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### **What is trespass of chattel?**

A chattel is any movable property which excludes land. So, trespass of chattel is a direct and unlawful injury done to chattel in possession of other person. It is actionable per se (it must be proven that there is direct and unlawful application of force but not necessarily the damage from trespass). A person that wants to sue in this tort can sue either in conversion detinue (trespass of Goods) or negligence that result to damage in good provided in the Torts Act 1977.

### **CONVERSION OF GOODS**

This is also known as 'trover' that is, the wilful and wrongful interference with the goods of a person entitled to ownership in such manner that can deny the person such rights or such a manner that can contradict his right. If right to immediate to possession is the determining factor, that is if such right exist, actual possession is unnecessary. See **North central wagon & finance Co Ltd v Graham**

#### **Examples of Conversion**

Conversion of goods can be seen in the following situation:

1. **Wrongfully Taking the Goods:** This must be accompanied by an intention to exercise temporary or permanent dominion over the goods. See **Fouldes v Willoughby**. On appeal, the court held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses.

2. **Wrongfully detaining the goods:** This must be accompanied by an intention to keep the goods from the person entitled to possession of the goods. Hence it would not be regarded as conversion if the finder of goods merely refrains from returning such to the owner. It would only be conversion in a situation in which when asked for the goods by the owner, he refuses to release it.

See **Howard E Perry and Co Ltd v British Railway Board**. the defendant, who were carriers, held the plaintiff's steel in depots. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff's steel to them. It was held that this amounted to conversion on the defendant's part.

For conversion to be committed there has to be some positive denial of possession towards the person entitled to possession.

3. **By wrongfully destroying the goods:** Destruction of goods would amount to conversion when:

- a) One person wilfully destroys the chattel of another.
- b) If the chattel either ceases to exist or changes its identity.

4. **Wrongfully disposing the goods:** This occurs in a situation in which the defendant attempts to confer title to a third party in a manner inconsistent with the right of the person entitled to possession.

5. **By wrongfully delivering the goods:** This occurs in a situation in which the defendant denies the true owner of the title to the goods by delivering them to another party that has no title.

## **TRESSPASS OF GOODS**

This is the general unlawful interference with goods on legal possession of another person. Possession is very important if one wants to bring an action for trespass to goods. Though one is not the real owner, he can still bring action of trespass see **Armory v**

**Delamirie**; a boy found a jewel and asked a goldsmith subsequently refused to return the jewel to the boy and the boy seek action. **Court held**; though the boy is not the true owner, he just having possession gives him right to seek action on trespass to goods.

### Elements

To prove trespass to chattels one must prove the following elements:

1. **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.
2. **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.
3. **Interference of chattels**: A person commits a trespass to chattel by
  - a. Taking possession of another's chattel,
  - b. using or intermeddling with a chattel in the possession of another
  - c. Damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

If all these are proven, a person can be liable for trespass to chattel.

## REMEDIES AND DEFENCES TO TRESPASS TO CHATTEL

### Defences to Conversion

- **Abandonment**: An action for conversion would not succeed in a situation in which the property in question was abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.
- **Authority of Law**: Conversion that is done under the authority of law would be justified. For example, the selling of the goods of a defendant by the claimant by an order of court in order to get a judgement debt, would be valid.
- **Consent**: If the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be held to be valid.

- **Statute of limitations:** The statute has provided that suit should be within 2-5 years, if not, the suit would not be heard by the court.
- **Unidentifiable property:** If the property cannot be properly identified, it could also serve as a defence to conversion.

### Defences for trespass to goods

- **Protection of persons or property:** If trespass to goods is committed while trying to protect life or property, the defendant would not be held liable. However, the defendant has to prove that:

a) The danger was real and imminent.

b) He acted reasonably.

See **Cresswell v Sirl** the plaintiff's dog was threatening the defendant's sheep. Subsequently, the defendant shot the dog in order to protect his sheep. In an action for trespass, it was held that the defendant's action was justified since what he did was in protection of his property.

- **Exercise of a Legal Right:** It would not be counted as trespass to goods if an action is done in lawful distress. This occurs in a situation in which the goods in question are causing damage to the property of the defendant. In this situation, he has a right to seize them till the plaintiff compensates him for his loss. Also, trespass to goods can be excused if it occurs in the carrying out of a legal process.

In a trespass to chattels claim, you can only recover actual damages. Actual damages are measured by the diminished value of the chattel that resulted from the defendant's actions.

### **REFERENCE**

Kodilinye & Aluko: Law of Torts

<https://www.findlaw.com/injury/torts-and-personal-injuries/trespass-to-chattels.html>

(www.findlaw.com)

<https://djetlawyer.com/trespass-to-chattel> (www.Djetlawyer.com)