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**INTRODUCTION**

A chattel is any moveable property that is capable of being owned, possessed, or controlled other than a human being, land and immoveable property. In simple terms, it is property other than land and immoveable property. It is any moveable property.

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: (1) trespass to chattels and (2) 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.

On the other hand, a trespass to chattels is an intentional interference with another person's lawful possession of a personal property. 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:

* Intent to trespass: 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.
* 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 (1) dispossessing another of the chattel, (2) using or intermeddling with a chattel in the possession of another, or (3) damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

Keep in mind that mistake of ownership is not a valid defense to a trespass to chattels. In other words, it doesn't matter if the person didn't know the property belonged to you. Possessing or damaging the property itself is enough to show interference.

In Nigeria, the tort of trespass to chattel consists of three torts – trespass to chattel, conversion and detinue – which protect the possessor of a chattel from wrongful interference therewith. For the purpose of exposition, each tort will be considered separately.

**TRESPASS TO CHATTEL**

Trespass to chattel is any direct and unlawful interference with the chattel in the possession of another person. It is the intentional or negligent interference with the possession of the chattel of another person. The interference must be direct and wrongful. It is actionable per se. Thus, the mere touching of a chattel without causing any harm to it may in appropriate circumstances be actionable and entitled the plaintiff to get nominal damages.

The tort of trespass is designed to protect the right of possession, that is, the right of immediate possession of a chattel, as distinct from ownership. It prohibits a person from any unlawful interference with a chattel that is under the control, possession or custody of another person. To maintain an action for trespass, the plaintiff must show he had possession at the time of the trespass or is entitled to immediate possession of the chattel. In this tort, the chattel is usually not taken from his possession as we have in conversion and detinue.

Trespass to chattel may be committed in many different ways. However the trespass must be intentional or negligent. Examples of trespass to chattel include: taking a chattel away, throwing another person’s property away, mere moving of the goods from one place to another, killing another person’s animal, mere use without permission, touching etc.

***Davies v Lagos City Council***[[1]](#footnote-2); the defendant city council granted a hackney permit to the plaintiff to operate a taxi cab, which permit was meant for the exclusive use of the plaintiff. The plaintiff transferred the permit to a third party, whereupon the defendant seized and detained the plaintiff’s taxi cab. In an action for trespass to property, **ADEFARASIN J** as he was then in the Lagos High Court held: that although the defendant council was entitled to revoke the permit to non-compliance with regulations, however ti was not entitled to seize nor take possession of the plaintiff’s vehicle. The defendant was therefore liable for trespass to chattel.

***Leame v Bray (1803) 102 ER 724;*** this was an accident between two horse drawn carriages. The defendant negligently drove his carriage and collided with the carriage of the plaintiff. The cpurt 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.

***Kirk v Gregory (1878) 1 EX D 55;*** the movement of a deceased person’s rings, from one room in his house to another was held to be a trespass to chattel and nominal damages was awarded against the defendant.

Anyone who has possession or caretaker-ship of a chattel may sue another person who meddles with the chattel. Therefore the persons who may sue for trespass to chattel, provided that they have possession at the material time of interference include: owners, bailees, lenders, assignees, trustees, finders, custodians, caretakers, adverse possessors, executors, administrators of estates etc.

***National Coal Board v Evans & Co***[[2]](#footnote-3); An electrical cable was placed under the land of the county council by the National Coal Board (NCB) or its predecessors, without the council’s knowledge, as far as could be established. The council contracted JE Evans & Co (Evans) to excavate a trench on the land. Evans had no knowledge or indication there was a cable. When excavating the land, the cable was struck and damaged. NCB brought a cause of action for trespass. No liability in trespass could be found since the act was involuntary and accidental. The act of Evans was neither negligent nor willful and was “utterly without fault”. The liability for negligence and injury lay with the NCB or their predecessors for failing to notify the council when they placed the cable under their land without knowledge or consent from the council.

**CONVERSION**

Conversion may be defined as intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiff’s possession or right to possession of such chattel[[3]](#footnote-4). Conversion is the deprivation of another’s right to use or possess personal property[[4]](#footnote-5). A conversion is an act of…willful interference, without lawful justifications, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.[[5]](#footnote-6)

In other words, conversion is any intentional interference with another person’s chattel which wrongfully deprives the person of title, possession, or use of his chattel. Conversion includes wrongful taking, wrongful detention, or wrongful disposition of the property of another person. It is not necessary to prove that the defendant had intention to deal with the goods. It is enough to prove that the defendant interfered with the goods. It is no defence that the defendant acted in good faith or that he was mistaken as to the plaintiff’s rights. In the words of Cleasby B.[[6]](#footnote-7):

*“The liability…is founded upon what has been regarded as a salutary rule for the protection of property, namely, that persons deal with the property in chattels or exercise acts of ownership over them at their peril.”*

Thus in the case of ***Consolidated Co. Ltd. v Curtis & Son***[[7]](#footnote-8); an auctioneer who, mistakenly believing that certain goods belonged to his client, sold and delivered it to a purchaser and handed over the proceeds of sale to the client; was held liable in conversion to the true owner of the goods. It was no defence that he had acted throughout in good faith and under a genuine mistake. Conversion of a chattel, belonging to any person may be committed in many different ways. The following acts among others will amount to conversion:

**Conversion by taking:** it is conversion to take goods, without justification, out of the possession of the person entitled to them with the intention of exercising a permanent or temporary dominion over them. It is essential, however that the defendant should have intended to exercise dominion over the chattel. If he merely removed the chattel from one place to another without intending to assume possession or otherwise deprive the plaintiff of possession, he will be liable in trespass but not in conversion.

In the case of ***Fouldes v Willoughby***[[8]](#footnote-9); the owner of two horses had come on board a ferry from Birkenhead to Liverpool. The ferryman refused to carry the horses. The owner refused to take them back on shore, and so the ferryman took the bridle from the owner turned the horses loose at the landing. The owner stayed put on board, and did not try to get the horses back. He sued the ferryman for conversion. The ferryman was held liable for conversion, he appealed. The Exchequer Court held that the ferryman was not guilty of conversion, because there was no interference with the plaintiff's "general right of dominion" over the horses. Instead, the ferryman was liable for trespass.

An example of conversion by taking in Nigeria is the case of ***Davies v Lagos City Council***[[9]](#footnote-10), where the defendant council was held liable in both trespass and conversion for the act of its officials in wrongfully seizing the plaintiff’s cab.

**Conversion by destruction, consumption or alteration:** intentionally to destroy or consume the plaintiff’s chattel constitutes conversion. Merely to damage the chattel of another is not conversion but trespass. In the case of ***Simmons v Lillystone***[[10]](#footnote-11), the court held that the sawing through planks of wood, but not so as to destroy them, is not conversion. It is also conversion to alter the identity of a chattel.

**Conversion by using:** if the defendant uses the chattel as if it were his own, his act is inconsistent with the rights of the plaintiff and he will be liable in conversion. In ***Petre v Heneage***[[11]](#footnote-12) the court rightly found that the unjustified wearing of a pearl necklace belonging to plaintiff by the defendant was conversion.

**Conversion by receiving:** where A, without lawful authority, transfers B’s chattel to C, the mere voluntary reception of the chattel by C constitutes conversion against B, even though C may have acted innocently. The basis of liability in such cases is that the receiver, however innocent he may have been, has been a party to denial of the plaintiff’s title and to the interference with his right to the possession of the goods. In the case of ***Fowler v Hollins***[[12]](#footnote-13), a cotton broker acting on behalf of a client, for whom he often made purchases, bought cotton from a fraudster who had no title to the cotton. The broker then sold it to his client and received only his commission. At the suit of the true owner for conversion sale, and loss of the goods the court held that the broker was liable in conversion for the full value of the goods.

**Conversion by wrongful transfer of title or possession:** that is depriving the plaintiff of the possession of his goods by wrongful transferring or disposing of them to another whether by sale and delivery, pledge, or delivery *simpliciter*. In the case of ***Chukwuka v C.F.A.O. Motors ltd***[[13]](#footnote-14); the plaintiff sent his car to the defendant motor company for repairs. Thereafter he failed to claim the car. Nine months later the defendants sold the car to a third party who registered it in his own name. The plaintiff sued for conversion. The court held that the defendant was liable to the defendant for conversion.

**Conversion by detention:** where the defendant is in possession of the plaintiff’s chattel without authority and refuses to surrender it to the plaintiff when asked to do so, he commits conversion. ***Ajao v Ashiru (1973) 1 All NLR pt II pg 51;*** the defendant was held liable in conversion for the seizure of the pepper mill of the plaintiff. ***Armory v Delamirie***[[14]](#footnote-15), a chimney-sweep’s boy found a jewel and gave it to the jeweler for valuation. The jeweler knowing the circumstances took the jewel and refused to return it to the boy. The boy sued for conversion. The court held the jeweler liable on the grounds that a finder of a property has good title, and he has a right to keep against all persons, except the rightful owner of the property or his agent.

**DETINUE**

The tort of detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person is entitled. Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. This tort is similar to that of conversion by detention. However it differs based on the grounds that refusal to surrender on demand is the essence of detinue, but it is only one of the several forms of conversion. Also in detinue the plaintiff can claim specific restitution of the goods, but he cannot do so in conversion.

For a plaintiff to succeed in action for detinue he must satisfy two conditions which are:

* He must have ownership or right to immediate possession of the chattel.
* 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.[[15]](#footnote-16)

***Kosile v Folarin***[[16]](#footnote-17); the defendant motor dealer seized and detained the motor vehicle he had sold for to the plaintiff on credit terms, upon delay by the plaintiff to fully pay up. The plaintiff buyer sued for detinue claiming damages which the Supreme Court upheld. The court held that the plaintiff was entitled to the return of the vehicle and for the loss of the use of the vehicle until the date of the judgment at the rate of ₦20 per day.

***WAEC v Koroye***[[17]](#footnote-18); the plaintiff sat for an examination conducted by the defendant council. The defendant neglected and or 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.

**The differences between conversion and detinue.**

Detinue covers the same ground as conversion by detention; however, there are the following differences between the two causes of action:

1. Refusal to surrender on demand is the essence of detinue, but it is only one of the several forms of conversion.
2. Also in detinue the plaintiff can claim specific restitution of the goods, but he cannot do so in conversion.
3. In conversion, damages are generally assessed on the value of the goods at the date of conversion, whereas in detinue they are assessed on the value of the goods at the date of the trial.
4. The defendant will not be liable for conversion by detention where, prior to the demand for their return by the plaintiff, the goods have been lost or destroyed, whether by accident or by the negligence of the defendant. But the defendant will be liable in detinue in such circumstances unless he proves that the goods were not lost or destroyed through his negligence.

**INNOCENT DELIVERY OR RECEIPT**

Generally, innocent delivery is not a tort or criminal offence. Therefore where an innocent holder of goods, such as, a carrier, or warehouseman, receives goods in good faith form 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 will be no conversion. Similarly, innocent receipt of godds is not conversion. However the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance.

**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***[[18]](#footnote-19). However the rules are not often easy to apply. The rules may be summarized as follows:

* No rights are acquired unless (a) the item is abandoned or lost and (b) the finder must take the item under their care and control to gain rights. The finder only acquires any rights against the world as a whole. The true owner and anyone with a prior right to keep the item that existed when the finder took it into their care have better rights to the item.
* Employees finding items in the course of their employment are finding it on behalf of their employer (unless there is agreement otherwise).
* The occupier has better rights than the finder to the things embedded in or attached to land. Likewise the occupier has superior rights to things attached to a building, even if they did not know it was there. Thus in ***Elwes v Briggs Gas & Co***.[[19]](#footnote-20)
* With regard to items in (or on top of) the building: The occupier has better rights only if they have manifested an intention to exercise control over the building and the things in it.
* The finder has an obligation to inform the true owner that the item has been found and where it is by whatever means are reasonable in the circumstances. In the meantime, they have to take care of the item.

***Parker v British Airways;*** A passenger found a gold bracelet on the floor of an executive lounge at Heathrow airport. He handed it to the owners of the land (British Airways Board) in order for them to attempt to find the true owner; requesting that the item be returned to him should the original owner not be found. When British Airways Board sold the unclaimed bracelet for £850, Mr. Parker challenged their claim to the bracelet. The court upheld Mr. Parker's claim, as the bracelet had been found in an area frequented by the public that British Airways Board did not exercise sufficient control over. British Airways Board was thus unable to assert superior title over the bracelet.

***Bridges v Hawkesworth***[[20]](#footnote-21); Plaintiff found banknotes on the floor of Defendant’s shop and left the notes with Defendant to return to the proper owner, and, when the notes were unclaimed after three years, asked that the notes be given to Plaintiff, a request which Defendant refused. The plaintiff was held entitled to the money upon the failure of the rightful owner to come forward to claim the money.

**Defences for trespass to chattel**

1. Inevitable accident
2. Jus tertii: **Jus tertii** (Latin, “third party rights”) is the legal classification for an argument made by a third party (as opposed to the legal title holder) which attempts to justify entitlement to possessory rights based on the showing of legal title in another person.
3. The defendant can show that he has better title than the plaintiff
4. Limitation of time: as a result of the expiration of time specified for legal action
5. Subsisting lien
6. Subsisting bailment
7. Innocent delivery
8. Honest conversion
9. Temporary detention: so as to enable steps to be taken to check the title of the plaintiff in cases like ‘lost and found’.
10. Self defence: reasonable defence of a person or property, such as when one beats a dog that was attacking him or another person.
11. Enforcement of a court order or other legal process.

**Remedies for trespass to chattel**

1. A claim for replacement or current market value of the goods especially when the goods have been destroyed
2. Order for delivery, return or specific restitution of the goods
3. Order of replevin: this is an order for the return of the goods on security, pending the determination of the ownership of the chattel. Replevin is the re-delivery to an owner of goods which were wrongfully seized, the action for such re-delivery, and for any specific and general damages suffered by him as the result of the detention.
4. General damages: 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. General damages may also be awarded at least to cover part of the cost of the legal actions.
5. Special damages: special damage is recoverable by the plaintiff for any specific loss proved.
6. Repairmen of damaged goods

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* Time accessed: 10:45

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2. (1951) 2 KB 861 [↑](#footnote-ref-3)
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4. <https://www.stimmel-law.com/en/articles/conversion-basic-tort> [↑](#footnote-ref-5)
5. Salmond. Law of Torts, 21st ed. 1996, p97-98. [↑](#footnote-ref-6)
6. Fowler v Hollinsdfvb n (1872) L.R. 7 Q.B. 616 at p.639 [↑](#footnote-ref-7)
7. (1892) 1 Q.B. 701 [↑](#footnote-ref-8)
8. (1841) 151 E.R. 1153 [↑](#footnote-ref-9)
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