

TRESPASS TO CHATTEL

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What Is Trespass to Chattel

This is a direct and unlawful injury done to the chattel in possession of another person. It is actionable per se; proof of direct and unlawful application of force is enough, there is no need to prove damages. However, the direct application of force does not have to be physical. For example, the driving away of cattle is trespass to chattel. A chattel is every moveable property. This thus excludes land.

A person who wants to sue in trespass to chattel can sue under trespass to goods, conversion and negligence that is involved in the commission of the trespass or conversion. These actions are substantiated by the provisions of the **Torts (Interference With Goods) Act 1977**. The act creates a new action called. “Wrongful interference with goods”. It defines it in **S.1** as:

- a) Conversion of goods called trover.
- b) Trespass to Goods
- c) Negligence in so far as it results in damage to goods.
- d) Subject to S.2 of the Act, any other tort as far as it results in damage to goods or to an interest in goods.

Trespass to Goods

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 goods. 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**, 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 Goods

1. 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** 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.

2. 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.

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:

- a) One person willfully 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.

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 defense to conversion.

SOURCES

1. Lecture delivered by Dr G.M Olatokun on Nigerian Law of Torts
2. B.S. Markesinis and S.F Deakins: Tort Law