

INTERFERENCE WITH GOODS

INTRODUCTION

Lecture notes here are from *Street on Torts*, Tenth Edition 1999.
Recommended reading for ILEX: *Winfield & Jolowicz*, Chapter 17, p583-617.

The action for trespass to goods, trespass *de bonis asportatis*, affords a remedy where there has been a direct interference with goods in the claimant's possession at the time of the trespass, whether that be by taking the goods from him or damaging the goods without removing them.

The oldest of the chattel torts, the writ of *detinue*, developed to provide a remedy for wrongful detention of goods. *Detinue* is abolished by the Torts (Interference with Goods) Act 1977. The one clear instance of *detinue* (loss or destruction of goods in breach of duty by a bailee) which did not constitute conversion at common law is 'converted' into a statutory conversion by s2(2) of that Act.

The action for conversion (originally called *trover*) developed upon a legal fiction. The original form of the pleadings alleged that the defendant had found the claimant's chattels (hence the name 'trover') and had wrongfully converted them to his own use. The allegation of finding (*trover*) could not be contested and the essence of the tort became the wrongful conversion of the goods to the use of the defendant. But merely moving or damaging goods without converting them to the defendant's own use remains remediable in trespass alone.

Trespass and conversion deal with intentional interference with goods. Where goods are lost or damaged as a result of the defendant's breach of a duty of care, an action may lie in *negligence*.

The Torts (Interference with Goods) Act 1977 introduces a collective description 'wrongful interference with goods' to cover conversion, trespass to goods, negligence resulting in damage to goods or to an interest in goods and any other tort in so far as it results in damage to goods or an interest in goods. This is done to facilitate common treatment of all chattel torts in respect to remedies and procedure. The Act neither redefines nor replaces the existing substantive rules on trespass, conversion, or the residual chattel torts. The substantive impact of the Act is extremely limited. *Detinue* is abolished and the one clear instance of *detinue* which did not constitute conversion at common law (wrongful loss or destruction of goods by a bailee) is declared to be conversion by s2(2). New provision is made for bailees to dispose of uncollected goods. The main impact of the 1977 Act is, as we shall see, to simplify and rationalise the remedies and procedures relating to chattel torts.

1. CONVERSION

Conversion may be defined as an intentional dealing with goods which is seriously inconsistent with the possession or right to immediate possession of another person.

This tort protects the claimant's interest in the dominion and control of his goods; it does not protect his interest in its physical condition.

(A) INTEREST OF THE CLAIMANT

The claimant must have either possession or the right to immediate possession. For example if a landlord has rented out furnished accommodation for a fixed term and a third party commits an act of conversion in respect of some of the furniture, the landlord has no right to sue in conversion, although the tenant may.

(1) BAILMENT

Where goods have been entrusted to another so as to create a bailment, the bailee can sue third parties in conversion. If the bailment is at will then the bailor may also sue because he is then deemed to have an immediate right to possession. *Manders v Williams* (1849) 4 Exch 339 is illustrative:

The plaintiff brewer supplied porter (stout) in casks to a publican on condition that he was to return empty casks within six months; it was held that the plaintiff could sue a sheriff who seized (within six months of their being supplied) some empty casks in execution for a debt of the publican, because, once the casks were empty, the effect of the contract was to make the publican a bailee at will, whereupon the plaintiff was entitled to immediate possession.

However, where bailor and bailee enjoy concurrent rights to sue in conversion they cannot both exercise those rights and so effect double recovery against the defendant. Either party may sue but the successful claimant must then account to the other.

Sale of the goods by the bailee will ordinarily terminate the bailment and the bailor can then sue either the bailee or the third party. Destruction of the goods or dealing with them in a manner wholly inconsistent with the terms of the bailment, will have the same result.

(2) LIEN AND PLEDGE

In certain limited cases where goods are entrusted to another to carry out certain services (e.g. repairs), the person in possession of those goods acquires a lien over the goods, that is to say a right to retain the goods until he is paid for his services.

(3) SALE

It is often difficult to discover which of the parties to a contract for the sale of goods has an interest sufficient to support an action in conversion. The crucial question is whether at the date of the alleged conversion the buyer has a sufficient right to immediate possession of the goods.

(4) LICENSEE

Sometimes a licensee may be able to sue in conversion. In *Northam v Bowden* (1855) 11 Ex 70, the plaintiff had a licence to prospect certain land for tin, and the defendant, without permission, carted away some of the soil on this land. The plaintiff was entitled to maintain an action for its conversion.

(5) FINDER

The popular maxim 'finders-keepers' has some considerable substance to it. The rule that possession is sufficient to ground a claim in conversion means that in certain circumstances someone who finds a chattel can keep it and protect his right to do so against third parties. The rules regarding finding were authoritatively settled in *Parker v British Airways Board* [1982] 1 All ER 834.

(6) JUS TERTII (THIRD PARTY RIGHTS)

Under the unamended common law a claimant often succeeded in conversion even though the defendant could show that a third party had a better title than the claimant. As it was said, the defendant could not plead jus tertii. A most significant procedural reform implemented by the 1977 Act, a reform of procedure which in effect also amends substantive law, is the abolition of the common law rules on jus tertii (s8(1)).

The defendant in an action of conversion or other wrongful interference is now entitled to prove that a third party has a better right than the claimant with respect to all or any part of the interest claimed by the claimant.

The Act authorised the making of rules of court to implement this change (s8(2)). These are RSC Ord 15, r10.

These rules abolish the former principle that a possessor of goods could recover for the full amount of their value although he was not the owner.

(B) THE SUBJECT MATTER

Any goods can be the subject matter of conversion.

Although cheques are of value only as choses in action, the courts have satisfied the demands of commercial convenience by allowing the full value represented by them to be recovered in actions for conversion (*Lloyd's Bank v Chartered Bank* [1929] 1 KB 40).

These rules are unaffected by the 1977 Act which provides that unless the context otherwise requires 'goods' includes all goods personal other than things in action and money (s14(1)). The Act thus retains the common law rule that money as currency (though not as coins, eg money in a bag: *Taylor v Plumer* (1815) 3 M&S 562) does not fall within the ambit of conversion.

(C) HUMAN BODY PARTS

Advances in medical science pose some fascinating conundrums concerning property rights in human body products. It is well established that there is no property in a dead body: *Dobson v North Tyneside Health Authority* [1996] 4 All ER 474. Only where some significant process has been undertaken to alter that body, or preserve it for scientific or exhibition purposes, can any title to the body be claimed.

(D) STATE OF MIND OF THE DEFENDANT

Save for the statutory conversion created by s2(2) of the 1977 Act there can only be a conversion if there is intentional conduct resulting in an interference with the goods of the claimant.

If the defendant intends that dealing with the goods which, in fact, interferes with the control of the claimant, that act will be conversion: "though the doer may not know of or intend to challenge the property or possession of the true owner." (per Lord Porter, *Caxton Publishing v Sutherland Publishing* [1938] 4 All ER 389, 404).

Mistake and good faith are irrelevant: "the liability ... is founded upon what has been regarded as a salutary rule for the protection of property, namely that persons deal with the property in chattels or exercise acts of ownership over them at their peril" (per Cleasby B, *Fowler v Hollins* (1872) LR 7 QB 616, 639; aff'd (1875) LR 7 HL 757; followed in *Union Transport Finance v British Car Auctions* [1978] 2 All ER 385).

(E) ACTS OF CONVERSION

In some of the acts of conversion now to be enumerated, especially those involving the sale of the goods, it is unchallengeably clear that the act is sufficiently inconsistent with the rights of the true owner to be a conversion. In many of the other ways of committing conversion, the courts have a discretion whether they will treat the act as sufficiently inconsistent with the right of the true owner to be a conversion - this is especially true in the case of physical damage to the goods and breach of bailment.

(1) TAKING GOODS OR DISPOSSESSING

To take goods out of the possession of another may be to convert them. To steal, or seize under legal process without justification, is a conversion. Merely to remove goods from one place to another is not conversion. A deprivation of the goods which is more than a mere moving of the goods, but in reality deprives the claimant of the use of the goods for however short a time, will generally constitute conversion. To make the claimant hand over goods under duress is conversion.

(2) DESTROYING OR ALTERING

To destroy goods is to convert them, if done intentionally. The quantum of harm constituting a destruction for this purpose is clearly a question of degree, but damage as such is not a conversion.

(3) USING

'If a man takes my horse and rides it and redelivers it to me nevertheless I may have an action against him, for this is a conversion ...' (Rolle, *Abridgement*). To use goods as your own is ordinarily to convert them; it was thus conversion for a person,

to whom carbolic acid drums were delivered by mistake, to deal with them as his own by pouring the contents into his tank: *Lancashire and Yorkshire Railway v MacNicol* (1918) 88 LJKB 601. A mere misuse by a bailee, unaccompanied by any denial of title, is not a conversion although it might be some other tort: *Donald v Suckling* (1866) LR 1 QB 585.

(4) RECEIVING

Voluntarily to receive goods in consummation of a transaction which is intended by the parties to give to the recipient some proprietary rights in the goods may be a conversion actionable by the owner.

(5) DISPOSITION WITHOUT DELIVERY

A person who agrees to sell goods to which he has no title and who does not transfer possession of them does not thereby ordinarily commit conversion, for the bargain and sale is void if the seller has no rights in the goods.

(6) DISPOSITION AND DELIVERY

Ordinarily a person who without lawful authority disposes of goods with the intention of transferring the title or some other right in the goods, and who delivers the goods, thereby commits a conversion.

(7) MISDELIVERY BY CARRIER

A carrier or warehouseman who by mistake delivers goods to the wrong person, commits a conversion whether or not his mistake was innocent. But failure to deliver because the goods have been lost or destroyed by accident or carelessness is not conversion. Nor is it conversion for a bailee or pledgee without notice of the claim of the true owner to return goods to the person from whom he received them.

(8) REFUSAL TO SURRENDER ON DEMAND

A refusal to surrender goods upon lawful and reasonable demands is a conversion. Many of the cases on wrongful detention were actions of detinue. With the abolition of detinue, conversion will now apparently lie in every case in which detinue would formerly have lain.

(9) GOODS LOST OR DESTROYED

At common law there could be no conversion where there was no voluntary act. Section 2 of the 1977 Act, which abolishes detinue, therefore further provides in s2(2):

‘An action lies in conversion for loss or destruction of goods which a bailee has allowed to happen in breach of his duty to his bailor (that is to say it lies in a case which is not otherwise conversion, but would have been detinue before detinue was abolished).’

Bailees are required to take reasonable care of goods in their keeping and will be liable for the loss or destruction of such goods unless they can disprove fault, but they are not insurers of the goods: *Sutcliffe v CC of West Yorkshire* [1996] RTR 86 – no action for conversion where an arson attack destroyed the plaintiff’s car, seized and kept in the police station yard.

(10) RESIDUAL ACTS AMOUNTING TO A CONVERSION

It must be emphasised again that the above are not exhaustive categories of acts of conversion. There are other acts which are not capable of being readily classified and which may yet fall within the definition of conversion. In these residual cases the judicial discretion whether to treat the act as sufficiently inconsistent with the true owner’s rights for a conversion is especially important.

(F) CONVERSION AS BETWEEN CO-OWNERS

Co-ownership does not afford a defence to certain proceedings in conversion. Section 10(1)(a) of the 1977 Act provides that co-ownership is no defence to an action founded on conversion where the defendant, without the authority of the other co-owner, destroys the goods, or dispose of them in a way giving a good title to the entire property in the goods, or otherwise does anything equivalent to the destruction of the other interest in the goods. This principle was well established at common law, and s10(1)(a) is declared to be by way of restatement of existing law (s10(3)).

The 1977 Act, however, does alter the common law by further providing in s10(1)(b) that it is also no defence to an action founded on conversion where the defendant, without the authority of the other co-owner, purports to dispose of the goods in such a way as would give a good title to the entire property in the goods if he were acting with the authority of all co-owners of the goods. At common law, a sale and delivery by a co-owner which did not pass title was not a conversion because it was not akin to destruction of the claimant's property.

(G) REMEDIES: DAMAGES

The major effect of the 1977 Act is to rationalise the remedies available to claimants suing in conversion both in relation to the damages which may be awarded and in making provision for specific return of the goods by way of orders for delivery.

(1) At common law a claimant with a limited interest in the goods could normally recover their full value from a third party. Under s8 of the 1977 Act and rules of court the claimant now has to identify any other person whom he knows to have an interest in the goods and any such interested party may be joined, whereupon the damages may be apportioned amongst the interested parties in proportion to their respective interests.

(2) The claimant in conversion is entitled to be compensated to the extent of the value to him of the goods of which he has been deprived. This will often appropriately be the market value of the goods. Where goods are of a kind which can be readily bought in the market the actual market value will be the appropriate measure; otherwise the replacement value in a comparable state (*JE Hall v Barclay* [1937] 3 All ER 620) or the original cost minus depreciation will be the standard. Where the actual value of the claimant's interest in the goods is less than the market value he may be awarded the value of that interest and not the higher market value.

(3) 'The general rule is that a plaintiff whose property is irreversibly converted has vested in him a right to damages for conversion measured by the value of the property at the date of conversion' (*BBMB Finance v Eda Holdings* [1991] 2 All ER 129).

However, the market value (even where ascertainable) at conversion will not necessarily mark the top limit of damages recoverable in conversion in the following instances:

- (i) Evidence comes in later to show what was the value at conversion (*Caxton Publishing v Sutherland Publishing* [1939] AC 178, 203, per Lord Porter).
- (ii) The market value of the goods rises between the date of the cause of action and trial (*Greening v Wilkinson* (1825) 1 C&P 625).
- (iii) If the defendant converts the claimant's goods and he then increases their value the claimant cannot ordinarily recover that increased value. Where the act of conversion relied on takes place after the improvement made to the goods, s6(1) of the Act is applicable now: if the defendant has improved the goods in the mistaken but honest belief that he had a good title to them an allowance is made for the extent to which at the time at which the goods fall to be valued in assessing damages, the value of the goods is attributable to the improvement. A similar allowance is enjoyed by purported purchasers of goods improved by another, provided again that the purchaser acted in good faith (s6(2)). Subsequent purchasers enjoy the same protection (s6(3)).

- (iv) If the claimant incurs pecuniary loss as a direct consequence of the conversion he may recover this as special damage in addition to the market value of the goods. A workman deprived of his tools recovered loss of wages in *Bodley v Reynolds* (1846) 8 QB 779.
- (v) Although detinue is abolished by s2(1) of the 1977 Act, s3 of the Act, in effect, preserves the remedies for what would previously have constituted detinue by making such remedies available in conversion. In *IBL Ltd v Cousseins* [1991] 2 All ER 133, the Court of Appeal held that in cases of temporary deprivation of property, where no irreversible act of conversion is committed, evidence must be adduced as to the true loss suffered by the owner of the goods.
- (vi) The effect as between the parties to a satisfied judgment for damages in conversion is to transfer the title to the defendant (*Ellis v John Stenning* [1932] All ER Rep 597). It follows that the court will not award damages for loss of use as well as the value of the goods where the effect would be doubly to compensate the claimant: the capacity for profitable use is part of the value of the goods.
- (vii) It is doubtful in what circumstances a buyer who does not recover his goods can claim a loss of re-sale profit. This loss was recovered in *France v Gaudet* (1871) LR 6 QB 199.

(H) REMEDIES: OTHER FORMS OF RELIEF

The 1977 Act introduces common remedies for all forms of 'wrongful interferences with goods'. Section 3 provides that in proceedings for conversion, or any other chattel tort, against a person in possession or control of goods, the following relief may be given, as far as is appropriate:

- An order for delivery and for payment of any consequential damages (s3(2)(a));
- An order for delivery of the goods, but giving the defendant the alternative of paying damages by reference to the value of the goods, together in either alternative with payment of any consequential damages (s3(2)(b)); or
- Damages(s3(2)(c)).

If it is shown to the court's satisfaction that an order for delivery and payment of any consequential damages has not been complied with, the court may revoke the order (or the relevant part of it) and make an order for payment of damages by reference to the value of the goods (s3(4)(a) and (b)).

Where an order is made for delivery but giving the defendant the alternative of paying damages (ie, under s3(2)(b)), the defendant may satisfy the order by returning the goods at any time before execution of judgment, but without prejudice to liability to pay any consequential damages: s3(5).

Where goods are not detained (as where they are lost or destroyed) the normal form of judgment is for damages.

(I) LIMITATION OF ACTIONS

The Limitation Act 1980 provides that:

- Once the period of limitation has expired, the claimant's title to the goods is extinguished.
- Where there are successive conversions in respect of the same goods, whether by the same person or not, the cause of action is extinguished after six years from the first conversion.
- If the action is based on fraud, or if the right of action is concealed by fraud, the period of limitation (normally six years under the Act) does not begin to run until the claimant discovers or ought to have discovered the fraud.

The Limitation Act 1980 also has complex provisions designed to enable owners from whom goods are stolen to sue the thief without limit of time.

2. TRESPASS TO GOODS

An intentional or negligent interference with goods in the possession of the claimant is a trespass provided that the interference is direct.

This tort protects several interests. First, it protects the claimant's interest in the retention of possession of his goods (though the tort of conversion also protects this interest and is more often relied on for this purpose than is trespass). Secondly, trespass protects his interest in the physical condition of his goods and, thirdly, his interest in the inviolability of his goods, ie protection against intermeddling.

(A) FORMS OF TRESPASS

It follows that trespass to goods assumes various forms. Taking goods out of the possession of another, moving them from one place to another, or even bringing one's person into contact with them, or directing a missile at them have all been held to be trespass.

(B) CHARACTER OF THE ACT OF THE DEFENDANT

There cannot be a trespass if the interference is indirect.

In order to decide whether a mere touching of goods is a trespass one must ask whether trespass to goods is actionable per se:

- A dictum of Lord Blanesburgh in *William Leitch v Leydon* [1931] AC 90, 106 is often cited to support the view that it is always actionable per se.
- Some, on the other hand, state that there is clear authority for the proposition that trespass is actionable per se, but only where there is a dispossession of the claimant. Yet in *Kirk v Gregory* (1876) 1 Ex D 55, a woman, who moved rings belonging to a man who had just died from one room in his house to another was held liable in nominal damages for this asportation, ie for carrying away of the goods from one place to another.

(C) STATE OF MIND OF THE DEFENDANT

In *National Coal Board v JE Evans* [1951] 2 All ER 310, the Court of Appeal held that a contractor whose servant, while excavating, damaged the cable of the plaintiff and whose act was neither intentional nor negligent, was not liable in trespass to goods. There is, then, no liability for an accidental trespass to goods.

(D) THE INTEREST OF THE CLAIMANT

The claimant must be in possession of the goods at the time of the interference. Possession connotes both the power (*factum*) of exercising physical control and the intention (*animus*) to exercise such control on his own behalf. Whether the claimant is owner is immaterial. Lord Esher has said: 'The plaintiff in an action of trespass must at the time of the trespass have the present possession of the goods, either actual or constructive, or a legal right to the immediate possession' (*Johnson v Diprose* [1893] 1 QB 512, 515).

There are three apparent exceptions to the rule that possession is essential:

- (1) In *White v Morris* (1852) 11 CB 1015, it was held that, where goods were assigned as security for a loan upon trust to permit the assignor to remain in possession until default in repayment, the assignee could sue in trespass while the goods were still in the assignor's possession.
- (2) The title of executors or administrators relates back to the death of deceased, and this entitles them to sue for a trespass committed between the date of the death and that of the grant (*Tharpe v Stallwood* (1843) 5 Man & G 760).

- (3) The owner of a franchise in wrecks has been deemed to have constructive possession of a wreck so as to enable him to sue in trespass a person who seized a cask of whisky before he could do so (*Dunwich Corp v Sterry* (1831) 1 B & Ad 831).

‘Trespass to goods’ is expressly included within the definition of a ‘wrongful interference with goods’ in the Torts (Interference with Goods) Act 1977. Therefore the defence of *jus tertii* is no longer available, and the statutory rules regarding co-ownership also apply, as in an appropriate case are all forms of relief provided for by that Act.

(E) DAMAGES

(1) MEASURE

Where the claimant has been deprived of the goods, he is entitled to their value by way of damages.

A claimant may recover general damages for loss of use of goods (as distinct from special damages for loss of profits from the goods) although he would not have been using them during the period within which he has been deprived of their use (*The Mediana* [1900] AC 113, 117-8 per Earl of Halsbury LC).

The provisions of the 1977 Act relating to damages apply to actions for trespass to goods.

(2) TRESPASS AB INITIO

Where any person having by authority of law entered on land or seized goods, or arrested a person, subsequently commits a trespass his original act will in certain circumstances be deemed itself to be a trespass. The Distress for rent Act 1737, s19, abolished this rule in the case of distress for rent.

This doctrine has little practical relevance today, but damages may be assessed on the basis that the entire conduct of the defendant and not merely his subsequent wrongful act is tortious (*Shorland v Govett* (1826) 5 B&C 485, obiter).

3. RESIDUAL TORTS

There are many circumstances where the violation of interests in goods is not protected by trespass, conversion or even the tort of negligence. The action analogous to the old action on the case has proved very fruitful in filling these gaps; and what now follows is to be treated as illustrative of this wider right of action and not as exhaustively defining the circumstances in which it may be held available in the future. These torts are forms of ‘wrongful interference with goods’ so that, where relevant, the provisions of the 1977 Act apply.

Trespass and conversion are especially restrictive in that they are not available to a claimant who neither possesses nor has an immediate right to possess the goods. The leading case of *Mears v London and South Western Railway* (1862) 11 CBNS 850, has firmly established that if goods are destroyed or damaged, the owner may sue without having possession or an immediate right to possess. The rule benefits, for example, a bailor, a purchaser where the vendor has a lien for unpaid purchase money, and a mortgagee. He must prove damage to his interest – taking the goods from the possessor without affecting title is insufficient.

A bailee disregarding the terms of his bailment may sometimes be liable in case, though not in conversion and that to deny the claimant access to his goods or to interfere with his freedom of using them is also actionable on the case. Further, to place baited traps on one’s land near the highway so as to attract dogs into the traps, and in consequence of which dogs are so trapped, is a tort of this category (*Townsend v Wathen* (1808) 9 East 277).