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**A PAPER ON THE TOPIC, ‘TRESPASS TO CHARTTELS’**

**INTRODUCTION**

Just as the Law of Torts exists to protect people and their landed properties from unlawful interference, it also exists as an instrument to protect people’s personal property/goods/chattel. The Torts **(Interference with Goods Act)** of 1977 is a significant statute that proves that the law also protects people’s personal property and goods from interference. In the legal parlance, such interference is called **Trespass to Chattel.**

Chattels are moveable items of property which are neither land nor permanently attached to land or a building, either directly or vicariously through attachment to real property.[[1]](#footnote-2) They are synonymous with goods. In the Nigerian Legal System, the tort of trespass to chattel is divided into three:[[2]](#footnote-3)

* Trespass to chattel
* Conversion
* Detinue

In an action for any remedies, the plaintiff is to be specific as to the particular tort they are seeking remedies. Whereas, in the United Kingdom, by virtue of the **(Interference with Goods Act)** of 1977, the tort of detinue was abolished and merged as one with the tort of conversion.

In this paper, this writer seeks to comprehensively explicate on the three divisions of trespass to chattel by laying emphasis on the elements of each of the divisions; the remedies and defenses; the differences between conversion and detinue; and to also reveal the position of the law with respect to innocent delivery of receipt and the lost property rule.

**TRESPASS TO CHATTELS**

This occurs in the taking of moveable property. **Trespass to chattels** is a tort interfered with another person's lawful possession of a **chattel** (movable personal property).

***Transco plc v Stockport Metropolitan Borough Council[[3]](#footnote-4)***

The defendant council were responsible for the maintenance of the pipe work supplying water to a block of flats. A leak developed which was undetected for some time. The water collected at an embankment which housed the claimant’s high pressure gas main. The water caused the embankment to collapse and left the gas main exposed and unsupported. This was a serious and immediate risk and the claimant took action to avoid the potential danger. They then sought to recover the cost of the remedial works under the principle established in **Rylands v. Fletcher.**

**Held**:

The defendant was not liable. The council’s use of land was not a non-natural use.

**ELEMENTS OF TRESPASS TO CHATTEL**

* lack of an owner’s consent to trespass
* interference with possessory interest
* intention of the trespasser.

**National Coal Board v Evans[[4]](#footnote-5)**

The plaintiffs placed an electric cable under certain land.
A firm of contractors employed by the landowners to excavate a trench in the land caused damage to the cable.

*The defendants were not held liable.*

They had no knowledge of the cable.
They had no reason to assume that there was a cable under the land.
'Inevitable accident' case.

Chattels could also be animal. In the case of **Fouldes v. Willoughby[[5]](#footnote-6),** horses held to be trespass able.

**PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL**

Any person who is in possession of a chattel is entitled to an action as this tort exists to protect rights of such people. Examples of such persons are; owners, bailees, lenders, assignees, trustees, finders, custodians, caretakers, executors, administrators of estates etc.

**DEFENCES FOR TRESPASS TO CHATTEL**

1. Inevitable accident
2. Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third party
3. Subsisting lien
4. Subsisting bailment
5. Limitation of time, as a result of the expiration of time specified for legal action
6. Honest conversion

**REMEDIES FOR TRESPASS TO CHATTEL**

1. Payment of damages
2. Replacement of the chattel
3. Payment of the market price of the chattel
4. Repair of the damage

**DIFFERENCE 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. Their circumstances vary but they are all on chattels.

**In Davies v Lagos City Council**[[6]](#footnote-7), 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 **Fouldes v Willoughby[[7]](#footnote-8)**, the defendant was the manager of a ferry boat. The plaintiff who was a passenger entered the boat with his horses. The defendant and the plaintiff had a dispute and in order to induce the plaintiff to leave the boat, the defendant disembarked the horses of the plaintiff from the ferry. The plaintiff who was not ruffled remained on the boat and crossed over to the other side of the river. The plaintiff then sued the defendant for trespass to the horses. The court held: that the defendant was liable for trespass to the horses, by moving them ashore. It was also held that there was no conversion as the plaintiff still had title.

In **Kirk v Gregory[[8]](#footnote-9)**, 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[[9]](#footnote-10)**, it was held to be a trespass for the defendant to cut and carry away the plaintiffs trees.

**CONVERSION (TROVER)**

This means dealing with another’s property in a way as to deny his right over it. There must be so extensive an encroachment on the rights of the rights of the owner as to exclude him from use and possession of the goods.

**Tear v Freebody[[10]](#footnote-11)**the defendant took certain goods of the plaintiff with the intention of taking a lien over them. IT WAS HELD TO BE CONVERSION

**Armory V Delamirie[[11]](#footnote-12)**Chimney sweep found a jewel, took it to the jewellers for valuation. Jeweler refused to return it, boy sued, held to be conversion. For conversion to occur there must be an act of some kind. Not necessarily a sale.

**Ashby v Tolhurst[[12]](#footnote-13)**

An attendant at a car park allowed a stranger to take away the plaintiff’s car. His employers were not liable for conversion. An omission does not suffice in conversion.

**Yearworth V North Bristol NHS[[13]](#footnote-14)**

Sperm donor, through embalming or stuffing sued hospital for letting their sperms go bad. The hospital held liable because they acted negligently on others property

**DEFENCES**

* **Jus tertii** [[14]](#footnote-15)(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.
* Right of distress.
* Subsisting Lien
* Limitation of Time

**REMEDIES**

* An action for damages for the recovery of the price of the goods
* 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 consequential damages
* Recovery of special and general damages

**INNOCENT RECEIPT OR DELIVERY**

Generally, innocent delivery, or innocent receipt are neither torts nor criminal offences. 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.

**THE LOST PROPERTY RULE**

The rule relating to finding lost property was established in the case of **Parker v British Airways[[15]](#footnote-16)** and the rules are summarized as follows:

* The 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.
* Any servant, or agent who finds a lost property in the course of his employment, does so on behalf of his employer, who by law acquires right of a finder.
* An occupier of land, or building has superior rights to those of a finder, over property or goods in, or attached to land or building. Based on this rule, rings found in the mud of a pool in the case of **South Straffordshire Water Co. v Sharman[[16]](#footnote-17)** 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 Co.[[17]](#footnote-18)**

**DIFFERENCE BETWEEN CONVERSION AND TRESPASS TO CHATTELS**

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

* 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 **(Fouldes v Willoughby)**
* 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.

**EXAMPLES OF CONVERSION**

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

* Taking
* Using
* Alteration
* Consumption
* Damaging, or destroying it
* Receiving
* Detention
* Wrongfully refusing to return a chattel
* Wrongful delivery
* Wrongful sale or disposition and so forth.
* Wrongful sale, etc.

**DETINUE**

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 is:

1. The wrongful detention of the chattel of another person
2. 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:

1. 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. .
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:

* The plaintiff must have title that is 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. 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[[18]](#footnote-19)**

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.

In **West Mrica Examinations Council v Koroye[[19]](#footnote-20)**

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.

**Ogiugo & Sons Ltd v C.O.P[[20]](#footnote-21)**

The lorry of the plaintiff appellant transporter was carrying a customer's goods, when the police intercepted and seized the vehicle on suspicion that the goods were contraband. Representations for its release failed to yield result. The appellant claimed for detinue of the vehicle. The Court of Appeal held: that the appellant was entitled to the immediate release of the vehicle and damages for its unlawful detention. The plaintiff must have title or right to immediate possession to be able to sue successfully for detinue.

As a general rule, where there is a subsisting lien on a proper**(1995) 6 NWLR pt 400, p. 247 CA**,ty, a claim for detinue will not succeed as was held in Shuwa v Chad Basin Development Authority (supra).

In **Otubu v Omotayo[[21]](#footnote-22)**

The plaintiff respondent kept his title deeds with a third party who subsequently deposited the deeds with the defendant appellant as collateral to secure a loan. The plaintiff respondent sued the defendant appellant for return of the title deeds. The Court of Appeal held: that an action cannot succeed where there is a subsisting lien on the chattel. Where there has been an equitable mortgage by deposit of title deeds as collateral to secure a loan, by a third party who does not own the deeds, but had custody of the deeds, an action for detinue cannot be maintained for return of the deeds or chattel, prior to payment of the amount due on it, or redemption of any outstanding obligation.

**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:

* 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.
* 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 Defences for Detinue**

In an action for detinue, a 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, that is, a third party person has a better title, provided the defendant is the agent, or has the authority of the third party, or is claiming under the third party. Jus tertii, is the better title of a third party. Jus tertii is a defence, that is, based on ownership by a third party, and it is not pleaded, except the defendant is defending under the right of such third party who has ownership, or paramount title, that will enable him to establish a better title, and the right to possession, than the plaintiff. Otherwise, as CLEASBY BJ said in **Fowler v Hollins[[22]](#footnote-23)**: "Persons deal with the property in chattels, or exercise acts of ownership over them at their peril”.
* Innocent delivery
* Subsisting bailment
* Subsisting lien on the chattel
* 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:

* 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.
* 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.
* Claim for the current market value of the chattel
* Recapture or self help to recover the goods.
* Replevin, that is release on bond pending determination of ownership.
* Damages: When a defendant has been found liable in detinue, he cannot deprive the plaintiff of his right to damages for detention of the chattel, simply because he has not been using it, nor earning anything .from its use. Also, if the wrongdoer has been making use of the goods for his own purpose, then he must pay a reasonable hire for chattel to the plaintiff. The reasonable hire usually includes the wear and tear of the goods. Therefore, as the courts have often affirmed the remedies available for the tort of detinue are an order for specific return of the chattel, or in default, 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. Also general damages may be awarded as may be assessed by the court. General damages are usually presumed in this action, especially for the loss of the use of the chattel. As in claims in other areas of law, general damages may be awarded at least to cover part of the cost of the legal action.

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