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**LAW OF TORT**

**ASSIGNMENT**

A Chattel is any property other than land and immovable property. In other words, A chattel is any form moveable property. The word "chattel" engrosses any article, goods, or personal property, other than land and immoveable property. The tort of trespass to chattels seeks to protects the chattel, goods, or personal properties of a person who has title or possession to such goods by prohibiting all interference without legal justification. The tort of trespass to chattel protects the rights of ownership or possession of a chattel from all wrongful and unlawful interference.

      The three forms of trespass to chattel are each actionable per se upon commission or occurrence without the plaintiff having to prove damages. Adefarasin J., in *Davies v Lagos City Council (1973) 10 CCHCJ 151 at 154*, held that: *“The plaintiff is entitled to succeed... in trespass... there may be a trespass without the infliction of any material damage by a mere taking or transportation. In my view, the seizure of the plaintiff’s vehicle without just cause... is a wrongful act, on account of which all the defendants taking part in it are jointly and severally liable.”* Although, trespass to chattel is actionable per se, it is not a strict liability tort, as cases where specific damages are claimed to have been done to a chattel, a plaintiff is entitled to prove it and recover damage for it as the case may be.

     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. The interference must be direct and wrongful. Thus, the mere touching of a chattel without causing any harm to it may in appropriate circumstances, be actionable and entitle the plaintiff to get nominal damages.

     Trespass to chattel is designed to protect the following interests in personal property such as one's 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 this tort, injury or wrong is done to the chattel while it is in the possession of the person claiming damages for the injury. The chattel is usually not taken from his possession as seen in conversion or detinue.

     In the case of *Erivo v Obi (1993) 9 NWLR pt 316, p. 60 CA,* the defendant respondent closed the door of the plaintiff 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 defendant 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 care and the normal force used by the respondent could not avert.

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; Intentionally; or Negligently. Thus, in the wider context, the tort of trespass to chattel is closely related to any tort or law which has to do with the protection of interest in personal property, such as: Negligence, Malicious damage such as arson, and, other damages to property or interest in property.

     Trespass to chattel may be committed in many different ways. However, the trespass must be intentional or negligent. Trespass may be committed by mere removal or any damage and it can be committed when there is no intention to deprive the owner, possessor or custodian permanently of the chattel. 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, that is; mere asportation. As seen in *Kirk v Gregory (1878) 1 Ex D 55, Scratching or making marks on the body of the chattel or writing with finger in the dust on the body of a motor vehicle*, Killing another person's animal, feeding poison to it or beating it. as was in *Shieldrick v Abery (1793) 170 ER 278 also, Cresswell v girl (1948) 1 KB 241.*

**Conversion.**

According to Sir John Salmon*, "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”. Evident in* *Ihenacho v Uzochukwu (1997) 2 NWLR pt 487. p. 257 SC.* Conversion is any inteference, possession or disposition of the property of another person, 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. 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.

It is dealing with a chattel which belongs to another person in a manner that is i inconsistent with the rights of the person. 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. See *Lewis v Avery (1972) 1 QB 198.* In criminal law, conversion is known as stealing or theft.

Essentially, conversion is; Any inconsistent dealing with a chattel, to which another person is entitled to immediate possession, Whereby the person is denied the use, Possession, or Title to it. Thus, an owner can sue for conversion. Likewise, a person who has mere custody, temporary possession or caretakership can sue any third party who tries to detain, dispose, steal or otherwise convert such chattel. In *North Central Wagon & Finance Co. Ltd v Graham (1950) 1 All ER 780,* 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 detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. As a general rule, to successfully sue in detinue, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel.

Essentially, the tort of detinue entails The wrongful detention of the chattel of another person, The immediate possession of which the person is entitled. 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. 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: A lends his chairs and tables to B for a one day party, and B 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. 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.

A plaintiff can only maintain action for the tort of detinue after satisfying two conditions which are: The plaintiff must have title that is ownership or right to immediate possession of the chattel and that 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 (1989) 3 NWLR pt 107,  p. 1 SC,*

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 of the vehicle until the date of judgment at the rate of N20 per day.

In the above case, the Supreme Court emphasised the requirement that in an action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable for detinue. See also *lhenacho v Uzochukwu (1997) 2 NWLR pt 487,  p. 257 SC.*

In *West Mrica Examinations Council v Koroye (1977) 2 SC 45; 11 NSCC 61,*

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 award damages in lieu of the release of the certificate by the Supreme Court.

**Differences between Trespass to Chattel, Conversion and Detinue**

In the tort of trespass to goods, there is no taking away, stealing, conversion, detention or detinue of the goods from the owner; or person entitled to possession. This is the main difference between it and the torts of conversion, and detinue. However, in the tort of trespass to chattel there must be some act of interference, meddling, harm, injury, damage or destruction of the goods, against the desire of the owner, possessor, custodian or caretaker. Thus, the tort of trespass to chattel includes any interference, meddling, harm, injury, damage or destruction of goods against the desire of the person who has right to it.

The following cases will give clear illustrations of trespass to chattel.  There circumstances vary but they are all on chattels.

In *Davies v Lagos City Council (1973) 10CCHCJ 151,* 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 council seized and detained the plaintiff‘s taxi cab. In an action for trespass to property, Adefarasin  J. as he then was in the Lagos High Court held that although the defendant council was entitled to revoke the permit for non-compliance with regulations, however, it was not entitled to seize nor take possession of the plaintiffs vehicle. The defendant was therefore liable for trespass to chattel by seizing the plaintiff’s car.

*In 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.

*In Haydon v Smith (1610) 123 ER 970,* it was held to be a trespass for the defendant to cut and carry away the plaintiffs trees.

*Also in G.W.K v Dunlop Rubber Co.  (1926) 42 TLR 376,* removing a tyre from a car, and replacing it with another tyre was held to be a trespass. *In Slater v Swann (1730) 93 ER 906,* beating the plaintiff’s animal was held to be a trespass to chattel. *In 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 court 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. To succeed, a plaintiff must establish that the act of trespass was Intentional or Negligent.

     Anyone who in possession 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 possession or right to immediate possession can sue. 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. Therefore, the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference include: Owners, Bailers, Lenders, Assignees, Trustees, Finders, Custodians, Caretakers, Adverse possessors, because mere possession gives a right to sue to retain possession, Executors, Administrators of estates; etc.

In *National Coal Board v Evans & Co. (supra),* the defendant contractors were employed by a county council to work on land owned by the defendant 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. who were head contractors, nor the sub-contractors knew this, and the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable and water seeped into it causing 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.

 In an action for trespass to chattel, the defences a defendant may plead include: Inevitable accident, Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third party. Seen in *C.O.P. v Oguntayo (1993) 6 NWLR pt. 299, p. 259 SC.* Subsisting lien., Subsisting bailment

Limitation of time, as a result of the expiration of time specified for legal action., Honest conversion, or acting honestly, etc.

 The remedies available to a person whose chattel has been meddled with, short of conversion or detinue are: Payment of damages, Replacement of the chattel, Payment of the market price of the chattel, 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.

     In conclusion, here will be trespass to chattel whenever there is a physical and intentional interference with goods of which the right of possession lies in a plaintiff. The intervention must be direct, physical and intentional and the plaintiff must have possession.