

NAME: OKODIYA OGHENETEGA

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QUESTION:

The tort of trespass to Chattel is made of: Trespass to Chattels Conversion and Detinue  
Discuss the above and support with case law. Students may consider the following: define and explain each tort State the elements of Trespass to Chattel, conversion and detinue Explain the concepts of innocent delivery or receipt, lost property rule and give examples of conversion Give examples of persons qualified to sue for Trespass to Chattel Discuss the remedies and defence to Trespass to Chattel, conversion and detinue Differences between conversion and Detinue

## **ANSWERS:**

The word "chattel" means any article, goods, or personal property, other than land and immovable property. It is any property other than land and immovable property. Therefore, A chattel is any moveable property. It is any moveable thing which is capable of being owned, possessed, or controlled other than a human being, land and immovable property. Examples of chattel include cars, furniture, animal, vessel, aircraft, etc.

### What is the tort of trespass to chattel?

Trespass to chattel is a particular type of trespass whereby a person has intentionally interfered with another person's lawful possession of a chattel. Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person.

The tort of trespass to chattel is actionable per se, that is proof of direct and unlawful application of force is enough, there is no need to prove damages. The interference must be direct and wrongful. However, the direct application of force does not have to be physical.

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.

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

1. Trespass to chattels
2. Conversion
3. Detinue.

### 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. In other words, trespass to chattel is any direct interference with a personal property in the possession of another person without lawful justification. In this tort, injury or

wrong is done to the chattel while it is in the possession of the person claiming damages for the injury.

Trespass to chattel is designed to protect the following interests in personal property;

- Right of retaining one's chattel
- Protection of the physical condition of the chattel; and
- Protection of the chattel against unlawful interference or meddling.

The tort of trespass to chattel is designed to protect possession, that is, the right of immediate possession of a chattel, as distinct from ownership. It protects the right of a person to the control, possession, retention or custody of a chattel against interference by another person without lawful justification. In other words, it prohibits a person from any unlawful interference with a chattel that is under the control, possession or custody of another person. The strongest way to regain ownership of goods such as when one's property is stolen is perhaps through criminal law. To maintain an action for trespass, the plaintiff must show that he had possession at the time of the trespass or is entitled to immediate possession of the chattel. Thus, a borrower, hirer, or a bailee of goods, possesses the goods lent, 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.

In the case of *Erivo v Obi*<sup>1</sup>, the respondent closed the door of the appellant's car and the side windscreen got broken. The appellant sued inter alia for damage to the windscreen and the loss he incurred in hiring another car to attend to his business. The defendant respondent alternatively pleaded inevitable accident. On appeal, the Court of Appeal held that the respondent was not liable. He did not use excessive force but only normal force in closing the door of the car. He did not break the windscreen intentionally or negligently. It was an inevitable accident which the exercise of reasonable and the normal force used by the respondent could not avert.

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<sup>1</sup> (1993) 9 NWLR pt 316, p. 60 CA

In this case, the Court of Appeal restated the position of the law that, trespass to chattel is actionable *per se*, that is, without proof of actual damage. Any unauthorized touching or moving of a chattel is actionable at the suit of the possessor of a chattel, even though no harm has been done to the chattel. Therefore, for trespass to chattel to be actionable, it must have been done by the wrongdoer, either intentionally or negligently.

This brings us to the elements of trespass to chattel.

### Elements of Trespass to Chattel

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

1. Intentional
2. Negligent

### Examples of Trespass to chattel

Given that the trespass must be intentional or negligent, Trespass to chattel may be committed in many different ways. Examples of trespass to chattel include:

1. Taking a chattel away
2. Throwing another person's property away, such as in annoyance
3. Use, that is, mere using without permission
4. Destruction, or any act of harm or damage
5. Driving another person's car without permission

### The Persons Who May Sue For Trespass to Chattel

Anyone who has possession or is to take care of a chattel may sue any other person who meddles with the chattel. Accordingly, some persons who do not have legal right 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.

- Owners
- Bailee
- Lenders
- Assignees
- Trustees

### Defenses for Trespass to Chattel

In an action for trespass to chattel, the defenses a defendant may plead include:

1. Inevitable accident
2. Subsisting lien.
3. Subsisting bailment
4. Limitation of time, as a result of the expiration of time specified for legal action.
5. Honest conversion, or acting honestly

### The Remedies for Trespass to Chattel

The remedies available to a person who are victims of trespass to chattel are,

1. Payment of damages
2. Replacement of the chattel
3. Payment of the market price of the chattel
4. Repair of the damage: A frequent demonstration of these remedies is in motor accident cases. Where one vehicle runs into another, damages may be paid, or the parts of the vehicle that are affected may be replaced or repaired.

## CONVERSION

Conversion is any interference, possession or disposition of the property of another person, as if it is one's own without legal justification. In other words, conversion is dealing with another person's property as if it is one's own. Conversion is any dealing which denies a person of the title, possession, or use of his chattel. According to **Sir John Salmond, in his book the Law of Tort**, *"A conversion is an act... of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it"*<sup>2</sup>.

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. In other words, conversion is any intentional interference with another person's chattel which unlawfully deprives the person of title, possession or use of it. Conversion includes wrongful taking, wrongful detention, and or wrongful disposition of the property of another person. Therefore, conversion includes denying a person of the title or possession, or use of his chattel. 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 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.

### Examples of Conversion

Conversion of a chattel, belonging to another person may be committed in many different ways. Examples of conversion include:

1. Taking:
2. Using:
3. Receiving:
4. Purchase:

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<sup>2</sup> *Law of torts 21st ed. (1996) p. 97-98*

5. Destruction:

6. By Detention

### Innocent Receipt or Delivery

Innocent delivery, or innocent receipt are not torts. 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 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*<sup>3</sup>, the defendant oil tanker owners had a contract to carry Unipetrol's cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of the 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, or reimbursement for its value.

Thus, an action for conversion will lie in conversion for any corporeal personal property, including papers and title deeds. Conversion is any dealing with a chattel in a manner inconsistent with another person's right whereby the other is deprived of the use and possession of it. To be liable, the defendant need not intend to question or deny the right of the plaintiff. It is enough that his conduct is inconsistent with the rights of the person who has title, or right to possession, or use of it. Conversion is an injury to the plaintiff's possessory rights in the chattel converted. Whether an act amounts to conversion or not depends on the facts of each case, and the courts have a degree of discretion in deciding whether certain acts amount to a sufficient deprivation of possessory or ownership rights as to constitute conversion. In conversion,

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<sup>3</sup> (1986) 5 NWLR pt 42 p. 532 CA

negligence or intention is not relevant, and once the dealing with the chattel of another person is in such a circumstance that the owner is deprived of its use and possession, the tort of

### 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 v British Airways*<sup>4</sup>. 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 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 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 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 as in the case of *South Staffordshire Water Co. v Sharman*<sup>5</sup> and a pre-historic boat discovered six feet below the surface were held as belonging to the land owner in the case of *Elwes v Briggs Gas*<sup>6</sup>
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*, The plaintiff was waiting in the defendant airways lounge at Heathrow Airport, London, England 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

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<sup>4</sup> (1982) 1 All ER 834 CA

<sup>5</sup> (1896) 2 QB 44

<sup>6</sup> (1886) 33 Ch D 562



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.

### Differences between Conversion and Trespass

Conversion is different from trespass to chattels in two main respects. These are:

1. In conversion, the conduct of the defendant must deprive the owners of the possession of the chattel, or amount to a denial or dispute of the title of the owner. Conversion is known as stealing or theft in criminal law. Therefore, mere touching or moving of a chattel and so forth, only amount to trespass. In the case of *Fouldes v Willoughby*<sup>7</sup>, the suit for conversion was unsuccessful because the movement of the chattel was not sufficient to establish conversion.
2. To maintain an action in conversion, the plaintiff need not be in actual possession of the chattel at the time of the interference. It is enough if the plaintiff has right to immediate possession of the chattel, that is, the right to demand for immediate possession of the chattel.

In the case of *Ashby v Tolhurst*<sup>8</sup>. The defendant car park attendant who negligently allowed a car thief to drive away the plaintiff's car from a car park under his watch was held: not liable in conversion. The driver had possession of the car which he had parked, for he has right to immediate possession. The defendant car park attendant is a bailee who only guarantees the safety of the car that is bailed in the car park as a bailee. The claimant should have sued in the tort of negligence for the loss of the car.

Also, The case of *Youl v Harbottle*<sup>9</sup>. The defendant carrier of goods by mistake delivered the plaintiffs goods to a wrong person. He was held liable in conversion, for the loss of

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<sup>7</sup> (1841) 151 ER 1153

<sup>8</sup> (1937) 2 KB 242

<sup>9</sup> (1791) 170 ER 81

the goods. Therefore, it follows that, if an act of interference with a chattel is intentional or willful, it is not a defense, that the tort was done by mistake, even if the mistake is honest, that is, in good faith or innocently.

### Persons Who May Sue For Conversion

The tort of conversion, like other trespass to chattel, is mainly an interference with possession.

Those who may sue in the tort of conversion include:

1. Owners:
2. Bailees
3. Holders of lien and pledge
4. Finders
5. Buyers

### Defenses for Conversion of a Chattel.

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

1. Jus tertii: Jus tertii is the right of a third party. It is the title or better right of a third party to the chattel, goods, or property in dispute. As a general rule, a defendant cannot plead that a plaintiff is not entitled to possession as against him, because a third party is the true owner of the chattel. A defendant can only plead jus tertii, that is, the better right of the true owner or third party only when he is acting with the authority of the true owner.
2. 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.
3. 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.

4. 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.
5. Time 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.
6. Unidentifiable property: If the property cannot be properly identified, it could also serve as a defense.

### The Remedies for 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 is sued by the true owners.
4. Recovery of special and general damages. Special damage is recoverable by a
5. plaintiff for any specific loss proved.
6. 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 equipments.

### DETINUE

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. It is the wrongful detention of the

chattel of another person, the immediate possession of which the person entitled. Detinue is only applicable, however, when the owner holds proprietary interest and/or actual possession of the property

An action in detinue is a claim for the specific return of a chattel wrongfully retained, or for payment of its current market value and any consequential damages. Anybody who wrong fully takes, detains, or retains a chattel, and after a proper demand for it, refuses, or fails to return it to the claimant without lawful excuse may be sued in detinue to recover it or its value. In the United Kingdom, **The Torts (Interference with Goods) Act 1977** has abolished the tort of detinue as a separate tort, and merged it with the tort of conversion where it is now known as conversion by detinue or detention

#### Example of Detinue:

In Nigeria, it still exists as a separate tort. Examples of detinue, that is, detention or retention of goods are many and include the following:

1. Peter lends his chairs and tables to Sarah for a one day party, and Sarah neglects, refuses or fails to return the furniture at the end of the day as agreed or after the expiration of a reasonable period of time.
2. C gives his radio set to D and pays him to repair it, and D fails or refuses to release or return it after a demand has been made on him for its return. In each of these circumstances, there is a right of action to sue for detinue of the chattel.

#### When to Sue for Detinue

A plaintiff can only maintain action for the tort of detinue after satisfying two conditions which 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, 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. This making of a demand by the plaintiff on the defendant is a condition precedent which the plaintiff must establish to succeed in his claim for detinue.

In *Kosile v Folarin*<sup>10</sup>, The defendant motor dealer seized 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 Supreme Court held: *inter alia* 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 loss of the use.

### 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.

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.

### The Defenses for Detinue

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

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<sup>10</sup> (1989) 3 NWLR pt 107, p. 1 SC

1. He has mere possession of the goods
2. Innocent delivery
3. Subsisting bailment
4. Subsisting lien on the chattel.
5. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff

### The 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: 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.
2. Claim for replacement of the chattel: Where possible or appropriate, a defendant may be ordered to replacement 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.
3. Claim for the current market value of the 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. Recapture or self-help to recover the goods: A person who is entitled to possession of goods of which he has been wrongfully deprived may resort to self-help and retake the goods from the custody of the person detaining it, using only reasonable force after he

has made a demand for their return. However, he may not trespass through the land of an innocent party to retake the goods. He may only go on such land with permission.

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