfy in a tort of detinue

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, and 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.

**Kosile v. Folarin**

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 20naira. In this case, the Supreme Court emphasized the requirement that in action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable for detinue.

**West Africa Examination Council v. Koroye**

The plaintiff sat for an examination conducted by the defendant council. The defendant neglected and or 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**.**

**Ogiugo & Sons Ltd v. C.O.P**

The lorry of the plaintiff appellant transporter was carrying a customer’s goods, when the police intercepted and seized the vehicle on suspicion that the goods were contraband. Representations for its release failed to yield result. The appellant claimed for detinue of the vehicle. The Court Of Appeal held that the appellant was entitled to the immediate release of the vehicle and damages for its unlawful detention. The plaintiff must have title or right to immediate possession to be able to sue successfully for detinue.

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

There are some differences that are to be noted between conversion and detinue. Which are:

1. Conversion deals with a chattel in a manner repugnant to the immediate right of possession of the true owner. While detinue is the wrongful detention of goods, when one refuses to deliver up goods to a person having the immediate right to possession

**DEFENCES FOR DETINUE**

1. He has mere possession of the goods
2. That the plaintiff has insufficient title as compared to himself.
3. The defendant may plead jus tertil, 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.
4. Innocent delivery
5. Subsisting bailment and subsisting lien on the chattel
6. Inevitable chattel
7. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff.
8. Enforcement of a court order or other legal process.

**REMEDIES FOR DETINUE**

1. Claim for the return of the specific chattel
2. Claim for the 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 that is release on bond pending determination of ownership.
6. Damages.
7. **Claim for the return of the specific chattel**: This is the claim for the return of the specific chattel, especially, if the chattel has not changed its character, content, and it has not been damaged nor destroyed during its or similar product.
8. **Claim for the replacement of the chattel**: Where possible or appropriate, a defendant may be ordered to replace the chattel by supplying an identical or similar chattel.
9. **Claim for the current 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 as proved at the time of judgment. The onus is on the plaintiff to prove the market value. Therefore, where there is default of restitution a plaintiff may claim for payment of the value of the chattel.
10. **Recapture or self-help:** a person who is entitled to possession of goods of which has been wrongfully deprived may resort to self-help and retake the goods from the custody of the person detaining it, using only reasonable force after he has made a demand for their return. May not trespass through the land of an innocent party to retake the goods. He may only go on such land with permission. However, recapture is usually frowned upon by court for the breach of peace and other offences it may occasion. This is because self-help is an instance of taking the laws into one’s hand. A person may not resort to recapture or self-help except it is safe, expected and reasonable or if it will not be resisted by the defendant and or person acting for him.
11. **Replevin or release on bond:** this is a return of the goods on security, pending the determination of the ownership of the chattel. Therefore replevin is the redelivery to an owner of goods which were wrongfully seized, the action for such redelivery, and for any specific and general damages suffered by him as a result of the detention.
12. **Damages**: when a defendant has been found liable in detinue, he cannot deprive the plaintiff of his right to damages for detention of the chattel, simply because he has not been using it, nor earning anything from its use. Therefore as the courts have often affirmed the remedies available for the tort of detinue are an order for specific return of the chattel or in default, an order for payment of the value and also damages that were suffered due to loss of use by the defendant up to the date of the judgment or redelivery of the chattel to the plaintiff. General damages are usually presumed in this action, especially for the loss of the use of the chattel. As in claims in other areas of law, general damages, may be awarded at least to cover part of the cost of the legal action.

**REFERENCES**

**K**odilinye and Aluko The Nigerian Law of Torts (Spectrum Law Publishing, 1999)

EseMalemi Law of Torts (Princeton Publishing co.2008) 159 T