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QUESTION: The Tort of Trespass is made up of: Trespass to Chattels, Conversion and Detinue. Discuss the above and support with case law.

This write-up shall focus extensively on Trespass to Chattel per se, detinue and conversion, which will be seriatim while highlighting each’s elements, purposes and remedies and also distinguishing each tort. .

Trespass to Chattel is made up of three types of torts:

1) Trespass to Chattels *per se,* without a conversion or a detinue of the chattel in question.

2) Conversion

3) Detinue

**Trespass to Chattel:** To gain an understanding into the trespass to chattel, it is imperative to begin by defining a chattel. A chattel is any article, goods or personal property, other than a human being, land and immovable property, capable of being owned, possessed or controlled. This basically means that a chattel is any tangible or movable property which is capable of being owned, possessed or controlled. It is a personalty which translates to any moveable property that is, not real estate. Examples of chattel include books, animals, cars, furniture, the list is innumerable.

The purpose of the Law of Trespass to Chattel is to protect all the chattel, goods or personal properties of a person who has title or possession by prohibiting all kinds of interferences without legal justification. The tort of trespass to chattel protects the rights of ownership or possession of a chattel from all wrongful interferences. Thus, it protects the chattels of a person who has title, possession or right to immediate possession, against and meddling, damage, destruction or conversion or interference whatsoever by any person without lawful justification.

Trespass to Chattel is actionable *per se*. The three forms of trespass to chattel are each actionable *per se,* that is upon commissionor occurrence and without the plaintiff having to prove damage. This element was further emphasized in the case of **Davies v Lagos City Council[[1]](#footnote-2)**, where **Adefarasin J.,** 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 exportation…In my view, the seizure of the plaintiff’s vehicle without just cause…is a wrongful act, on account of which all the defendants taking part in it are jointly and severally liable.” In this case, the defendant council had granted the plaintiff a hackney carriage license to operate a taxi cab in Lagos. The plaintiff was well aware that the permit was for his exclusive use and was not transferrable, but he nonetheless caused it to be transferred to a third party, who operated a taxi cab on the strength of it. On learning this, the council, in the purported exercise of their power to revoke the permit, seized the plaintiff’s taxi and detained it at the L.C.C. pound. In an action for trespass, the court held that the Council was entitled to revoke permit for non-compliance with the regulations concerning permits, but it was not entitled to seize the vehicle or otherwise take possession of it. The Council was therefore liable for trespass. It is however important to note that although trespass is actionable per se, it is not a strict liability tort. Furthermore, where a specific damage has been done to a chattel, a plaintiff is entitled to prove it and recover damages for it as the case may be.

**Trespass to Chattel *per se:***

Trespass to Chattel is any direct and unlawful interference with a chattel in the possession of another. It can also be defined as committing any act of direct or physical interference with a chattel possessed by another without lawful justification[[2]](#footnote-3).It is any direct, wrongful or unlawful interference with a chattel in the possession of another. It is the intentional or negligent interference with the possession of a chattel of another person, without lawful justification. The interference must be direct and wrongful. Thus, the mere touching of a chattel without causing any harm may be actionable in the appropriate circumstances and may entitle the plaintiff to get nominal damages.

Trespass to chattel protects the following interests in personal property:

a) right of retaining one’s chattel;

b) protection of physical condition of the chattel;

c) protection of the chattel against unlawful interference or meddling.

The tort of Trespass to chattels is designed to protect the **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. To maintain an action for trespass, the plaintiff must show that he had possession at the time of trespass or is entitled to immediate possession of the chattel. Thus, a borrower, hirer or bailee of goods who possesses the goods hired, lent or bailed may therefore maintain an action. Similarly, a person who has wrongfully acquired possession may maintain action against all persons except the owner or agent of the owner of the chattel.

**Elements of Trespass**

1) **Intention to trespass or Negligence**: the mere act of trespass is sufficient to sustain an action. It is not necessary for the plaintiff to show the defendant’s intent to harm. In the case of **Erivo v Obi[[3]](#footnote-4),** the defendant closed the door of the plaintiff’s appellant’s car door and the side windscreen got broken. The plaintiff sued inter alia for damages to the windscreen and the loss he incurred in hiring another car to use. The defendant respondent alternatively pleaded inevitable accident. On appeal, the Court of Appeal held that the defendant was not liable as he did not use excessive force in closing the door but normal force. He did not break the windscreen negligently or intentionally. It was an inevitable accident which the exercise of reasonable care and normal force used by the respondent could not avert. The court restated the position of law that trespass to chattel is actionable per se, thus any unauthorized touching or moving of chattel is actionable at the suit of the possessor of a chattel even though no harm has been done. The court further stated that for trespass to be actionable, it must have been done by the wrongdoer either:

a) Intentionally; or

b) Negligently

2) **Lack of consent:** Consent negates trespass entails unauthorized interference with the plaintiff’s chattel. However, consent when not freely given, is not valid and would render the defendant liable.

3) **Ownership or Possession of the chattel**: In order to succeed, the plaintiff must show that he is the rightful owner of the chattel or is someone entrusted legally with the possession of the chattel.

In the wider context, trespass to chattel is closely related to any tort which has to do with the protection of interest in personal property such as negligence, malicious damage or other damage to property.

**Examples of Trespass to Chattel**

Trespass to Chattel includes Taking a chattel away; throwing another person’s property away, mere moving of goods from one place to another, scratching or making marks on the body of the chattel, killing another person’s animal, destruction or any act of damage, touching, use without permission, damaging or causing harm to a chattel etc.

In **Kirk v Gregory[[4]](#footnote-5),** 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 were awarded against the defendant**.** In **Haydon v Smith[[5]](#footnote-6)**, it was held to be trespass for the defendant to cut and carry away the plaintiff’s trees. In **Slater v Swann**[[6]](#footnote-7), beating the plaintiff’s animal was held to be a trespass to chattel. In **G.W.K v Dunlop Rubber Co[[7]](#footnote-8),** removing and replacing a tyre with another was held to be a trespass. In **Leame v Bray[[8]](#footnote-9),** there was an accident between two horse drawn carriages. The defendant negligently drove his carriage and collided with the carriage of the plaintiff. The court held that the accident was a trespass to chattel and the defendant was held liable in damages to the damage done to the coach of the plaintiff.

**Persons Who May Sue for Trespass to Chattel**

Any person who has possession or caretaker ship of a chattel may due any other person who meddles with the chattel. Thus, it is not limited to only owners of chattels, but also persons who have possession or the right to immediate possession, such as bailees, lenders, assignees, trustees, finders, custodians, etc. It also extends to people who are deemed by law to have possession so that they will be able to protect chattel left under their care. For instance, the employee to whom an employer has given custody of goods.

**Defences for Trespass to Chattel**

1. **Inevitable accident**: An inevitable accident is an occurrence not avoidable by any precaution a reasonable person would be expected to take. This defence may avail the defendant if he can show that he accidentally interfered or damaged the chattel due to the accident being inevitable.
2. **Public Necessity**: this defence may be invoked where the defendant interferes with the chattel in an emergency situation in order to protect the community or society from a greater harm that would have occurred if the defendant had not committed the trespass.
3. **Private Necessity:** this defence can be used against charges of trespass where a defendant interferes with the plaintiff’s property in order to protect an interest of his own, or to protect himself from bodily harm.
4. **Subsisting lien**
5. **Subsisting bailment**
6. **Limitation of time**: When the time required by the statute of limitation passes, the plaintiff would be barred from instituting an action for trespass.
7. ***Jus terti****-* 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 Delarmirie[[9]](#footnote-10),** a chimney sweep’s boy found a jewel and gave it to the jeweler for valuation. The jeweler, knowing the circumstances, took the jewel, detained it and refused to return it to the boy. The boy the sued for conversion and for an order for the return of the jewelry to him. The court held that the jeweler was liable for conversion. In this case, the boy has the better right as he was the finder of the jewel especially since the owner was not traced, in accordance with the lost property rule.

**Remedies for Trespass to Chattel**

a) Payment of Damages;

b) Replacement of Chattel

c) Payment of market price of chattel

d) Repair of damage.

**CONVERSION**

According to Sir John Salmond, in his book, the *Law of Tort:* “A conversant is an act…of willful interference, without lawful justification, with any chattel in a manner inconsistent with the rights of another, whereby that other is deprived of the use and possession of it.”[[10]](#footnote-11)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 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. It also includes denying a person of the title or possession, or use of his chattel. It is not necessary to prove that the defendant has 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. In criminal law, conversion is known as stealing or theft.

Persons who can sue for conversion: An owner can sue for conversion. Also, a person who has mere custody, temporary possession or caretaker ship can sue any third party who tries to dispute, detain, steal or otherwise convert such chattel.

**Examples of Conversion**

1) **Taking:** Where a defendant takes a plaintiff’s chattel out of the 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.

2) **Using:** Using a plaintiff’s chattel as if it is one’s own is conversion of chattel. In **Petre v Heneage[[11]](#footnote-12),** wearing the plaintiff’s jewelry was held to be conversion. In **Penfolds Wine Ltd v Elliot[[12]](#footnote-13),** using the plaintiff’s bottle to store wine was held to be conversion of such chattel.

3) **Consumption:** by eating or using up

4) **Destruction:** by damaging or obliterating it. Mere damage of a chattel is not sufficient to make one liable for conversion as it would only amount to trespass in chattel in tort and also malicious damage in criminal law.

5) **By Detention:** In the case of **Armory v Delarmirie[[13]](#footnote-14),** a chimney sweep’s boy found a jewel and gave it to the jeweler for valuation. The jeweler, knowing the circumstances, took the jewel, detained it and refused to return it to the boy. The boy the sued for conversion and for an order for the return of the jewelry to him. The court held that the jeweler was liable for conversion. A finder of a property has a good title, and he has a right of interest, to keep it against all persons, except the rightful owner of the property or his agent. However, a temporary reasonable refusal by the finer or custodian of a property to hand it over to a claimant is not actionable, except where the refusal is adverse to the owner’s better title.

6) **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.

7) **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 in such situation takes possession at his own risk, in accordance with the rule of law that acts of ownership are exercised at the owner’s peril.

8) **Receiving:** Receiving a chattel from a third party who is not the owner is a conversion. This is wrongful as it is an act of assisting the other party inthe conversion of thechattel. Involuntary receipt of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance.

9) **Alteration:** by changing its form, whatsoever.

10) **By Wrongful Disposition:** Such as by sale, transfer of title or other wrongful disposition.

**Innocent Receipt or Delivery is not Conversion**

Generally, innocent delivery or receipts are not torts, nor criminal offences. Thus, innocent delivery is not conversion. Therefore, when an innocent holder of gods such as a carrier or a warehouseman, recovers goods in good faith from a person he believes to have lawful position of them and he delivers them on the person’s instructions to a third party in good faith, there would be no conversion. Also, innocent receipt of goods is not conversion. However, the receiver must not willfully damage the goods unless the goods constitute a nuisance.

**The Lost Property Rule**

The lost property rule was settled by the court in **Parker v British Airways[[14]](#footnote-15).** The plaintiff was waiting in the defendant lounge at Heathrow Airport, London when he found a bracelet on the floor. He handed it to the defendant’s employees, 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 returned to the finder. The court held that the proceeds of sale belonged to the plaintiff who found it. The court further set down the lost property rule to be:

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.

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, attached to the land or building. Based on this rule, in **South Staffordhshire Water Co v Sharman[[15]](#footnote-16),** a pre-historic boat discovered six feet below the surface was held to belong to the land owner.

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 **Bridges v Hawkesworth[[16]](#footnote-17),** 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.

It is important to note that the finder has duty to take reasonable steps to trace the true owner.

An act of conversion will lie in respect for any corporeal personal property including papers and title deeds. In **Owena Bank Nigeria Ltd v Nigerian Sweets and Confectionery Co. Ltd[[17]](#footnote-18)**, the court held the defendants liable for the conversion of import license papers. In this case, the first respondent was granted an import license by the government to import granulated sugar. However, the second respondent opened a letter of credit and imported the sugar.

**Persons who can sue for Conversion**

a) Owners in possession or right to immediate possession may sue under another person for conversion, b) Bailees 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[[18]](#footnote-19),** 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 and can maintain action against a bailee for conversion.

**Defences for Conversion of a Chattel**

1) Just terti

2) Subsisting bailment

3) Subsisting lien

4) Temporary retention: to enable steps to be taken to check the title of the claimant.

5) Limitation of Time

**Remedies for Conversion**

1) Order for delivery, return of 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 honesty in good faith, buys and improves a stolen item, for example, a car. If he 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 y a plaintiff for any specific loss proved,

5) General damages:

**Differences between Trespass to Chattel, Conversion and Detinue**

1) The major distinguishing feature between trespass to chattel *per se* and detinue and conversion, is that in this tort, damage or wrong is done to the chattel while it is in the possession of the person claiming damages for the injury. The chattel is usually not taken from his possession as seen in conversion or detinue. In Trespass to Chattel, there is no taking away, conversion, detention or stealing of goods from the owner or possessor. The act of interfering or damaging the chattel is done while the chattel remains in possession of the owner or possessor. On the other hand, in conversion and detinue, the owner or possessor of the chattel is deprived the possession of the chattel. In the case of **Fouldes v Willoughby[[19]](#footnote-20),** the defendant was the manager of a ferry boat. The plaintiff who was a passenger entered the boat with his horses. They had a dispute and in order to induce the plaintiff to leave the boat, the defendant disembarked the horses of the plaintiff from the ferry. The plaintiff who was not affected remained on the boat and crossed over to the other side of the river. The plaintiff then sued for trespass to the horses by moving them ashore. It was held that there was no conversion as the plaintiff still had title.

In conversion, the conduct must deprive the owners of the possession of the chattel, or amount to a dispute of the title or owner. Conversion is stealing in criminal law. Thus, mere touching or moving of a chattel while it remains in possession of the possessor or owner would only amount to trespass. See **Fouldes v Willoughby** (supra).

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 that the plaintiff has the right to immediate possession of the chattel, that is, the right to demand for immediate possession of the chattel.

**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 a plaintiff who is entitled to it. Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. In the United Kingdom, the Torts (Interference with Goods) at 1922 has abolished the tort of detinue as a separate tort and merged it with the tort of conversion where is it now known as conversion by detinue or detention. In Nigeria, it still exists as a separate tort.

**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 which is the ownership or right to immediate possession of the chattel.

2) The defendant who is in actual possession of the chattel must have failed 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.

In **West African Examination v Koroye[[20]](#footnote-21),** 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 detinuefor his certificate and was awarded damages in lieu of the release of the certificate by the Supreme Court. In **Kosile v Folarin[[21]](#footnote-22),** the defendant motor dealer seized and detained the motor vehicle he has sold o the plaintiff on credit terms, upon delay by the plaintiff to fully pay up. The plaintiff buyer sued for detinue claiming damages. The Court held that the seizure and detention of the vehicle of the defendant was wrong. The plaintiff was entitled to return of his vehicle or its vehicle ad for loss off the use of the vehicle until the date of judgment at the rate of N20 per day. The court also emphasized 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.

**Differences between Conversion and Detinue**

Although, detinue covers the same ground as conversion by detention, there are some differences between the two which are:

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.

2) 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 chattel is not 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 has a choice to either restore the chattel or pay the market value. However, since the enactment of the Act, the court has discretion to order specific restitution or award of the market value of the chattel to the plaintiff or it may award damages alone if the goods can be replaced easily.

**Defences for Detinue**

1) He has mere possession of the goods

2) That the plaintiff has insufficient title as compared to himself

3) Just terti, that is a third party has a better title, provided that the defendant is the agent, or has the authority of the third party or is claiming under the third party. Jus terti is the better title of a third party. It is not pleaded unless the defendant is claiming or defending under the right of such party who has ownership, or paramount title, which will enable him to establish a better title, and the right to possession than the plaintiff.

4) Innocent Delivery

5) Subsisting bailment

6) Subisisting lien on the chattel

7) Temporary retention of the chattel to enable steps to b taken to check the title of the plaintiff’

8) Inevitable accident

9) Reasonable defence of person or property, such as when one hits an animal that was attacking him.

10) Enforcement of a court order, or other legal process, such as levying of execution of property under a writ of fifa.

**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

1) **Claim for Return of the Chattel**: This is a 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 detention.

2) **Replacement of the Chattel:** Where possible or appropriate, a defendant may be ordered to replacement 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 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. This option appears to be the best form of action, where the chattel has otherwise been removed from jurisdiction, or hidden, damaged, destroyed or otherwise not found. In such circumstances there is no alternative than to claim for the market value of the chattel as assessed, plus any specific and general damages for its detention.

4) **Recapture or Self-help:** A person who is entitled to possession of goods of which he 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. However, he 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 as a remedy 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. Therefore, a person may not resort to the option of recapture or self help except it is safe, expected, and reasonable or if it will not be resisted by the defendant and or persons acting for him.

5) **Replevin or Release on Bond**: This is a return of the goods on security, pending the determination of the ownership of the chattel. When a third party's goods have been wrongfully taken in the course of levying execution or distress of the movable property of another person or judgment debtor, such third party claiming ownership may recover them by means of an interpleader summons determining their ownership. The registrar will then issue a warrant for the restoration of the goods, to such third party or claimant on bond. Therefore, Replevin is the re-delivery to an owner of goods which were wrongfully seized, the action for such re-delivery, and for any specific and general damages suffered by him as the result of the detention.

6) **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. Also, if the wrongdoer has been making use of the goods for his own purpose, then he must pay a reasonable hire for chattel to the plaintiff. The reasonable hire usually includes the wear and tear of the goods. 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 judgment or re-delivery of the chattel to the plaintiff. Also general damages may be awarded as may be assessed by the court. General damages are usually presumed in this action, especially for the loss of the use of the chattel. As in claims in other areasof law, general damages may be awarded at least to cover part of the cost of the legal action.

In conclusion, trespass to chattel is the direct and unlawful interference with a chattel in the possession of another. It seeks to protect the possession of a chattel against any unlawful interference. It is made up of: Trespass to chattel, Conversion and Detinue.

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