

TORTS LAW ASSIGNMENT

ABINYE-BROWN PRECIOUS .A.

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INTRODUCTION

¹Trespass is entering another person's property without permission of the owner or his/her agent and without lawful authority (like that given to a health inspector) and causing any damage, no matter how slight. Any interference with the owner's (or a legal tenant's) use of the property is a sufficient showing of damage and is a civil wrong (tort) sufficient to form the basis for a lawsuit against the trespasser by the owner or a tenant using the property. Trespass includes erecting a fence on another's property or a roof which overhangs a neighbor's property, swinging the boom of a crane with loads of building materials over another's property, or dumping debris on another's real estate. In addition to damages, a court may grant an injunction prohibiting any further continuing, repeated or permanent trespass.

Under common law, there are seven types of intentional torts: assault, battery, false imprisonment, trespass to land, trespass to chattels, conversion, and intentional infliction of emotional distress. Trespass to chattels refers to the use of property without permission of the owner. Trespass to chattels can be easily confused with the tort of conversion because they both deal wrongful interference of personal property

There are said to be 3 different types of trespasses which are Trespass to person, Trespass to land and Trespass to Goods. Trespass to person which is subdivided into (3) which are Assault, battery and false imprisonment.

DEFINITION AND EXPLANATION OF EACH TORT

CONVERSION

Conversion, which is also also wrongly called chattel trespass, entails the unlawful interference with another's mobile object. Money (see: Wymor Construction Inc. v. Gray, [2012] O.J. 4181), products, machinery, materials, or other material items, and probably, as below, intangible things such as records, such as electronic data, may be such an item. While conversion may be characterized using words that are common with criminal law, such as theft or robbery or burglary, and while conversion may occur through theft, robbery, or burglary, other techniques may be used to torture conversion. In addition, while 'incorrectness' is an aspect of conversion, it is misleading to conclude that criminal or illegal motives must be included in the wrongfulness.

While conversion involves an element of intent, such 'intention' may merely be an action that was an innocent intention; and thus, conversion falls under the family of torts known as the strict liability torts, while liability may still result even if the conversion, being the wrongful interference, was without nefarious or improper intentions and solely with innocent intentions.

¹ ("Tresspass")

The tort of conversion was well articulated within the case of *BMW Canada Inc. (Alphera Financial Services Canada) v. Mirzai*, [2018 ONSC 180](#) which stated:

The tort of conversion involves the wrongful interference with the goods of another, such as taking, using or destroying those goods in a manner inconsistent with the owner's right of possession: *DaimlerChrysler Canada Inc. v. Associated Bailiffs & Co. Ltd.*, [2005 CanLII 24234](#) (ON SC).

The crux of the tort of conversion is the defendant committing a wrongful act with respect to the property. Evidence must show or permit an inference to be drawn that the defendant acted in such a way as to deny the Plaintiffs title or possessory right. (*Simpson v. Gowers (1981)*, [1981 CanLII 1884](#) (ON CA), 32 OR (2d) 385 (C.A.) at 387, per MacKinnon A. C. J. O.).

The tort is one of strict liability, and accordingly, it is no defence that the wrongful act was committed in all innocence. The defendant cannot claim contributory negligence or some fault on the part of the plaintiff: *Boma Manufacturing Ltd. V. Canadian Imperial Bank of Commerce*, [1996 CanLII 149](#) (SCC), [\[1996\] 3 SCR 727](#) at para. 31. Diplock L.J. asserted this principle in *Marfani & Co. v. Midland Bank, Ltd.*, [1968] 2 All E.R. 573, at pp. 577-78:

. . . the moral concept of fault in the sense of either knowledge by the doer of an act that is likely to cause injury, loss or damage to another, or lack of reasonable care to avoid causing injury, loss or damage to another, plays no part.

In *Westboro Flooring and Decor Inc. v. Bank of Nova Scotia*, [2004 CanLII 59980](#) (ON CA), [2004] O.J. No. 2464, the Court of Appeal confirmed that all that is required re intent is the defendant acts in a manner that is inconsistent with the owner's title or possessory right, and any blameworthy conduct beyond that is not essential (at para. 14 – 16, per Simmons, J.A.). The philosophy behind strict liability is that a defendant cannot use or convey anything which is no title to use or convey.

A person not in lawful possession of a chattel (non real property) may commit conversion by:

- intentionally dispossessing the lawful possessor of the chattel,
- intentionally using a chattel in his possession without authority so to use it,
- receiving a chattel pursuant to an unauthorized sale with intent to acquire for himself or for another a proprietary interest in it,
- disposing of a chattel by an unauthorized sale with intent to transfer a proprietary interest in it, or
- refusing to surrender a chattel on demand to a person entitled to lawful possession.

Baram v. Farugia, 606 F.2d 42 (3d Cir. Pa. 1979)

ELEMENTS

There are four essential elements for the tort of conversion.

- i. The defendant commits a wrongful act;
- ii. Involving the Plaintiff's chattel;
- iii. By handling or disposing of the chattel;
- iv. With the intention of denying or negating the Plaintiff's title or other possessory interest.

Conversion is a tort that exposes you to liability for damages in a civil lawsuit. It applies when someone intentionally interferes with personal property belonging to another person. To make out a conversion claim, a plaintiff must establish four elements:

First, that the plaintiff owns or has the right to possess the personal property in question at the time of the interference;

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

Third, that the interference deprived the plaintiff of possession or use of the personal property in question; and

Fourth, that the interference caused damages to the plaintiff.

DEFENCES TO THE CLAIM OF CONVERSION

What are Some Defenses to a Claim of Conversion?

Depending on the circumstances, you may have a defense if you are sued for conversion. Some common defenses to a claim of conversion include:

- Abandonment of the property;
- Authority of Law: This refers to when a person operates under authority of law (such as a law enforcement officer) or by court order;
- Consent;
- Lack of Value: Some states will not allow a claim of conversion if the property has little to no monetary value; and
- Privilege: In some circumstances, a person may be considered privileged to commit an act that would be considered conversion. An example is if the action was necessary to protect the person's own property or to avoid physical harm.

THE REMEDIES FOR CONVERSION

In a claim for the conversion of a chattel several remedies are available to a plaintiff. The court in its judgment may order any, or a combination of any of the following reliefs:

1. Order for delivery, return or specific restitution of the goods; or
2. Alternative order for payment of the current market value of the chattel.
3. An order for payment of any consequential damages. However, allowance may be made for any improvement in the goods, such as, where a person honestly in good faith buys and improves a stolen car and is sued by the true owner; the damages may be reduced to reflect the improvements.
4. Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved.
5. General Damages: Furthermore, where for instance, a plaintiff whose working equipment or tools are converted by another person, a plaintiff may sue for the loss of profit, or existing contract or wages for the period of the conversion of the work tools or equipments.

TRESPASS TO CHATTEL

A trespass to chattels is an intentional interference with another person's lawful possession of a personal property. A "chattel" refers to any personal property, moving or unmoving. Trespass to chattels does not apply to real property or any interest in land. Trespass to Chattels is defined as committing any act of direct physical interference with a chattel possessed by another without lawful justification.

The tort of chattel trespass involves unlawful interference with chattels, whereas the legal concept of chattels includes personal property artifacts that are unattached to land; and thus, a chattel may include things such as vehicles, aircraft, watercraft, household furniture, artwork, mobile machinery, commercial inventory goods or stock, pets and livestock, among various items

To make a case for Trespass to Chattels, the plaintiff must show that the defendant made a volitional movement that resulted in either:

1. Dispossession of, or
2. Intermeddling with,

the plaintiff's personal property.

Dispossession is where the defendant actually asserts ownership over the chattel.

Intermeddling is merely interfering with the plaintiff's use of his chattel.

The plaintiff must show that the defendant intended to treat the property in the manner that he did.

As in Trespass to Land, it makes no difference that the defendant might have mistaken the plaintiff's property for his own

The elements necessary to give rise to the tort of trespass to chattels were well articulated in *Ontario Consumers Home Services v. Enercare Inc.*, 2014 ONSC 4154 where it was stated: *OCHS v. Enercare*, 2014 ONSC 4154 at paragraph 50. In *Hudson's Bay Company v. White*, [1997] O.J. No. 307 (Ont.Gen.Div.) Lederman J. at para. 8 referenced the criteria necessary for trespass to chattels: In Clerk and Lindsell on Torts, 17th ed. (London: Sweet and Maxwell, 1995), at p. 705, the authors define trespass to chattels, or "trespass to goods", as being concerned with "the direct, immediate interference with the plaintiff's possession of a chattel". Halsbury's offers a similar definition at Vol. 45, para. 1491: "Trespass to goods is an unlawful disturbance of the possession of goods by seizure or removal, or by a direct act causing damage to the goods".

ELEMENTS

In order to prove 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.

THE PERSONS WHO MAY SUE FOR TRESPASS TO CHATTEL

Anyone who has possession or caretakership 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:

1. Owners

2. Bailees
3. Lenders
4. Assignees
5. Trustees
6. Finders
7. Custodians
8. Caretakers
9. Adverse possessors, because mere possession gives a right to sue to retain possession
10. Executors
11. Administrators of estates; etc.

DEFENCES

In an action for trespass to chattel, the defences a defendant may plead include:

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. See *C.O.P. v Oguntayo* (1993) 6 NWLR pt. 299, p. 259 SC.
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, or acting honestly, etc.

REMEDY

The remedies available to a person whose chattel has been meddled with, short of conversion or detinue are:

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

DETINUE

The tort of detinue is the unlawful arrest of another individual's chattel, the tort of detinue. Immediate ownership by the individual entitled to it. Detinue is a claim for the particular The complainant who is entitled to it shall return, deliver, or surrender a chattel. Detinue is the The unlawful arrest or detention of a chattel by which the person entitled to it is denied The ownership or use of it. As a general rule, to effectively sue in detinue, a claimant, as a general rule, Before arrest, they must have custody or have the right to immediate possession of the Chattel.

Detinue a form of action in tort, now defunct, that allowed a bailor (see BAILMENT) to sue a bailee or a person entitled to possess a thing to sue a person in actual possession of it, giving the plaintiff the right to recover the thing or, in the event of a failure, to be able to return it through lack of care by the defendant, its value. The same right of action now exists as a form of conversion, which is itself a form of wrongful interference with goods.

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. For an action in detinue to succeed, a claimant must first prove that he had better right to possession of the chattel 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 for the value of the chattel, but unlike most other interference torts, detinue also allows for the recovery of the specific chattel being withheld.

Similar to conversion, detinue is also a tort that can only be committed against a good, rather than property. When someone commits a tort of detinue, they are considered to be wrongfully withholding goods from a person that has an immediate right of possession.

The other element of detinue is that the person committing the wrongful act is also denying the innocent party rightful possession of their property, and with full knowledge of the person's rights to their goods. The final element of detinue is if the tortfeasor fails to deliver the goods as required by law.

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.

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

Make a Demand

The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of the demand. The demand is imperative.⁴

Refuse the Demand

The defendant must refuse that demand (whether expressly refusing or failing to respond at all). On some occasions, a defendant who does not have possession of the chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.⁵

Unreasonable Refusal

Where the chattel is in the defendant's possession, the refusal to return the chattel must be unreasonable

Consequential damage

As a result of the defendant's conduct, the plaintiff has suffered loss. This will usually be calculated as the value of the chattel.

Once the above elements have been established, an action for detinue can be made out.

2 WAYS DETINUE CAN ARISE

1. Where the defendant has actual possession of the chattel (any goods – for example, a lawn mower or excavator) and refuses to return it to the plaintiff on their demand; or
2. Where the defendant was in possession of the plaintiff's chattel under bailment (i.e. the good had been temporarily provided to the defendant for a particular purpose) and has wrongfully parted with that chattel.

It is important to note that even if there is a case of a wrongful parting with the chattel, there must be a demand and refusal for detinue to arise.

THE DEFENCES FOR DETINUE

In an action for detinue, a defendant may plead that:

1. He has mere possession of the goods
2. That the plaintiff has insufficient title as compared to himself
3. 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* (1872) LR 7 QB 616 at 639:

"Persons deal with the property in chattels, or exercise acts

of ownership over them at their peril".

4. Innocent delivery

DIFFERENCE BETWEEN CONVERSION AND DETINUE

Detinue occupies the same ground as detention conversion misconduct. Any, however,

Differences, which include the following, should be noted:

1. The nature of detinue, or retention, is the refusal to surrender or return a chattel on demand. There must have been a desire for the chattel's return.

2. Detinue is the right solution where the plaintiff wishes the particular to be returned

Products in question, And not just an assessed value of the sector. Nonetheless, where

There will be no clear return of the chattel or substitution, an award of the chattel

The plaintiff is typically offered the current market value of the chattel.

OTHER DIFFERENCES INCLUDES;

Conversion occurs when one purposely interferes with another's personal property. The plaintiff must show that he owns or has the right to have the item at the time it's interfered with, that the defendant's interference with it was intentional, that the interference deprived the plaintiff of possession or use of the item, and that the interference caused damages to the plaintiff.

Say I swipe a document off of your desk and walk out with it. Within 30 seconds, it would be unlikely you could claim conversion. Why? Because there had not yet been any damages to you. Now, if I had that document for three hours and you were supposed to file it in court for a deadline or something, and you could show I intentionally took it (aka did not mistakenly believe it was mine), you may then have a claim.

Also, conversion can happen if you receive an item from somebody who was not authorized to give it away from you.

Detinue is defined as the wrongful detention of goods, performed only if and when the owner asserts the immediate right to ownership of those goods, when one unreasonably refuses to surrender or return personal property to his rightful owner. However, the detention is only valid if the owner owns the proprietary interest and/or the property's actual ownership. In many instances, detinue is specified as In certain ways, detinue is categorized under Conversion, since the two vary only in the sense that when the owner expressly asks for property back, an act is called Detinue and not Conversion, and is still denied.

Conversion is an interference with another's ownership of property. It is a general intent tort, not a specific intent tort. That means that the intent to take or otherwise deal with the

property is enough to support the claim, and it doesn't matter whether the defendant knew that the act would constitute interference with the property of another. Therefore, the defendant's innocent reasons for the act cannot be used as an excuse. It does not matter if the defendant made a mistake. 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.

THE RULES REGARDING FINDING LOST PROPERTY

The rules of law applicable to finding a lost property were authoritatively settled by the English Court of Appeal in the case of *Parker v British Airways* (1982) 1 AllER 834 CA.

However, the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows: -

1. A 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.
2. Any servant, or agent who finds a lost property in the course his employment, does so on behalf of his employer, who by law acquires the rights of a finder.
3. An occupier of land or a building has superior rights to those of a finder, over property or goods in, or attached to the land, or building. Based on this rule, rings found in the mud of a pool in the case of *South Staffordshire Water Co. v Sharman* (1896) 2 QB 44 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* (1886) 33 Ch D 562.
4. However, an occupier of premises does not have superior rights to those of a finder in respect of goods found on or in the premises, except before the finding, the occupier has manifested an intention to exercise control over the premises, and things on it.

THE CONCEPT OF INNOCENT DELIVERY

Innocent Receipt or Delivery Is Not Conversion

Generally, innocent delivery, or innocent receipt are not torts, nor criminal offences. Thus, innocent delivery is not conversion. 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.

Unipetrol v Prima Tankers Ltd (1986) 5 NWLR pt 42 p. 532 CA.

The defendant oil tanker owners had a contract to carry Unipetrol's cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of the cargo. The Court of Appeal held: that the respondents were liable in conversion. The word "loss" is wide enough to include a claim for conversion against a carrier. It is elementary law that in a claim for conversion, the claimant is entitled to the return of the article seized, missing, or in the possession of the other party, or reimbursement for its value. See also *FHA v Sommer* (1986) 5 NWLR pt 17, p. 533 CA.

In Owena Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd (1993) 4 NWLR pt.

290, p. 698 CA,

The 1st respondent was granted an import licence by the Federal Ministry of Trade to import granulated sugar. However, the 2nd respondent opened a letter of credit and imported the sugar. The 1st respondent sued for damages for the wrongful conversion of the import licence. On appeal by the bank, the Court of Appeal held: That the defendants were liable for conversion of the import licence papers. Thus, an action for conversion will lie in conversion for any corporeal personal property, including papers and title deeds.

Conversion is any dealing with a chattel in a manner inconsistent with another person's right whereby the other is deprived of the use and possession of it. To be liable, the defendant need not intend to question or deny the right of the plaintiff. It is enough that his conduct is inconsistent with the rights of the person who has title, or right to possession, or use of it. Conversion is an injury to the plaintiff's possessory rights in the chattel converted. Whether an act amounts to conversion or not depends on the facts of each case, and the courts have a degree of discretion in deciding whether certain acts amount to a sufficient deprivation of possessory or ownership rights as to constitute conversion.

In conversion, negligence or intention is not relevant, and once the dealing with the chattel of another person is in such a circumstance that the owner is deprived of its use and possession, the tort of committed.

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