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

##### [Generally, the torts of Trespass to Chattels, Conversion and Detinue involve improper interference with property, various rights of ownership or possession. The tort of trespass to chattels as well as the torts of conversion and detinue is found within the family of interference torts. Trespass to chattels involves interference such as vandalism without interfering in possession. Conversion involves wrongful removal of property from the rightful person. Detinue involves failure to return property to the rightful person.](https://marketing.legal/EN/articles-archive/areas-of-focus/tortious-conduct/trespass-to-chattels)

## THE TORT OF TRESPASS TO CHATTEL

## The tort of trespass to chattels refers to wrongful interference with chattels. It involves the damage caused to a chattel without removal or deprivation of the chattel. Chattels are any kind of personal moveable property that is unattached to land which include items such as automobiles, aircraft, watercraft, household furnishings, artwork, moveable machinery, goods or stock of commercial inventory, pets and livestock, shares, copyright, the right to recover debts, the right to use property (including a lease of commercial or residential property) and basically anything else that can be owned or controlled other than a human being.

Trespass to chattels is similar to the torts of conversion and detinue as all three relate to wrongful interference with a chattel. The distinguishing factor with trespass to chattels is that the object remains in possession or control of the owner or person with rightful possession whereas the owner or person with rightful possession is deprived of possession under the torts of conversion and detinue. Another way of explanation is to use criminal law terms in that conversion or detinue may arise from theft (the criminal law term) of the object, being interference by removing the chattel from the possession of the rightful owner or person with right of possession and trespass to chattels may arise from vandalism (the criminal law term) being interference without removal of the chattel.

## Elements of Trespass to Chattels

Trespass to Chattels has some elements and features that are analogous to, or overlap with, the Tort of Detinue and the Tort of Conversion. Commonly, a party who has suffered loss and damage will sue for all three torts with the aim of being successful for at least one of these actions.Although care needs to be taken, there can be advantages to suing for multiple causes of action in the same proceedings, including because there are certain differences in the elements between the three torts that protect goods. Consequently, casting a wide net may protect a plaintiff’s prospects when commencing proceedings.

The elements of trespass to chattels are:

### 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 trespass. A person may be said to have possession of a chattel if s/he has physical control of the chattel with the intent to exercise such control on one’s own behalf, or on behalf of another

### Intentional Interference a Result of Defendant’s Act

It has also to be shown that there was an intentional, unauthorized, unlawful interference with the plaintiff’s right to possession of the chattel which must be a direct consequence of the defendant’s act. . Such person must have knowledge that his/her action is destructive of any possessory right of another person.  There must be only an intention to interfere physically with the goods themselves and it need not be a wrongful intent.  It is immaterial that a person intermeddles with a chattel under a mistake of law or fact. Simply handling someone else’s goods without their authority or consent can theoretically constitute trespass. There is also no need for the plaintiff to show actual or material damage to the chattel to. Actual damage is not necessarily a required element of a trespass to plead a cause of action in trespass.

### Fault

### It must be clear that 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.

In the case of **National Coal Board v Evans & Co**. where an electrical cable had been placed under the land of the county council by the National Coal Board (NCB) or its predecessors, without the council’s knowledge, as far as could be established. The council contracted JE Evans & Co (Evans) to excavate a trench on the land. Evans had no knowledge or indication there was a cable. When excavating the land, the cable was struck and damaged and so the NCB brought a cause of action for trespass. It was held that the act of Evans was neither negligent nor wilful and was “utterly without fault”. The liability for negligence and injury lay with the NCB or their predecessors for failing to notify the council when they placed the cable under their land without knowledge or consent from the council. The case of Weaver v Wardwas applied in that, where a defendant is entirely with fault, it is a good defence to trespass. Where the cable was hidden and put there without permission or knowledge, no blame could possibly be attached. The damage was therefore caused indirectly by the predecessors.

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

Anyone who has possession or caretakership 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. 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. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference are:

Owners, Bailees, Lenders, Assignees, Trustees, Finders, Custodians, Caretakers, Adverse possessors, Executors, Administrators of estates, amongst others.

**Defences for Trespass to Chattels**

A person that has been accused of trespass to chattel has certain defences that may be available to him including but not limited to:

### Necessity

The defendant may be able to establish a defence to trespass if the inference occurred in circumstances where the interference was necessary, but consent could not reasonably be obtained. The defendant must show that there was an apparent imminent danger to person or property and that the defendant honestly believed on reasonable grounds that the act was necessary for the preservation of the person or property.

### Consent

A defendant may be able to establish a defence to trespass 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.

### Inevitable Accident

Inevitable accident is a defence 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 defence 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.

### Mistake

Mistake is generally not a defence to intentional torts. However, mistake may be a defence to a cause of action in trespass if the defendant can prove that he or she acted with a mistaken belief, and the mistake was reasonable. The standard for what is considered ‘reasonable’ is generally fairly difficult to meet.

### Incapacity

There may be a defence to trespass if the defendant is a minor who can establish their inability to understand the true nature of the act committed. This would seem to indicate that a defence based on incapacity would only cover young children up to about four years of age.

### Retaking Goods

A defendant may be able to establish a defence to trespass if the defendant can prove that reasonable force was used to retake goods to which the defendant has a better right to possession than the plaintiff, or where the goods were wrongfully taken from the defendant by the plaintiff.

### Jus Tertii

Jus Tertii means ‘the right of a third party’ or a better 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 provided that he has the authority of such third party. The onus is on the defendant to establish that a better right to possession is held by a third party in order for the defence to succeed. In the case of **C.O.P v Oguntayo** stated the law clearly that: “A person cannot plead jus tertii of a third party, unless the person is defending on behalf of, or on the authority of the true owner. In the instant case, the appellant claims title on behalf of an unknown owner, but as the third party is not discoverable and the respondent has made out a good prima facie case of title by possession, the respondent has title as against all other persons including the appellants.” Therefore, for a defendant to successful plead jus tertii, that is, the better right of a third party who has right to immediate possession, the identity of such true owner, or third party must be disclosed, his title or better right to immediate possession must be established, and the defendant must be claiming for, on behalf, or under the title. of the alleged true owner, or third party who has a better right to immediate possession.

## Remedies for Trespass to Chattel

A person who wishes to bring a claim for trespass to chattel or land has the following remedies available to him

### 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.

- Payment of market price of the chattel

- Repair of the damage

- Replacement of the chattel

A frequent demonstration of these remedies is in motor accident cases. Where one vehicle runs into another, damages may be paid, or the parts of the vehicle that are affected may be replaced or repaired.

**THE TORT OF CONVERSION**

Conversion is any dealing with a chattel in a manner inconsistent with another person's right whereby the other is deprived of the use and possession of it. 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.

Conversion, involves the wrongful interference with a mobile object of another.  Such object might be money as seen in the case of **Wymor Construction Inc. v. Gray** goods, equipment, supplies, or other materially tangible things and possibly, as below, intangible things such as electronic data as information.  While conversion may be described using terms familiar to criminal law such as theft or robbery or burglary, and while conversion may occur by theft, robbery, or burglary, the tort of conversion may occur by other methods. Conversion falls within the family of torts known as the strict liability torts whereas even if the conversion, being the wrongful interference, was without nefarious or illicit intentions and purely with innocent intentions, liability may still result.

In the case of **Unipetrol v Prima Tankers Ltd** the defendant oil tanker owners had a contract to carry Unipetrol's cargo of fuel fromPort 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

Another case of conversion is that of **Owena Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd** where the 1st respondent was granted an import licence 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 licence. On appeal by the bank, the Court of Appeal held that the defendants were liable for conversion of the import licence papers. Thus, an action for conversion will lie in conversion for any corporeal personal property, including papers and title deeds.

Both trespass to chattels and conversion are [general intent](https://dictionary.findlaw.com/definition/general-intent.html) torts. As opposed to [specific intent](https://dictionary.findlaw.com/definition/specific-intent.html) torts, general intent torts do not consider whether the [tortfeasor](https://dictionary.findlaw.com/definition/tortfeasor.html) knew his or her conduct would result in the specific harm. As a result, mistake of ownership is not a valid defense to trespass to chattels and conversion.

The main difference between trespass to chattels and conversion is the degree of interference. Conversion occurs when a person uses or alters a piece of personal property belonging to someone else without the owner's consent. The degree of interference for conversion must be so serious that the tortfeasor, or person accused of committing the tort, may be required to pay the full value of the property.

On the other hand, a trespass to chattels is an act that falls short of conversion. The tortfeasor is responsible only to the extent of the damage done (not the full value of the property) from dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or damaging the chattel.

**Examples of Conversion**

Conversion of a chattel belonging to another person may be committed in many different ways. Examples of conversion include:

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. On the other hand, 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 jewelery, as in the case of **Petre v Heneage** or using the plaintiff’s bottle to store wine as was the case in **Penfolds Wine Ltd v Elliot** is a conversion of such chattel.

3. Alteration: By changing its form howsoever.

4. Consumption: By eating or using it up.

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 the case of **Armory v Delamirie** 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 jewelry to him. The court held: that the jeweler was liable for conversion. A finder of a property has a good title, and he has a right 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 or 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** 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 reregistered 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.

**The concept of innocent delivery or receipt**

Innocent delivery or innocent delivery is generally confused to be a tort or criminal offences and as a result it is mistaken to be conversion. The truth is that innocent delivery is not any of these. When 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 receipt of goods is not conversion. However the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Nuisance is an action or inaction which can cause harm, interference or inconvenience to the plaintiff

**The 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. In this case, 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.

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, 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.**

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.

Another case under the rule of lost property is the case of Bridges v Hawkesworth where the plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop was held entitled to the money instead of the shop owner, upon the failure of the rightful owner to come forward to claim the money

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.

**The tort of Detinue**

Similar to conversion, detinue is also a tort that can only be committed against a good, rather than property. When someone commits a tort of detinue, they are considered to be wrongfully withholding goods from a person that has an immediate right of possession. One **element** of detinue is that the person committing the wrongful act is also denying the innocent party rightful possession of their property, and with full knowledge of the person’s rights to their goods. Another element of detinue is if the tortfeasor fails to deliver the goods as required by law.

**The Defences for Detinue**

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, as in the case of **National Coal Board v Evans**.

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, etc.

**The Remedies for Detinue**

When a person's chattel is detained by another person, the person who is deniedpossession 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 trespass through the land of an innocent party to retake the goods. He may only go on such land with permission. However, recapture as a remedy is usually frowned upon by court for the breach of peace and other offences it may occasion. This is because self-help is an instance of taking the laws into one's hand. Therefore, a person may not resort to the option of recapture or self help except it is safe, expected, and reasonable or if it will not be resisted by the defendant and or persons acting for him.

5. Replevin or Release on Bond

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

6. Damages

When a defendant has been found liable in detinue, he cannot deprive the plaintiff of his right to damages for detention of the chattel, simply because he has not been using it, nor earning anything .from its use. Also, if the wrongdoer has been making use of the goods for his own purpose, then he must pay a reasonable hire for chattel to the plaintiff. The reasonable hire usually includes the wear and tear of the goods. Therefore, as the courts have often affirmed the remedies available for the tort of detinue are an order for specific return of the chattel, or in default, an order for payment of the value and also damages that were suffered due to loss of use by the defendant up to the date of judgment or re-delivery of the chattel to the plaintiff. Also general damages may be awarded as may be assessed by the court. General damages are usually presumed in this action, especially for the loss of the use of the chattel. As in claims in other areas of law, general damages may be awarded at least to cover part of the cost of the legal action.

**The 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.

**REFRENCES**

* [**http://sglaw.com.au**](http://sglaw.com.au)**:** accessed on the 27th of January, 2021
* [**https://marketing.legal**](https://marketing.legal)**:** accessed on the 25th of January, 2021
* **Law of Torts by Ese Malemi:** accessed on the 27th of January, 2021