**HELEN SOLOMON**

**18/LAW01/201**

**300 LEVEL**

**TRESPASS TO CHATTEL**

The three torts, trespass to chattel, conversion and detinue protect the possessor of a chattel from wrongful interference. For better understanding, a chattel is an item of property other than freehold land which includes tangible goods and leasehold interests. It is any article of tangible property other than land buildings and other things annexed to land.

Trespass to chattel is an intentional interference with another person’s lawful possession of personal property whether moveable or immoveable. It is also called trespass to goods. This tort like many others seeks to protect possession rather than ownership hence it protects the plaintiff owners;

1. Interest in retaining possession of his chattel
2. Interest in the physical condition of his chattel
3. Interest in protecting the chattel against intermeddling.

Trespass to chattel is actionable per se meaning that there need not be proof of actual damage before an action can be instituted.

ELEMENTS OF TRESPASS

**There must be an intent to trespass**. The trespass to person could be negligent or intentional. Either intention or negligence must be established as there is no liability for accidental interference with goods. There need not be any damage to the goods because it is actionable per se. trespass comes in various forms but it to be a wrongful physical interference.

**Lack of owners consent**. The trespass must take place without the owner’s knowledge and permission.

**Direct interference with chattel**: trespass to chattel involves goods, any corporeal moveable goods is subject to trespass. Interference could be destroying, moving or using the chattel without permission from the owner.

**CONVERSION**

Conversion is the intentional exercise of control over a chattel which interferes with the plaintiff’s possession of such chattel. It is an unlawful interference with the plaintiff’s title in the goods. The tort of conversion is available to the plaintiff who is out of possession of his goods due to the defendants act.

The interference must be intentional. An involuntary receipt of goods will not be conversion. The defendant must have intentionally decided to claim possession of the plaintiff’s property. Negligent possession of goods will not qualify as conversion. The most important factor is the intention to claim possession of the plaintiff’s goods. There must be a deliberate act depriving the plaintiff of his rights or else no conversion has taken place. In *Ashby v. Tolhurst*, a car-park attendant negligently allowing a thief to drive the plaintiff’s car away was not held to be conversion. The intention of the attendant had not been to claim ownership of the car.

Whether taking another’s goods will be taken to be conversion depends on the degree of the interference. There will be no conversion where the interference is merely temporary and unaccompanied by an intention to assert rights over the chattel. An interference can be a trespass to chattel and not a conversion. In *Fouldes v. Willoughby*, it was held that removing the claimant’s horses from the ferry boat was merely trespass and not conversion.

INNOCENT RECEIPT OR DELIVERY OF CHATTEL

The entire concept simply explains what the law has to say about involuntary interference with the chattel of a person. When a person innocently receives another person’s goods, it is not conversion. Whereby the chattel of a person comes into your possession by mistake, then it is not conversion. If a thief parks a stolen car in t of a person’s house, then such a person is not guilty of possession even if he knew that the car had been stolen.

An involuntary recipient of goods cannot be made a bailee without his consent and mere negligence on his part with respect to the chattel will not make him liable for conversion. Howard v. Harris, a playwright sent the manuscript of a play to a theatrical producer, who had not asked for it at all and when it got lost, he was held liable. The involuntary bailee does not no wrong by acting reasonably and trying to return the goods. Note that the innocent receiver must not destroy the goods.

LOST PROPERTY RULE

There is a saying that stipulates that finders of lost things should have the right to claim them. The tort of conversion recognizes that there is some truth in it. The rule that possession is sufficient ground in claim for conversion means that in circumstances where a person finds a chattel, he can keep it and protect his right to do so against third parties.

A finder of a chattel has such title that will enable him keep it against everyone. But this is subject to exceptions;

He has no title against the rightful owner: if It is discovered that there is indeed a true owner of the chattel then the finder cannot lay claim on it without being guilty of theft and conversion. He can only escape liability if he claimed the chattel in the honest belief that it belonged to no one.

The owner of the property were the chattel was found might have a stronger claim on it; the owner of the land where the chattel was found may lay claim on it if the finder trespassed in other to get the thing and where the property is in the land or attached to it. For example in *Waverly BC v. Fletcher, where* a medieval golden brooch was found embedded nine feet in the ground. The owner of the land where the lost thing was found may also lay claim where he is the occupier of the land before and after the chattel was found and he had previously manifested an interest to exercise control over everything on and in the land. Then the burden of proof will rest on the occupier if the facts do not speak for themselves.

EXAMPLES OF CONVERSION

Acts which will be taken as conversion include;

**Conversion by taking**: it is conversion to take goods without lawful justification, out of the possession of the person entitled to them with the intention of exercising a permanent or temporary dominion over them. If the defendant merely removed the chattel without intention to deprive the plaintiff of possession, then he is liable for trespass and not conversion (*Foulders v. Willoughby).*

**Conversion by destruction, consumption and alteration**: to intentionally destroy or consume the plaintiff’s chattel constitutes conversion. Eating the fruits that belong to the plaintiff is conversion. Also altering the identity or appearance of a chattel is conversion.

**Conversion by using**: if the defendant makes use of the plaintiff’s goods as though they belonged to him, he violates the rights of the defendant and is therefore liable for conversion. Wearing the defendant’s jewelry as per *Petre v. Heneage*, and using the defendant’s tank to store carbolic acid as in *Lancashire and Yorkshire v. McNicholl* all constitute conversion. Taking possession is not all that matters, also using the chattel even without moving it from it’s location is still conversion.

**Conversion by wrongful transfer of title**: it is conversion to deprive the plaintiff of the possession of his goods by wrongfully transferring the goods to another person whether by a sale or delivery.

**Conversion by detention**: it is conversion to withhold the chattel of a plaintiff and refuse to surrender it to him when he asks you to do so. This is during to the reasoning that in refusing to release the goods the defendant shows an intention to claim ownership of it.

**DETINUE:**

This is an action in tort that is instituted where the plaintiff has an immediate right to the possession of goods and the defendant who is in actual possession of those goods fails to deliver them up after the plaintiffs has made a proper demand for their return. Detinue thus covers the same grounds as conversion by detention with certain differences.

 DIFFERENCES BETWEEN DETINUE AND CONVERSION

1. Refusal to surrender on demand is the very root of detinue. While in conversion refusal to surrender is only one of several other forms of conversion.
2. In conversion, damages are assessed on the value of the goods as at the date of conversion, while in detinue they are assessed based on their value as at the time of the trial.
3. The plaintiff in detinue can claim specific restitution of the goods but such is not possible in conversion.

PERSONS QUALIFIED TO SUE FOR TRESPASS

1. **The owner of the property**
2. **Bailee’s**; the bailor transfers possession of the property but not ownership to the bailee. The Bailee of a chattel has lawful possession of it and so can institute an action in conversion against those who try to interfere with his bailment.
3. **Holders of liens**: a lien holder is the person or entity that retains the interest of another person’s property. He could be a lender, a banker, a credit card issuer, or individual that a contract has been signed within which money is owed. He could take a legal action against interference with that property.
4. **Finders**: a person who finds a chattel in the absence of any owner acquires possession of it and therefore can maintain an action against anyone who attempts to interfere.

REMEDIES FOR INTERFERRENCE WITH GOODS

**Self help Remedy**: often times, an owner of goods is put in a position where his goods are snatched right before his eyes. In such a situation, the owner is justified if he exercises a certain amount of force to retrieve his property. The force must not be more than necessary and the court will look at the peculiar facts of the case.

**Retaking and trespass**: the owner of the goods can enter the land of the person that took his goods and take them back. He can also enter an innocent person’s property if the goods have come there by accident, or if he trails the person that took them the innocent persons land and the innocent person refuses to release the goods to him.

**Damages**: at common law a claimant with a limited interest in the goods could normally recover their full value from a third party. The claimant is also entitled to compensation to the extent of the value to him of the goods of which he has been deprived. This will often be the market value of the goods.

**Recovery of consequential loss**: the claimant is entitled to compensation for consequential losses such as personal inconvenience, loss of hobby, cost of seeking out goods, loss of livelihood *(Bodley v. Reynolds*]

DEFENCES

* **Involuntary receipt**: a defendant can argue that the goods were placed in his possession without his permission or knowledge.
* **Finders-keepers**: a person that finds a thing without an owner has a claim over it.
* **Mistake:** usually, mistake will not be a defense. This rule was set in *Hollins v. fowler*. The exceptions to this rule are: estoppel by representation or negligent conduct, sale under a voidable title, disposition in the ordinary course of business by a mercantile agent inn possession of the goods without the owner’s consent, sale by buyer in possession and private purchase of vehicle under hire-purchase.

**REFERENCES**

Kilodinye and Aluko, the Nigerian law of torts, spectrum law publishing, 1999

Winfield and Jolowitz,

[www.findlaw.com](http://www.findlaw.com), Trespass to chattels.

[www.lawteacher.com](http://www.lawteacher.com), interference with goods lecture