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LAW OF TORTS

ASSIGNMENT

The tort of trespass to Chattel in is made of: Trespass to Chattels Conversion and Detinue, discuss the above and support with case law.

Trespass to Chattells:

Trespass has been defined as an unlawful interference with one persons property or other rights. At common law, trespass was a form of action brought to recover damages for any injury to ones person or property, or relationship with another.

Chattels:

The word “chattel” has been used interchangeably with goods to mean possession of an article or movable property.

To Halsburys statutes of England chattels are:

1. A personal property comprising all forms of property other the freehold estate in land and its appurtenances and its connection land may include chattels affixed to the land.
2. Chattels personal are classified as being either things in possession or things in action.

Trespass to chattels or goods is an intentional or negligent interference with a chattel in the possession of the plaintiff provided that the interference is direct.

According to Kodilinye : this tort may be defined as a direct and wrongful interference with a chattel in possession of the plaintiff, such interference being either intentional or negligent.

Thus like all actions founded on trespass, it consists in the direct interference with the chattels or goods which are in the possessions of the plaintiffs. It need not necessarily involve the removal of the goods from the possession of the plaintiff, but if it does, it will constitute trespass to chattel, which is *trespass de bonis asporantis,* though it may give rise to an action in conversion in addition to trespass.

Kodilinye has noted trespass to chattels may take various forms such as destroying, damaging or merely using goods or wrongfully moving them from one place to another. In Davies v. Lagos city council[[1]](#footnote-1), the defendant council had granted to the plaintiff a hackney carriage licence to operate a tax-cab in the Lagos area. 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 to a third party, who operates a taxi-cab on the strength of it. On receiving knowledge of this, certain officials of the council, in the purported exercise of their power to revoke the permit, seized the plaintiffs taxi and detained it at Lagos city council premises. In an action for trespass brought by the plaintiff, the court helds that the council was entitled to revoke the plaintiffas 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 in trespass .

It is only the person in possession of the of the chattel who has a right of action for trespass to it. In Armory v. Delamire[[2]](#footnote-2), a chimney sweep found a jeweled gold ring in a gutter where he had worked. He gave the jeweled gold ring to a gold smith to help him assess the value of the ring. The goldsmith removed the jewel and sought to return the ring to the chimney sweep boy. In an action in court for recovery of the jewel ring, the court held that the chimney sweep boy was entitled to the jewel ring against, not only the jeweler, but also against the owner of the premises where the jeweled ring was found. Possession in this instance involves actual physical control of the chattel, or a right to control the person who is in physical control of chattels.

Undoubtedly in an action for trespass to chattels or goods, the right to possessions, which gives a right of action, need not be supported by a claim to ownership of the goods. In the **WINKFIELD** case postmaster-general sued the winkfield, a ship owner, through whose negligence it was generally assumed the ship sunk, with all mails on it. Arguments advanced by counsel that the postmaster-general was not the owner of the letters did not hold, and the postmaster-general was held entitled to the claim, as he was in possession of the letters, and he was the person best entitled to claim for them, from third parties.

ELEMENTS OF TRESPASS TO CHATTEL

1. It is actionable *per se*
2. Intentional or negligently
3. Malice is also a factor in a claim for trespass to chattel

REMEDY FOR TRESPASS TO CHATTEL

The remedy for all torts is damages, therefore damages for trespass to chattel would be discussed:

As has earlier been stated, an action founded on trespass to goods consist of direct interference with goods, which are in the possession of the plaintiff or put simply *trespass de bonis asportatis* which relates to the wrongful taking of chattels. Essentially, like other forms of trespass, trespass to chattel actionable *per se*, that is to say, without, without proof of actual damage. Thus, the mere wrongful moving or touching of a chattel without any harm being caused is actionable, but there are some authority to contrary, that is, to the effect that trespass to goods requires proof of some damages or asportation.

The former seems to be the better view. For where the plaintiff has proved the requirements of the tort, he will surely be compensated. Also where actual damage is not incurred, the most the law can do is to allow for expenses involved in preventing such loss. Additionally, we have to point here that fundamental principle underlying the whole of damages is that of compensation. Thus, in essence, means that the plaintiff receives in monetary terms, no more and no less than that which he actually lost.

CONVERSION

Conversion is the 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 possessions of that chattel; so held the Supreme Court in the case of Iheanachor & Anor v. Uzuchukwu & Anor[[3]](#footnote-3), the court stated in that case that ;

The tort of conversion is committed where one, without lawful justification, takes a chattel out of possession of another with the intention of exercising permanent or temporary dominion over it, because the owner is entitled to the use of his property at all times. The usual method of proving that a detention is to show that the plaintiff demanded the delivery of the chattel and that the defendant refused or neglected to comply with the demands.

From the foregoing pronouncement of the supreme court it is deducible that trespass to goods could become conversion of the goods if the defendant has taken these chattels without the consent of the plaintiff and proceed to deal with the goods in a manner inconsistent with the right of the plaintiff owner of the goods.

And in consonance with the above views, Kodilinye defined conversion as an intentional dealing with or exercise of control over a chattel, which seriously interferes with the plaintiffs possession or right to possession of such chattel.

ELEMENTS OF CONVERSION

1. Interference must be intentional.
2. Plaintiff has to have actual possession of the goods at the time of the interference.
3. It is not conversion merely to move chattel from one place to another without any intent to take possession of it or dispute the owners title.

Various acts constitute conversion:

1. Conversion by taking possession: taking possession of anothers goods will normally be conversion as well as trespass, but it may not be conversion where the interference is, for the time being, and it is unacceptable by any intention to exercise any right over the goods. Thus in a Canadian case of Onatario Ltd. V. R in Right of Canadians[[4]](#footnote-4); a conversion by temporary taking was denied in the absence of intention to use. However, it must be stated that it is not often necessary that the defendant should assert right of ownership over the goods, the subject matter of the conversion. It has been held that taking of goods for the purpose acquiring a license or by temporary user amounts to conversion.
2. Conversion by destruction, consumption or alteration: where a person intentionally destroys or consumes anothers chattels, he is liable for conversion; as for instance, where the defendant smashes the plaintiffs windscreen or drinks his wine. But it should be noted that to merely damage the chattel of another is not conversion but trespass. What is important to consider in each case is a question of degree as to whether or not the damage is so great as to amount to destruction. It should also be noted that it is conversion to alter the identity of a chattel, for example, to sew cloth into a dress, to grind cassava into garri, or to turn grapes into wine.
3. Conversion by using: where the defendant uses the plaintiffs chattel as if it were his own, his act is inconsistent with the rights of the plaintiff and he will be liable in conversion. Thus, if a person comes to anothers house and collects his shoes, probably without that others knowledge, and wears it, he will be liable in conversion. In many old English cases, it has been held actionable to wear the plaintiffs jewelry, to use his wine bottles to store the defendants wine, and pour the content of his carbolic acid drums into the defendants tank.

It should be noted that where the defendant is lawfully in possession of the plaintiffs chattel as bailee, he will be liable in conversion:

1. If he uses it contrary to an express term in the contract of bailment prohibiting use by the bailee, or
2. Where there is no express prohibition of use, if he uses it for a purpose so contrary to the termof the bailment contract as a whole that it constitutes a material breach thereof.
3. Conversion by receiving : in this instance, where the third party, without lawful authority transfers the plaintiffs chattel to the defendant, the mere voluntary reception of the chattel by the defendant constitutes conversion against the plaintiff, even though the defendant may have acted innocently. Thus in litinacy of decided authorities, the English courts have always cited with approval Lord Ellenborough, CJ. Dicta in McCombie v. Davies[[5]](#footnote-5), where his lordship stated that;

Certainly a man is guilty of conversion who takes my property by assignment from another who has no authority to dispose of it; for what is that but assisting that other in carrying his wrongful act into effect.

1. Conversion by wrongful transfer of title possession:

It is conversion to deprive the plaintiff of the possession of his goods by wrongfully transferring or disposing of them to another, where by sales or delivery or pledge. In the leading English case of Hollins v. Fowler[[6]](#footnote-6); a rogue obtained Fowlers cutton and offered it for sale to Hollins, a broker: Hollins sold and delivered it to Micholls & co, who worked it into yarn. Hollins accounted for the proceeds to the rogue, who disappeared. Hollins was held liable for conversion to Fowler even though he had acted in good faith and obtained only a brokers commission from Michols & co.

Damages for conversion

As has been noted earlier, conversion may be committed by wrongfully taking possession of goods, by wrongfully disposing of them, by wrongfully destroying them or simply by wrongfully refusing to give them up when demanded, for in all, these cases are traced to the conduct by the defendant which amounts to a denial of the plaintiffs right or the assertion of inconsistent rights. The proof of a demand by the plaintiff for the return of the goods met by a refusal of the defendant is one of the common ways of producing evidence of conversion, for it tends to show that the defendants detention of them is wrongful.

In all claims for damages for conversion the measure of damages is for the value of the goods converted and for damages for the detention. And in the recent case of Chief Paul Odia v. piedmont LTD[[7]](#footnote-7) the supreme court stated per Bello, CJN(as he then was) that “if the action is founded on conversion, the loss of use, if the goods are of commercial or of hiring, the measure of damage will be based on the market price of the goods up to the time of conversion.

Similarly in Ezani v. Ezidikie[[8]](#footnote-8) , it was held that the claim of conversion is for the market value of the goods and a claim for detention dependas on whether it is remote.

DETINUE:

Detinue consists of the refusal to return goods of another on demand. It is wrongful withholding of immediate possession of goods from the person entitled to it after a demand for it return has been made.

The word “detinue” is derived from the latin word “detiner” meaning withholding. At common law, a claim in detinue lay at the suit of a person who has an immediate right to the possession of the goods, in issue, against another, who is in actual possession of them, and who, upon proper demand, failed or refused to deliver them up, without lawful excuse.it is of utmost importance here to note that detinue is based on the defendants wrongful detention of plaintiffs chattel, with the evidence of defendants refusal to deliver up the chattel on demand by the plaintiff. In JULIUS BERGER V. OMOGUI[[9]](#footnote-9), the supreme court of Nigeria defined detinue as: wrongful retention of goods. The wrongness upon the detention of the chattel after demand for its return by the person entitled to its immediate possession has been made.

Thus to succeed in a claim for detinue, the plaintiff must establish wrongful detention of his chattel by the defendant. The plaintiff must do by showing that he had demanded a return of his chattel, and the defendant refused to deliver. This was the supreme courts position in the case of SALIBA V. YASSIN.

The redress is not strictly for the wrong but for the return of that chattel or its value. In the recent case of CHIEF PAUL ORDIA V. PIEDMONT (Nig) Ltd[[10]](#footnote-10) the supreme court had stated that detinue is now an action only in tort for failure to deliver up the plaintiffs chattel and it entails claim for the return of the chattel or its value and damages for its detention. Also it has been noted that;

Nowadays it is even possible to ask for specific return of that chattel if it is still in possession of the defendant rather than its value, and damages for its detention.

The supreme court in ACGIEF PAUL ORDIA V. PIEDMONT Ltd unequivocally asserted that, more appropriately, it is up to the plaintiff to decide which course to follow among the following:

1. Value of chattel and damages for its detention
2. The return of chattel and damages
3. For the return of the chattel and damages for its detention.

DAMAGES FOR DETINUE;

It should be reiterated here that detinue is the wrongful withholding of immediate possession of good from the person entitled to it; and it entails, claim for return of chattels or its value and damages for its detention. The defendant cannot deprive the plaintiff of his right to damages for detention of chattel simply because he was not earning anything for its use.

It is important to point out that in the case of detinue the court will award what is reasonable as damages for detention of chattels by the defendant. The measure of damages in detinue, therefore, has always been the value of the chattel and the damages for for its detention. Each case is determined by its facts and special circumstances, as it is still uncharted field. But along, the principle is that in a claim for damages, whethewr tort or in contract, the plaintiff recovers only what he has lost; this is subject to the rule of remoteness. Thus, where the defendant has deliberately refused to deliver up the chattels and in the process has continued to make profit by its retention, he will pay the plaintiff damages which will be substantial, this is not the case of detinue.

Another essential point to note is that it is trite law that where the action is founded in detinue, the court may award damages for the loss of use up till date of judgement since the plaintiff claims for the return of the said goods or the value for the said goods. In such a case, the measure of damages, if the goods are of commercial nature, will be based on the market value of the goods so detained up to the time of judgement. We must hasten to add here that the plaintiff can recover for loss of use only when the loss of use is consequential on some wrongful damage to the goods.

DIFFERENCE BETWEEN CONVERTION AND DETINUE

1. In convertion, the defendant has the option of retaining the goods while paying for their value in damages. Whereas in detinue however, restitution is not automatic; but subject the courts discretion. Where the chattel is an ordinary article of commerce and of no special value, interest or significance to the plaintiff and damages will not be an adequate compensation, restitution will not be granted.
2. Detinue is only an aspect of conversion since it is concerned with refusal to surrender the goods on demand. In detinue the plaintiff can claim specific restitution of the goods, but in conversion, he cannot. Where a plaintiff wishes to sue for restitution, his action lies in detinue not conversion.
3. The defendant will not be liable for conversion by detention where prior to the demand by the plaintiff the goods had been lost or destroyed by accident or negligence of the defendant. But the defendant would be liable in detinue unless he proves that the loss or destruction was not due to his negligence.

1. (1973) 10 CCHCJ 151 at 154 [↑](#footnote-ref-1)
2. (1722) EWHC. [↑](#footnote-ref-2)
3. (1997)1 SCNJ. 117 at126 [↑](#footnote-ref-3)
4. (1984) 8 D.L.R (4th) 676 [↑](#footnote-ref-4)
5. (1805)6 East 538 [↑](#footnote-ref-5)
6. (1875)LR7 HL [↑](#footnote-ref-6)
7. (1995)2 SCNJ 175 at 186 [↑](#footnote-ref-7)
8. (1964) 1ALL NLR 402. [↑](#footnote-ref-8)
9. (2001)65 SCNJ P214 [↑](#footnote-ref-9)
10. supra [↑](#footnote-ref-10)