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**ABSTRACT:**

*This paper aims to discuss trespass to chattel. In this paper, the definition of tresspass, conversion, detinue, as well as the elements, defenses and remedies of trespass to chattel, conversion and detinue are addressed.*

**Keywords*: trespass,*** *chattel, conversion, detinue*

**INTRODUCTION**

Under Common law, there are seven types of intentional torts, they include:

**Assault, battery, false imprisonment, trespass to land, trespass to chattels, conversions and intentional infliction of emotional distress.** However, for the purpose of this paper work, I will be concentrating on TRESSPASS TO CHATTEL, CONVERSION AND DETINUE.

The three torts of trespass to chattels, conversion and detinue protect the possessor of a chattel from wrongful interference therewith. This area of the law of tort is, for historical reason, somewhat complex, and it has been rightly said that ‘*we are still called upon to observe distinctions and subtleties that have no substance or justification in them, but are nothing more than an evil inheritance from the days when forms of action and of pleading held the legal system in their clutches*’. Furthermore, because of the separate and piecemeal development of each tort and the unsystematic way in which the old forms of action were gradually extended to cover novel situations, each tort overlaps with the others at several point and thus, trespass, conversion and detinue cannot be regarded as a watertight compartments.

**TRESPASS TO CHATTELS**

A ‘**chattel**’ refers to any personal property, moving or unmoving. Its any article, goods or personal property other than land and immoveable property. A chattel is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land or immoveable property. The list of chattel is inexhaustible, Examples of chattels includes: laptop, book, cars, animal, furniture aircraft etc.

Generally, a **trespass** refers to a wrongful use of another person’s property without his/her permission. **Trespass to chattels** is an intentional interference with another person’s lawful possession of a personal property without lawful justification. Trespass to chattels is the intentional or negligent interference with the possession of the chattels of another person. The interference must be direct and wrongful. Thus, the mere touching of a chattel without causing any harm to it may in appropriate circumstances be actionable and entitles the plaintiff to get nominal damages. It’s pertinent to note that trespass to chattels does not apply to real property or any interest in land. Trespass to chattel may be committed in many different ways. However, it must be intentional or negligent.

Trespass to chattel is actionable per se upon commission or occurrence without the plaintiff having to prove damage. This point was vividly explained by Adefarasin J in the case of ***Davies v. Lagos City Council[[1]](#footnote-1)*** where he held that ‘***the plaintiff is entitled to succeed in trespass… there may be a trespass without the infliction of any material damage by a mere taking or asportation. In my view, the seizure of the plaintiff vehicle without just cause is a wrongful act, on account of which all the defendants taking part in it are jointly and severely liable’***

**Examples of trespass to chattel includes**: throwing a person’s property away, driving another person’s car without permission, throwing something at the chattel, killing another person’s animal-in the case of ***Slater v.Swann***[[2]](#footnote-2), it was held that beating the plaintiff animal was trespass to chattels also in the case of ***Uzoahia v. Atu***,[[3]](#footnote-3) a cow belonging to the plaintiff was attacked by tsetse fly and as a result, it wandered into the plaintiff’s village where it injured a number of people. As a result, the plaintiff and other villagers cornered and killed the cow. The court held that the defense of necessity would avail the defendant since they were protecting themselves from the cow., filling another person’s bottle with anything, destruction or any act of harm or damage, use anther persons property without permission, mere moving of goods from one place to another, that is, mere asportation- in the case of ***Kirk v.Gregory***[[4]](#footnote-4) the court held that the defendant was liable for trespass to chattel where the sister in law removed jewelry from an unlocked box and she kept those jewelries in another unlocked box and the jewelry was stolen., taking a chattel away also in the case of ***G.W.K. v. Dunlop Rubber co***[[5]](#footnote-5) removing a tyre from a car and replacing it with another tyre was held to be a trespass, making marks on the body of the chattel Etc.

**THE PURPOSE OF THE TORT OF TRESSPASS TO CHATTEL**

The tort of trespass to chattels is designed to protect possession that is the right of immediate possession of a chattel, as distinct from ownership. It protects the right of a person to the control, possession, retention or custody of a chattel against interference by another person without lawful justification. In order words, it prohibits a person from any unlawful interference with a chattel that is under control, possession or custody of another person. The tort of trespass to chattel protects the chattel, goods and all personal properties of a person who has title, possession or right to immediate possession against meddling, damage, destruction, diminution, conversion, detinue or any interference whatsoever, by any other person without lawful justification.

In order to prove trespass to chattels, the plaintiff must show the following **elements**:

1. **INTENT TO TRESPASS**: merely intending to do the act is enough to show this element of trespass. The plaintiff does not necessarily need to show intent to harm a specific person.
2. **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.
3. **INTERFERENCE OF CHATTELS**: a person commits a trespass to chattels by [A]. Dispossessing another of the chattel [b]. Using or intermeddling with a chattels with a chattel in the possession of another [c]. Damaging the chattel.
4. For trespass to chattel to be actionable, it must have been done by the wrongdoer: intentionally or negligently.
5. The plaintiff must prove that he owns or that he has the right to possess the personal property at issue.

**VALID TRESSPASS TO CHATTELS CLAIM**

A person will be held liable for trespass to chattels in any of the following claims:

1. The chattel is impaired as to its condition, quality or value.
2. The possessor is deprived of the use of the chattel for a substantial time.
3. Bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.
4. The person dispossesses the other of the chattel.

In trespass to chattels claim, you can only recover actual damages [as opposed to nominal damages]. Actual damages are measured by the diminished value of the chattel that resulted from the defendant’s actions.

**PERSONS WHO MAY SUE FOR TRESSPASS TO CHATTEL**

A person who wants to sue in trespass to chattel can sue under trespass to goods, conversion and negligence. These actions are sustained by the provisions of the ***Tort [interference with Goods] Act 1977***.the Act creates a new action called **‘wrongful interference with goods’** it defines it in **section 1** as: **[A]** Conversion of goods called trover. **[B**]. Trespass to goods **[C].** Negligence in so far as it results to damage to goods **[D].** Subject to section 2 of the Act, any other tort as far as it results in damage to goods or to an interest in goods.

Anyone who has possession or caretakership of a chattel may sue any other person who meddles with the chattel. This is so for the object of the tort of trespass is to protect possession, or right to immediate possession. Accordingly, some persons who do not have legal rights are deemed by law to be able to have possession, so that they will be able to protect chattel left under their care. For instance: an employee to whom the employer has given custody of goods, a personal representative 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 includes: Owners, bailees, lenders, assignees, trustees, finders, custodians, caretakers, adverse possessors [because mere possession gives right to sue to retain possession], executors, Administrators of estate etc.

In the case of ***Armory v. Delamirie***[[6]](#footnote-6) a boy found a jewel and asked the goldsmith to value it. The goldsmith subsequently refused to return the jewel to the boy. Thus, the boy sued. The court held that although the boy was not the true owner the fact that he had possession of the goods gives him the right to sue for trespass.

**DEFENCES FOR TRESSPASS TO CHATTEL**

In an action for trespass to chattel, the defenses the defendant may plea includes:

1. **CONSENT**: This is the most common defense to trespass. If the owner of the property gave you permission to use their personal property, you can claim consent. It’s important to note that consent can be given through words and actions. However, this defense will not work if the consent was induced by fraud or if it was given by someone who is incompetent, intoxicated or a minor.
2. Inevitable accident
3. **PUBLIC NECESSITY**: this defense can be used if one intentionally interferes with another person’s chattel to protect the public. However, if one acted unreasonably when taking another person’s chattel or damages the chattel, this defense will not be available to such a person.
4. Subsisting lien
5. Subsisting bailment
6. **PRIVATE NECESSITY**; this defense can be used when the purpose of using another person’s chattel is to protect your own interest. Private necessity can be claimed if one is trying to protect him/herself from death or bodily harm. However, the onus is on the defendant to prove that: **[a]** the danger was real and imminent [**b**] he acted reasonably. In the case of ***Cresswell v. Sirl,*** the plaintiff’s dog was threating the defendant’s sheep. Subsequently, the defendant shot the dog in order to protect his sheep. In an action for trespass, it was held that the defendant’s action was justified since what he did was in protection of his property.
7. Limitation of time, as a result of the expiration of time specified for legal action.
8. Honest conversion
9. **NECESSITY**- ***Uzoahia v. Atu***,[[7]](#footnote-7) a cow belonging to the plaintiff was attacked by tsetse fly and as a result, it wandered into the plaintiff’s village where it injured a number of people. As a result, the plaintiff and other villagers cornered and killed the cow. The court held that the defense of necessity would avail the defendant since they were protecting themselves from the cow.
10. *Jus tertii-* that is, the title, or better right of the third party, provided that he has the authority of such third party. In the case of ***Armory v. Delamirie***[[8]](#footnote-8) a boy found a jewel and asked the goldsmith to value it. The goldsmith subsequently refused to return the jewel to the boy. Thus, the boy sued. The court held that although the boy was not the true owner the fact that he had possession of the goods gives him the right to sue for trespass. Thus, the goldsmith could not raise the issue of *jus tertii* [better title].
11. **VOLENTI**-in the case of ***Arthur v.Anker***[[9]](#footnote-9), a company which clamped a car parked on private land was held to have the defense of consent, notices display prominently had warned that anyone parking without authorization would be clamped, and by parking there the claimant was deemed to have accepted the risk.

**REMEDIES FOR TRESSPASS TO CHATTEL**

The remedies available to a person whose chattel has been meddled with, short of conversion or detinue includes:

1. Payment of damages
2. Replacement of the chattel
3. Payment of the market price of the chattel
4. Repair of the damage- a frequent demonstration of this is in motor accident cases, the part of the vehicle that has been damaged may be repaired

**CONVERSION**

Conversion consists of the willful and wrongful interference with the goods of a person entitled to possession in such a way as to deny him such right or in such a manner inconsistent with his right.

According to Sir John Salmond, in his book the Law of Tort ‘***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 is the interference, possession or disposition of the property of another person, as if it’s one’s own without legal justification. In other words, conversion is dealing with another person’s property as if it’s one’s own. Conversion is any dealing which denies a person of the title, possession or use of his chattel. Conversion includes wrongful taking, wrongful detention, and or wrongful disposition of the property of another person. It’s not necessary to prove that the defendant had the intention to deal with the goods, it’s enough to prove that the defendant interfered with the goods. Its immaterial that the defendant does not know that the chattel belongs to another person, for instance, if he innocently bought the goods from a thief.

**Examples of conversion includes**:

1. **Wrongfully taking the goods**: where the defendant takes the plaintiff chattel out of the plaintiff possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion. This must be accompanied by an intention to exercise temporary or permanent dominion over the goods. In the case of ***Fouldes v. Willoughby[[10]](#footnote-10)***, the owner of two horses brought them abroad a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. The horse owner sued for conversion. On appeal, the court held that the act of leading the horse away from his ferry by the ferryman could not have been held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses.
2. **By wrongfully destroying the goods**: destruction of goods would amount to conversion in the following situations:

**[a]** one person willfully destroys the chattels of another

[b] If the chattel either ceases to exist or changes its identity

3. **By wrongfully delivering the goods**: this occurs in a situation in which the defendant denies the true owner title to the goods by delivering them to another party that has no title. In the case of ***Youl v. Harbottle***[[11]](#footnote-11), the defendant carrier of the goods by mistake delivered the plaintiff’s goods to the wrong person. He was held liable for conversion. It follows that, if an act of interference with the chattel is intentional or willful, its not a defense that the tort was done by mistake, even if the mistake is honest, that is, in good faith or innocently.

4. **Wrongfully disposing the goods:** this occurs in a situation in which the defendant attempts to confer tittle to a third party in a manner inconsistent with the right of the person entitled to possession.

5. **Wrongfully detaining the goods**: this must be accompanied by an intention to keep the goods from the person entitled to possession of the goods. Hence, it would not be regarded as conversion if the finder of the goods merely refrains from returning such to the owner. It would only be conversion in a situation in which when asked for the goods by the owner, he refuses to release it.

In the case of ***Howard E Perry and co Ltd v. British Railway Board***[[12]](#footnote-12) the defendant, who were carriers, held the plaintiff’s steel in depot. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff’s steel to them. It was held that this amounted to conversion on the defendant’s part.

For conversion to be committed there has to be some positive denial of possession toward the person entitled to the possession.

In the case of ***Armory v. Delamirie***[[13]](#footnote-13) a boy found a jewel and asked the goldsmith to value it. The goldsmith subsequently refused to return the jewel to the boy. Thus, the boy sued. The court held the jeweler was liable for conversion. A finder of a property has a good title, and has a right or interest, to keep it against all persons, expect the rightful owner of the property or his agent.

6. **Purchase**: at common law, 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. Such as when a thief, steals and sells a chattel. A buyer at such a situation takes possession at his risk, in accordance with the rule of law that acts of ownership are exercised at the owner’s peril.

Other examples of conversion includes: alteration, consumption, using, etc.

**Persons who may sue for conversion:**

1. An owner of a chattel may sue for conversion- in the case of Hollins v. Fowler[[14]](#footnote-14), a cotton broker acting on behalf of a client, for whom he often made purchases, bought cotton from a fraudster who had no title to the cotton. The broker then sold it to the fraudster and received only his commission. At the suit of the true owner for conversion sale, and loss of the goods. The court held that: the broker was liable in conversion for the full value of the goods.

2. Likewise a person who has mere custody, temporary possession or caretakership can sue any third party who tries to detain dispose, steal or otherwise convert such chattel.

In the case of ***North Central Wagon and Finance Co Ltd v. Graham[[15]](#footnote-15)***, the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus, the plaintiff sued the auctioneer for conversion. The court held that the plaintiff could sue in conversion regardless of the fact that the plaintiff didn’t have actual possession of the car at the time. Since the right in the goods were already vested in the plaintiff, there was no need for actual possession.

3. **Bailees*;*** the 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 action against a bailee for conversion. In the case of ***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 held 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. It was held that the owners of the winkfield were liable and that ‘*as between a bailee and a stranger, possession gives title’.* :

4. **Holders of lien and pledge**- the holder of a lien has the 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 good, he loses his lien and he will himself be liable to the owner in conversion.

5. **Finders**: a person who finds a chattel acquires possession and therefore can maintain an action against any person who interferes with such possession. Except [**a**] the true owner **[b]** the owner of the land on which it was found-where a chattel is found attached to or embedded under the surface of land it seems to be established that the owner of the land as a better title to the chattel than the finder.

**Other persons who may sue for conversion includes:** [6]. Buyers [7] Assignees [8].licensees [9] trustees

**ELEMENTS OF CONVERSION**

To establish a conversion claim, a plaintiff must prove that;

1. It had a possessory interest in the property- a possessory interest in personal property is sufficient to maintain an action for conversion against one who sells that property without notifying the lawful possessor. Even though the lawful possessor does not have legal title, if he exercises control of it by taking possession of it or maintaining it for a period of time, his right in the chattel may be sufficient.
2. The defendant intentionally interfered with the plaintiff possession
3. The defendants are the legal cause of the plaintiff loss of property.

**SIMILARITIES AND DIFFERENCES BETWEEN TRESSPASS TO CHATTEL AND CONVERSION.**

It’s often easy to confuse trespass to chattel with conversion because they both deal with interfering person property. 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 for both to liability for both torts.

**Differences**

1. The main difference between trespass to chattel and conversion is the degree of interference. The degree of interference for conversion must be so serious that the tortfessor 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 interference in a conversion case:
2. The extent and duration of the tortfessor’s exercise of dominion or control.
3. The tortfessor’s intent to deprive the owner of the possession
4. The tortfessor’s good faith
5. The harm done to the chattel
6. The inconvenience and expand caused
7. The extent and duration of the resulting interference with the others right of control.

On the other hand trespass to chattel, is an act that falls short of conversion. The tortfessor is responsible only to the extent of the damage done [not the full value of the property] from dispossessing another of the chattel using the chattel or damaging the chattel.

1. Unlike in trespass, in conversion it is not necessary for the plaintiff to have had actual possession of the goods at the time of the interference; it’s sufficient if he had an immediate right to possession.
2. 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 in criminal law. Therefore, mere touching or moving of a chattel, only amounts to trespass.

**INNOCENT RECEIPT OR DELIVERY**

Generally, innocent delivery, or innocent receipt are not torts nor criminal offences. 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. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance.

In the case of ***Unipetrol v. Prima Tankers Ltd***[[16]](#footnote-16) 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 in conversion. The word ‘loss’ is wide enough to include a claim for conversion against a carrier. Its elementary law that in a claim for conversion, the claimant is entitled to the return of the article seized, missing or in the possession of the other party, or reimbursement for its value.

**LOST PROPERTY RULE**

The rule 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***[[17]](#footnote-17). However, the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows:

1. The finder of a chattel acquires no right over it, unless it has been abandoned or lost and he takes it into his care and control. He acquires 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 right of a finder.
3. An occupier of land, or a building has superior rights to those of a finder, over property or goods I, or attached to the land, or building. Based on this rule, rings found in the mud of a pool in the case of ***South Stafordshire Water Co. v. Sharman***[[18]](#footnote-18) and a pre-historic boat discovered six feet below the surface water was held as belonging to the land owner in the case of ***Elwes v. Briggs Gas Co***[[19]](#footnote-19)
4. However, 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.

The above explanations would be better understood by considering the following case laws:

In the case of ***Bridges v. Hawkesworth***[[20]](#footnote-20), 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.

Also, in the case of ***Parker v. British Airways***[[21]](#footnote-21) the plaintiff was waiting in the defendant airways lounge where he found a bracelet on the floor. He handed it over 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 by anybody. The defendants failed to return it to the finder and sold it. The English Court of Appeal held that: the proceeds of the sale belonged to the plaintiff who found it.

In the ***case of Hannah v. Peel***[[22]](#footnote-22)in 1938, Major Hugh peel [defendant] was granted ownership of a house. There was no indication that peel ever lived in the house. In 1940, Hannah [plaintiff]lived in the house while it was requisitioned for the quartering of soldiers. While there, Hannah found a brooch embedded in a widow still. Hannah reported his find to the police, who held the brooch for two years. When no owner was found, the police gave the brooch to peel, who sold it for 66 Euros in 1942. The brooch was subsequently resold by the jeweler for 88 Euro. In 1943, Hannah sued for return of the brooch or for its value. The court ruled in favor of the plaintiff and that judgement should be for the plaintiff for 66 pounds.

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

As a general rule, 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.

**DEFENCES TO CONVERSION**

In an action for the conversion of a chattel the defendant may plead:

1. **Abandonment**; an action for conversion would not succeed in a situation where the property has been abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.
2. **Authority of the law**: conversion that is done under the authority of the law would be justified. For example; the selling of the goods of a defendant by the claimant by an order of court in order to get a judgement debt, would be valid.
3. **Consent:** if the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be held to be valid.
4. **Statute of Limitation**: if the suit for conversion is not filed after a specific period [ranging from 2-5 years], it would be held to statue barred. Thus, the suit would not be heard by the court.
5. **Unidentifiable property**: if the property cannot be properly identified, it could serve as a defense to conversion.
6. Subsisting bailment
7. Subsisting lien
8. Jus tertii- this is the right of the third party to the chattel, goods or property in dispute. As a general rule, a defendant cannot pled 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 jus terti that is the better right of the true owner or third party only when he is acting with the authority of the true owner. In the case of ***C.O,P, v. Oguntayo***[[23]](#footnote-23) it was stated that ‘*a person cannot plead jus tertii of a third party, unless the person is defending on behalf of, or on the authority of the true owner’.*
9. **Temporary retention:** to enable steps to be taken to check the title of the claimant. A defendant may temporarily, refuse to give up goods, while steps are been 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 right to immediate possession**.**

**REMEDIES FOR CONVERSION**

In a claim for the conversion of a chattel several remedies are available to the plaintiff. The court in his judgement may order any, or a combination of any of the following reliefs:

1. Order for delivery, return or specific restitution of the goods
2. Alternative order for payment of the current market value of the chattel
3. Recovery of special and general damages. Special damages is recoverable by a plaintiff for any specific loss proved.
4. **General damages**: furthermore, wherefore instance the plaintiff whose working equipment or tools are converted by another person, a plaintiff may sue for the loss of profit, or existing contract or wages for the period of the conversion of the work, tools or equipment’s.
5. **An order for the payment of consequential damages**. However, allowance may be made for any improvement in the goods, such as, where a person honestly in good faith buys and improves a stolen car and is sued by the true owner, the damages may be reduced to reflect the improvements.

**DETINUE**

Detinue is the wrongful detention of goods or 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 or for payment of its current market value and any consequential damage. Detinue is committed when one unreasonably refuses to surrender or return personal property to its rightful owner, only and if when the owner claims the immediate right to possession of these goods. .Detinue is only applicable, however, when the owner holds proprietary interest and/ or actual possession of the property.

In the United Kingdom, the ***Torts [interference with Goods] Act 19777*** has abolished the tort of detinue as a separate tort, and merged it with the tort of conversion, where it’s now known as conversion by detinue or detention. In Nigeria, it still exists as a separate tort.

**Examples of detinue** are inexhaustible and includes the following:

1. A leads his laptop to B for one day and B neglects or fails to return the Laptop at the end of the day as agreed or after the expiration of a reasonable time.
2. An action for detinue will be available against someone who wrongfully refused to return goods that were held subject to a bailment, such as a deposit for safekeeping or repair.
3. It could be used against an executor who refused to turn to turn over a deed for the deceased property to the proper heir.

**ELEMENTS OF DETINUE**

There are four elements required to establish detinue:

1. **Make a demand**: the plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of the demand. The demand is imperative.
2. **Refusal of the demand**: the defendant must refuse that demand [whether expressly refusing or failing to respond at all]. On some occasions, a defendant who does not have possession of the chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.
3. **Unreasonable Refusal**: where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable.
4. **Consequential damage:** as a result of the defendant’s conduct, the plaintiff has suffered loss. This will usually be calculated as the value of the chattel.

Once the above elements have been established, an action for detinue can be made out.

**WHO CAN SUE TO DETINUE**

The plaintiff must have a right to immediate possession at the time of the refusal that derives from some proprietary or possessory interest in the chattel. The interest in the property must also be a lawful interest. If the plaintiff does not have an immediate right to possession of the goods or chattels, then the plaintiff cannot sue for detinue.

**WHEN TO SUE FOR DETINUE**

A plaintiff can only maintain action for the tort of detinue after satisfying two conditions which 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 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. Thus, there must have been a demand by the plaintiff for the return of the chattel and a refusal or failure to return them. the making of the demand by the plaintiff on the defendant is a condition precedent which the plaintiff must establish to succeed in his claim for detinue.

In the case of ***Kosile v. Folarin***[[24]](#footnote-24) the Supreme Court emphasized the requirement that in an 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.

In ***West Africa Examinations Council v. Koroye***[[25]](#footnote-25), the plaintiff sat for an examination conducted by the defendant council. The defendant 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.

In the case of ***Steyr Nig Ltd V. Gadzama***[[26]](#footnote-26), at the end of their services, the plaintiff appellant company sued the defendant respondent who were former employees of the appellant for detaining official cars and household items which were in their use as top management staff of the company. The Court of Appeal held: that the respondent were to pay reasonable prices for the items in lieu of returning the chattels.

In the case of ***Ogiugo and Sons Ltd v. C.O.P.[[27]](#footnote-27)*** the lorry of the plaintiff who was a transporter, carrying a customer’s goods was seized by the police on suspicion that the goods were contraband. Representations for it release failed to yield result. The appellant claimed for detinue of the vehicle. The court of appeal held that the appellant was entitled to immediate release of the vehicle and damages for its unlawful detention.

**DIFFERENCES BETWEEN DETINUE AND CONVERSION**

Detinue covers the same ground as conversion by detention, however, these are the following differences between the two causes of action:

1. Liability in detinue is stricter than in conversion by detention. The defendant will not be liable in conversion by detention where, prior to the demand for their return by the plaintiff, the goods have been lost or destroyed, whether by accident or by negligence of the defendant. But the defendant will be liable in detinue in such circumstances, unless he proves that the goods were not lost or destroyed through his negligence.
2. Refusal to surrender on demand is an essence of detinue, but its only one of several forms of conversion.
3. In conversion, damages are generally assessed on the value of the goods at the date of the conversion, whereas in detinue, they are assessed on the value of the goods at the date of the trial.
4. In detinue, the plaintiff can claim specific restitution of the goods, but he can’t do so in conversion.

**DEFENCES FOR DETINUE**

There are several potential defenses available for detinue. These includes, but are not limited to these. A defendant may plead that:

1. He has mere possession of the goods
2. That the plaintiff has insufficient title as compared to himself
3. Jus terri- this is a defense that is based on ownership by a third party. Jus tertii is not pleaded, except the defendant is claiming or defending under the right of such third party who has ownership, or paramount title, which will enable him to establish a better title, and the right to possession, than the plaintiff. Otherwise, as Cleasby BJ said in the case of ***Fowler v. Hollins***[[28]](#footnote-28)- *‘ persons deal with the property in chattels, or exercise acts of ownership over them at their peril’*
4. Innocent delivery
5. Reasonable defense of a person or property such as when one beats or injures a dog that was attacking him or another person.
6. Enforcement of a court order or other legal process, such as levying of execution of property under a writ of fifa, or the police taking away goods they believe to have been stolen for the purpose of use as exhibit in evidence before court and so forth.
7. Inevitable accident
8. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff.
9. Subsisting bailment
10. Subsisting lien on the chattel- in the case of ***Otubu v. Omotayo***[[29]](#footnote-29) the plaintiff respondent kept this title deeds with the third party who subsequently deposited the deeds with the defendant appellant as collateral to secure a loan. The plaintiff respondent sued the defendant appellant for return of the title deeds. The Court of Appeal held that an action cannot succeed where there is a subsisting lien on the chattel. where there has been an equitable mortgage by deposit of title deeds as collateral to secure a loan by a third party who does not own the deeds, but had custody of the deeds, an action for detinue cannot be maintained for return of the deed or chattel, prior to payment of the amount due on it.
11. Consent: this is a defense to show that there can be no detinue in the interference occurs with the plaintiff’s consent. Consent can be expressed or implied.

**REMEDIES FOR DETINUE**

When a person is detained by another person, the person who is denied possession or use of such chattel has several remedies open to him which includes:

1. **Claim for return of the chattel:** this is a claim for the return of a specific chattel, especially if the chattel has not changed its character, content, and it has not been damaged nor destroyed during its detention.
2. **Replacement of the chattel:** where possible or appropriate, a defendant may be ordered to replace the chattel by supplying an identical or similar chattel. This is possible for instance in the case of manufacturers of products, who can easily replace the goods by supplying an identical or similar product.
3. **Claim for the market value of the chattel**: the measure of damage in detinue is usually the market value of the goods as proved at the time of judgement. The onus is on the plaintiff to prove the market value. Therefore, where there is a default of restitution a plaintiff may claim for payment of the value of the chattel. This option appears to be the best form of action, where the chattel has been removed from jurisdiction, hidden, damaged, destroyed or otherwise not found, this remedy can be employed.
4. **Self-help or recapture**: a person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with the enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession.
5. **Damages**; when a defendant has been found liable in detinue, he cannot deprive the plaintiff of damages for detention of the chattel simply because he has not been using it or earning anything from its use. General damages maybe awarded as accessed by the court. General damages maybe awarded at least to cover part of the cost of the legal action. In ***West Africa Examinations Council v. Koroye***[[30]](#footnote-30), the plaintiff sat for an examination conducted by the defendant council. The defendant 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.

In conclusion, this writer has explicitly explained trespass to chattel, conversion and detinue. Though they might be similar, they have their differences.

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