* EDOJA BEST
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* TORT LAW
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Q**UESTION**: The tort of trespass to Chattel in is made up of: Trespass to Chattel, 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. Examples of persons qualified to sue for trespass to Chattel. Discuss the remedies and defense to Trespass Chattel, Conversion and Detinue. Difference between Conversion and Detinue.

THE TORT OF TRESPASS TO CHATTEL IS MADE UP OF; TRESPASS TO CHATTEL, CONVERSION AND DETINUE. DISCUSS THE ABOVE AND SUPPORT WITH CASE LAW.

**CHATTEL :**Chattel refers to any physical property that can be moved, as the property is neither a parcel of land, nor an item that is attached to a parcel of land, such as a home, or a tree that grows in the yard. Chattel is anything that a person might take with him if he needs to move to another location, like toiletries, appliances, or furniture (“personal property”). The word “chattel” comes from the Middle English word for “cattle,” which, during feudal times, were the most valuable property someone could own, aside from his land.

Chattel differs from a fixture in that a fixture cannot be removed from the property, while chattel can be. An example of a fixture is a building that is placed on a piece of property. The building cannot just be picked up and moved, and so it is considered to be one with the property. Chattel, too, can become a fixture. For instance, if a wooden board is sitting on someone’s property, then it can be moved and it is chattel. However, if that board is then picked up and then used to construct part of a house, then that chattel becomes immovable and a fixture.

There are also chattel mortgages, which are loans for which the item being bought is used as security, in case the borrower defaults on the loan. The item being bought is referred to in these cases as “collateral.” A chattel mortgage is often used for the purchase of a car, the “chattel” being the car. A less acceptable transaction involving chattel is chattel slavery, which is a situation in which people are bought and sold as if they were physical property.

A Chattel is an item or property other than freehold land, including tangible goods and lease hold interests. A chattel is any moveable property which does not include humans, land and immovable property, capable of being owned or possessed.

Trespass to chattel is a tort whereby the infringing party has intentionally interfered with another person’s lawful possession of his property. Trespass to chattel is direct, intentional and unlawful interference with another person’s personal property. Such interference could be done intentionally or negligently and it must be without lawful justification before it is regarded as trespass to chattel. Mere touching could be of a chattel could require a plaintiff get nominal damages if it is appropriate.

Trespass to chattel aims at ensuring all goods and property of every individual is protected. It aims to protect ones possession from all wrongful interferences, danger, and destruction and without lawful justification. For one to have a successful claim while suing for trespass to chattel, he ought to be in possession of the goods or property while it is in the claimant’s possession unlike in Conversion and detinue.

While proving trespass to chattel, the claimant must prove that the defendant committed the act intentionally or negligently even though the trespass to chattel is not a strict liability tort. For the claimants claim to be successful, he also ought to prove the defendants action was not authorized and it was an unlawful interference. The claimant must prove that the act was committed without his consent and that is to say that there must have been an interference with the chattel. For one to sue under trespass to chattel, he must not be the owner of the property but it is enough if he has possession of it at the time there was a breach.

**CONVERSION**Conversionwhich is an intentional tort involves one party taking away the other party’s property by using it or handling it in a way which is inconsistent with the rights of the owner. Conversion is an intentional tort consisting of ‘taking with the intent of exercising over the chattel an ownership inconsistent with the real owner’s right of possession. The tort of Conversion is equivalent to larcery or theft in criminal law. Conversion is a tort that exposes one to liability for damages in a civil suit. It applies only when an individual intentionally interferes with another person’s belonging.
The tort of Conversion and Trespass differ as Conversion seeks to deprive the owner of a property from his possession while Trespass is the unlawful or unjustifiable interference of land in possession of one party by another.

In order for the claim of conversion to be successful, the following should be proven;

* The plaintiff ought to have right to possession of the property. That is ownership of the property at the time.
* The defendants’ conversion by wrongful act inconsistent with the property rights of the plaintiff.
* The defendants act caused the plaintiff’s loss of property or it constituted damages.

## Detinue

**The name of an action for the recovery of a personal chattel in specie.**

**This action may be considered:**

**1. With reference to the nature of the thing to be recovered**

**2. The plaintiff's interest therein**

**3. The injury**

**4. The pleadings**

**5. The judgment**

**The goods which it is sought to recover, must be capable of being distinguished from all others, as a particular horse, a cow, etc., but not for a bushel of grain. Detinue cannot be maintained where the property sued for had ceased to exist when the suit was commenced.**

## Possession

**To support this action, the plaintiff must have a right to immediate possession, although he never had actual possession; a reversioner cannot, therefore, maintain it. A bailee, who has only a special property, may nevertheless support it when he delivered the goods to the defendant, or they were taken out of the bailee's custody.**

**The gist of the action is the wrongful detainer and not the original taking. The possession must have been acquired by the defendant by lawful means, as by delivery, bailment or finding, and not tortiously. But a demand is not requisite, except for the purpose of entitling the plaintiff to damages for the detention between the time of the demand and that of the commencement of the action.**

## The Plaintiff

**The plaintiff may declare upon a bailment or a trover; but the practice, by the ancient common law, was to allege, simply, that the goods came to the hands, etc., of the defendant without more. The trover, or finding, when alleged, was not traversable, except when the defendant alleged delivery over of a chattel actually found to a third person, before action brought, in excuse of the detinue.**

**Nor is the bailment traversable, but the defendant must answer to the detinue. In describing the things demanded, much certainty is requisite, owing to the nature of the execution. A declaration for 'a red cow with a white face,' is not supported by proof that the cow was a yellow or sorrel cow.**

**In this action the defendant frequently prayed garnishment of a third person, whom he alleged owned or had an interest in the thing demanded; but this he could not do without confessing the possession of the thing demanded, and made privity of bailment. If the prayer of garnishment was allowed, a sci. fac. issued against the person named as garnishee. If he made default, the plaintiff recovered against the defendant the chattel demanded, but no damages.**

## The Garnishee

**If the garnishee appeared and the plaintiff made default, the garnishee recovered. If both appeared, and the plaintiff recovered; he had judgment against the defendant for the chattel demanded, and against the garnishee a judgment for damages, and a fi. fa. in execution. The verdict and judgment must be such that a special remedy may be had for the recovery of the goods detained, or a satisfaction in value for each parcel, in case they, or either of them, cannot be returned.**

**The judgment is in the alternative, that the plaintiff recover the goods or the value thereof and his damages for the detention and full costs, if he cannot have the goods themselves. This action has yielded to the more practical and less technical action of trover.**

In tort law, detinue is an action to recover for the wrongful taking of personal property. It is initiated by an individual who claims to have a greater right to their immediate possession than the current possessor. Detinue entails the wrongful detention of another persons’ chattel or the chattel of another person. It is the wrongful detention of another’s chattel and this would render the owner a denied access to that which he owns. The plaintiff ought to have right over the chattel before its retention or have right to immediate possession of the chattel. The Tort of Detinue was abolished in the United Kingdom and it was merged with the tort of Conversion. Irrespective of the fact that the tort was abolished in the UK through the Torts (Interference with Goods) Acts 1977, it still operates on its own in Nigeria, although a tort could claim both torts in a single action.

In order for the claim of detinue to be successful, the following should be proven;

* The plaintiff must have right or claim as to the title of the chattel or right to possession of the chattel at the time.
* When the defendant fails to return the chattel without any lawful excuse after the claimant has expressly asked for it to be returned. For this claim to stand, the plaintiff must have demanded a return of his chattel from the defendant and he out rightly refused to deliver the chattel without any lawful excuse.

**INNOCENT RECEIPT OR DELIVERY**

 On a general base, innocent delivery and innocent receipts are neither torts nor criminal offences and this implies that innocent delivery is not conversion. This implies that where an innocent holder of goods receives goods from a person and helps to deliver to a third party; he would not be liable of conversion. In the same vein, the innocent receipt of goods is not conversion. The receiver of the goods must not damage the goods during the time he is in possession of the goods unless he has reasons to believe it would constitute nuisance. In Unipetrol v Prima Tankers Ltd[[1]](#footnote-1), the court held that the respondents were liable in conversion. It is expected in a claim for conversion, the claimant is entitled to return the article seized, missing or in the possession of the other party, or something of its equivalent value.

**LOST PROPERTY RULE**

The lost property rule were stated in the case of **Parker v British Airways[[2]](#footnote-2)** and this rule serve as a base for deciding cases on lost property. They are as follows;

a). One who finds a chattel has no right over it unless it has been lost or abandoned and he takes it into his care and control. He has the right to keep it to himself but it should be returned to the true owner if he asks for it or a person who can assert he is the owner of the chattel found.

b). Any person who finds a lost property in the course of his employment does that for his employer, who by law acquires the rights of a finder.

c). An occupier of a land or the owner of the land or building has superior rights to those of a finder, over a property or goods in or attached to the land or building.

d). On another hand, an occupier has no superior right to those of a finder in respect of goods found on or in the premises, except before the finding, the occupier has manifested and intention to exercise control over the premises, and things on it.

**WHO CAN SUE FOR TRESPASS TO CHATTEL**

The tort of trespass aims to protect the possession and the right to immediate possession; this means that anyone who has possession or right to immediate possession can sue. That is the owner can sue. Any person who is deemed fit by law to have possession in order to protect chattels which are left under their supervision or control. These persons include; Owners, Bailees, Finders, Buyers, Assignees, Licensees, Trustees. These people have the right to sue in an event of trespass to chattel.

**DEFENSES FOR TRESPASS TO CHATTEL**

When an action for trespass has been raised, the defendant can raise the following in his defense;

* Inevitable accident
* Subsisting lien
* Subsisting bailment
* Honesty Conversion or acting honestly, and so forth.
* Jus tertii; it is the title or better right of a third party to the chattel, goods or property in dispute. A defendant can only plead jus tertii, that is when he is acting with the authority of the true owner and this was stated in the case of C.O.P v OGUNTAYO[[3]](#footnote-3).

**REMEDIES FOR TRESPASS TO CHATTEL**

An aggrieved party can only be issued the following remedies and they are;

* Payment of damages
* Replacement of chattel
* Payment of market price of the chattel
* Repair of damages.

**DEFENCES OF CONVERSION**

* Jus tertii, better right of a third party to the chattel, goods or property in dispute. A defendant can only plead jus tertii, that is when he is acting with the authority of the true owner and this was stated in the case of C.O.P v OGUNTAYO.
* Subsisting lien: the legal claim of one person upon the property of another person to secure the payment of a debt or the satisfaction of an obligation.
* Subsisting bailment: Is a legal relationship in common law, where the owner transfers physical possession of personal property (chattel) for a time, but retains ownership.
* Temporary retention; this enables the steps to check the title of the goods. A defendant may decide to not to give up the goods temporarily while steps are put in place to verify the title of the before it is handed over to the plaintiff who claims the chattel if he is the owner or has immediate possession.
* Limitation of time

**REMEDIES FOR CONVERSION**

When a claim for conversion of chattel is brought up, several remedies are available to the plaintiff and they are as follows;

* Order for delivery, return or specific restitution of the goods
* 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.

**DEFENCES FOR DETINUE**

In an action for detinue, a defendant may plead;

* He has mere possession of the goods
* That the plaintiff has insufficient title as compared to himself
* Jus tertii is a defense, which is based on ownership by a third party
* Innocent delivery
* Subsisting bailment
* Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff.

**REMEDIES FOR DETINUE**

When an individual’s chattel is detained by another person, the person who is denied possession or use of chattel, has several remedies open to him include;

* Claim for Return of the Chattel: this is a claim for the return of specific chattel, especially when the chattel has not been damaged or no harm has come to it during its detention.
* Replacement of Chattel: In an appropriate and possible case, the defendant can be issued to replace the chattel with a similar chattel.
* Claim for Market Value of Chattel: This is a claim for the current market value of the chattel as may be assessed. The plaintiff has the duty to prove the market value. The measure of damage on detinue is usually the market value of goods as proved at the time of judgment.
* Recapture or Self help: A person who has possession of goods of which he deprived wrongfully 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.
* Damage: When a defendant has been found liable in detinue, he cannot deprive the plaintiff of his right to damages for detention of the chattel because he has not been using it nor earning anything from its use.

**DIFFERENCE BETWEEN CONVERSION AND DETINUE**

The refusal to surrender or return a chattel on demand is the essence of detinue. There must have been a demand for the return of the chattel.
Detinue is the remedy where an individual wants a return of his chattel or goods and not merely its market value. In a situation where the specific good cannot be returned, an award of the current market value of the chattel is usually made to the plaintiff.

**DIFFERENCE BETWEEN TRESPASS OF CHATTEL, CONVERSION AND DETINUE**

The main difference between trespass to chattel and the tort and conversion and detinue is that the tort of trespass to chattel must be some act of interference, meddling, damage, destruction of goods against the desire of the person who has right to it.

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2. (1982) 1 All ER 834 CA [↑](#footnote-ref-2)
3. (1993) 6 NWLR pt 299, p. 259 at 271 SC. [↑](#footnote-ref-3)