# NAME: ALICHE BLOSSOM CHIAMAKA MATRICNUMBER:18/SMS13/002. COURSE TITLE: LAW OF TORTS. ASSIGNMENT: TORTS OF TRESPASS TO CHATTEL

# WHAT IS TORT OF TRESPASS TO CHATTEL?

# The word "chattel" means any article, goods, or personal property, other than land and immoveable property. Examples of chattel include cars, furniture, animal, vessel, aircraft, sea craft, and anything which is moveable and capable of being owned. The tort of trespass to chattel is the aspect of tort which protects the rights of ownership or possession of a chattel from all wrongful interferences and/or unlawful interferences. In Erivo v Obi (1993) 9 NWLR pt 316, p. 60 CA, 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. 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.

# ELEMENTS OF TORT OF TRESPASS TO CHATTEL:

# To succeed, the plaintiff must establish that the act of trespass was:

# Intentional; or

# . Negligent. National Coal Board v Evans & Co. (1951) 2 KB 861 and Gaylor

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 defence, may be pleaded to

avoid liability.

EXAMPLES OF PERSONS QUALIFIED TO SUE FOR TRESPASS TO CHATTEL

Anyone who has possession of a chattel may sue any other person who meddles with the chattel because the main aim of the tort of trespass is to protect possession, or the right to immediate possession. In other words, anyone who has possession or 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, Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time 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 a right to sue to retain

possession

10. Executors

11. Administrators of estates; etc.

In National Coal Board v Evans & Co. (supra), 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 Evan & 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.

THE DEFENCES AND REMEDIES

OF TRESPASS TO CHATTEL.

DEFENCES:

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.

3. Honest conversion, or acting honestly.

4. Subsisting bailment

5. Subsisting lien.

6. Limitation of time, as a result of the expiration of time specified for legal action.

REMEDIES

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.

Torts of trespass to chattel is made up of:

1. Conversion

2. Detinue

WHAT IS CONVERSION?

Conversion is any inteference, 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. According to Sir John Salmond, in his book the Law of Tort, 21st ed. (1996) “A conversion is an act... of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it”.

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. Also,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.

In North Central Wagon & Finance Co. Ltd v Graham (1950) 1 All ER 780, 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.

EXAMPLES OF CONVERSION

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

ways.

1. 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. A defendant may not be liable; if he merely moves the goods without denying the plaintiff of title.

2.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.

3. Alteration: By changing the form of a chattel that belongs to another person

4. Consumption: By eating or using.

5. Destruction: By damaging or obliterating it.

Mere damage of a chattel is not sufficient to make one liable for conversion. As a general rule of law, mere damage or destruction of a chattel without more, is a trespass to chattel in tort and also a malicious damage in criminal law.

6. Receiving

Involuntary receipt of goods is not conversion. However, the receiver must not willfully

damage or destroy the goods unless the goods constitute a nuisance. Receiving a chattel

from a third party who is not the owner is a conversion. This is wrongful, for it is an act of assisting the other person in the conversion of the chattel, or the receiving of stolen goods.

7. By Detention

In Armory v Delamirie (1722)

A chimney sweep's boy found a jewel and gave it to a jeweler for valuation. The jeweler

knowing the circumstances, took the jewel, detained and refused to return it to the boy.

They boy then sued the jeweler for conversion and for an order for return of the jewellery 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 or interest, to keep it against all persons, except the rightful owner of the property or his agent.

However, a temporary reasonable refusal by the finder or custodian of a property to hand it over to a claimant, in order to verify the authenticity of the title of the claimant. is not actionable, except where the refusal is adverse to the owner's better title. .

8. By Wrongful Delivery

Wrongfully delivery of a person's chattel to another person who does not have title or

right to possession without legal justification is a conversion.

9. 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 a 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.

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

disposition. In Chukwuka v C.F .A.O. Motors Ltd (1967) the plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months later the defendants sold the car to a third party who re-registered it in his own name. The plaintiff sued for conversion. The High Court held: that the defendant was liable to the plaintiff for conversion of the car.

INNOCENT DELIVERY OR RECEIPT.

Generally, innocent delivery, or innocent receipt are not torts, nor criminal offences.

Thus, innocent delivery is not conversion. Therefore, where an innocent holder of goods,

such as, a carrier, or warehouseman, receives goods in good faith from a person he

believes to have lawful possession of them, and he delivers them, on the person's

instructions to a third party in good faith, there would be no conversion. Similarly,

innocent receipt of goods is not conversion. However the receiver must not willfully

damage or destroy the goods unless the goods constitute a nuisance. In Unipetrol v Prima Tankers Ltd (1986). 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.

In Owena Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd (1993) The 1st respondent was granted an import license by the Federal Ministry of Trade to

import granulated sugar. However, the 2nd respondent opened a letter of credit and

imported the sugar. The 1st respondent sued for damages for the wrongful conversion of the import license. On appeal by the bank, the Court of Appeal held: That the defendants were liable for conversion of the import license papers.

Thus, an action for conversion will lie in conversion for any corporeal personal property,

including papers and title deeds. To be liable, the defendant need not intend to question or deny the right of the plaintiff. It is enough that his conduct is inconsistent with the rights of the person who has title, or right to possession, or use of it. Conversion is an injury to the plaintiff’s possessory rights in the chattel converted. Whether an act amounts to conversion or not depends on the facts of each case, and the courts have a degree of discretion in deciding whether certain acts amount to a sufficient deprivation of possessory or ownership rights as to constitute conversion.

In conversion, negligence or intention is not relevant, and once the dealing with the

chattel of another person is in such a circumstance that the owner is deprived of its use

and possession, the tort of committed.

LOST PROPERTY RULE

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 (1982) . 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.

2. 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, in the case of South Staffordshire Water Co. v Sharman (1896) rings found in a mud of pool 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 (1886)..

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. In Bridges v Hawkesworth (1851)

The plaintiff found a packet of bank notes lying on the floor, in the public part of a

shop, he 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. 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.

DEFENCES AND REMEDIES FOR CONVERSION

DEFENCES

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

1. Jus tertii: Jus tertii is the right of a third party. It is the title or better right of a third party to the chattel, goods, or property in dispute. As a general rule, a defendant cannot plead that a plaintiff is not entitled to possession as against him, because a third party is the true owner of the chattel. A defendant can only plead jus tertii, that is, the better right of the true owner or third party only when he is acting with the authority of the true owner.

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.

5. Limitation of time.

REMEDIES

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

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 equipments.

WHAT IS 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. 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. An example of detinue is if A lends some of his decorations to B for a one day event, and B neglects, refuses or fails to return the decorations at the end of the as agreed

WHEN TO SUE FOR DETINUE

A plaintiff can only maintain action for the tort of detinue after satisfying two conditions

which are:

1. The plaintiff must have title that is ownership or right to immediate possession of

the chattel.

2. The defendant who is in actual possession of the chattel must have failed, and or

refused to deliver the chattel to the plaintiff after the plaintiff has made a proper

demand for the return of the chattel, without lawful excuse. Thus, there must have

been a demand by the plaintiff for the return of the chattel and a refusal or 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 Kosile v Folarin (1989) The defendant motor dealer seized and detained the motor vehicle he had 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: inter alia 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 judgment at the rate of N20 per day.

In the above case, the Supreme Court emphasized the requirement that in an action for

detinue, there must have been a demand by the plaintiff on the defendant to return the

chattel, and if the defendant persists in keeping the chattel, he is liable for detinue. In West Mrica Examinations Council v Koroye (1977) 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 in detinue for his certificate and was award damages in lieu of the release of the certificate by the Supreme Court.

In Davies v Lagos City Council The defendant city council wrongfully seized and detained the plaintiff’s taxi cab. The plaintiff sued claiming damages. The Lagos High Court held that: The plaintiff was entitled to a return of the vehicle and loss of earnings on the vehicle as a result of the unlawful detention. In this case ADEFARASIN J as he then was stated that a plaintiff is entitled to loss of earnings on his chattel which he uses for work or business, thus: “This is not a case in which the plaintiff is entitled to the

value of the vehicle. He is, however, entitled to the losses caused to him as a result of the unlawful detention. He is entitled to the loss of earning on the vehicle.”

In Oguigo & Sons Ltd v C.O.P (1991) 3 NWLRpt177, p.46 CA. 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.

DEFENCES AND REMEDIES FOR DETINUE

DEFENCES

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.

4. Innocent delivery

5. Subsisting bailment

6. Subsisting lien on the chattel.

7. Temporary retention of the chattel to enable steps to be taken to check the title of

the plaintiff.

8. Inevitable accident

9. Reasonable defence of a person or property, such as when one beats or injures a

dog that was attacking him or another person.

10. 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.

REMEDIES

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 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 treapass 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. See Agbai v Okogbue. 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.

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. 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. In Hollins v Fowler (1875) 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.

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.

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.

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.

REFERENCES

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