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LAW OF TORTS I

TRESPASS TO CHATTEL ASSIGNMENT

LPB 301

A chattel is any moveable property which is capable of being owned, possessed or controlled other than an immoveable property such as land. Examples of chattel includes a book, a car, furniture, aircraft and so on. The list of chattels cannot be exhausted. The tort of trespass to chattel protects the rights of ownership or possession of a chattel from interferences without lawful justification.

In Nigeria, the tort of trespass to chattel is made up of three types of torts. These are;

* Trespass to chattels per se, without a conversation or a detinue of the chattel in question
* Conversion; and
* Detinue .

Trespass to chattel is any direct, intentional or negligent interference with a personal property or chattel in possession of another person without lawful justification. The mere touching of a chattel without causing any harm to it may be seen as unlawful and in appropriate circumstances be actionable and may entitle the plaintiff to nominal damages. Generally, a trespass refers to a wrongful use of another person's property without his or her permission. Under intentional torts, there are two types of trespass; trespass to chattels and trespass to land. Trespass to land is an unlawful entry or use of another person's land without the owner's permission or reasonable excuse. Examples of trespass to chattel includes,

* Killing another person’s animal, feeding poison to it or beating it
* Driving another person’s car without permission
* Throwing another person’s property away, such as in annoyance; and so on

For instance, let’s say you're watching a movie with your friend, Bob, at his place. After the movie ends, you get up to go home. As you're leaving, you see a laptop sitting on a coffee table and pick it up, thinking it's yours. In fact, the laptop belongs to Bob. His laptop happens to be the exact same model as yours. Even if you genuinely thought the laptop was yours, you're still liable for a trespass to chattels because you intended to take the laptop. Mistake of ownership is not a defense to a trespass to chattels. However, in order to successfully sue you, Bob will have to show that you've done some harm to the laptop or to Bob by taking it. Without showing actual damages, Bob won't be able to recover any compensation.

Trespass to chattel is 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 proving damage. ADEFARASIN J as he then was in ***Davies vs Lagos City Council*** held that, The plaintiff is entitled to succeed in trespass to chattel. Trespass to chattels does not apply to real property or any interest in land. In order to prove trespass to chattels, you are required to show the following elements:

* Intentional and Negligent: Merely intending to do the act is enough to show this element of trespass. You don't necessarily need to show intent to harm a specific person. As a general rule, proving intention or negligence is very important as to 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
* Lack of owner's consent: There must be an unauthorized, unlawful interference, which means the person interfered with or dispossessed the chattel without the owner's permission.
* Interference of chattels: A person commits a trespass to chattel by dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

A person who may sue for trespass to chattel is anyone one who has possession or caretakership of the chattel or personal property at the material time of the interference. Such person’s include,

* Owners
* Bailees
* Lenders
* Trustees
* Finders

Custodians; and so on.

***See the case of National coal board vs Evans & Co,*** the defendant contractors were employed by a county council to work on land owned by defendant council. A trench had to be dug, which the defendant employed a sub-contractor to do. An electric cable passed under the table, but neither the council, nor Evan &Co, who were head contractors, nor sub-contractors knew this, and the cable as 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 defendants. The damage was an inevitable accident.

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**DEFENCES FOR TRESPASS TO CHATTEL.**

The defences a defendant may plead in an action to trespass to chattel includes,

**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 the defendant to prove that:  
a) The danger was real and imminent.  
b) He acted reasonably.  
In the case of ***Cresswell vs 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.

**Consent:** This is the most common defense to trespass. If the owner of the property gave you permission to use their personal property, you can claim consent. Keep in mind that consent can be given through both words and actions. However, this defense will not work if the consent was induced by fraud or was given by someone who is incompetent, intoxicated or a minor.Jus tertii, that is, the title or better right of a third party, provided that he has the authority of such third party. Other defences include, subsisting bailment, honest conversion, or acting honestly, and so forth.

The remedies available to a person whose chattel has been tampered with, short of conversion or detinue are;

* Payment of damages
* Replacement of the chattel
* Payment of the market price of the chattel
* Repair of 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) 1 WLR 1375***, 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 onthedefendant’spart.  
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: destruction of goods would amount to conversion in the following situations; one person willfully destroys the chattel of another and if the chattel ceases to exist or changes identity.

**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.

**INNOCENT DELIVERY OR RECEIPT.**

Generally innocent delivery, or innocent receipt are not torts, or 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 instruction to a third party in good faith, there would be no conversion. Similarly innocent receipt of goods is not conversion. However the receiver must no willfully damage or destroy the goods unless the goods constitute a nuisance. ***See the case of Unipetrol vs Prima Tankers Ltd,*** where the defendants oil tanker owners had a contract to carry Unipetrol’s cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of 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. You can also see the case of Owena Bank Nig. Ltd vs Nigerian Sweets Confectionary Co. Ltd. An action for conversion will lie in conversion for any corporeal personal property, including papers and title deeds.

**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 vs British Airways.*** 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 right over it. unless it has been abandoned, or lost, and he takes it into his care and control. He acquires the 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 right of a finder.
3. An occupier of land or 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 vs Sharman, and a pre-historic boat discovered six feed below the surface were held as belonging to the land owner in the case of ***Elwes vs Briggs Gas Co***
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.

See the case of ***Bridges vs Hawkesworth,*** in this case 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.

**Defenses to Conversion**

* Jus tertii, that is the title or better right of a third party
* 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.
* 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.
* 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.
* 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.
* Unidentifiable property**:** If the property cannot be properly identified, it could also serve as a defense to conversion.

**Remedies for conversion.**

* Recovery of special and general damages. Special damages is recoverable by a plaintiff for any specific loss proved
* Alternative order for payment of the current market value of the chattel
* General Damages: where for instance, a plaintiff whose working equipment or tools are converted by another person, a plaintiff maybe sue for the loss of profit, or existing contract or wages for the period of the conversion of the work tools or equipments.
* 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.\

**DETINUE.**

In tort law, **detinue** is an action to recover for the wrongful taking of personal property. It is initiated by an individual who claims to have a greater right to their immediate possession than the current possessor. For an action in detinue to succeed, a claimant must first prove that he had better right to possession of the chattel than the defendant and second that the defendant refused to return the chattel once demanded by the claimant. Detinue allows for a remedy of damages for the value of the chattel, but unlike most other interference torts, detinue also allows for the recovery of the specific chattel being withheld. Detinue was a way for a plaintiff to seek recovery of their specific property in court. It was abolished in 1977 and replaced with interference with property torts such as conversion. Under detinue, the defendant could have taken the property by lawful means, but retains it unlawfully. The plaintiff does not have to ever have the property in their possession to seek recovery of it through detinue.

A plaintiff can only maintain action for tort of detinue after satisfying two conditions which are:

1. The plaintiff must have title to 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 failure to return them. This making of a demand by the plaintiff must establish to succeed in his claim for detinue. See the case of ***West Africa Examination council vs Koroye***, where the plaintiff sat for an examination conducted by the defendant council. The defendant neglected and refused to release his certificate. The plaintiff successfully claimed in detinue for his certificate and was awarded damages in lieu of the release of the certificate by the supreme court. See also the case of ***Davies vs Lagos City council, also Ajikawo vs Ansaldo Nig. Ltd.***

. **The Defences For Detinue.**

In an action for detinue, a defendant may plead that,

* He has mere possession of the goods
* That the plaintiff has insufficient title as compared to himself
* The defendant may plead ***jus tertii,*** that is, that a third party, or is claiming under the third party. ***Jus tertii*** except the defendant is claiming or defending under the right of such third party who has ownership, or paramount title which will enable him to establish a better title and the right to possession than the plaintiff. Otherwise as ***CLEASBY BJ*** said in ***Fowler vs Hollins*** *“*person’s deal with the property in chattels or exercise acts of ownership over them at their persil”
* Innocent delivery
* Inevitable accident; and so forth.

**Remedies and Compensation for Detinue**

**Remedies for detinue are:**

* Delivery Up of Goods; An order for delivery up of goods is available in an action for detinue. It is basically a Court order demanding the return of the goods or chattel to the plaintiff.
* Compensatory Damages; Compensatory Damages may be awarded if there has been a loss.
* Restitution; The remedy of specific restitution (i.e. remedy calculated based on the gains of the defendant) where damages are inadequate.
* Abatement (also known as Self-Help); A person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with the enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession.
* 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.

The list of remedies to detinue cannot exhausted.

**THE DIFFERENCES BETWEEN CONVERSION AND DETINUE.**

Detinue covers the same ground as the tort of conversion by detention. However some differences include the following;

* 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.
* Detinue is the proper remedy where the plaintiff wants a return of the specific goods in questions 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.

***SOURCES/ REFERENCES.***

* ***ESE MALAMI, LAW OF TORTS TEXTBOOK***
* ***LEGAL MATCH***
* ***WIKIPEDIA***
* ***LAW TEACHER.***