**Introduction**

The Rei Vindicatio and the Condictio Furtuva are both common law remedies to recover lost possession of a patrimonial thing. Although these actions ostensibly do the same thing and are alternatives to each other, there are differences between them. Following I will explore both actions. I will look at the definition of the actions, what their requirements are and the differences between the two actions.

**Definition of the Condictio Furtuva:**

This is a delictual action which is used by a plaintiff that has their patrimonial thing removed from their possession through theft. This action is available to the owner of the thing or anyone with an interest in the stolen thing. This action can be brought against the thief and their heirs. [[1]](#footnote-1)

The action can be used even in the absence of fault from the defendant, this formed part of the ratio decidendi in Crots v Pretorius (2010 (6) SA 512 (SCA) were the court found that dolus eventualis satisfies the requirements for theft[[2]](#footnote-2), following is a quick summery of the case:

*The defendant bought heifers (cows) from a third party, during the sale he flouted the requirements of the provisions of the Stock Theft Act 57 of 1959 which he was or should have been familiar with given he was a stock speculator for 7 years. The defendant agreed to buy the heifers provided he could pay the third party an amount that the heifers would make upon slaughter. The Stock Theft Act has provisions which the defendant floated and admitted to knowing. The defendant however claims to he had no direct knowledge of the theft. However, the court found he foresaw the possibility that the third party didn’t have enough right to sell the heifers but choose to ignore this and therefore his actions satisfy the requirements for dolus eventualis for the theft. [[3]](#footnote-3)*

The Condictio Furtiva can be used to claim damages of the highest value of the thing between the time of the theft to litis contestatio.[[4]](#footnote-4)

**Requirements:**

1. The thing must be removed from the owner or anyone with an interest in the thing through theft. This include ***Furtum Uses***(theft of use recognised in common law as theft), This is illustrated by Malan JA’s citation of **Clifford v Farinha** in **CHETTY v ITALTILE (668/2011)** which says[[5]](#footnote-5):

*“The intention to appropriate the thing permanently, as in the case of criminal theft, is not a requirement of the condictio where furtum usus is concerned. The condictio furtiva will be available where, for example, the defendant withdraws the thing from the possession of another, or ‘takes’ it, and uses it while intending to restore possession after use.” [[6]](#footnote-6)*

1. The plaintiff must be an owner or someone with an interest in the thing stolen[[7]](#footnote-7)

**Definition of the Rei vindicatio**

Like the Condictio furtiva this is also a common law remedy to restore possession to the plaintiff who is the owner of the movable or immovable thing to which he/she lost possession. This remedy is merely used to restore possession and does not award damages.[[8]](#footnote-8) The remedy can be used to recover property from a third party that gets possession from someone that deprived the plaintiff of possession. The third party will not be entitled to compensation even if they gave value to get the thing.[[9]](#footnote-9) This remedy does not concern itself with the lawfulness of the act that deprived the owner of possession. It only looks at whether possession was lost by an owner and is held by a respondent who holds no right of possession.[[10]](#footnote-10) The application Rei Vindicatio goes have limitations which are

* Property held on judicial sale or in execution
* Property alienated by an agent that was impowered to alienate
* Doctrine of estoppel[[11]](#footnote-11)

The plaintiff cannot use it to claim from a party that unlawfully deprived him of possession if they do not hold the property anymore. If the thing is destroyed or consumed the owner will have a claim for damages but cannot use the Rie vindicatio anymore.[[12]](#footnote-12)

The remedy stems from the notion that the owner of a thing is the holder of the highest right towards the thing and they must also have possession of the thing.[[13]](#footnote-13) Except where someone has a right of possession.

**Requirements**

1. The plaintiff must prove their ownership of the thing
2. They must prove that possession is now with the defendant.
   1. The defendant than has an onus to prove that they have a valid right to possession

When to use which remedy

Where it is impossible to restore possession as in the case of the thing being destroyed or lost the Condictio is the remedy to use as opposed to the similar Rei Vindicatio

Bibliography

1. Crots v Pretorius (2010 (6) SA 512 (SCA) (herein referred to as “Crots”) para 3 [↑](#footnote-ref-1)
2. Crots para 8. [↑](#footnote-ref-2)
3. Crots 4, 6, 7. [↑](#footnote-ref-3)
4. Chetty para 10. [↑](#footnote-ref-4)
5. Chetty para 10 [↑](#footnote-ref-5)
6. Chetty v Italtile Ceramics Ltd (668/2011) [2012] ZASCA 170 (herein referred to as ‘Chetty’) para 10. [↑](#footnote-ref-6)
7. Chetty para 10. [↑](#footnote-ref-7)
8. Baqfin para 10 (need the full citation ) [↑](#footnote-ref-8)
9. Citing is in the PDFs from telegram page 726 [↑](#footnote-ref-9)
10. Sorvaag v pettersen and other 1954 (3) SA 636 (c) para ### [↑](#footnote-ref-10)
11. Citing is in the PDFs from telegram page 726 [↑](#footnote-ref-11)
12. Citing is in the PDFs from telegram page 727 [↑](#footnote-ref-12)
13. ------------------- [↑](#footnote-ref-13)