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**COURSE TITLE: LAW OF TORT**

**ANSWERS**

**INTRODUCTION**

The three torts of trespass to chattels, conversion and detinue protect the possessor of a chattel from wrongful interference therewith.

Generally, conversion, detinue, and trespass to chattels involve interference with property. Conversion involves wrongful removal of property from the rightful person. Detinue involves failure to return property to the rightful person. Trespass to chattels involves interference such as vandalism without interfering in possession.

**TRESPASS TO CHATTELS**

Trespass to chattels is a [tort](https://en.wikipedia.org/wiki/Tort) whereby the infringing party has intentionally [negligently](https://en.wikipedia.org/wiki/Negligence) interfered with another person's lawful possession of a [chattel](https://en.wikipedia.org/wiki/Personal_property) (movable personal [property](https://en.wikipedia.org/wiki/Property)). The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattel (whether by taking it, destroying it, or barring the owner's access to it). As opposed to the greater wrong of [conversion](https://en.wikipedia.org/wiki/Conversion_(law)), trespass to chattels is argued to be actionable per se. The origin of the concept comes from the original [writ](https://en.wikipedia.org/wiki/Writ) of [trespass](https://en.wikipedia.org/wiki/Trespass) ***de bonis asportatis.***

This tort may be defined as a direct and wrongful interference with a chattel in the possession of the plaintiff, such interference being either intentional or negligent. The interest of the plaintiff which the tort protect is:

1. His interest in retaining possession of the chattel
2. His interest in the physical condition of the chattel
3. His interest in protecting the chattel against intermeddling. ***(FORSON v. KOENS(1975) P. 484)***

**Acts of Trespass**

Trespass to chattel can take various forms such as destroying ***(SHELDRICK v. ABERY (1793)170 E.R 278)***, damaging ***(FOULDES v. WILLOUGHBY (1841)151 E.R 1153 AT P. 1157)*** or merely moving the goods ***(PENFOLDS WINES PTY LTD v. ELLIOT (1946) 74 C.L.R 204 AT PP. 214,215)*** or wrongly moving them from one place to another ***(KIRK v. GREGORY (1876)34 L.T. 488).***

A Nigerian case in which there was an actionable trespass to a chattel is ***DAVIES v. LAGOS CITY COUNCIL (1973)***. The act of trespass was moving the goods.

**Elements of Trespass to Chattels**

In order to qualify to sue for trespass to chattels, you are required to show the following elements:

* **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 a chattel in the possession of another, or

(3) Damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of [Conversion](https://dictionary.findlaw.com/definition/conversion.html).

**Example of Trespass to Chattels:**

Let's say joy was watching a movie with her friend, Bob, at his place. After the movie ends, she get up to go home. As she was leaving, she sees a laptop sitting on a coffee table and pick it up, thinking it's hers. In fact, the laptop belongs to Bob. His laptop happens to be the exact same model as her own. Even if she genuinely thought the laptop was hers, she is still liable for a trespass to chattels because she intended to take the laptop. Mistake of ownership is not a defence to a trespass to chattels. However, in order to successfully sue joy, Bob will have to show that joy have done some harm to the laptop or to Bob by taking it. Without showing actual damages, Bob won't be able to recover any compensation.

**Defences for Trespass to Chattels**

If you have been accused of trespass to chattel, there are certain defences that may be available to you, including but not limited to:

1. **Necessity:** The defendant may be able to establish a defence to trespass if the inference occurred in circumstances where the interference was necessary, but consent could not reasonably be obtained. The defendant must show that there was an apparent imminent danger to person or property and that the defendant honestly believed on reasonable grounds that the act was necessary for the preservation of the person or property.
2. **Consent:** A defendant may be able to establish a defence to trespass if the interference occurred with the plaintiff’s consent. Consent can either be express or implied by conduct; however, it must be genuine and voluntary.
3. ***Jus Tertii: Jus Tertii*** means ***‘the right of a third party’***. A cause of action in trespass may fail if the defendant can show that a third party has better rights to the chattel than the plaintiff.
4. **Inevitable Accident:** Inevitable accident is a defence that apply in circumstances where the defendant can show that their conduct was involuntary, and accordingly, the defendant is without fault.
5. **Mistake:** Mistake is generally not a defence to intentional torts. However, mistake may be a defence to a cause of action in trespass if the defendant can prove that he or she acted with a mistaken belief and the mistake was reasonable. The standard for what is considered ‘reasonable’ is generally fairly difficult to meet.
6. **Incapacity:** There may be a defence to trespass if the defendant is a minor who can establish their inability to understand the true nature of the act committed. This would seem to indicate that a defence based on incapacity would only cover young children up to about four years of age.
7. **Retaking Goods:** A defendant may be able to establish a defence to trespass if the defendant can prove that reasonable force was used to retake goods to which the defendant has a better right to possession than the plaintiff, or where the goods were wrongfully taken from the defendant by the plaintiff.

**Remedies for Trespass to Chattel**

If you wish to bring a claim for trespass to chattel or land, there are various remedies that may be available to you, including:

1. **Compensatory Damages:** Compensatory damages applies if damage to the chattel has been sustained or not capable of being returned. The aim for this type of damages is to put an injured person in the same situation as they would have been in had the trespass not been committed.
2. **Nominal Damages:** Trespass is a tort of strict liability, which means that nominal damages (Damages awarded to a person who has suffered a legal wrong) apply even where no actual damage has been sustained by the plaintiff.
3. **Injunctions:** An injunction is a Court order preventing a party from doing something, or alternatively, forcing a party to do a specific thing. In order for the Court to grant an injunction, the Court must be satisfied that the damages suffered by the plaintiff are significant (such as where the trespass is ongoing).
4. **Exemplary Damages:** Exemplary damages, also referred to as punitive damages (i.e. Damages awarded in order to punish the defendant and deterring others from engaging in similar conduct) may be awarded in certain circumstances involving trespass to chattels. Exemplary damages (although not traditionally so) are available for any tort.

**CONVERSION**

Conversion is an intentional [tort](https://en.wikipedia.org/wiki/Tort) consisting of "taking with the intent of exercising over the [chattel](https://en.wikipedia.org/wiki/Personal_property) an ownership inconsistent with the real owner's right of possession”. A conversion occurs when a person does such acts in reference to the personal property of another as amount, in view of the law, to his appropriating the property for himself ***(***[***RICHSTEIN v. ROESCH***](https://en.wikipedia.org/w/index.php?title=Richstein_v._Roesch&action=edit&redlink=1)***)***. The action probably developed because there was no equivalent form of action in [English law](https://en.wikipedia.org/wiki/English_law) to the [Roman law](https://en.wikipedia.org/wiki/Roman_law) [***rei vindicatio***](https://en.wikipedia.org/wiki/Rei_vindicatio). This was an action in protection of one's property, whereby a claimant could simply allege in court "that's mine!" Early cases of conversion are to be found in 1479, where reference to an even earlier action on the case is made when the defendant "converted" the goods by changing their character, making clothes out of gold cloth. Otherwise, conversion had its origin in the [common law](https://en.wikipedia.org/wiki/Common_law) action in [trover](https://en.wikipedia.org/wiki/Trover), as a branch of [action on the case](https://en.wikipedia.org/wiki/Action_on_the_case). The earliest cases are most likely lost. These probably involved cases when the finder of lost goods did not return them to the rightful owner, but used them himself or disposed of them to someone else (Prosser and Keeton, p. 88). It became necessary to invent a new writ which covered the gap between action in [trespass](https://en.wikipedia.org/wiki/Trespass) which lay for the wrongful taking of a chattel, and [detinue](https://en.wikipedia.org/wiki/Detinue) which lay for its wrongful detention.

Conversion may also be defined 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. Conversion is similar to trespass in that it primarily protects possession rather than ownership of goods, and there are undoubtedly many acts of interference with goods which will give rise to the liability for both torts ***(DAVIES v. LAGOS CITY COUNCIL (1973); TORMEKPEY v. AHIABLE (1975)).***

**Difference between Trespass to Chattels and Conversion**

**The Degree of Interference:** The main difference between trespass to chattels and conversion is the degree of interference. Conversion occurs when a person uses or alters a piece of personal property belonging to someone else without the owner's consent. The degree of interference for conversion must be so serious that the tortfeasor, or person accused of committing the tort, may be required to pay the full value of the property.

According to the Restatement (Second) of Torts, the court may consider the following factors to determine the seriousness of the interference in a conversion case:

1. The extent and duration of the tortfeasor's exercise of dominion or control
2. The tortfeasor's intent to deprive the owner on possession
3. The tortfeasor's good faith
4. The extent and duration of the resulting interference with the other's right of control
5. The harm done to the [chattel](https://dictionary.findlaw.com/definition/chattel.html)
6. The inconvenience and expense caused

On the other hand, a trespass to chattels is an act that falls short of conversion. The tortfeasor is responsible only to the extent of the damage done (not the full value of the property) from dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or damaging the chattel.

**Examples of conversion:**

Alpha cuts down and hauls away trees on land he knows is owned by Beta, without permission or privilege to do so.

Gamma takes furniture belonging to Delta and puts it into storage, without Delta's consent (and especially if Delta does not know where Gamma put it). A common act of conversion in medieval times involved bolts of cloth that were bailed for safekeeping, which the Bailee or a third party took and made clothes for their own use or for sale.

**Elements of Conversion**

The elements of conversion are:

1) Intent to convert the tangible or intangible property of another to one's own possession and use. ***(ASHBY v. TOLHURST (1937))***

2) The property in question is subsequently converted***.(***[***HARTFORD FINANCIAL CORP. V. BURNS***](https://en.wikipedia.org/w/index.php?title=Hartford_Financial_Corp._v._Burns&action=edit&redlink=1)***,*** [***BROWN v. MEYER***](https://en.wikipedia.org/w/index.php?title=Brown_v._Meyer&action=edit&redlink=1)***,***[***GEBHART v. D. A. DAVIDSON & CO.***](https://en.wikipedia.org/w/index.php?title=Gebhart_v._D._A._Davidson_%26_Co.&action=edit&redlink=1)***)***

3) The plaintiff owns or has the right to possess the personal property in question at the time of the interference;

4) The defendant intentionally interfered with the plaintiff's personal property (sometimes also described as exercising "dominion and control" over it);

5) The interference deprived the plaintiff of possession or use of the personal property in question.

6) The interference caused damages to the plaintiff.

**Acts of Conversion**

1. Conversion by taking
2. Conversion by destruction, consumption or alteration
3. Conversion by using
4. Conversion by receiving
5. Conversion by wrongful transfer of title or possession
6. Conversion by detention
7. Conversion by negotiable and other instruments

**Defences to Conversion**

Defences that are normally advanced for conversion are:

* Abandonment of property by plaintiff.
* Authority of law.
* Consent or approval of plaintiff.
* Statutes of limitation.
* Interest of defendant (e.g. Defendant has rights to the property.)
* Lack of value of property.
* Nonexistence or lack of identity of property.
* Privilege.(In certain circumstances and under certain statutes, a defendant has the privilege to claim possession…storage facilities after proceeding along statutory lines, can seize stored property and are privileged to do so, for example.)
* Unlawful and illegal acts.
* Waiver, ratification, and estoppel.
* By receipt of proceeds of a sale. Accepting the proceeds of a sale of the converted property is a defence against further action.
* By accepting return of goods. Once the owner accepts the converted property back, he or she is generally precluded from any further action.

**Remedies to Conversion**

The standard remedy for conversion is a judgment for damages in an amount equal to the fair market value of the property. Punitive damages are also possible, because conversion is an intentional tort.

**DETINUE**

In [tort law](https://en.wikipedia.org/wiki/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. For an action in detinue to succeed, a claimant must first prove that he had better right to possession of the [chattel](https://en.wikipedia.org/wiki/Personal_property) than the defendant and second that the defendant refused to return the chattel once demanded by the claimant.

Detinue allows for a remedy of [damages](https://en.wikipedia.org/wiki/Damages) for the value of the chattel, but unlike most other interference torts, detinue also allows for the recovery of the specific chattel being withheld.

Detinue was a way for a plaintiff to seek recovery of their specific property in court. It was abolished in 1977 and replaced with interference with property torts such as conversion. Under detinue, the defendant could have taken the property by lawful means, but retains it unlawfully. The plaintiff does not have to ever have the property in their possession to seek recovery of it through detinue.

The tort of detinue occurs when a person wrongfully detains a person’s property and unreasonably refuses to return that property to the rightful owner.1 Detinue is similar to the [Tort of Conversion](https://gibbswrightlawyers.com.au/publications/conversion-tort), except for a specific element: it is a condition of the action of detinue that the plaintiff has made demand for the return of goods, and the demand has been refused.2 The plaintiff must also have a right to immediate possession of the chattels.

**What Were the Requirements for Detinue?**

In order for a plaintiff to recover property under detinue, they were required to show:

1. The property sought must be identifiable in a unique way, and
2. The plaintiff has not made any demands by the defendant to return the property prior to filing the lawsuit.

**Elements of Detinue**

There are four elements required to establish detinue:

1. Make a Demand
2. Refuse a Demand
3. Unreasonable Refusal
4. Consequential damage

**Defences to Detinue**

There are several potential defences available for detinue. These include, but are not limited to:

**Consent:** It is a defence to show that there can be no trespass if the interference occurs with the plaintiff’s consent. Consent can either be express or implied.

***Jus Tertii:*** It is a defence to show that a third party has a better right to possession than the plaintiff.

**No right to possession:** The legal ownership of a chattel can be complicated. Registration of a vehicle is not proof of ownership, for example. If someone has purchased a chattel, ownership may be passed to another through it being given as a gift. There may be contractual obligations (in particular for commercial equipment) or other facts that demonstrate that the person demanding the return was not the rightful owner.

**The demand was invalid:** If a demand has been made, it may be vague, confusing or otherwise invalid. If the demand isn’t valid, then a refusal may not have been unreasonable.

**There was no refusal:** If the refusal to return something is not specific, and a sufficient amount of time has not passed to imply that there is a refusal, then the element of refusing the demand to return the chattel may not be met.

**It wasn’t reasonable to return the chattel:** There may be a reasonable excuse why the chattel had not been returned in time.

**Remedies and Compensation for Detinue**

Remedies for detinue are:

**Delivery up of goods:** An order for delivery up of goods is available in an action for detinue. It is basically a court order demanding the return of the goods or chattel to the plaintiff.

**Compensatory damages:** Compensatory damages may be awarded if there has been a loss.

**Restitution:** The remedy of specific restitution (Remedy calculated based on the gains of the defendant) where damages are inadequate.

**Abatement (also known as self-help):** A person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with the enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession.

**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.

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 defence shows the defendant would have refused to comply, then a formal demand would have been futile.

**CONCLUSION**

The torts of conversion, detinue, and trespass to chattels, all involve elements of wrongful intentional interference with chattels.  Furthermore, the wrongful intention may, be wrongful and intended in the nefarious or illicit sense; however, the wrongfulness and the intention may arise without a nefarious or illicit state of mind yet occur nonetheless; and accordingly, these torts are, generally, of the strict liability type without an availability of a defence based on lack of intention to cause illicit harm.  The interference is deemed intentional and wrongful merely by some form of positive act that results in the interference.