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 **Assignment**

Trespass to charttel;

A chattel is any moveable thing which is capable of being owned, possessed, or controlled

Other than a human being, land and immoveable property. Examples of chattel include

Cars, furniture, animal, vessel, aircraft, sea craft, and anything whatsoever which is

Moveable and capable of being owned.

Trespass to Chattel is any direct and unlawful interference with a chattel in the possession

of another person. It is the intentional or negligent interference with the possession 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 chattels protects all the chattel, goods, or personal properties of a

person who has title or possession by prohibiting all interference without legal

justification.

Trespass to chattel is designed to protect the following interests in personal property;

1. Right of retaining one's chattel;

2. Protection of the physical condition of the chattel; and

3. Protection of the chattel against unlawful interference or meddling.

The three forms of trespass to chattel are each actionable per se upon commission or

occurrence without the plaintiff having to prove damage.

See the case of Erivo v Obi, the defendant respondent closed the door of the plaintiff appellant's car

and the side windscreen got broken. The appellant sued inter alia for damage to the

windscreen and the loss he incurred in hiring another car to attend to his business. The

defendant respondent alternatively pleaded inevitable accident. On appeal, the Court of

Appeal held that the defendant respondent was not liable. He did not use excessive force

but only normal force in closing the door of the car. He did not break the windscreen

intentionally or negligently. It was an inevitable accident which the exercise of reasonable

care and the normal force used by the respondent could not avert. 105

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.

TYPES OF TRESPASS TO CHATTEL

In Nigeria, the tort of trespass to chattel is made up of three types of torts. These are:

 TRESPASS TO CHATTELS PER SE

 CONVERSION; AND

 DETINUE.

1. TRESPASS TO CHATTELS PER SE

In the wider context, the tort of trespass is closely related to any tort or law which has to

Do with the protection of interest in personal property such as protection of interest in

Personal property such as negligence, malicious damage such as arson and other damage

To property or interest in property.

Trepass to chattel is any direct and unlawful interference with the chattel in the possession

Of another person the interference may either be negligent or intentional. Another author

Said that it is a wrongful physical interference with goods and it could take the form of

Numerable or innumerable interference.

In the case of Davies V. Lagos City Council, Justice Adefarasin elaborately explained that

Trespass to chattel is actionable per se. In that case, the defendant council had granted

The plaintiff a hackney carriage licence to operate a taxi cab in the Lagos area. The plaintiff

Was well aware that the permit was for exclusive use and was not transferable but he

Nonetheless caused it to be transferred to a 3rd party who operated a taxi cab on the

Strength of it on leaving that, certain officials of the council in the purported exercise of

Their power to revoke the permit, seized the plaintiff’s taxi and detained it at the LCC

Pound. In an action brought by the plaintiff for trespass, Adefarasin J held that the council

Was entitled to revoke the plaintiff’s permit for non-compliance with the regulations

Governing the use of hackney carriage licenses, but it was not entitled to seize the vehicle

Or otherwise take possession of it. The council was therefore liable to trespass.

It is no defence in an action for trespass to chattel that the tort was committed when

Carrying out the instruction of the executive arm of government as distinct from the

Judicial arm.

See the case of: Ajao V. Ashiru, the plaintiff’s pepper mill was seized by the defendant and the defence

To the claim of the plaintiff was that the peppermill was seized by the police. The court

Held that the defendant was liable based on the ground that the police acted at his own

Instance in seizing the peppermill of the plaintiff.

EXAMPLES OF TRESPASS TO CHATTEL

Trespass to chattel may be committed in many different ways. However, the trespass

Must be intentional or negligent. Trespass may be committed by mere removal or any

Damage and it can be committed when there is no intention to deprive the owner,

Possessor or custodian permanently of the chattel. Examples of trespass to chattel

Include:

1. Taking a chattel away
2. Throwing another person’s property away, such as in annoyance
3. Mere moving of the goods from one place to another, that is, mere transportation.
4. Scratching or making marks on the body of the chattel, or writing with finger in the dust
5. Killing another person’s animal, feeding poison to it or beating it.
6. Destruction, or any act of harm or damage.
7. Touching, that is, mere touching, for instance, touching a precious work of art which

 Could be damaged by mere touch.

THE DEFENCES FOR TRESPASS TO CHATTEL

In an action for trespass to chattel, the defences a defendant may plead include:

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. See C.O.P. v Oguntayo (1993) 6 NWLR pt. 299, p. 259 SC.

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, or acting honestly, etc.

THE 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 frequent demonstration 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.

CONVERSION

According to Sir John Salmond,

"A conversion is an act... of wilful interference, without lawful justification, with any chattel

in a manner inconsistent with the right of another, whereby that other is deprived of the

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 other words, conversion is dealing

With another person’s property as if it is one’s own. Conversion is any dealing which denies

A person of the title, possession, or use of his chattel. It is the assertion of a right that is

inconsistent with the rights of the person who has title, possession or right to use the

chattel.

It is dealing with a chattel which belongs to another person in a manner that is i

inconsistent with the rights of the person. In other words, conversion is any intentional

interference with another person's chattel which unlawfully deprives the person of title,

possession or use of it. Conversion includes wrongful taking, wrongful detention, and or

wrongful disposition of the property of another person. Therefore, conversion includes

denying a person of the title or possession, or use of his chattel. It is not necessary to prove

that the defendant had intention to deal with the goods. It is enough to prove that the

defendant interfered with the goods. It is 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. In criminal law, conversion is known as stealing or theft.

Essentially, conversion is:

1. Any inconsistent dealing with a chattel

2. To which another person is entitled to immediate possession

3. Whereby the person is denied the use

4. Possession; or

5. Title to it.

Thus, an owner can sue for conversion. 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.

See the case of ; North Central Wagon & Finance Co. Ltd v Graham, 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.

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 .Therefore, mere touching or moving of a 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.

See the case of ; 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 in

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 the tort of negligence for the loss of the car.

See the case of ; City Motor Properties Ltd v Southern Aerial Service, an owner of a chattel was held

Liable in conversion for dispossessing the plaintiff bailee of it, during the subsistence of

The bailment, which was not unilaterally determinable at will by the plaintiff owner.

Also, see the case of ; Hollins v Fowler, 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 his client 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.

EXAMPLES OF CONVERSION

Conversion of a chattel, belonging to another person may be committed in many different

Ways. Examples of conversion include:

1. CONVERSION BY TAKING

Where a defendant takes a plaintiffs 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. Contrast this proposition with the decisions in the cases

Of Fouldes v Willoughby and Davies v Lagos City Council. Another example is the Ghanaian

Case of Tormekpey V.Ahiable, here the defendant had sold and delivered a lorry to the

Plaintiff on delivery, which was that property in the lorry passed to the plaintiff on delivery,

With no right of seizure reserved to the defendant wrongfully seized the lorry and refused

To hand it back to the plaintiff. The Court of Appeal of Ghana held that the defendant was

Liable in conversion as well as in trespass to detinue.

On the other hand, a defendant may not be liable; if he merely moves the goods without

Denying the plaintiff of title.

1. CONVERSION BY USING

Using a plaintiff’s chattels as if it is 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 in Penfolds Wine Ltd v Elliot is a conversion of such chattel. And to pour the contents

Of his carbolic acid drums into the defendant’s tank as seen in Lancashire and Yorkshire

Rly Co V. McNicholl.

INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION

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.

See the case of; Unipetrol v Prima Tankers Ltd, where 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. It is 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.

THE 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. However, the rules are not

Often easy to apply. The rules applicable to finding lost property may be summarized as

Follows: -

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 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.

1. Any servant, or agent who finds a lost property in the course 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 rule, 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.

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.

In 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 defendants 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. See also South

Staffordshire Water Co v Sharman and Waverley Borough Council v Fletcher

In 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. See also

Hannah v Peel and Moffatt v Kazana.

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 sue in the tort of conversion include:

1. Owners

An owner in possession, or who has right to immediate possession may sue another.

person for conversion.

2. Bailees

A 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 Winkfield (1902) P. 42 at 60, a ship ran into another ship, a mailship which sank. The

Post-Master General though not the owner of the mails in the ship that sank was held

Other persons who may have right to immediate possession and therefore, may be able

To sue another person for conversion of a chattel include:

1. Holders of lien and pledge
2. Finders, see Armory v Delamirie, London Corp v Appleyard and Hannah v Peel.
3. Buyers
4. Assignees
5. Licensees
6. Trustees

DEFENCES FOR CONVERSION OF A CHATTEL

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

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 the title of the claimant. A

Defendant may temporarily, refuse to give up goods, while steps are 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.

1. Limitation of time.

THE REMEDIES FOR CONVERSION

In a claim for the conversion of a chattel several remedies are available to a plaintiff. The

court in its judgment may order any, or a combination of any of the following reliefs:

1. Order for delivery, return or specific restitution of the goods; or

2. Alternative order for payment of the current market value of the chattel.

3. An order for payment of any 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.

4. Recovery of special and general damages. Special damage is recoverable by a plaintiff

for any specific loss proved.

5. General Damages: Furthermore, where for instance, a 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

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. It is the

wrongful detention or retention of a chattel whereby the person entitled to it is denied

the possession or use of it.

As a general rule, to successfully sue in detinue, a plaintiff must have possession before

the detention, or have right to immediate possession of the chattel.

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.

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. Anybody who

wrong fully takes, detains, or retains a chattel, and after a proper demand for it, refuses,

or fails to return it to the claimant without lawful excuse may be sued in detinue to recover

it or its value. In the United Kingdom, the Torts (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 are many and include the following:

1. A lends his chairs and tables to B for a one day party, and B neglects, refuses or fails to

Return the furniture at the end of the day as agreed or after the expiration of a reasonable

Period of time.

1. C gives his radio set to D and pays him to repair it, and D fails or refuses to release or

Return it after a demand has been made on him for its return. In each of these

Circumstances, there is a right of action to sue for detinue of the chattel.

THE DEFENCES FOR DETINUE

In an action for detinue, 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. The defendant may plead jus tertii, that is, a third party person 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.

Jus tertii, is the better title of a third party. Jus tertii is a defence, that is, based on

Ownership by a third party, and it is not pleaded, except the defendant is defending under

The right of such third party who has ownership, or paramount title, that will enable him

To establish a better title, and the right to possession, than the plaintiff. Otherwise, as

CLEASBY BJ said in Fowler v Hollins (1872) LR 7 QB 616 at 639:

“Persons deal with the property in chattels, or exercise acts of ownership over them at

Their peril”.

1. Innocent delivery
2. Subsisting bailment
3. Subsisting lien on the chattel. See Otubu v Omotayo (supra)
4. Temporary retention of the chattel to enable steps to be taken to check the title of the

Plaintiff

1. Inevitable accident, see National Coal Board v Evans.
2. Reasonable defence of a person or property, such as when one beats or injures a dog

That was attacking him or another person.

1. 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, etc.

THE REMEDIES FOR DETINUE

When a person’s chattel is detained by another person, the person who is denied

Possession or use of such chattel, has several remedies open to him which include:

1. Claim for return of the specific chattel
2. Claim for 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

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 which include the following:

1. The refusal to surrender or return a chattel on demand is the essence of detinue, or

Detention. There must have been a demand for return of the chattel.

1. Detinue is the proper remedy where the plaintiff wants a return of the specific goods in

Question, and not merely an assessed market value. However, where specific return of the

Chattel or a replacement will not be possible, an award of the current market value of the

Chattel is usually made to the plaintiff.

Before the Common Law Procedure Act 1854, was enacted a defendant had a choice to

Either restore the actual chattel or pay the market value. However, since the enactment

Of the Act, a court has discretion to order specific restitution, or award the market value

Of the chattel to the plaintiff or it may award damages alone if the goods can be replaced

Easily.

Reference : LAW OF TORTS BY KODILINYE & ALUKO

 LAW OF TORTS BY ESE MALEMI

 WINFIELD AND JOLOWICZ ON TORTS

 NATIONAL OPEN UNIVERSITY SYLLABUS ON LAW OF TORTS