

18/LAW01/108

COURSE CODE: LPB 301

COURSE: LAW OF TORTS

## **TRESPASS TO CHATTEL**

### **What is a chattel?**

A chattel is any property other than land and any immovable property. It is any movable property any article, goods or personal property other than land. A chattel is any movable thing which is capable owned, possessed, or controlled other than human beings, land and immovable property.

### **Trespass to chattel**

This is a direct and unlawful injury done to the chattel in possession of another person. It 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.

A person who wants to sue in trespass to chattel can sue under trespass to goods, conversion and negligence that is involved in the commission of the trespass or conversion. These actions are substantiated by the provisions of the **Torts (Interference With Goods) Act 1977**. The act creates a new action called.

“Wrongful interference with goods”. It defines it in **S.1** as:

- a) Conversion of goods called trover.
- b) Trespass to Goods
- c) Negligence in so far as it results in damage to goods.
- d) Subject to S.2 of the Act, any other tort as far as it results in damage to goods or to an interest in goods.

The purpose of the torts of trespass to chattel

The tort of trespass to chattels protects all the chattel, goods, or personal properties of a person who has title or possession by prohibiting all interference without legal justification. The tort of trespass to chattel protects the rights of ownership or possession of a chattel from all wrongful

Interferences. Thus, the tort of trespass to chattel protects the chattels, goods, and all personal properties of a person who has title, possession, or right to immediate possession against meddling, damage, destruction, diminution, conversion, detinue, or any interference whatsoever, by any other person without lawful justification.

**Trespass to Chattel Is Actionable Per Se** the three forms of trespass to chattel are each actionable per se upon commission or occurrence without the plaintiff having to prove damage. Explaining the law that trespass to chattel is actionable per se without prove of damage Adefarasin J., as he then was, in *Davies v Lagos City Council* (1973) 10 CCHCJ 151 at 154, held that: "The plaintiff is entitled to succeed... in trespass... there may be a trespass without the infliction of any material damage by a mere taking or transportation. In my view, the seizure of the plaintiff's vehicle without just cause... is a wrongful act, on account of which all the defendants taking part in it are jointly and severally liable." Although, trespass to chattel is actionable per se, however it is not a strict liability tort. Furthermore, where a specific damages has been done to a chattel, a plaintiff is entitled to prove it and recover damage for it as the case may be.

**Trespass to Chattel in Nigeria** in Nigeria, the tort of trespass to chattel is made up of three types of torts. These are:

1. Trespass to chattels per se, without a conversion or a detinue of the chattel in question;
2. Conversion
3. Detinue.

Examples of Trespass to Chattel Trespass to chattel may be committed in many different ways. However, the trespass must be intentional or negligent. Trespass may be committed by mere removal or any damage and it can be committed when there is no intention to deprive the owner, possessor or custodian permanently of the chattel. Examples of trespass to chattel include:

1. Taking a chattel away
2. Throwing another person's property away, such as in annoyance
3. Mere moving of the goods from one place to another, that is, mere asportation. **Kirk v Gregory** (1878) 1 Ex D 55.
4. Scratching or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle
5. Killing another person's animal, feeding poison to it or beating it. **Shieldrick v Aberly** (1793) 170 ER 278; **Cresswell v girl** (1948) 1 KB 241.

Elements of Trespass to Chattel: What a Plaintiff Must Prove To Succeed to succeed, a plaintiff must establish that the act of trespass was:

1. Intentional.

2. Negligent. **National Coal Board v Evans & Co. (1951) 2 KB 861 and Gaylor & Pope v Davies & Sons (1924) 2 KB 75.** As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort. However, accident, intentional or negligent trespass do not automatically give rise to liability per se, as an appropriate defense, may be pleaded to avoid liability.

### **Persons who may sue for trespass to chattel.**

The 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. For instance, an employee to whom an employer has given custody of goods, a repairer, caretaker, personal representatives of a deceased and so forth. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference include:

1. Owners

2. Bailee

3. Lenders

4. Assignees

5. Trustees and more.

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 Defences for Trespass to Chattel:** 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. **C.O.P. v Oguntayo (1993) 6 NWLR pt. 299, p. 259 SC.**

3. Subsisting lien.

4. Subsisting bailment
5. Limitation of time, as a result of the expiration of time specified for legal action.

**The Remedies for Trespass to Chattel:** 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.

### **Conversion**

This consists of the willful and wrongful interference with the goods of a person entitled to possession in such a way as to deny him such right or in such a manner inconsistent with his right.

The right to immediate possession is the determining factor. That is, if the right exists, actual possession is unnecessary.

In the case of *North Central Wagon and Finance Co Ltd vs Graham*, the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus the plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff didn't have actual possession of the car at the time. Since the right in the goods were already vested in the plaintiff, there was no need for actual possession.

### **Instances of Conversion**

Conversion of goods would arise in the following situation:

1. Wrongfully Taking the Goods: This must be accompanied by an intention to exercise temporary or permanent dominion over the goods. In the case of *Fouldes vs Willoughby* the owner of two horses brought them aboard a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. The horse owner sued for conversion. Judgement was entered in his favour at the trial court. On appeal, the court, in allowing the appeal held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses.
2. Wrongfully detaining the goods: This must be accompanied by an intention to keep the goods from the person entitled to possession of the goods. Hence it would not be regarded as conversion if the finder of goods merely refrains from returning such to the owner. It would only be conversion in a situation in which when asked for the goods by the owner, he refuses to release it.

In the case of *Howard E Perry and Co Ltd vs British Railway Board. (1980)*, the defendant, who were carriers, held the plaintiff's steel in depots. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff's steel to them. It was held that this amounted to conversion on the defendant's part.

For conversion to be committed there has to be some positive denial of possession towards the person entitled to possession.

3. By wrongfully destroying the goods

4. Wrongfully disposing the goods: This occurs in a situation in which the defendant attempts to confer title to a third party in a manner inconsistent with the right of the person entitled to possession.

5. By wrongfully delivering the goods: This occurs in a situation in which the defendant denies the true owner of the title to the goods by delivering them to another party that has no title.

### **Defenses to Conversion**

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.

1. 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.

2. 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.

3. 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.

4. Unidentifiable property: If the property cannot be properly identified, it could also serve as a defense to conversion

### **Innocent Receipt or Delivery**

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. **Unipetrol v Prima Tankers Ltd (1986) 5 NWLR**. 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.

### **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* (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, rings found in the mud of a pool in the case of *South Staffordshire Water Co. v Sharman* (1896) 2 QB 44 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.

### **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. Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. As a general rule, to successfully sue in detinue, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel. Essentially, the tort of detinue is:

1. The wrongful detention of the chattel of another person
2. The immediate possession of which the person is entitled.

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. Examples of detinue, that is, detention or retention of goods are many and include the following:

1. A lends his chairs and tables to B for a one day party, and B neglects, refuses or fails to return the furniture at the end of the day as agreed or after the expiration of a reasonable period of time. .
2. C gives his radio set to D and pays him to repair it, and D fails or refuses to release or return it after a demand has been made on him for its return. In each of these circumstances, there is a right of action to sue for detinue of the chattel.

### **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) 3 NWLR pt 107, p. 1 SC, 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.

### **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.

### **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. *Otubu v Omotayo* (supra)
7. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
8. Inevitable accident.

### **The Remedies for Detinue**

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 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

**Reference: DJetLawyer.com, Lawteacher.net, Ese malemi law of torts, National open university law of torts PDF notes.**