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**COURSE TITLE: LAW OF TORTS I**

**QUESTION:** The torts of trespass to chattel is made up of trespass to chattels, conversion and detinue. Discuss the above and support with case law. Students may consider the following:

Define and explain each tort, state the elements of trespass to chattel, conversion and detinue. Explain the concepts of innocent delivery or receipt, lost property rule and give examples of persons qualified to sue for trespass to chattel. Discuss the remedies and defenses to trespass to chattel, conversion and detinue, differences between conversion and detinue.

**TRESPASS TO CHATTEL**

This tort may simply be defined as any direct and unlawful interference with the chattel of another person (usually the possessor/plaintiff). In other words, trespass to chattel is the intentional and wrongful interference of another person’s personal property. Such interference could either be intentional or negligent. A chattel is any moveable property. This tort aims to protect;

1. The plaintiff’s interest in retaining possession of the chattel.
2. His interest in physical condition of the chattel.
3. To prevent unlawful intermeddling with chattel of a person.

The act of trespass to chattel may take various forms such as destroying, damaging or merely using goods or even wrongfully moving them from one place to another. This was illustrated in the Nigerian case of **Davis v Lagos City Council.** The defendant council had granted the plaintiff a hackney carriage license to operate a taxi cab in Lagos. The plaintiff being aware the permission was for only his use, granted it to a third party. The taxi was detained. The plaintiff sued. It was held that the defendant was entitled to revoke the license issued the plaintiff but not seize the car, therefore it was liable to trespass.

The tort of trespass to chattel is actionable *per se;* this means without proof of actual damage. Thus, the mere wrongful moving or touching of someone’s chattel without any harm is actionable *per se*, i.e. it is a trespass to chattel where someone parks his car and another person leans on it or even touches it. A person who wants to sue in trespass to chattel can sue under trespass to goods, conversion and negligence that is involved in the commission of the trespass or conversion. These actions are substantiated by the provisions of the **Torts (Interference with Goods) Act 1977.** The act creates a new action called “Wrongful interference with goods.” It defines it in **section 1** as:

1. Conversion of goods called trover.
2. Trespass to goods.
3. Negligence in so far as it results in damage to goods.
4. Subject to **section 2** of the act, any other tort as it results in damage to goods.

**Trespass to Goods:** this can be defined as the general unlawful interference with goods in lawful possession of another person. Possession is very important in bringing an action for trespass to goods. Thus, a person in possession of goods, though not being the true owner, can bring an action for trespass. In the case of **Armory v Delamirie,** a boy found a jewel and asked a 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 has 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).

Possession normally means physical possession by the possessor. However, in the case of a master-servant relationship, the master is in possession of goods held on his behalf by his servants. An executioner or administrator is also held to be in possession of the deceased’s goods until a probate or letter of administration is granted. Also, a trustee not in physical possession would be held as having possession in a situation in which he brings an action against a third party in order to protect the goods. In the case of **National Coal Board v Evans & Co,** the defendant contractors were employed by a county council to work on land owned by the defendant council. A trench had to be dug, which the defendants employed a sub-contractor to do. An electric cable passed under the land, but neither the council nor Evans & Co who were head contractors, nor the sub-contractors knew this, and the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable and water seeped into it causing an explosion, and thereby cutting off electricity supply to the plaintiff’s coal mine. The plaintiff sued claiming damages for trespass to the electricity cable. The court held that in the absence of establishing negligence on the part of the defendant contractors, there was no fault and there was no trespass by the defendants. The damage was an inevitable accident.

**Elements of trespass to chattel**: for a plaintiff to be successful, he must establish that the trespass was intentional or negligent. As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort. However, accident, intentional or negligent trespass do not automatically give rise to liability per se, as an appropriate defense, may be pleaded to avoid liability.

**Persons Qualified to Sue for Trespass to Chattel:** anyone who has possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. Anyone who has possession, or the right to immediate possession can sue. Accordingly, some persons who do not have legal right are deemed by law to have possession, so that they will be able to protect chattels left under their care, for instance, an employee to whom an employer has given custody of goods, a repairer, caretaker, personal representatives of a deceased and so forth. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material times of the interference include:

1. Owners
2. Bailees
3. Lenders
4. Assignees
5. Trustees
6. Finders
7. Custodians
8. Caretakers
9. Adverse possessors, because mere possession gives right to sue to retain possession.
10. Executioners
11. Administrators of estates.

**Defenses for Trespass to Chattel**

1. Inevitable accident: this is a defense that applies in circumstances where the defendant can show that their conduct was involuntary, and accordingly, the defendant is without fault. The onus on establishing this defense is on the defendant, who must show that their conduct was neither intentional nor negligent, and the interference with the chattel was a result of an inevitable accident.
2. *jus tertii:* this means the right of a third party. A cause of action in trespass may fail if the defendant can show that a third party has better rights to the chattel than the plaintiff. The onus is on the defendant to establish that a better right to possession is held by a third party in order for the defense to succeed.
3. Limitation of time.
4. Consent: a defendant may be able to establish a defense to chattel if the interference occurred with the plaintiff’s consent. Consent can either be express or implied by conduct; however, it must be genuine and voluntary. The onus is on the defendant to establish that they interfered with the chattel with the plaintiff’s consent.
5. Subsisting lien.
6. Honest conversion or acting honestly

**Remedies for trespass to chattel**

1. Payment of damages i.e. compensatory damages: this applies if damage to the chattel has been sustained or not capable of being returned. The aim for this type of damages is to put an injured person in the same situation as they would have been in had the trespass not committed.
2. Replacement of the chattel.
3. Payment of the market price of the chattel.
4. Repair of the damage.

**Conversion**

This 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. The right to immediate possession is the determining factor. That is, if the right exists, actual possession is unnecessary. In the case of **North Central Wagon and Finance Co Ltd V Graham,** 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 plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs 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.

**Elements of Conversion**

1. Wrongfully taking the goods: this must be accompanied by an intention to exercise temporary or permanent dominion over the goods. In **Fouldes v Willoughby,** the owner of two horses brought them aboard 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. Judgement was entered in his favor at the trial court. On appeal, the court in allowing the appeal held that the act of leading the horses away from his ferry by the ferryman could not be 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. 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 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 (1980) 1 WLR 1375,** the defendant, who were carriers, held the plaintiff’s steel in depots. 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 towards the person entitled to possession.
3. Wrongfully destroying the goods: destruction of goods would amount to conversion where; one person willfully destroys the chattel of another, or if the chattel either ceases to exist or changes its identity.
4. Wrongfully disposing the goods: this occurs in a situation which the defendant attempts to confer title to a third party in a manner inconsistent with the right of the person entitled to possession.
5. Wrongfully delivering goods: this occurs in a situation in which the defendant denies the true owner of the title to the goods by delivering them to another party that has no title.

**Situations that don’t Amount to Conversion**

1. 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 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 nuisance. In **Unipetrol v Prima Tankers Ltd,** the defendant oil tanker owners had a contract to carry Unipetrol’s cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of the cargo. The Court of Appeal held that the respondents were liable in conversion. The word “loss” is wide enough to include 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.
2. 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:
3. The 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.
4. 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.
5. 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 Co.**
6. 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. In **Bridges v Hawkesworth,** the plaintiff finder 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 money.

**Defenses to Conversion**

1. Abandonment: an action for conversion would not succeed in a situation in which the property was 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 law: conversion that is done under the authority of 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 specified period (ranging from 2-5 years), it would be held to be statute barred. Thus, the suit would not be held to be heard by the court.
5. Unidentifiable Property: If the property cannot be properly identified, it could also serve as a defense to conversion.

**Remedies to Conversion**

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. 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 improvements.
4. General Damages: where 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**

This 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. Detinue 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. 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 wrongfully 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. It still operates as a separate tort in Nigeria.

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 a failure to return them. This making of a 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,** the defendant motor dealer seized and detained the motor vehicle he sold to the plaintiff on credit terms, upon delay by the plaintiff to fully pay up. The plaintiff buyer sued for detinue claiming damages. The Supreme Court held that the seizure and detention of the vehicle by the defendant was wrong. The plaintiff was entitled to the return of the vehicle or its value and for loss of the use of the vehicle until the date of the judgement are at the rate of N20 per day. 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 **Steyr Nig.Ltd v Gadzama,** at the end of their services, the plaintiff appellant company used the defendant respondents 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 respondents were to pay reasonable prices for the items in lieu of returning the chattels. In **Ogiugo & Sons Ltd V C.O.P,** the lorry of the plaintiff appellant transporter was carrying a customer’s goods, when the police intercepted and seized the vehicle on suspicion that the goods were contraband. Representations for its release failed to yield result. The appellant claimed for detinue of the vehicle. The Court of Appeal held that the appellant was entitled to the immediate release of the vehicle and damages for its unlawful detention. The plaintiff must have title or right to immediate possession to be able to sue successfully for detinue.

**Defenses to Detinue**

1. *Jus tertii:* that is the better title of a third party. Jus tertii is a defense, that is based on ownership of 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.
2. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff.
3. 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.
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.

**Remedies for Detinue**

1. Claim for return of 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 retention.
2. 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 judgement 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.
3. 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 judgement debtor, such third party claiming ownership may recover them by means of an interpleader summons determining their ownership. The register 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.
4. Replacement of the chattel: where appropriate and possible, 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.
5. Recapture or self-help: a person who is entitled to possession of goods 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.

**Difference between Conversion and Detinue**

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. While conversion involves dealing with another person’s property in a manner which denies the owner of the property.
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 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.

**REFERENCE**

* **Law of Torts by Ese Malemi**
* **Djetlawyer.com**
* **Mondaq.com**