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**COURSE TITTLE: LAW OF TORT**

 A chattel is any moveable property other than land and immovable property. The word chattel means any article, goods, or personal property, other than land and immoveable property. Examples of chattel or goods are innumerable.

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

1. Trespass to chattels
2. Conversion
3. Detinue

**TRESSPASS OF CHATTEL**

Trespass of chattel is a direct and unlawful injury done to chattel in possession of other person. It is actionable per se (it must be proven that there is direct and unlawful application of force but not necessarily the damage from trespass). A person that wants to sue in this tort can sue either in conversion detinue (trespass of Goods) or negligence that result to damage in good provided in the Torts Act 1977.

**ELEMENTS OF TRESPASS TO CHATTEL**

1. The act of trespass must be intentional
2. The act must be negligent
3. There must be wrongful interference
4. Chattel must belong to another party.

**PERSONS WHO MAY SUE FOR TRESPASS IN CHATTEL**

1. Assignees
2. Trustees
3. Finders
4. Custodians
5. Caretakers
6. Adverse possessors
7. Executors
8. Owners
9. Bailees

**THE DEFENSES FOR TRESPASS TO CHATTEL**

1. **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.
2. **Public Necessity:** This defense can be used if you intentionally interfere with another person’s chattel to protect the public. However, if you acted unreasonably when taking another person’s chattel, this defense will not be available to you. An example of when this defense would be available is if you took another person’s gun in order to prevent someone else from shooting up an entire building.
3. **Private Necessity:** This defense can be used when the purpose of using another person’s chattel is to protect your own interests. [Private necessity can](https://www.legalmatch.com/law-library/article/private-necessity-lawyers.html) only be claimed if you were attempting to protect yourself from death or serious bodily harm. As such, this defense is not as commonly used.
4. **Privileged Invasion to Reclaim Personal Property:** Lastly, if you take someone’s personal property because it is actually your own property, you can argue privilege as a defense. In order for this defense to be successful, the defendant must have taken your property or it must be in the defendant’s possession because of an act of god, such as a storm or flood.
5. **Honest converstion, or acting honestly, and so forth.**
6. Limitation of time, as a result of the expiration of time specificed for legal action.

 **REMEDIES FOR TRESPASS TO CHATTEL**

1. Payment of damages
2. Repair of the damage
3. Replacement of the chattel
4. Payment of the market price of the chattel.

These remedies can easily be demonstrated in motor accident cases where car parts or the vehicle itself may be damaged and requires a replacement, repair or monetary fee.

**CONVERSTION**

**Conversion** is any dealing which denies a person of the title, possession, or use of chattel. It is the assertion of a right that is inconsistent with the rights of the person who has title, possession or right to use the chattel. **North central wagon & finance Co Ltd v Graham**

**ELEMENTS OF CONVERSION**

1. Using one’s property as if I were his own
2. There is no legal justification
3. Injury of plaintiff’s possessory rights

**EXAMPLES OF CONVERSION**

1. Taking
2. Using
3. Alteration
4. Consumption
5. Receiving
6. Detention
7. Wrongful delivery
8. Damaging, or destroying it.

**Taking**: where a defendant takes a plaintiffs chattel out of the plaintiffs possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion.

**Using**: using a plaintiffs chattels as if it one’s own, such as, by wearing the plaintiffs jewelry, as in the case of **petre v heneage**, or using the plaintiffs bottle to store wine as was the case in **Penfolds wine v Elliot** is also conversion

**Alteration:** this involves the changing the form of a chattel in any form whatsoever.

Consumption: by eating or using it up

**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, also, receiving chattel from a third party who is not the owner is conversion.

**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.
* **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.

**INNOCENT RECEIPT OR DELIVERY**

Generally, innocent delivery, or innocent receipts 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 good in good faith from a person he believes to have lawful possession of them, and he delivers them, on the persons 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. Case of **unipetrol v prima tankers**, the defendant oil tanker owner had a contract to carry unipetrols cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The court of appeal held that the respondents were liable in conversion.

 **THE RULES REGARDING FINDING LOST PROPERTY**

The rule of law for finding a lost property was established by the English court of appeal in the case of **parker v British airways (1982)**, in this case, the plaintiff was waiting in the defendants airways lounge at Heathrow airport, London, England when he found the 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 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. The rules are as listed below

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 a right to keep it against all persons, except the true owner, or a person who has prior right to keep the chattel.
2. Any servant, or agent who finds a lost property in the course of his employment does so on behalf of the employer, by is the finder according to law.
3. An occupier of land, or a building has superior rights to those of a finder, over property or goods in, or attached to land, or building. Case of south Staffordshire water co v Sharman, where rings were found in a pool.
4. However, an occupier of premise 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 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.

 **ELEMENT OF DETINUE**

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

1. The plaintiff must have tittle that is ownership or right to immediate possession of the chattel.
2. The defendant who is an 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.

KOSILE V FOLARIN The defendant motor dealer seized and detained the motor vehicle he had sold to the plaintiff on credit terms, upon delay by plaintiff to fully pay up. The plaintiff claiming damages. The supreme court held 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 the loss of the use of the vehicle until the date of judgement at the rate of 20 naira per day.

**This is the main difference between it and the tort of conversion, and detinue**.

In the tort of trespass to chattel, there must be some interference, meddling, harm, injury, damage or destruction of the goods, against the desire of the owner, possessor, custodian or caretaker. Therefore, the tort of chattel is made up of chattel s conversion and detinue.

In the case of **kirk v Gregory (1878),** the movement of a deceased persons rings, from one room in his house to another was held to be trespass to chattel and nominal damages was awarded against the defendant.

In the case **of Haydon v smith (1610)** it was held to be trespass for the defendant to cut and carry away the plaintiff’s tree.

In the case of **leame v bray**, this was an accident between two horse drawn carriages. The defendant negligently drove his carriage and collided with the carriage of the plaintiff. The court held that the accident was a trespass to chattel and the defendant was liable in damages to the plaintiff for the damage done to the coach of the plaintiff.

 **THE DEFENCES OF DETINURE**

1.He has mere possession of goods

2.That the plaintiff has insufficient tittle as compared to himself

3.The defendant may plead jus tertii, that is, that a third party has a better tittle, provided the defendant is the agent, or has the authority of the third party, or claiming under the third party.

**REMEDIES FOR DETINUE**

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 and the property is still the same
2. **Damages**: when a defendant has been found liable in detinue, he cannot deprive the plaintiff from damages. General damages are usually presumed in this action, especially for the loss of the use of the chattel.
3. **Recapture or self-help**: a person who is entitled to possession of goods which he has wrongfully deprived may resort to self-help and retake the goods from the custody of the person detaining it using reasonable force after making demand for the chattel.
4. **Replacement of the chattel**: a defendant may be ordered to replace the chattel by supplying an identical or similar chattel. This is easier in products.
5. **Release on bond*:*** this is a return of the goods on security, pending the determination of the ownership of the chattel.

**DIFFERENCE BETWEEN CONVERSION AND DETINUE**

Detinue and conversion are very similar and covers the same ground. It must although be noted, some differences between the two which would be explained below.

1. The refusal to surrender or return chattel on demand is the essence of detinue or detention
2. Detinue is the proper remedy where the plaintiff wants a return of the specific goods in question and not necessarily market value.

Conversion is when one deals with a chattel in a manner repugnant to the immediate right of the possession of the true owner. Subjective intention to convert is unnecessary. While detinue is the wrongful detention of goods when one refuses to deliver up goods to a person having the immediate right to possession.

REFRENCE: Ese Malemi law of tort (Princeton publishing Co. 2008)

 KODILINYE AND ALUKO (The Nigerian law of torts)

 (www.Djetlawyer.com)