**NAME: OBIEZE ONYENEME IFEYINWA**

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**COURSE TITLE: LAW OF TORTS 1**

 **ASSIGNMENT**

1. The tort of trespass to charttel is made of:
2. Trespass to chattel, conversion and detinue. Discuss the above and support with case law.

Students may consider the following guidelines:

1. Define and explain each tort, state the elements of trespass, conversion and detinue
2. Explain the concepts of innocent delivery /receipt, lost property rule and give examples of conversion.
3. Give examples of persons qualified to sue for trespass to charttel
4. Discuss the remedies and defense to trespass to charttel, conversion and detinue
5. Differences between conversion and detinue

**Question 1**

 Trespass to charttel means the intentional/ negligent interference to a person’s personal property. It can also be defined as committing any act of direct physical interference with a chattel possessed by another without lawful jurisdiction. Personal property is usually moveable and excludes immovable properties, e.g. Land. The interest of the plaintiff which the tort protects is:

1. His interest in retaining possession of the chattel
2. His interest in the physical condition of the chattel
3. His interest in protecting the chattel against intermeddling.

Trespass to chattel may take various forms such as destroying, damaging or merely using goods, or moving them from one place to another. In the case of ***Davies v Lagos City Council,*** the defendant council had granted the plaintiff a hackney carriage license to operate a taxi cab in the Lagos area. The plaintiff was well aware that the permit was for his exclusive use and was not transferrable but he nonetheless caused it to be transferred to a third party that operated a taxi cab on the strength of it. On learning of this, certain officials of the council in the purported exercise of their power, seized the taxi and detained it. In an action for trespass brought by the plaintiff, ***Adefarasin j.*** held that the council was entitled to revoke the plaintiff’s permit for non-compliance with the regulations governing the hackney carriage license, but it was not entitled to seize the vehicle or take hold of it. The council was therefore liable to trespass and the plaintiff is entitled to succeed in trespass. Like other forms of trespass, trespass to chattel is actionable per se, that is to say, without proof or actual damage. Thus the mere wrongful moving or touching of a chattel without any harm being caused is actionable. It is of importance to note that it is no defense in an action for trespass to chattel that the tort was committed when carrying out instructions of the executive arm of government as distinct from judicial act. In the case of ***Ajao v Ashiru,*** the plaintiff’s pepper mill was seized by the defendant and the defense of the defendant to the claim of the plaintiff was that the pepper mill was seized by the police. The court held that the defendant was liable on the grounds that the police acted at his instance in seizing the pepper mill of the plaintiff.

The elements of trespass to chattel are as follows:

1. The trespass must be done intentionally or negligently- the modern rule of trespass is that either intention or negligence must be proved and there is no liability for an interference with goods which is merely accidental. Also, merely intending to do the act is enough to show the element of trespass.
2. Trespass to chattel is actionable per se, ie without proof or actual damage
3. Interference of chattel: there is always an interference of one’s property by disposing him/her of the chattel, or intermeddling with a chattel in the possession of another or damaging the chattel
4. Accidental trespass is not a defense: if the interference with one’s chattel is intentional, the fact that the defendant did not realize he was committing a trespass is not a defense. For instance, if A takes B’s schoolbag thinking it’s his own, he is liable in trespass since his act in taking the schoolbag is intentional. The fact that he didn’t realize he was committing a trespass is immaterial.

**Examples of person qualified to 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. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference4 include:

1. owners
2. bailers
3. lenders
4. assignees
5. trustees
6. custodians
7. Caretakers.

**Defenses for trespass to chattel**

1. **Necessity :** the defendant may be able to establish a defense to trespass if the inference occurred in circumstances where the interference was necessary, but consent could not be reasonably obtained
2. **Consent:** a defendant may be able to establish a defense 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.
3. **Jus Tertii:** jus Tertii means “the 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. The onus is on the defendant to establish that a better right to possession is held by a third party in order for the defense to succeed.
4. **Inevitable Accident:** inevitable accident is a defense that can apply in circumstances where the defendant can show that their conduct was involuntary, and accordingly, the defendant is without fault.

**Remedies for trespass to chattel:**

1. **Compensatory damages:** compensatory damage applies if damage to the chattel has been sustained or not capable of being returned. The aim of 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.
2. **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.
3. **Replacement of the chattel**
4. **Payment of the market price of the chattel**

Conversion- conversion maybe defined as the intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiff’s right to possession of such chattel. The action for conversion developed upon a legal friction. The original form of the pleadings alleged that the defendant had found the claimant’s chattel and had wrongfully converted them to his own use. Conversion is similar to trespass in that it primarily protects possession rather than ownership of goods. Conversion can also be defined as an act or complete sets of acts or willful interference without lawful justification with any chattel in a manner that is inconsistent with the right of another depriving him of goods and possession of the goods. The legal remedy for conversion is called TROVER. This means a form of lawsuit for the recovery of damages for wrongful taking of personal property. An act of conversion maybe committed but not limited to these ways:

1. When the property is wrongfully sold
2. When the property is wrongfully parted with
3. When the property is wrongfully destroyed
4. When there is a denial of wrongful owner’s right

A defendant will be liable in conversion where his conduct in relation to the plaintiff’s goods was intentional. An interference resulting from merely careless conduct is not actionable in conversion. To amount to conversion, the intention of the defendant must be to deal with the plaintiff’s goods by exercising dominion over them either on his behalf or that of another. It is no defense if the defendant states that he acted in good faith or that he was mistaken as to the plaintiff’s right to the property. Thus, an auctioneer who believes that certain goods belongs to his client, sells and delivers the goods to the purchaser and hands over proceeds of sale to his client; is held liable in conversion to the true owner of the goods.

 In addition, in applying the principle that a man is presumed to intend the natural consequence of his act, if the defendant deals with the plaintiff’s chattel in circumstances in which there is a serious risk of loss, he will be liable in conversion if the loss in fact occurs and he cannot be heard to say that the result was unintended by him. Acts of conversion can be by taking, destruction/consumption, by using, by receiving, by wrongful transfer of title, by detention.

Elements of conversion include:

1. That the plaintiff has the right to possession of the property in question at the time of the interference
2. That the defendant intentionally interfered with the plaintiff’s property
3. That the interference denied the plaintiff of possession or use of the personal property in question
4. That the interference caused damages/loss to the plaintiff.

**Concept of innocent delivery/ receipt, lost property rule**

Generally, innocent delivery or innocent receipts are neither 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 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 not willfully damage or destroy the goods unless the goods constitute a nuisance. In the case of ***Unipetrol v Prima Tankers ltd,*** the defendant oil tanker owners had a contract to carry Unipetrol’s cargo of fuel from portharcourt. The captain of the vessel allegedly went elsewhere with the 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.

**The 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.*** In that case, the plaintiff was waiting in the defendant airways lounge at Heathrow Airport, London 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 anyone and the defendants failed to return it to the plaintiff and then sold it. The English Court of Appeal held that the proceeds of sale belonged to the plaintiff who found it. The rules applicable to finding loss property are 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 or 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 the employer, who by law acquires the rights of a finder.
3. An occupier of a 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 Stafford Water Co. v Sharman,*** and a pre-historic boat discovered six feet below the surface were held as belonging to the land owner the case of ***Elwes v Briggs Gas Co.***
4. An occupier of premises does not have superior rights to those of a finder in respect to 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 in it.

It should be noted that 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.

**Examples of conversion**

1. **Taking goods or dispossessing:** to take goods out of the possession of another maybe to convert them. To steal or seize under legal process without justification, is a 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 a short time will generally constitute conversion.
2. **Using:** 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 withthem as his own by pouring the contents into his tank. This was seen in the case of ***Lancashire and Yorkshire Railway v MacNicoll.***
3. **Alteration:** by changing its form however
4. **Receiving:** involuntary receiving of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance
5. **By wrongful delivery:** wrongful delivery of a person’s chattel to another person who does not have title or right to possession without legal justification is a conversion.

**Defenses of 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.
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 judgment 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.

**Remedies of conversion**

In a claim for the conversion of a chattel several remedies are available to a plaintiff. The court in its judgment may order any, or a combination of any of the following reliefs:

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 issued 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.

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**.**

**Detinue**- detinue is the wrongful detention of the chattel of another, the immediate possession of which the person entitled. 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 held. Detinue however covers the same ground as conversion by detention; in the case of ***Ajao v Ahiru,*** the defendant was held liable in conversion for the seizure of the pepper mill of the plaintiff. The essence of this conversion is that the defendant, in refusing to hand over the plaintiff’s goods, has shown an intention to keep it in defiance of the plaintiff’s right. An example of a successful action in detinue is ***Udechukwu v okwuka,*** where the plaintiff bought a kit-car from the defendant and after the sale left it in the defendant’s premises, having told the plaintiff’s driver to hand over the earnings of the car to the defendant for safe keeping. Later when the plaintiff went to collect the car, the defendant refused to allow him to take it away until him {defendant} saw the driver. ***De Lestang F.J,*** delivering the judgment of the West African Court of Appeal held the defendant liable in detinue.

Elements of detinue:

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. In the case of ***Koshile v Folarin,*** the defendant motor dealer sized 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 S.C held that the plaintiff was entitled to the return of the vehicles or it’s value and for loss of the use of the vehicle until the date of the judgment.

**Defenses to 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. Jus tertii, is the better title of a third party. Jus tertii is a defence, that is, based on ownership by a third party, and it is not pleaded, except the defendant is defending under the right of such third party who has ownership, or paramount title, that will enable him to establish a better title, and the right to possession, than the plaintiff.
4. Innocent delivery

**Remedies to detinue**

1. **Replacement of the Chattel**: Where possible or appropriate, a defendant may be ordered to replace 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.
2. **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.
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.
4. **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.

**Differences between conversion and detinue:** Conversion is the act of the intentional handling of goods that is against or inconsistent with the will of the owner, whether through withholding, misusing, misdelivering, or changing the nature of the goods, or ultimately any action that is so significantly inconsistent with the owner’s right to possession of the goods that it actually attempts to wrongfully deprive the owner of that right to possession. While Detinue is defined as the wrongful detention of goods, committed when one unreasonably refuses to surrender or return personal property to its rightful owner, only if and when the owner claims the immediate right to possession of these goods. Detinue is only applicable, however, when the owner holds proprietary interest and/or actual possession of the property. In many cases, detinue is classified within Conversion, as the two only differ in the sense that an act is considered Detinue and not Conversion when the owner specifically asks for property back, and is still refused. In essence, the main difference between the tort of conversion and detinue is:

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.

**REFERENCE**

* **Ese Malemi, Law of Torts**
* [**www.findlaw.com**](http://www.findlaw.com)
* [**www.nigerianlawclaz.com**](http://www.nigerianlawclaz.com)
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