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**INTRODUCTION**

Trespass to chattels is a cause of action in torts involving situations where a defendant acts in an intentional or negligent way that causes an unauthorised interference with the plaintiff’s possession of a chattel. According to the Torts (Interference with Goods) Act 1977, “wrongful interference”, or “wrongful interference with goods”, means

1. conversion of goods (also called trover)
2. trespass to goods,
3. negligence so far as it results in damage to goods or to an interest in goods
4. subject to section 2, any other tort so far as it results in damage to goods or to an interest in goods

The Torts (Interference with Goods) Act 1977 made a number of changes to the common law, as well as codifying the law in some respects. Although it abolished the action in detinue, it did not create any new actions nor did it greatly simplify the law.

As can be seen from section 1 of the Act, a range of distinct actions at common law continues to protect interests in goods, and these actions are referred to as instances of ‘wrongful interference with goods’. This includes negligence in relation to goods.

Trespass [to goods] bears the marks of its early origins. It is constituted by a direct, immediate and unjustified interference with the possession of the chattels of another.

Conversion by contrast involves actions which are inconsistent with the claimant’s title to the goods. We define conversion more fully in the next section.

Trespass to goods is like all forms of trespass in its limitation to direct interferences (though it has been suggested that the tort has more recently evolved to replace the ‘directness’ criterion with a requirement of ‘intention’. Since many (though not all) cases of trespass to goods involve damage, negligence frequently presents an alternative action, which is not confined to direct interference nor, of course, to intentional interferences. Therefore, the practical importance of trespass to goods is quite restricted, even though it may cover a wider range of interferences than conversion. Illustrating its potential breadth is the suggestion in Rugby Football Union v Viagogo Ltd[[1]](#footnote-2), where it was held that boarding a bus without any intention of buying a ticket may be a trespass to goods.

**TRESPASS TO CHATTEL**

This can be defined as the general unlawful interference with goods in lawful possession of another person. Possession is very important in bringing an action for trespass to chattel. Thus, a person in possession of goods, though not being the true owner, can bring an action for trespass. In the case of ***Armory vs Delamirie***,[[2]](#footnote-3) a boy found a jewel and asked a goldsmith to value it. The goldsmith subsequently refused to return the jewel to the boy. Thus the boy sued.

The court held that although the boy was not the true owner, the fact that he has possession of the goods gives him the right to sue for trespass. Thus, the goldsmith could not raise the issue of jus tertii (better title).

Possession normally means physical possession by the possessor. However, in the case of a master-servant relationship, the master is in possession of goods held on his behalf by his servants. An executioner or administrator is also held to be in possession of the deceased’s goods until a probate or letter of administration is granted.

Also, a trustee not in physical possession would be held as having possession in a situation in which he brings an action against a third party in order to protect the goods.

**DEFENCES TO TRESPASS TO chattel**

### **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 onus is on the defendant to prove that:

         a) The danger was real and imminent.

         b) He acted reasonably.

In the case of **Cresswell vs Sirl *[[3]](#footnote-4)***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.

1. **Exercise of a Legal Right:**It would not be counted as trespass to goods if an action is done in levying lawful distress for rent. 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.
2. Subsisting bailment
3. Limitation of time, as a result of the expiration of time specified for legal action

**REMEDIES FOR TRESPASS TO CHATTEL**

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

**EXAMPLES OF TRESPASS TO CHATTEL**

Trespass to chattel may be committed in many different ways. However, the trespass must be intentional or negligent. Trespass may be committed by mere removal or any damage and it can be committed when there is no intention to deprive the owner, possessor or custodian permanently of the chattel. Examples of trespass to chattel include:

* Taking a chattel away
* Throwing another person's property away, such as in annoyance
* Mere moving of the goods from one place to another, that is, mere asportation. **(Kirk v Gregory)**.
* Scratching or making marks on the body of the chattel, or writing with finger in the dust on the body of a motor vehicle
* Killing another person's animal, feeding poison to it or beating it **(Shieldrick v Abery)**
* Touching, that is, mere touching, for instance, touching a precious work of art which could be damaged by mere touch

**Elements of Trespass to Chattel: What a Plaintiff Must Prove To Succeed**

To succeed, a plaintiff must establish that the act of trespass was:

1. Intentional; or
2. Negligent.

As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort. However, accident, intentional or negligent trespass do not automatically give rise to liability per se, as an appropriate defence, may be pleaded to avoid liability.

**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:

* Owners
* Bailees
* Lenders
* Assignees
* Trustees
* Finders
* Custodians
* Caretakers
* Adverse possessors, because mere possession gives a right to sue to retain possession
* Executors
* Administrators of estates; etc.

## ****CONVERSION****

This consists of the **willful** and **wrongful** interference with the goods of a person entitled to possession in such a way as to deny him such right or in such a manner inconsistent with his right.  
The right to immediate possession is the determining factor. That is, if the right exists, actual possession is unnecessary.

In the case of ***North Central Wagon and Finance Co Ltd vs Graham,***the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus the plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff didn’t have actual possession of the car at the time. Since the right in the goods were already vested in the plaintiff, there was no need for actual possession.

### ****INSTANCES OF CONVERSION****

Conversion of goods would arise 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. In the case of **Fouldes vs Willoughby**the owner of two horses brought them aboard a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. The horse owner sued for conversion. Judgement was entered in his favour at the trial court. On appeal, the court, in allowing the appeal 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. In the case of **Howard E Perry and Co Ltd vs British Railway Board. (1980) 1 WLR 1375**, 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 in the following situations:

* One person willfully destroys the chattel of another.
* If the chattel either ceases to exist or changes its identity.

### ****DEFENSES TO CONVERSION****

1. **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.
2. **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.
3. **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.
4. **Statute of limitations:** If the suit for conversion is not filed after a specified period (ranging from 2-5) years, it would be held to be statute barred. Thus, the suit would not be heard by the court.
5. **Unidentifiable property:** If the property cannot be properly identified, it could also serve as a defence to conversion.

**REMEDIES**

* An action for damages for the recovery of the price of the goods
* Order for delivery, return or specific restitution of the goods
* Alternative order for payment of the current market value of the chattel
* An order for payment of consequential damages
* Recovery of special and general damages

**DIFFERENCES BETWEEN TRESPASS TO CHATTEL, COVERSION AND DETINUE**

In the tort of trespass to goods, there is no taking away, stealing, conversion, detention or detinue of the goods from the owner; or person entitled to possession.

However, in the tort of trespass to chattel, there must be some act of interference, meddling, harm, injury, damage, or destruction of the goods, against the desire of the owner, possessor, custodian or caretaker.

**INNOCENT DELIVERY OR RECEIPT**

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[[4]](#footnote-5)**.

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.

In Owena **Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd[[5]](#footnote-6)** 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.

**THE RULE REGARDING 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**.[[6]](#footnote-7) However, the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows: -

* 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.
* 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.
* 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 feed below the surface were held as belonging to the land owner in the case of **Elwes v Briggs Gas**.[[7]](#footnote-8)
* 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.

In **Parker v British Airways** (supra),

The plaintiff was waiting in the defendant airways lounge at Heathrow Airport, London, England when he found a bracelet on the floor. He handed it to the employees of the defendant, together with his name and address, and a request that it should be returned to him if it was unclaimed. It was not claimed by anybody and the defendants failed to return it to the finder and sold it. The English Court of Appeal held: that the proceeds of sale belonged to the plaintiff who found it.

**DETINUE**

This is an action to recover for the wrongful taking of personal property. A claim of detinue lies at the suit of a person who has an immediate right to the possesion of the goods against a person who is in actual possesion

Purposes for Detinue[[8]](#footnote-9)

* If the plaintiff desires specific restitution of his chattels and not damages for their conversion, will sue in detinue not trover.
* The defendant will sue if the defendant sets up no claim of ownership and has not been guilty of trespass for the previous acquisition.

In **detinue sur bailment,** the defendant is in a [bailment](https://en.wikipedia.org/wiki/Bailment) relationship with the claimant and either refuses to return the chattel or else has negligently or intentionally lost or destroyed it. The onus is on the bailee to prove that the loss of the chattel was not his or her fault.

In **detinue sur**[trover](https://en.wikipedia.org/wiki/Trover)**,** the defendant can be any individual in possession of the chattel who refuses to return it to the claimant. A defendant could be a finder or a thief or any innocent third party, and the claimant need only have a better right to possession.

**The Defences for Detinue**

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

* He has mere possession of the goods
* That the plaintiff has insufficient title as compared to himself
* 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**[[9]](#footnote-10): "Persons deal with the property in chattels, or exercise acts of ownership over them at their peril”.
* Innocent delivery
* Subsisting bailment
* Subsisting lien on the chattel
* Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff

**The Remedies for Detinue**

When a person's chattel is detained by another person, the person who is denied possession or use of such chattel, has several remedies open to him which include:

* Claim for return of the specific chattel: This is a claim for the return of the specific chattel, especially, if the chattel has not changed its character, content, and it has not been damaged nor destroyed during its detention.
* Claim for replacement of the chattel Where possible or appropriate, a defendant may be ordered to replacement the chattel by supplying an identical or similar chattel. This is possible for instance in the case of manufacturers of products, who can easily replace the goods by supplying an identical or similar product.
* Claim for the current market value of the chattel
* Recapture or self help to recover the goods.

1. [2011] EWHC 764 (QB) [↑](#footnote-ref-2)
2. [1722] EWHC J94 [↑](#footnote-ref-3)
3. [1948] CA [↑](#footnote-ref-4)
4. (1986) 5 NWLR pt 42 p. 532 CA [↑](#footnote-ref-5)
5. (1993) 4 NWLR pt. 290, p. 698 CA, [↑](#footnote-ref-6)
6. (1982) 1 AllER 834 CA [↑](#footnote-ref-7)
7. (1886) 33 Ch D 562 [↑](#footnote-ref-8)
8. www.duhaime.org › Legal Dictionary  
    [↑](#footnote-ref-9)
9. (1872) LR 7 QB 616 at 639 [↑](#footnote-ref-10)