**NAME: FAYINMINU ABIMBOLA OLUWATAMILORE**

**LEVEL: 300**

**COLLEGE: COLLEGE OF LAW**

**MATRICULATION NUMBER: 18/LAW01/106**

**QUESTION:** The tort of trespass to Chattel is made 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 conversion Give examples of persons qualified to sue for Trespass to Chattel Discuss the remedies and defense to Trespass to Chattel, conversion and detinue Differences between conversion and Detinue Support References Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

**ABSTRACT**

In law of torts, Trespass to property has been categorized into two; trespass to land and trespass to chattel. The prime focus of this work will be the trespass to chattel. The trespass to chattel can be addressed as trespass to personal property as well trespass to goods.

From the earliest days of the common law, a number of torts were developed specifically to protect interests in goods. However, by the 1970s, it had become clear that the torts relating to chattels were badly in need of reform in the United Kingdom and, in 1977, the Torts (Interference with Goods) Act was passed in an attempt to clarify the law[[1]](#footnote-2). This statute brought about some changes in the United Kingdom by merging the torts of detinue and conversion which are types of trespass to chattel however this fusion is not effective in Nigeria as the torts of detinue and conversion still exist quite indecently.

**INTRODUCTION**

In order to have a balanced view of the topic of trespass to chattel, this thesis aims to explore the tort law area by providing a legal definition of trespass to chattel, conversion and detinue, examine the elements of the torts, briefly highlighting examples of each of the torts, looking into other relating concepts to the torts, considering the people qualified to sue for this trespass, ascertaining the differences between the torts and finally exploring the remedies and defenses to these torts.

**TRESPASS TO CHATTEL**

Chattel means any article, goods, personal property other than land immovable property. Trespass to chattel has been defined to be the direct and unlawful interference with a chattel in the possession of another person[[2]](#footnote-3). Trespass to chattels refers to the use of property without permission of the owner.[[3]](#footnote-4) The tort of trespass to chattel protects the rights of ownership or possession of a chattel from all wrongful interferences. Thus, it protects the personal properties of a person who has title or immediate possession from any interference whatsoever of any person without lawful justification.[[4]](#footnote-5) Trespass to chattel is actionable per se; proof of direct and unlawful application of force is enough, there is no need to prove damages. However, the direct application of force does not have to be physical. For example, the driving away of cattle is trespass to chattel. A chattel is every moveable property. This thus excludes land. Some other basic examples of trespass to chattel include; throwing another person’s property away, destruction or any act of harm or damage and using another person’s property without permission from the person.

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

1. Trespass to chattel per say
2. Conversion
3. Detinue

**ELEMENTS OF TRESPASS TO CHATTEL**

These elements of trespass to chattel are simply the things a plaintiff must prove in order to succeed for a claim of trespass to chattel.

### Lawful Possession

The only person that can sue for trespass to chattel is the person in actual possession of the chattel at the time of the interference. The plaintiff does not need to prove a title to the chattel, but merely that they had actual or constructive possession of the chattel at the time of the defendant’s act.

### Interference a Result of Defendant’s Act

The interference with the plaintiff’s right to possession of the chattel must be a direct consequence of the defendant’s act. Simply handling someone else’s goods without their authority or consent can theoretically constitute trespass. Commonly, however, it is the act of stealing or otherwise taking a chattel that is typically litigated as trespass. There is also no need for the plaintiff to show actual or material damage to the chattel to plead a cause of action in trespass

### Fault

It must be clear that the defendant was at fault by interfering with the chattel. Liability will not arise if the Court discovers that the interference was not intentional, and the defendant was not negligent.

**PEOPLE QUALIFIED TO SUE FOR TRESPASS**

Anyone who has possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. This is so for the object of the tort of trespass is to protect possession, or the right to immediate possession. 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 more possession gives a right to sue to retain possession
10. Executors
11. Administration of estates; and so forth

**REMEDIES FOR TRESPASS TO CHATTEL**

### Compensatory Damages

Compensatory damages 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 been committed.

### Nominal Damages

Trespass is a tort of strict liability, which means that nominal damages (i.e. damages awarded to a person who has suffered a legal wrong) apply even where no actual damage has been sustained by the plaintiff.

### Injunctions

An injunction is a Court order preventing a party from doing something, or alternatively, forcing a party to do a specific thing. In order for the Court to grant an injunction, the Court must be satisfied that the damages suffered by the plaintiff are significant (such as where the trespass is ongoing).

### Exemplary Damages

Exemplary damages, also referred to as punitive damages (i.e. damages awarded in order to punish the defendant and deterring others from engaging in similar conduct) may be awarded in certain circumstances involving trespass to chattels. Exemplary damages (although not traditionally so) are available for any tort.

1. **Replacement of the chattel**
2. **Payment of the market price of the chattel**

**DEFENCES FOR TRESPASS TO CHATTEL**

1. **Protection of persons or property:** If trespass to goods is committed while trying to protect life or property, the defendant would not be held liable. However, the onus is on is on the defendant to prove that:
* **The danger was real and imminent**
* **He acted reasonably.**

In the case of **Cresswell v Sirl**the plaintiff’s dog was threatening the defendant’s sheep. Subsequently, the defendant shot the dog in order to protect his sheep. In an action for trespass, it was held that the defendant’s action was justified since what he did was in protection of his property.[[5]](#footnote-6)

1. **Exercise of a Legal Right:**It would not be counted as trespass to goods if an action is done in levying lawful distress for rent. This occurs in a situation in which the goods in question are causing damage to the property of the defendant. In this situation, he has a right to seize them till the plaintiff compensates him for his loss. Also, trespass to goods can be excused if it occurs in the carrying out of a legal process.
2. Inevitable accident
3. Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third party
4. Subsisting lien
5. Subsisting bailment
6. Limitation of time, as a result of the expiration of time specified for legal action
7. Honest conversion, or acting honestly, and so forth

**CONVERSION**

Conversion according to Sir John Salmond is any 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.[[6]](#footnote-7) The tort of conversion consists of dealing with goods in a manner inconsistent with the rights of the true owner, so denying the right of the owner to the goods, or asserting a right which is inconsistent with the owner’s right. The claimant must prove that he had possession of the goods or the right to immediate possession of them at the time of the wrongful act. It is necessary to prove that the defendant had the intention to deal with the goods, though there is no need to prove the intention to deny the owner his or her right or title to the goods. Thus, the only relevant intention is that of committing the act of interference. Indeed, the tort may be committed even in circumstances when the defendant had no knowledge that the goods belonged to the claimant, for example when goods are purchased in good faith from a thief. The tort features prominently in considering the issue of title to goods when there is a question of mistaken identity in contract (Lewis v Averay (1972).[[7]](#footnote-8) Examples of conversion include; wrongfully taking goods and wrongfully detaining goods.

**ELEMENTS OF CONVERSION**

1. The plaintiffs ownership or right to possession of the property
2. The defendants conversion by wrongful act inconsistent with the property rights of the plaintiff

**EXAMPLES OF CONVESION**

1. **TAKING GOODS OR DISPOSSESSING**

To take goods out of the possession of another may be to convert them. To steal, or seize under legal process without justification, is a conversion. Merely to remove goods from one place to another is not conversion. A deprivation of the goods which is more than a mere moving of the goods, but in reality deprives the claimant of the use of the goods for however short a time, will generally constitute conversion. To make the claimant hand over goods under duress is conversion.

1. **DESTROYING**

To destroy goods is to convert them, if done intentionally. The quantum of harm constituting destruction for this purpose is clearly a question of degree, but damage as such is not a conversion.

1. **ALTERING**
2. **USING**

‘If a man takes my horse and rides it and redelivers it to me nevertheless I may have an action against him, for this is a conversion …’ (Rolle, Abridgement). To use goods as your own is ordinarily to convert them; it was thus conversion for a person, to whom carbolic acid drums were delivered by mistake, to deal with them as his own by pouring the contents into his tank: Lancashire and Yorkshire Railway v MacNicoll (1918) 88 LJKB 601. A mere misuse by a bailee, unaccompanied by any denial of title, is not a conversion although it might be some other tort: Donald v Suckling (1866) LR 1 QB 585.

1. **RECEIVING**

Voluntarily to receive goods in consummation of a transaction which is intended by the parties to give to the recipient some proprietary rights in the goods may be a conversion actionable by the owner.

1. **DISPOSITION WITHOUT DELIVERY**

A person who agrees to sell goods to which he has no title and who does not transfer possession of them does not thereby ordinarily commit conversion, for the bargain and sale is void if the seller has no rights in the goods.

1. **DISPOSITION AND DELIVERY**

Ordinarily a person who without lawful authority disposes of goods with the intention of transferring the title or some other right in the goods, and who delivers the goods, thereby commits a conversion.

1. **MISDELIVERY BY CARRIER**

A carrier or warehouseman, who by mistake delivers goods to the wrong person, commits a conversion whether or not his mistake was innocent. But failure to deliver because the goods have been lost or destroyed by accident or carelessness is not conversion. Nor is it conversion for a bailee or pledge without notice of the claim of the true owner to return goods to the person from whom he received them.

1. **REFUSAL TO SURRENDER ON DEMAND**

A refusal to surrender goods upon lawful and reasonable demands is a conversion. Many of the cases on wrongful detention were actions of detinue. With the abolition of detinue, conversion will now apparently lie in every case in which detinue would formerly have lain.

1. **GOODS LOST OR DESTROYED**

At common law there could be no conversion where there was no voluntary act. Section 2 of the 1977 Act, which abolishes detinue, therefore further provides in s2 (2):

‘An action lies in conversion for loss or destruction of goods which a bailee has allowed to happen in breach of his duty to his bailor (that is to say it lies in a case which is not otherwise conversion, but would have been detinue before detinue was abolished).’

Bailees are required to take reasonable care of goods in their keeping and will be liable for the loss or destruction of such goods unless they can disprove fault, but they are not insurers of the goods: Sutcliffe v CC of West Yorkshire [1996] RTR 86 – no action for conversion where an arson attack destroyed the plaintiff’s car, seized and kept in the police station yard.

1. **RESIDUAL ACTS AMOUNTING TO A COVERSION**

It must be emphasized again that the above are not exhaustive categories of acts of conversion. There are other acts which are not capable of being readily classified and which may yet fall within the definition of conversion. In these residual cases the judicial discretion whether to treat the act as sufficiently inconsistent with the true owner’s rights for a conversion is especially important.

**INNOCENT DELIVERY**

Innocent delivery is neither a tort nor a crime. 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 t them, and he delivers them, on the person’s instructions to a third party in good faith, there would be no conversion.

**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. The rules applicable to finding lost property may be summarized as follows:

1. A finder of a chattel acquires no tight 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 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 in, or attached to the land, or building
4. 4. However, an occupier of premises does not have superior rights to those of a finder in respect of goods found on in the premises, except before the finding, the occupier has manifested an intention to exercise control over the premises and things on it

**REMEDIES FOR CONVERSION**

1. Order for delivery, return or specific restitution of the goods; or
2. Alternative order for payment of the current market value of the chattel
3. An order for payment of any consequential damages. However, allowance may be made for any improvement in the goods, such as, where a person honestly in good faith buys and improves a stolen car and is sued by the true owner, the damages may be reduced to reflect the improvements
4. Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved
5. General damages: furthermore, where for instance, a plaintiff whose working equipment or tools are converted by another person, a plaintiff may sue for the loss of profit, or existing contract or wages for the period of the conversion of the work tools or equipment.

**Defenses to Conversion**

1. **Abandonment:** An action for conversion would not succeed in a situation in which the property in question 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 limitations:** 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 heard by the court.
5. **Unidentifiable property:** If the property cannot be properly identified, it could also serve as a defense to conversion.
6. Jus tertii, that is the title or better right of a third party
7. Subsisting bailment
8. Subsisting lien
9. **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[[8]](#footnote-9).

**DETINUE**

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. In the United Kingdom, the torts (interference with Goods) Act 1977 has abolished the tort of detinue and has merged it with the tort of conversion. In Nigeria, however they still exist as separate torts. An example of the tort of detinue

## ELEMENTS OF DETINUE[[9]](#footnote-10):

### Make a Demand

The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of the demand. The demand is imperative.4

### Refuse the Demand

The defendant must refuse that demand (whether expressly refusing or failing to respond at all). On some occasions, a defendant who does not have possession of the chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.5

### Unreasonable Refusal

Where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable

### Consequential damage

As a result of the defendant’s conduct, the plaintiff has suffered loss. This will usually be calculated as the value of the chattel.

Once the above elements have been established, an action for detinue can be made out.

## How Can Detinue Arise?

Detinue is established by a demand for the chattel by the plaintiff and a refusal of that demand by the defendant. A conditional demand that later becomes unconditional will also be enough to prove a cause of action in detinue.6

Detinue can arise in two ways:

1. Where the defendant has actual possession of the chattel (any goods – for example, a lawn mower or excavator) and refuses to return it to the plaintiff on their demand; or
2. Where the defendant was in possession of the plaintiff’s chattel under bailment (i.e. the good had been temporarily provided to the defendant for a particular purpose) and has wrongfully parted with that chattel.

**REMEDIES OF DETINUE**

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

**DEFENCES OF DETINUE**

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, that a third party 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 defense 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,

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

There are similarities between the two torts however there also places where they differ. The refusal to surrender or return a chattel on demand is the essence of detinue, or detention. There must have been a demand for the return of the chattel.

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.

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