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**COURSE TITLE:** LAW OF TORTS

**COURSE CODE**: LPB 301

 **QUESTION**

 -The tort of trespass to Chattel is made of: Trespass to Chattels Conversion and Detinue, Discuss the above and support with case law.

* Define and explain each tort, state the elements of Trespass to Chattel, conversion and detinue.
* Explain the concepts of innocent delivery or receipts, lost property rule and give examples of conversion.
* Give examples of persons qualified to sue for trespass to Chattel, discuss the remedies and defense to trespass to Chattel, conversion and detinue.
* Differences between conversion and detinue

**TRESPASS TO CHATTEL:** Trespass to Chattel is a tort whereby the infringing party has intentionally interfered with another person’s lawful possession of a chattel. The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattel.

According to Ese Malemi; Trespass to Chattel is any direct and unlawful interference with a chattel in the possession of another person.

**The Elements of Trespass to Chattel are:**

-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 the chattel in the possession of another, or
3. Damaging the chattel.

**The Elements of Conversion are**:

-Intent to convert the tangible or intangible property of another to one’s own possession and use,

-Anyone claiming conversion must show a tortious conversion of the chattel, a right to property in it, and a right to immediate possession which is absolute, unconditional and not dependent upon the performance of some act.

**Elements of Detinue**

-Detinue allows for remedy of damages for the value of the chattel

-Detinue also allows for the recovery of the specific chattel being withheld

**CONCEPT OF INNOCENT DELIVERY**: 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. Innocent receipt of goods is not conversion, however the receiver must not wilfully damage or destroy the goods unless the goods constitute a nuisance. The Case of Unipetrol v Prima Tankers Ltd

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.

**CONCEPT OF 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***.

-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.

-Any servant, or agent who finds a lost property in the course of his employment, does so on behalf of his employee, who by law acquires the right of a finder

-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. See ***Elwes v Briggs Gas co***; a pre-historic boat discovered six feet below the surface were held as belonging to the landowner.

-An occupier of a premises does not have superior rights to those of a finder in respect of goods found on or in the premises.

**EXAMPLES OF CONVERSION**: Conversion can occur when someone, acting without your consent, does any of the following with your property;

-Takes and fails to return your property

-Sells your property

-Substantially changes your property, cutting down trees to use the wood in construction

-Severely damages or misuses your property

**PERSONS QUALIFIED TO SUE FOT TRESPASS TO CHATTEL:**

Anyone who has the 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. In other words, anyone who has the possession or right to immediate possession can sue. 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. The persons who can sue for trespass, provided they have possession at the material time of the interference include:

1. Owners
2. Bailees
3. Lenders
4. Assignees
5. Trustees
6. Finders
7. Custodians
8. Caretakers
9. Adverse Possessors
10. Executors etc…

**REMEDIES AND DEFENCES TO TRESPASS TO CHATTEL, CONVERSION AND DETINUE**

**Defenses for Trespass to Chattel**

-Inevitable Accident

-Jus Tertii; title or better right of a third party

-Subsisting lien

-Subsisting bailment

-Limitation of time

-Honest Conversion or acting honestly

**Remedies for Trespass to Chattel**

-Payment of damages

-Replacement of the Chattel

-Payment of the market price of the chattel

-Repair of the damage

**Defenses for Conversion**

-Jus Tertii

-Subsisting bailment

-Subsisting lien

-Temporary retention

-Limitation of time

**Remedies of Conversion**

-Order for delivery, return or specific restitution of the goods; or

-Alternative order for payment of the current market value of the chattel

-An order for payment of any consequential damages.

-Recovery of special and general damages

-General Damages

**Defenses of Detinue**

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

-He has mere possession of the goods

-That the plaintiff has insufficient title as compared to himself

-The defendant may plead jus tertii

-Innocent Delivery

-Subsisting bailment etc…

**Remedies for Detinue**

-Claim for return of specific chattel

-Claim for replacement of the Chattel

- Claim for the current market value of the chattel

-Re capture or self-help to recover the goods

-Damages

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

**CONVERSION** is when one deals with a chattel in a manner repugnant to the immediate right of 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. Often there is a demand for return, and a refusal, but that is not essential. Where the defense shows the defendant would have refused to comply, then a formal demand would have been futile.

**REFERENCE**: Ese Malemi on Torts & Wikipedia.