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**AN ASSESSMENT OF THE APPLICABILITY OF DOCTRINE OF TRESPASS TO
CHATTEL VIZ-AVIZ DETINUE AND CONVERSION UNDER THE NIGERIAN LEGAL
SYSTEM. BY: ABUBAKAR SHEHU AHMAD TIJANI***

ABSTRACT

The Law of tort is a significant branch of law. It regulates almost every of human activities. One of the most interesting aspects of the law of tort is trespass to chattel which occurs almost every day all over the world and this is the main area of discussion in this paper. The paper examines the meaning of trespass as it relates to detinue and conversion. It also discusses the line of distinction between detinue and conversion. What is the relevance of knowledge and intention in determining the liability of a person who is alleged to have committed the tort of trespass by way of detinue or conversion? what are the available remedies and measure of damages for the injury caused to a particular chattel? The study explains the factors to be considered by the court to determine the existence or none existence of locus standi of a prospective plaintiff in an action for tort of trespass to chattel. All these questions have been provided with necessary and relevant answers in this paper.

INTRODUCTION

The doctrine of trespass to chattel is specie of tortious liability arising from wrongful or unlawful interference with goods/chattels.

Therefore, the aspect of the law of tort seeks to protect interest in goods/chattels for it is as much concerned with remedy to loss, destruction, damage or general interference with goods/chattels.

Thus, an action for wrongful/unlawful interference with goods/chattels may lie in detinue or conversion or both depending on the circumstances surrounding each particular case. The action for trespass has always been a remedy affording compensation. The sole question is whether the defendant has directly interfered with the plaintiff's possession. Trespass remedies any damage thus cause; it is also actionable per se that is without proof of actual damage to the chattel.¹

This is based mostly on the current Nigerian Legal System with the aid of recent judicial authorities emanating from Nigerian Courts with little reference to English cases where necessary.

TRESPASS TO CHATTEL

The term "chattel" has been described as movable or transferable property especially, personal property.² Trespass has also been defined to mean an unlawful act committed against the person or property of another especially wrongful entry on another's real property.³

Therefore, trespass to chattel is an act of committing, without lawful justification, any act of direct physical interference with a chattel possessed by another.⁴ It has also been defined as direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional or negligent.⁵

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¹ Clerk & Linsell, (1987) *Clerk & Linsell on Torts*, (15th Edition), Sweet & Maxwell, P. 1019.

² Brayan, A. G, (1999), *Black's Law Dictionary*, (7th Edition), p. 229.

³ *Zenith Bank Plc V. Ekereuwem* (2012) 4 NWLR (pt. 1290) 207 at 229 paras F-G

⁴ *Supra*

⁵ Kodilinye & Aluko, (1999) *The Nigerian Law of Torts* (2nd Edition) Spectrum Law Publishing, Ibadan p. 195.

NATURE OF TRESPASS TO CHATTEL

A. IT IS ACTIONABLE PERSE

Like other species of trespass, trespass to chattel is actionable perse that is to say without proof of actual damage, so the mere touching of a chattel without any harm being caused is actionable in tort.⁶ See *Zenith Bank PLC V. Ekereuwen* (supra). See also *Davies V. Lagos City Council*,⁷ *Ajao V. Ashiru*.⁸ In *Ajao V. Ashiru* (supra) the plaintiff's pepper mill was seized by the defendant and the defense of the defendant to the claim of the plaintiff was that the pepper mill was seized by the police. The court held that the defendant was liable on the ground that the police acted at his instance in seizing the pepper mill of the plaintiff. The Supreme Court further held that those who set a ministerial rather than a judicial officer in motion in this way are as liable for the wrongful seizure of another's property as if they had done it themselves. See also the case of *Pter Osset V. Mr. Bolaji Akanbi*.⁹ The Nigeria Police Officers are therefore urged not to allow themselves to be used by any individual or group of persons to enforce private grievances. This warning has been sounded time without number by our courts in an army of judicial authorities. In *Igwe V. Ezeanochie*¹⁰ the Court Appeal held that:-

The police are not and should not in any community of civilized people be used as debt or levy collectors. The courts have in strong terms condemned the use of polices and soldiers in the resolution or settlement of disputes amongst people, as such use of police often lead to infringement on the fundamental rights of others.

See also *Agbai V. Okogbue*,¹¹ and *Nkpa V. Nkume*.¹² In *Okoji V. Olokoba*,¹³ the Court of Appeal, Abuja Division held that there is no Law which empowers the police to detain a motor vehicle in such circumstance particularly when it was not alleged that the vehicle had been used of the purpose of committing a crime. It is my considered observation that the Nigerian policemen are fund of jumping into people's vehicle in a bit to arrest the vehicle or the driver on mere suspicious and at the end of the day, there may be no justification for such an act of trespass.

B. INTENTION OR NEGLIGENCE

It has been submitted earlier in this paper that trespass to chalets is a torts of strict liability, and it is not necessary for the plaintiff to prove that the defendant's act was intentional or neglect. However, the learned scholars, Kodilinye and Aluko argued that the modern rule is that either intention or negligence must be established¹⁴, they both relied on the English case

⁶ Ibid

⁷ (1973) 10 CCHJ 151

⁸ (1973) 1 ALL NLR (Pt. 11) p. 51

⁹ UNREPORTED; SUIT NO. KWS/89/2006, judgment delivered on 10th June, 2013 by Honourable Justice Adewara of Kwara State High Court of Justice, Ilorin.

¹⁰ (2010) 7 NWLR (Pt. 1192) 61 at 93, paras B-C

¹¹ (1991) 7 NWLR (Pt. 204) 391

¹² (2001) 6 NWLR (Pt. 710) 543 at 561

¹³ (200) 4 NWLR (Pt. 654) 513 at 532 paras F-C.

¹⁴ Kodilinye & Aluko, (1999), *The Nigeria Law of Torts*, 2nd edition, Spectrum Law Publishing, Ibadan, p. 197.

National Coal Board V. Evans¹⁵ which was decided in 1951. With due respect to the learned Scholars, their position could not find the support of the recent position of our Law in Nigeria particularly, the divine wisdom of the Court of Appeal, Ilorin Judicial Division in the case of Mrs. Bamiso Mayowa Bukola V. Mrs. V. A. Oshundahunsi¹⁶. See also the case of Zenith Bank PLC V. Ekereuwem¹⁷ where the court held thus:-

By its definition in the Black's Law Dictionary, 8th edition page 1541, trespass means an unlawful acct committed against the person or property of another especially wrongful entry on another's real property. Trespass to land or premises as now well described through numerous decisions of courts is unauthorized and unlawful entry upon the land in possession of another or a direct and immediate interference with another person's possession of the land.

Therefore, in exceptional cases, in an action for trespass to chattel, the plaintiff is not required to prove that the act of the defendant was intentional or that the defendant was negligent when he committed the unlawful act of trespass.

C. PROTECTION OF POSSESSION

A person in possession of a chattel can commence or maintain an action in trespass against any person because trespass to chattel protects possession rather than title or ownership. See the cases of SALAMI V. LAWAL¹⁸ and AIRLIQUID NIG. PLC V. NNAM.¹⁹ It follows therefore that:-

(i). the real owner of a chattel will be liable in interference with it at the time when it is in the lawful possession of another person, such as a bailee, because, bailment involves a change in possession of chattels not title.²⁰

(ii). A person who acquires possession of goods wrongfully can maintain an action in trespass against any person who interferes with it except the owner or a person acting under the authority of the owner. See SALAMI V. LAWAL.²¹

CONVERSION

The word conversion has been defined as the act of changing something from one form to another.²² Conversion has also been described as an intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiff's possession or right to possession of such chattel.²³

Conversion also arises where a person that is entitled to the possession of a chattel is permanently deprived of that possession and the chattel is converted to the use of someone else.²⁴ For instance, if A

¹⁵ (1951) 2 K. B. 861

¹⁶ Unreported, Appeal No. CA/IL/35/2011, Judgment delivered on 17/05/2012.

¹⁷ (2012) 4 NWLR (Pt. 1290) 207 at 229-230 paras F-A

¹⁸ (2008) 14 NWLR (Pt. 1108) 546 at 364-365 para H-H; 575 paras C-D, 565-566 Paras H-C & 568 Paras D-G. it is a land matter wherein the Supreme Court held that generally, trespass protects possession rather than title or ownership.

¹⁹ (2011) 9 NWLR (Pt. 1251) 61 at 83-84 Paras H-A. it deals with an action in detinue and the plaintiffs claim was based on the fact that he was in possession of the chattel at the time of the alleged trespass.

²⁰ Kodilinye & Aluko (Supra) P. 198

²¹ Supra, footnote 19

²² Bryan, A. G. (1999), Black's Law Dictionary (7th Edition) P. 333

²³ Kodilinye & Aluko (Supra) P. 199

takes the chattel of B from him, A commits an act of trespass but if he takes it and keeps it or transfers it to another person, he is guilty of both trespass and conversion. See the case of Salami Ajao V. Karimu Ashiru & 3 ORS²⁵ and Alhaja Baba Nakyauta V. Alhaji Ibrahim Maikima & ANOR²⁶ in the Locus – Classicus of Akudo v. Guinness (NIG.) PLC²⁷ the Respondent's (Plaintiff at the trial Court) claim was for tort of conversion of goods had but not delivered to designed destination. In that case, the Court of Appeal held that:

Conversion in this case does not give the claim a criminal colouration thus requiring proof beyond doubt but rather an action in tort and results in a judgment for pecuniary damages if proved on the preponderance of evidence.

The court further held, relying on the case of Omidiora V. Ademiluyi²⁸ that:-

The term "conversion" can mean either a crime or civil wrong (tort). In the present case, in my view the plaintiff used the term against the appellant in its civil or tortious sense. Thus it was not an allegation of crime.

NATURE OF CONVERSION

INTENTIONAL CONDUCT

Unlike an action for trespass, where the intention of the defendant/trespasser is immaterial to make him liable to the plaintiff, a defendant will be liable to the plaintiff in conversion only where his act in relation to the plaintiff's chattels was intentional²⁹. Thus, as a matter of general rule an interference resulting from merely careless conduct of the defendant is not sufficient enough to maintain an action for conversion. To amount to conversion, the intent of the defendant must be to deal with the plaintiff's good by exercising dominion over time on his own behalf or on behalf of someone else. Conversion may arise in different ways such as taking away of another's chattel without justification with the intention of exercising a permanent or temporary dominion over the chattels. Conversion by destruction, consumption or alteration of chattels, conversion by receiving of chattels belonging to another person without lawful excuse or conversion by wrongful transfer of title or possession of the plaintiff's chattel to another person either by sale, gift or delivery, conversion by unlawful detention of chattel etc.

- As a matter of general rules, in an action for conversion, the plaintiff is expected to prove that the defendant has intention to deal with the plaintiff's goods/chattels by exercising dominion over time on his own behalf or on behalf of someone else.
- It is also as matter of general rule that mere carelessness of the defendant will be sufficient enough to maintain an action for conversion.
- However, to every general rule, there are a number of exceptions. Thus, a Court of law will be ready to hold a defendant liable to the plaintiff in an action for conversion where the defendant, by his negligent act transfers the plaintiff's chattel or goods or item to himself or to

²⁴ Clerk & Lindsell (Supra) P. 1020

²⁵ (1973) 11 S. C. 29

²⁶ (1977) 634 at 44 Lines 25-30

²⁷ (2012) 15 NWLR (Pt. 1322) 150 at 166 paras C-D

²⁸ (1997) 6 NWLR (Pt. 508) 294 at 306

²⁹ Kodilinye & Aluko (Supra) P. 199

plaintiff. In the case of *TRADE BANK PLC V. BENILUX (NIG.) LTD*³⁰, MOHAMMED J.S.C. held inter-alia that:-

Now it is settled Law by a long string of authorities that bankers who collect cheques and pay them to those not entitled to the proceeds in the cheques are guilty of the tort of conversion.

DETINUE

A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in actual possession of them, and who upon proper demand, fails or refuses to deliver them up without lawful excuse.³¹

In *Air Liquid Nig. Plc V. Nnam*³², the Court of Appeal held inter-alia that an action in detinue arises when a person claims property in goods against another who is in possession of the goods after demand to return of the goods has been made. The court further stated that the important thing in detinue is the refusal to return the goods. It is important to note that, as a matter of law and fact, the plaintiff must have made proper demand for the return of the goods before he can maintain an action in detinue otherwise, the claim for detinue will fail. In *Air Liquid Nig. Plc V. Nnam (Supra)*³³, the court held that plaintiff/1st respondent did not bring an action against the appellant for wrongful seizure and deprivation of the use of the 22 gas cylinders by the appellant, and since the action was not based on detinue, there was no necessity to prove demand by the 1st respondent and refusal by the appellant.

In an action in detinue, the plaintiff may desire the specific restitution of his chattels and not damages for their conversion; he will then sue in detinue.

NATURE OF DETINUE AND REMEDIES AVAILABLE TO THE PLAINTIFF IN AN ACTION PREMISED ON DETINUE

By its nature, an action in detinue has the resemblance of one for restitution³⁴. It is a return of a specific chattel to its rightful owner subject to damages if any its detention up to the date of judgment³⁵.

Detinue is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and this continues until delivery up of the goods or until the judgment is delivered. The action is in the nature of an action in Rem.³⁶

AVAILABLE REMEDIES

In an action in detinue, the court may order as damages the value of the chattel and also damages for loss of its use. The measure of damages for the chattel is its value or the cost of replacement at the time of its receiving while the measure of damages for further loss of use is then actual loss suffered

³⁰ (2003) 9 NWLR (PT. 825) 416 at 431 paras A-B,

³¹ *Air Liquid (Nig.) Plc V. Nnam* (2011) 9 NWLR (Pt. 1251) 61 at 83-84 paras H-A; *Julius Berger Nig. Plc V. Omogui* (2001) 5 NWLR (Pt. 736) 401.

³² *Ibid*

³³ P. 84 para G

³⁴ Restitution is the act of giving back to a person something that was stolen or paying money for the loss of the thing where its value is known.

³⁵ *Odumosu V. A. C. B. Ltd* (1976) 10 NSCC 635; *J. E. Oshevire Ltd V. Tripoli Motors* (1997) 5 NWLR (Pt. 503)

³⁶ *NACENN (Nig.) Ltd V. U. B. A. P. Ltd* (2011) n11 NWLR (Pt. 1257) 193 at 206 paras B; 207-208 paras G-D; 208-209 paras G-A. ; *Civil Design Construction Nig. Ltd. V. SCOA Nig. Ltd* (2007) 5 MJSC 142 at 161-166

by the plaintiff for its detention which depends on the circumstances of each case³⁷. While emphasizing the remedies available to a plaintiff in an action in detinue, the Supreme Court of Nigeria stated unequivocally in the case of NACCNN (Nig.) V. B. A. P. LTD.³⁸ That the plaintiff may sue for:

- (a) The value of the chattel as assessed and also damages for its detention; or
- (b) The return of the chattel and recovery of its value as assessed and also damages for its detention; or
- (c) The return of the chattel and damages for its detention.

In other words, by definition, the gravamen of the tort of detinue is the wrongful retention of the chattel. Mere retention is enough to ground a cause of action in detinue but a successful plaintiff will only be entitled to nominal damages. See *J. E. O Shevire Limited V. Tripoli Motors (supra)*.³⁹ His Lordship, Belgore, JSC (as he then was) stated the law briefly thus⁴⁰

In an action like this, where chattel is withheld by defendant from the plaintiff, the action in detinue is for either the return of the chattel plus damages for its retention. Thus, the defendant even cannot deprive the plaintiff of his right to damages for detention of the chattel simply because he was not earning anything from its use

There are myriad of judicial authorities in support of this principle of law such as *Oluwa Glass Company Ltd. V. Ehinlanwo*⁴¹; *Kosile V. Folaran*⁴² and *Rosenthal V. Nderton & Sons*⁴³

DISTINCTION BETWEEN DETINUE AND CONVERSION

It is important to indicate the line of distinction between the two terms "Detinue" and "Conversion". On this point, there is galaxy of case laws drawing line distinction between the two species of tort. Although, the two appears to be bird of the same feathers with similar characteristics, however one is distinguished from another in the sense that, unlike an action for conversion which is purely a personal action and judgment is for a single sum which is the value of the chattel at the date of conversion, detinue is in the form of an action in rem whereby the plaintiff seeks specific restitution of his chattel resulting in judgment for the delivery up of the chattel or payment of its value as assessed at the time of judgment and damages for its detention. See the case of *Stitch V. A.G.; FED.*⁴⁴

³⁷ *Akudo V. Guinness (Nig.) Plc* (2012) 15 NWLR (Pt. 1322) 150 at 170 paras G-H; *Zenon Petroleum & Gas V. Idrisiyya Ltd.* (2006) 8 NWLR (Pt. 982) 221 and *Ordia V. Piedmont Ltd.* (1995) 2 NWLR (Pt. 379) 516.

³⁸ (2011) 11 NWLR (Pt. 1257) 193 at 207-208 para G-D

³⁹ pp. 21 -22, Per Onu, JSC

⁴⁰ *Ordia V. Piedmont (Nig.) Ltd* (1995) 2 NWLR (Pt. 379) at 528 paras F-G.

⁴¹ (1990) 7 bNWLR (P. 160) 14

⁴² (1989) 3 NWLR (Pt. 107) 1

⁴³ (1946) K. B. 374

⁴⁴ (1986) 5 NWLR (Pt. 46) 1007. See also *NACCNN (Nig.) Ltd. V. B. A. P. Ltd.* (2011) 11 NWLR (Pt. 1257) 193 at 208 Paras E-F. *J.E. Oshevire Ltd. V. Tripoli Motors* (1997) 5 NWLR (Pt. 503) 1.

WHEN DOES CAUSE OF ACTION IN DETINUE ARISE?

The Supreme Court has defined cause of action in the case of *UNIJS V. IKEGWUOHA*⁴⁵ as:

Facts which when proved will entitle a plaintiff to a remedy against a defendant..... The facts are discernible by looking at the writ of summons and the statement claim alleging when the wrong was committed which give rise to the cause of action...

In a more elaborate description, the Supreme Court has elucidated the connotation of the term cause of action in the case of *Rinco Const. CO. V, Veepee Ind. LTD.*⁴⁶ as follows:

A cause of action is the entire set of circumstances giving rise to an enforceable claim, it is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements: (a) the wrongful act of the defendant which gives the plaintiff his cause of complaint and (b) the consequent damage

Therefore, in detinue, cause of action arises when a person claims property in goods against another who is in possession of the goods after a demand to return the goods has been made. The important thing in detinue is the refusal to return the goods after a demand is made.⁴⁷

CONCLUSION AND RECOMMENDATION

It should be noted that the torts of trespass to chattel, that is to say, trespass, conversion and detinue are meant to protect the interest and right of a possessor of a chattel from wrongful interference by the defendant/tortfeasor. Most of the text books available on these aspects of torts based their write up majorly on English cases that have been decided since long time ago and where Nigerian cases are referred to, they are not recent cases. The law as we know it changes from time to time and principles of practice and procedure are being developed by lawyers and judges day-in day-out. One must therefore acquaint himself with the current position of law as it is and not as it ought to be. This study becomes relevant to the members of legal profession as it has been tailored toward the current position of Nigerian Legal System concerning trespass to chattel and detinue.

⁴⁵ (2013) 9 NWLR (Pt. 1360) 478 at 504 para C-F. see *Egbe V. Adefarasin* (1985) n1 NWLR (Pt. 3) 459 at 551 and *Egbe V. Araka* (1988) 3 NWLR (pt. 84) 598 at 613

⁴⁶ (2005) 9 NWLR (Pt. 929) 85 at n95-97 paras H-A. See also the case of *Arabambi V. Advance Beverage Ind. Ltd.* (2205) 19 NWLR (PT. 959) 1 at 22 paras A-C; *Udoh V. Okitipupa Oi Palm Plc.* (2005) 9 NWLR (Pt. 929) 58 at 72 paras A-B & D; *Eminator V. Nigeria Army* (1999) 12 NWLR (Pt. 631) 362 at 369- 370 paras H-A.

⁴⁷ *Air Liquid Nig. Plc V. Nnam* (supra) PP. 83-84 paras H-A.