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| LAW OF TORTS |
| ASSIGNMENT |
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| **1/27/2021** |

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| This paper seeks to give a brief answers on the given questions |

QUESTION:

1. define and explain each tort
2. State the elements of Trespass to Chattel, conversion and detinue
3. Explain the concepts of innocent delivery or receipt, lost property rule
4. Give examples of conversion
5. Give examples of persons qualified to sue for Trespass to Chattel
6. Discuss the remedies and defence to Trespass to Chattel, conversion and detinue
7. Differences between conversion and Detinue

1.

**INTRODUCTION TO TRESPASS TO CHATTEL**

Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the intentional or negligent interference with the possession of the chattel of another person without lawful justification. The requirement for such trespass is that it must be direct, physical, intentional or negligent and wrongful. Thus, merely touching a chattel without causing any harm to it may, in appropriate circumstances, be actionable and entitle the plaintiff to get nominal damages.

 The purpose of the tort of trespass to chattel is to protect all the chattel, goods, or personal properties of a person who has title or possession by prohibiting all interference without legal justification. It protects the rights of ownership or possession of a chattel from all wrongful interferences. In Nigeria, the tort of trespass to chattel is made up of three types of torts. These are:

1. Trespass to chattels *per se.*

2. Conversion.

3. Detinue.

To succeed in an action for trespass, the plaintiff must prove that he had possession at the time of the trespass or is entitled to immediate possession of the chattel. Thus, a hirer, or a bailee of goods, possesses the goods hired or bailed and therefore he may maintain an action against any person who wrongfully interferes with the goods. Similarly, a person who has wrongfully acquired possession may also maintain action against all persons except the owner or agent of the owner of the chattel.

2.

**Element of Trespass to Chattel**

To succeed in an action for trespass to chattel, the plaintiff must establish that the trespass was:

1. Intentional
2. Negligent

In the case of *National Coal Board v Evans & Co.,[[1]](#footnote-2)*the defendants were employed by a county council to work on land owned by the 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.,nor the sub-contractors knew thisas the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable, it caused 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 damage was an inevitable accident.

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 defence, may be pleaded to avoid liability.

Accordingly, persons who do not have legal right to possession 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. Bailees
3. Lenders
4. Assignees
5. Trustees
6. Custodians
7. Caretakers
8. Administrators of Estates; etc.

### **Defences for Trespass to Chattel**

In an action for trespass to chattel, 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.
3. Subsisting lien.
4. Subsisting bailment
5. Limitation of time, as a result of the expiration of time specified for legal action.
6. Honest conversion, or acting honestly, etc.

### **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 caused to the chattel.

A frequent demonstration of these remedies is in motor accident cases.

**CONVERSION**

Conversion is any interference with the possession or disposition of the property of another person as if it is one’s own. It is any dealing which denies a person of the title, possession or use of his chattel. It includes wrongful taking, wrongful detention or wrongful disposition of the property. It is not necessary to prove that the defendant interfered with the goods. It is also immaterial that the defendant does not know that the chattel belongs to another person, for instance, if he innocently bought the goods from a thief.

In the case of *North Central Wagon & Finance Co. Ltd v Graham[[2]](#footnote-3),* the defendant hire purchaser sold the car in contravention of the terms of the hire purchase agreement. In the circumstances the court held that the plaintiff finance company was entitled to terminate the hire purchase agreement and sue the selling hire purchaser in the tort of conversion, for recovery of the car.

The tort of conversion is mainly an interference with possession. Those who may sue in the tort of conversion include:

1. Owners
2. Bailees: A bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him. However, a bailor at will has title to immediate possession of a chattel he
3. Holders of Lien and pledge
4. Finders
5. Buyers
6. Assignees
7. Licensees
8. Trustees

 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 plaintiff’s chattel out of the latter’s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion.

1. Using

Using a plaintiff’s chattel as if it is one’s own such as by wearing the plaintiff’s jewellery as in the case of *Petre v. Heneage[[3]](#footnote-4)*or using the plaintiff’s bottle to store wine as in the case of *Penfolds Wine Ltd v. Elliot[[4]](#footnote-5)*is a conversion of such chattel.

1. Alteration
2. Consumption
3. Destruction

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.

1. 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 wrong for it is an act of assisting the other person in the conversion of the chattel or receiving stolen goods.

1. Detention

In *Armory v. Delamirie[[5]](#footnote-6),* a chimney sweeps 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. The boy then sued the jeweler for conversion and for an order to return the jewellery 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.

1. Wrongful delivery

Wrongful delivery of a person’s chattel to another person who does not have right to possession without legal justification is a conversion

1. Purchase

Conversion is committed by a person who bought and took delivery of goods from a seller who has no title to the chattel nor right to sell them. For instance, where a thief steals and sells a chattel, a buyer, in this situation, takes possession at his own risk.

1. Wrongful disposition: such as by sale, transfer of title etc.

In *Chukwuka v. C.F.A.O. Motors Ltd.[[6]](#footnote-7),* the plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months after, the defendants sold the car to a third party who re-registered it in hisown name. The plaintiff sued for conversion. The High Court held that the defendant was liable to the plaintiff for conversion of the car.

**DEFENCES FOR CONVERSION OF A CHATTEL**

In an action for conversion of a chattel, the defendant may plead the following;

1. Jus tertii, that it, the title or better right of a third party to the chattel or property in dispute.. A defendant can only plead when he or she is acting with the authority of the true owner. Therefore, for a defendant to plead jus tertii, the identity of the true owner must be disclosed, his title or better right to immediate possession must be established
2. Subsisting bailment
3. Subsisting Lien
4. Temporary retention
5. Limitation of time

**Remediesfor Conversion**

In a claim for conversion, the plaintiff may claim the following:

1. Order for delivery, return or specific restitution of goods
2. Alternative order for payment of the current market value of the chattel
3. An order for payment of any consequential damages
4. Recovery of special and general damages.

**DETINUE**

The tort of detinue is the wrongful detention or retention of the chattel whereby the person entitled to it is denied the immediate possession or use of it. It is a general rule that to successfully sue in detinue, a plaintiff must have possession before the detention or have the right to immediate possession of the chattel.

A plaintiff can only maintain action for the tort of detinue after satisfying two conditions. These conditions 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 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 *West Africa Examinations Council v. Koroye[[7]](#footnote-8),* 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.

**DEFENCES FOR DETINUE**

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

1. He has mere possession of the goods.
2. The plaintiff has insufficient title as compared to himself.
3. The defendant may plead *jus tertii* provided that the defendant is the agent.
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
9. Reasonable defence of a person or property, such as when one beats or injures a dog that was attacking him or another person.

**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 or releaseonbond
6. Damages.

**INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION**

Innocent delivery or innocent receipt is 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 receipt of good is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. 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 possession of the other party or reimbursement for its value.

**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[[8]](#footnote-9).* 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 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 that finds a lost property in the course of 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 that 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[[9]](#footnote-10)*and a pre-historic boat discovered six feet below the surface in the case of *Elwes v Briggs Gas[[10]](#footnote-11)* were held as belonging to the land owner.
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.

In *Parker v British Airways[[11]](#footnote-12) (supra), t*he plaintiff was waiting in the defendant airways lounge at Heathrow Airportwhen 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.

It is a general rule that 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 excuse the rights of an owner over the property he found.

### **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.
1. (1951) 2 KB 861 [↑](#footnote-ref-2)
2. (1950) 1 All ER 780 [↑](#footnote-ref-3)
3. *(1701) 88 ER 149* [↑](#footnote-ref-4)
4. *(1946) 74 CLR 204 at 214-215* [↑](#footnote-ref-5)
5. *(1722) 93 ER 664* [↑](#footnote-ref-6)
6. *(1967) FNLR at 170* [↑](#footnote-ref-7)
7. (1977) 2 SC [↑](#footnote-ref-8)
8. *(*1982) 1 All ER 834 CA. [↑](#footnote-ref-9)
9. [↑](#footnote-ref-10)
10. [↑](#footnote-ref-11)
11. [↑](#footnote-ref-12)