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Article 1

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THE NATURE OF CONVERSION

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Conversion is the forgotten tort. Few courts or law professors[1] have had any interest in it, and with few exceptions[2] what little has been written about it has been quite perfunctory. There are as a matter of fact several hundred cases of conversion reported every year; but, as in the rather similar case of trespass to land, most of them are concerned only with the ownership of the disputed property, and the tort itself is not in issue. There are still relatively few decisions which throw any light upon the question of just what a conversion is.

Baron Bramwell once frankly conceded that "it seems to me that, after all, no one can undertake to define what a conversion is."[3] There have been dozens of attempts at definition since;[4] but it still must be said that there is no good reason to disagree with the learned Baron. All of the definitions have been either so general and so vague in their terms as to be meaningless, or so broad as to include conduct which is clearly not a conversion, or so narrow as to exclude conduct which clearly is. Nevertheless, the decisions have displayed a rather remarkable consistency, and in any one type of situation there has been amazingly little disagreement. It is as if the courts have arrived, more or less instinctively, at a tacit agreement as to the nature of this tort, which they have not succeeded in putting into words.

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† See Contributors' Section, Masthead p. 223, for biographical data.

1 One reason is that in the law schools conversion has fallen between the two stools of Property and Torts. The teachers of Property have insisted that conversion is tort law, and should be taught in Torts; the teachers of Torts have insisted that it is property law, and that they should not be bothered with it. With the disappearance of the Personal Property course from the modern law school curriculum, conversion has had perforce to be covered, for bar examination purposes, in Torts; and in that sadly overcrowded course it has been received with no enthusiasm at all. No one on either side, with the exception of the late Professor Edward H. Warren of Harvard, has had any interest in the subject.

2 Of the scanty literature in the legal journals, only the following appear to be worth mention: Ames, "History of Trover," 11 Harv. L. Rev. 277, 374 (1898); Clark, "The Test of Conversion," 21 Harv. L. Rev. 408 (1908); Rubin, "Conversion of Choses in Action," 10 Fordham L. Rev. 415 (1941); Salmond, "Observations on Trover and Conversion," 21 L.Q. Rev. 43 (1905); Warren, "Qualifying as Plaintiff in an Action for a Conversion," 49 Harv. L. Rev. 1084 (1936); Note, 21 Cornell L.Q. 112 (1935). See also Professor Warren's small book, Trover and Conversion (1936).

3 In Burroughes v. Bayne, 5 H. & N. 296, 308, 157 Eng. Rep. 1196, 1200 (Exch. 1860), continuing: "Some decided cases may enable one to come to a conclusion, but in cases not similar there will always be a difficulty."

4 A great many of these will be found in 9 Words and Phrases 502-40 (Perm. ed. 1940), continued in the 1956 Supplement at 145-58. Typical is the following, from Pugh v. Hassell, 206 Okla. 290, 291, 242 P.2d 701, 702 (1952):

> Conversion is the unlawful and wrongful exercise of dominion, ownership or control over the property of another to the exclusion of the exercise of the same rights by the owner, either permanently or for an indefinite time.

Compare Salmond, Law of Torts 323 (11th ed. 1953):

> A conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.

The problem is an interesting one, which has occupied the Reporter and his Advisers working on the Second Restatement of Torts.[5] This article is intended to offer some tentative conclusions reached in the course of that work.

The hand of history lies heavy upon the tort of conversion.[6] It had its genesis in the old common law action of trover, whence it still appears in the indices under the title of Trover and Conversion—a thing baffling to the law school freshman, and sometimes even to some lawyers. Trover emerged late in the fifteenth century, as a branch of the action on the case. We probably do not have the earliest examples of the use of the writ, but its name, derived from the French word for finding, indicates rather clearly that they were cases in which the finder of lost goods did not return them, but used them himself, or disposed of them to someone else. The new writ was invented through the ingenuity of some long forgotten common law pleader, to fill in the gaps left by the actions of trespass, which lay for the wrongful taking of a chattel, and detinue, which lay for its wrongful detention. By 1554 the allegations of the complaint had become more or less standardized.[7] The plaintiff alleged that he was possessed of certain goods, that he casually lost them, that the defendant found them, and that the defendant "converted them to his own use." From that phrase in the pleading came the name of the tort.

Trover, as it developed, had some definite procedural advantages over the other forms of action, not the least of which was that it avoided wager of law, a form of licensed perjury which made detinue singularly unattractive to an honest plaintiff suing a dishonest defendant. Almost from the beginning, therefore, the effort was made to expand trover into the field of the wrongful detention of chattels not found. The device by which this was accomplished was that of treating, first the allegation of losing the goods,[8] and then that of finding them,[9] as a fiction. The de-

[5] Work on the Second Restatement of Torts began in January, 1955, with the writer serving as Reporter. The Advisers who met to consider this part of the work included Professors Warren A. Seavey and Robert E. Keeton of Harvard, Fleming James, Jr., of Yale, Wex S. Malone of Louisiana, Dean W. Page Keeton of Texas, and Mr. Laurence H. Eldredge of Philadelphia, formerly Professor of Law at Pennsylvania and Temple.

It should be made clear that at the time of writing the proposed section of the Second Restatement is still in Preliminary Draft form, and is subject to change at meetings of the Council of the American Law Institute aud the Institute itsclf; and that the opinions expressed in this article are those of the writer, and not those of the Institute.

[6] See, generally, Fifoot, History and Sources of the Common Law 102-25 (1949); Ames, "History of Trover," 11 Harv. L. Rev. 277, 374 (1898); Salmond, "Observations on Trover and Conversion," 21 L.Q. Rev. 43 (1905).

[7] Lord Mounteagle v. Countess of Worcester, 2 Dyer 121a, 73 Eng. Rep. 265 (1554).

[8] Kinaston v. Moore, Cro. Car. 89, 79 Eng. Rep. 678 (Exch. 1626); Gumbleton v. Grafton, Cro. Eliz. 781, 78 Eng. Rep. 1011 (1600).

[9] Isaack v. Clark, 2 Bulst. 306, 80 Eng. Rep. 1143 (H.L. 1614); Ratcliff v. Davies, Cro. Jac. 244, 79 Eng. Rep. 210 (Q.B. 1611).

fendant was not permitted to deny the losing and finding, so that the only issues to be litigated were those of the plaintiff's right to possession and the conversion itself. The fictitious allegations survived, however, even into our own century, in jurisdictions where the lost art of common law pleading lingered on; and there are quite modern cases in which it was alleged that the plaintiff casually lost, and the defendant found, something like a steamboat or twenty carloads of grain.

With losing and finding no longer essential, trover moved also into the field of the wrongful taking of chattels, formerly occupied by trespass.[10] In the course of time it entirely replaced detinue, which passed into oblivion unwept, unhonored and unsung; and it so far replaced trespass to chattels that that action fell almost, but not altogether, into disuse. For some two centuries it was said that "whenever trespass for taking goods will lie, that is, where they are taken wrongfully, trover also will lie."[11] The two actions, in other words, were regarded as alternative remedies for the same wrong.

There was, however, a significant difference between the actions of trespass and trover, which for these two centuries passed unremarked. The theory of trespass was that the plaintiff remained the owner of the chattel, with his possession only interfered with or interrupted, so that when it was tendered back to him he must accept it. His recovery was limited to the damages he had sustained through his loss of possession, or through harm to the chattel, which were usually considerably less than its value. The theory of trover was that the defendant, by "converting" the chattel to his own use, had appropriated the plaintiff's rights, for which he was required to make compensation. The plaintiff was therefore not required to accept the chattel when it was tendered back to him; and he recovered as his damages the full value of the chattel at the time and place of the conversion. When the defendant satisfied the judgment in trover, the title passed to him, and plaintiff had nothing more to do with it. The effect was that the defendant was compelled, because of his wrongful appropriation, to buy the chattel at a forced sale, of which the action of trover was the judicial instrument.[12]

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[10] Bishop v. Viscountess Montague, Cro. Eliz. 824, 78 Eng. Rep. 1051 (K.B. 1653); Cro. Jac. 50, 79 Eng. Rep. 42 (C.P. 1601).

[11] Lord Mansfield, in Cooper v. Chitty, 1 Burr. 20, 31, 97 Eng. Rep. 166, 172 (K.B. 1756); Serjeant Williams, Note to Saunders' Reports, Wilbraham v. Snow, 2 Wms. Saund. 47aa, 85 Eng. Rep. 624 (K.B. 1670).

[12] "'The distinction between acts of trespass, acts of misfeasance, and acts of conversion is often a substantial one. In actions in the nature of trespass or case, for misfeasance, the plaintiff recovers only the damages which he has suffered by reason of the wrongful acts of the defendant; but in actions in the nature of trover the general rule of damages is the value of the property at the time of the conversion,

The modern law of conversion began when this basic difference between the theories of trespass and trover was brought into sharp focus in *Fouldes v. Willoughby*,[13] in England in 1841. The plaintiff went on board the defendant's ferry-boat, taking with him two horses. The defendant wrongfully refused to carry the horses, and put them on shore. The plaintiff remained on the boat and was conveyed across the river, as a result of which he lost his horses. In an action of trover it was held that the mere act of removing the horses from the boat, although it was actionable as a trespass, did not amount to the tort of conversion. Three judges struggled at length with the distinction, all of them endeavoring to express the fundamental idea that a conversion must be some act which denies or defies the plaintiff's right of ownership of his chattel. Baron Alderson, seizing upon a word used in the argument of counsel, said that it must be "an act inconsistent with the general right of *dominion* which the owner of the chattel has in it."[14]

"Dominion" has haunted the conversion cases ever since. It is, of course, a difficult word, which has been at best a negative aid. If the defendant merely takes the plaintiff's horse by the bridle and leads it a few steps, it is certainly to some extent an exercise of dominion, authority, sovereignty or control over the horse, and it is certainly to some extent an act inconsistent with the plaintiff's "general right of dominion," which must include the right not to have his horse interfered with. Yet this illustration was given by Lord Abinger in *Fouldes v. Willoughby*,[15] as an example of a mere trespass, not amounting to a conversion. The same is certainly no less true of the defendant who intentionally scratches the panel of the plaintiff's carriage, which was likewise given as an illustration of trespass, but not conversion.[16] On the other hand, if the defendant had thrown the horses into the water, and they had been

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diminished, when property has been returned, and received by the owner, by the value of the property at the time it was returned, so that after the conversion, and until the delivery to the owner, the property is absolutely at the risk of the person who converted it, and he is liable to pay for any depreciation in value, whether that depreciation has been occasioned by his negligence or fault, or by the negligence or fault of any other person, or by inevitable accident, or the act of God.' Hale, Bailments, 188.

"Another distinction is that a judgment for a breach of contract or injury to property, though followed by a payment, does not transfer title to the subject matter involved, while a judgment in trover for conversion will, after payment, effect a complete change in ownership, by operation of law. . . . This upon the theory that the plaintiff, by suing in trover, elects to compel the defendant to become a purchaser of the property, and to pay its value at the date of conversion. Freeman, Judgments (3d ed.) § 237." May v. Georger, 21 Misc. 622, 625-26, 47 N.Y. Supp. 1057, 1060 (Sup. Ct. App. T. 1897).

[13] 8 M. & W. 540, 151 Eng. Rep. 1153 (Exch. 1841).

[14] Id. at 548, 151 Eng. Rep. at 1156.

[15] Id. at 546, 151 Eng. Rep. at 1155.

[16] Id. at 549, 151 Eng. Rep. at 1157.

drowned, it was agreed that there would have been a conversion.[17] Yet the act itself is no more than putting them off of the boat, and it is only its immediate consequences which make it more serious. What seems to emerge from the case, as the goal toward which the three judges were groping, is that it is not the fact that the defendant has exercised dominion or control over the chattel, or that he has interfered with the plaintiff's dominion or control over it, which is alone important; and that it is the degree of such interference which makes a conversion.

In the United States the same essential problem of delimitation arose in the horse and buggy days, in cases where a bailee made an unauthorized use of the bailed chattel. In *Johnson v. Weedman*,[18] in 1843, a bailee with whom a horse was left to be agisted and fed rode it, on one occasion, for a distance of fifteen miles. The ride in no way injured the horse, although it died later from other causes, and could not be returned. Counsel for the defendant, a young man of thirty-five named Abraham Lincoln, succeeded in convincing the court that the use of the horse, although it was a breach of contract and a tort, was not a conversion, because it was not a sufficiently serious invasion of the plaintiff's right.[19] Subsequent decisions, chiefly concerned with the driving of rented horses for a short distance beyond the agreed destination, worked out in effect the distinction made in this case, that if the unauthorized use results in substantial damage to the chattel there is a conversion,[20] but that in the absence of such damage there is not,[21] unless the use itself is

[17] Id. at 547, 151 Eng. Rep. at 1156.

[18] 5 Ill. 495 (1843).

[19] "While we admit that if a bailee for a special purpose, as he is here, viz., agistment and feeding, use the property for another purpose, without leave of the owner, he is liable as for a conversion, and, as is laid down in the books, for assuming and exercising ownership over the goods, . . . yet it should be understood only of such an use as occasions an injury or damage. . . . If the doctrine of the books is to be literally understood, that any and every use, by the bailee, not falling strictly within the terms of the bailment, is a conversion, the mere temporary exercise of the animal for his own health and improvement, might, in like manner, be charged as a temporary conversion, subject to be made permanent, and the right of property changed into the defendant by a judgment. . . . I would by no means be understood as saying that the defendant had a right, or that it was proper to use the horse, but only that, that use, in this instance, being without detriment, does not amount to a conversion. Another form of action would be better adapted to adjust the real rights of the parties. Peradventure in an action of assumpsit for the use of the horse, the value of his services might be recovered, or in a special action on the case, on the bailment." Id. at 497.

[20] Spencer v. Pilcher, 8 Leigh 495 (Va. 1837); Mayor and Council of Columbus v. Howard, 6 Ga. 213 (1849); Towne v. Wiley, 23 Vt. 355 (1851); Woodman v. Hubbard, 25 N.H. 67 (1852); Disbrow v. Tenbroeck, 4 E.D. Smith 397 (N.Y. 1855); Harvey v. Epes, 12 Gratt. 153 (Va. 1855); Wentworth v. McDuffie, 48 N.H. 402 (1869); Hall v. Corcoran, 107 Mass. 251 (1871); Collins v. Bennett, 46 N.Y. 490 (1871); Fisher v. Kyle, 27 Mich. 454 (1873); Perham v. Coney, 117 Mass. 102 (1875); Line v. Mills, 12 Ind. App. 100, 39 N.E. 870 (1894); Churchill v. White, 58 Neb. 22, 78 N.W. 369 (1899); Ledbetter v. Thomas, 130 Ala. 299, 30 So. 342 (1901); Palmer v. Mayo, 80 Conn. 353, 68 Atl. 369 (1907); Baxter v. Woodward, 191 Mich. 379, 158 N.W. 137 (1916); Vermont Acceptance Corp. v. Wiltshire, 103 Vt. 219, 153 Atl. 199 (1931).

[21] Harvey v. Epes, 12 Gratt. 153 (Va. 1855); Wentworth v. McDuffie, 48 N.H. 402

an important interference with the rights of the plaintiff. Again the character of the act is the same in either case, and its effect, as a major or a minor invasion of the plaintiff's interests, is the determining factor.

The subsequent development of the law has been along these lines. Following *Fouldes v. Willoughby* there was, as might have been expected, a revival of the old action for trespass to chattels, and it has had some occasional use as a remedy for minor interferences, resulting in some damage,[22] but not sufficiently important or sufficiently serious to amount to the greater tort.[23] Conversion has been confined, in effect, to those major interferences which are so important, or serious, as to justify the forced judicial sale of the chattel to the defendant which is the distinguishing feature of the action. There has been increasing recognition of the fact that the significance of conversion lies in the measure of damages, the recovery of the full value of the goods, and that the tort is therefore properly limited to those wrongs which justify imposing it.

Out of all this the laborers in the vineyard of the Restatement have brought forth the conclusion, be it mountain or mouse, that there is probably no type of act or conduct on the part of a defendant which is always, under any and all circumstances, a conversion; and that as to any particular type of act the existence of this tort is a matter of the seriousness of the interference with the plaintiff's rights, which in turn will depend upon the interplay of a number of different factors, each of which has its own importance, and may, in a proper case, be controlling.

This may be stated in the form of black letter propositions, and tested by a series of illustrations involving the various types of conduct which have been held to be sufficient for conversion. Therefore:

(1) *Conversion is an intentional exercise of dominion or control over*

(1869); Farkas v. Powell, 86 Ga. 802, 13 S.E. 200 (1891); Doolittle v. Shaw, 92 Iowa 348, 60 N.W. 621 (1894); Daugherty v. Reveal, 54 Ind. App. 71, 102 N.E. 381 (1913); Jeffries v. Pankow, 112 Ore. 439, 229 Pac. 903 (1924); cf. Donovan v. Barkhausen Oil Co., 200 Wis. 194, 227 N.W. 940 (1929); Wm. L. Hughson Co. v. Northwestern Nat'l Bank, 126 Ore. 43, 268 Pac. 756 (1928).

22 The American cases agree that not even trespass will lie unless there is a dispossession, or actual harm to the chattel. Glidden v. Szybiak, 95 N.H. 318, 63 A.2d 233 (1949); De Marentille v. Oliver, 2 N.J.L. 379 (Sup. Ct. 1808); Graves v. Severens, 40 Vt. 636 (1868); Paul v. Slason, 22 Vt. 231 (1850); 1 Street, Foundations of Legal Liability 16 (1906); Restatement, Torts § 218, Comment *f* (1934).

23 Bankston v. DuMont, 205 Miss. 272, 38 So. 2d 721 (1949) (opening and searching purse, removing money); Bruch v. Carter, 32 N.J.L. 554 (Ct. Err. & App. 1867) (moving chattel); Post v. Munn, 4 N.J.L. 61 (Sup. Ct. 1818) (damaging fishing net); Brittain v. McKay, 23 N.C. 265 (1840) (cutting crop).

> Where the conduct complained of does not amount to a substantial interference with possession or the right thereto, but consists of intermeddling with or use of or damage to the personal property, the owner has a cause of action for trespass or case, and may recover only the actual damages suffered by reason of the impairment of the property or the loss of its use.

Zaslow v. Kroenert, 29 Cal. 2d 541, 551, 176 P.2d 1, 7 (1946).

a chattel, which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.

(2) *In determining the seriousness of the interference and the justice of requiring the actor to pay the full value, the following factors are important:*

(a) *The extent and duration of the actor's exercise of dominion or control;*

(b) *The actor's intent to assert a right in fact inconsistent with the other's right of control;*

(c) *The actor's good faith;*

(d) *The extent and duration of the resulting interference with the other's right of control;*

(e) *The harm done to the chattel; and*

(f) *The expense and inconvenience caused to the other.*[24]

In testing these propositions, it is convenient to proceed down the catalogue of the various types of the defendant's conduct which have been held sufficient for conversion: taking the chattel, removing it, transferring it, withholding it, damaging or altering it, and using it. It is to be assumed throughout that the defendant has acted with the intent of affecting the chattel, and has not merely been negligent with respect to it;[25] and that in all instances he does not have a privilege to act as he does. The illustrations will speak for themselves, and the cases may be relegated to the footnotes.

TAKING THE CHATTEL

1. A, leaving a restaurant, by mistake takes B's hat from the rack, believing it to be his own. When he reaches the sidewalk he puts on the hat, discovers his mistake, and immediately returns it to the rack. This is not a conversion.[26]

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24 Preliminary Draft of § 222A, Second Restatement of Torts, see supra note 5.

25 There is general agreement that conversion is an intentional tort, in the sense that the defendant's act must be intended to affect the chattel. Negligence, even though it results in loss of the goods or damage to them, is never a sufficient basis for the tort. Davis v. Hurt, 114 Ala. 146, 21 So. 468 (1897); Emmert v. United Bank & Trust Co., 14 Cal. App. 2d 1, 57 P.2d 963 (1936); Dearbourn v. Union Nat'l Bank, 58 Me. 273 (1870); Wamsley v. Atlas S.S. Co., 168 N.Y. 533, 61 N.E. 896 (1901); Heald v. Carey, 11 C.B. 977, 138 Eng. Rep. 762 (C.P. 1852); Restatement, Torts § 224 (1934).

It is not, however, necessary that the conversion be a matter of conscious wrongdoing, or an intent to affect the plaintiff's rights. An innocent mistake may be enough. See for example the cases of bona fide purchasers of stolen goods, infra note 31. The defendant's good faith is, however, a factor to be considered in determining the seriousness of the interference.

26 Blackinton v. Pillsbury, 260 Mass. 123, 156 N.E. 895 (1927). An employee of a club removed personal property from the locker of one member, believing it to be the locker of another.

Hushaw v. Dunn, 62 Colo. 109, 160 Pac. 1037 (1916). An officer took money from

2. The same facts as in Illustration 1, except that A keeps the hat for three months before discovering his mistake and returning it. This is a conversion.[27]

3. The same facts as in Illustration 1, except that as A reaches the sidewalk and puts on the hat a sudden gust of wind blows it from his head, and it goes down an open manhole and is lost. This is a conversion.[28]

4. Leaving a restaurant, A takes B's hat from the rack, intending to steal it. As he approaches the door he sees a policeman outside, and immediately returns the hat to the rack. This is a conversion.[29]

5. A, a sheriff, levies execution on the goods of B, mistakenly believing them to belong to C. This is a conversion.[30]

6. A, by fraudulent representations as to his credit, induces B to deliver an automobile to him. This is a conversion.[31]

7. A steals B's automobile. In good faith, for value, and without no-

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the person of a prisoner before he was locked up, and returned it the next day when he pleaded guilty.

MacBryde v. Burnett, 44 F. Supp. 833 (D. Mo. 1942). A trustee by mistake transferred five out of eighty shares of stock belonging to the trust estate into his own name. There was no other interference with the stock.

Frome v. Dennis, 45 N.J.L. 515 (Sup. Ct. 1883). The defendant innocently borrowed a plow from a bailee who had no right to lend it, and used it for three days before returning it.

[27] No cases in point have been found. It seems clear, however, that if deprivation of use for a substantial time is sufficient for conversion where the defendant has withheld the chattel from the plaintiff (infra text at note 63), it is no less so where he has taken it from him.

[28] Blackinton v. Pillsbury, supra note 26. It was said that if the property were lost or destroyed there would be a conversion.

Donahue v. Shippee, 15 R.I. 453, 8 Atl. 541 (1887). Defendant cut grass on plaintiff's land, believing in good faith that he was privileged to do so. The grass was removed and appropriated by third persons.

See also the cases of loss or damage in the course of a minor unpermitted use by a bailee, infra note 83.

[29] There seems to be no doubt that any taking with knowledge of the plaintiff's rights and an intent to deprive him of them permanently is a conversion. Lawyers' Mortgage Inv. Co. v. Paramount Laundries, 287 Mass. 357, 191 N.E. 398 (1934); Hutchinson v. Merchants' & Mechanics' Bank, 41 Pa. 42 (1861).

[30] McPheters v. Page, 83 Me. 234, 22 Atl. 101 (1891); Atlantic Finance Corp. v. Graham, 311 Mass. 49, 39 N.E.2d 951 (1942); Kloos v. Gatz, 97 Minn. 167, 105 N.W. 639 (1906); Johnson v. Farr, 60 N.H. 426 (1880); Morse v. Hurd, 17 N.H. 246 (1845); Zion v. De Jonge, 39 Misc. 839, 81 N.Y. Supp. 491 (N.Y. City Ct. 1902).

It may be suggested, however, although no cases have been found, that a levy in good faith, followed by immediate discovery of the mistake and termination of the levy, is not a sufficiently serious matter to constitute a conversion.

[31] Sale induced by fraud: Hagar v. Norton, 188 Mass. 47, 73 N.E. 1073 (1905); Holland v. Bishop, 60 Minn. 23, 61 N.W. 681 (1895). Since the theory of the recovery is that of a wrongful taking, rather than wrongful detention, demand is not essential to the cause of action. Thurston v. Blanchard, 22 Pick. 18 (Mass. 1839); Baird v. Howard, 51 Ohio St. 57, 36 N.E. 732 (1894); Yeager v. Wallace, 57 Pa. 365 (1868); Restatement, Torts §§ 221, 222 (1934). Cf. Bolton v. Stewart, 191 S.W.2d 798 (Tex. Civ. App. 1945) (purchase of goods from lunatic incapable of contract).

Delivery of possession induced by fraud: Roehrich v. Holt Motor Co., 201 Minn. 586, 277 N.W. 274 (1938); McCrillis v. Allen, 57 Vt. 505 (1884). Contra, Christensen v. Pugh, 84 Utah 440, 35 P.2d 100 (1934).

tice that it is stolen, C buys the car from A and takes possession of it. This is a conversion.[32]

8. The same facts as in Illustration 7, except that C buys the car but does not take possession of it. This is not a conversion.[33]

9. The same facts as in Illustration 7, except that C rents the car from A, or takes it from him in pledge. This is a conversion.[34]

10. The same facts as in Illustration 7, except that C gratuitously borrows the car from A and drives it ten miles. This is not a conversion.[35]

11. The same facts as in Illustration 7, except that C is the owner of a garage, and receives the car from A for storage. This is not a conversion.[36]

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[32] This is the rule in the great majority of the jurisdictions. The taking itself is wrongful, and no demand is required before suit. Claybrooke Warehouse & Gin Co. v. Farmers Coop. Warebouse & Gin Co., 260 Ala. 518, 71 So. 2d 88 (1954); Culp v. Signal Van & Storage Co., 298 P.2d 162 (Cal. App. 1956); Wilson Cypress Co. v. Logan, 120 Fla. 124, 162 So. 489 (1935); Sims v. James, 62 Ga. 260 (1879); Klam v. Koppel, 63 Idaho 171, 118 P.2d 729 (1941); Fawcett, Isham & Co. v. Osborn, Adams & Co., 32 Ill. 411 (1863); Wyman v. Carrabassett Hardwood Lumber Co., 121 Me. 380, 116 Atl. 729 (1922); Torgerson v. Quinn-Shepherdson Co., 161 Minn. 380, 201 N.W. 615 (1925); Hyde v. Noble, 13 N.H. 494 (1843); Hovland v. Farmers Union Elevator Co., 67 N.D. 71, 269 N.W. 842 (1936); Creach v. Ralph Nichols Co., 267 S.W.2d 132 (Tenn. App. 1953); Cooper v. Willomatt, 1 C.B. 672, 135 Eng. Rep. 706 (C.P. 1845).

Again it may be suggested that a bona fide purchase, followed by immediate discovery of the theft and tender of the return of the chattel, is not a sufficiently serious matter to amount to a conversion. Suppose that A buys a painting at an auction, and when he gets it into his hands immediately recognizes it as one stolen from B, and gives it back to B, who is standing next to him?

In four jurisdictions the purchase and taking of possession in good faith are held not to be in themselves a sufficient interference with the owner's rights to amount to conversion, so that the purchaser is not a converter until demand is made for the goods. Parker v. Middlebrook, 24 Conn. 207 (1855); Gillet v. Roberts, 57 N.Y. 29 (1874); McJunkin v. Hancock, 71 Okla. 257, 176 Pac. 740 (1918); Burckhalter v. Mitchell, 27 S.C. 240, 3 S.E. 225 (1887). Even here, however, demand is held to be unnecessary where it would obviously be futile, as where the purchaser after knowledge of the plaintiff's rights claims to be the owner. Employers' Fire Ins. Co. v. Cotten, 245 N.Y. 102, 156 N.E. 629 (1927).

[33] Hall v. Merchants' State Bank, 199 Iowa 483, 202 N.W. 256 (1925); Andrews v. Shattuck, 32 Barb. 396 (N.Y. 1860). Cf. Jenkins v. Holly, 204 Ala. 519, 86 So. 390 (1920); Matteawan Co. v. Bentley, 13 Barb. 641 (N.Y. 1852); Knowles v. Knowles, 25 R.I. 464, 56 Atl. 775 (1903); Richstein v. Roesch, 71 S.D. 451, 25 N.W.2d 558 (1946); Irish v. Cloyes, 8 Vt. 30 (1836); Martin v. Sikes, 38 Wash. 2d 274, 229 P.2d 546 (1951).

[34] Werner v. Martin, 49 U.S. (11 How.) 209 (1850); Bott v. McCoy & Johnson, 20 Ala. 578 (1852); O'Connell v. Chicago Park District, 376 Ill. 550, 34 N.E.2d 836 (1941); McCreary & Barlow v. Gaines, 55 Tex. 485 (1881); Thrall v. Lathrop, 30 Vt. 307 (1858). Cf. International Agricultural Corp. v. Lockhart Power Co., 181 S.C. 501, 188 S.E. 243 (1936) (creditor); Fine Arts Society v. Union Bank, 17 Q.B.D. 705 (1886) (bank crediting post office orders).

A few courts, represented by Varney v. Curtis, 213 Mass. 309, 100 N.E. 650 (1913), have held that the mere taking in pledge is not sufficient for conversion, and tbat the pledgee is not liable until demand is made upon him.

[35] Frome v. Dennis, 45 N.J.L. 515 (Sup. Ct. 1883). In Deering v. Austin, 34 Vt. 330 (1861), this was carried to the length of holding that the defendant was not liable where he kept a cow all winter, and "used" it, apparently for milk. The case looks wrong, and it is suggested that it would not be followed today.

[36] Thomas v. D. C. Andrews & Co., 54 F.2d 250 (2d Cir. 1931); Nelson v. Iverson, 17 Ala. 216 (1850); Shellnut v. Central of Georgia R.R., 131 Ga. 404, 62 S.E. 294 (1908); Williams v. Roberts, 59 Ga. App. 473, 1 S.E.2d 587 (1939); Gurley v. Armstead, 148

12. The same facts as in Illustration 7, except that D, who is the agent or servant of C, in good faith takes delivery of the car for him, or receives it from him for safekeeping. Although C is a converter, D is not.[37]

13. The same facts as in Illustration 7, except that D, who is the agent or servant of C, in good faith negotiates the transaction by which C purchases the car, and takes delivery for him. D is a converter.[38]

14. The same facts as in Illustrations 10, 11 and 12, except that in each case the car is received with notice that it is stolen. In each case there is a conversion.[39]

REMOVING THE CHATTEL

15. A takes possession of a house, and finds B's furniture in it. He requests B to remove the furniture, and B does not do so. A then removes the furniture to a storage warehouse, stores it in the name of B, and notifies B that he may come and get it. This is not a conversion.[40]

16. The same facts as in Illustration 15, except that A removes the furniture to a warehouse at a distance, so that B is subjected to unnecessary inconvenience and expense in recovering his goods. This is a conversion.[41]

Mass. 267, 19 N.E. 389 (1889); Strickland v. Barrett, 20 Pick. 415 (Mass. 1838); Nanson v. Jacob, 93 Mo. 331, 6 S.W. 246 (1887).

[37] Cases as to liability for mere receipt are few. In Burditt v. Hunt, 25 Me. 419 (1885), and Silver v. Martin, 59 N.H. 580 (1880), the agent was held not to be a converter. To the contrary are Stephens v. Elwall, 4 M. & S. 259, 105 Eng. Rep. 830 (K.B. 1815) and Miller v. Wilson, 98 Ga. 567, 25 S.E. 578 (1896). See, however, the cases of delivery by an agent, infra note 57, all of which necessarily involved his receipt.

[38] Where the agent himself negotiates the transaction, it is generally agreed that his interference with the chattel is sufficiently serious to be a conversion, notwithstanding his good faith. Lee v. Matthews, 10 Ala. 682 (1846); Flannery v. Harley, 117 Ga. 483, 43 S.E. 765 (1903); Kimball v. Billings, 55 Me. 147 (1867); Richtmyer v. Mutual Livestock Commission Co., 122 Neb. 317, 240 N.W. 315 (1932); First Nat'l Bank v. Siman, 65 S.D. 514, 275 N.W. 347 (1937); Nahm v. J. R. Fleming & Co., 116 S.W.2d 1174 (Tex. Civ. App. 1938).

Even here there are occasional cases to the contrary, such as Abernathy v. Wheeler, 92 Ky. 320, 17 S.W. 858 (1891); Fargason v. Ball, 128 Tenn. 137, 159 S.W. 221 (1913).

[39] Warder-Bushnell & Glessner Co. v. Harris, 81 Iowa 153, 46 N.W. 859 (1890); Edwards v. Max Thieme Chevrolet Co., 191 So. 569 (La. App. 1939); Smith v. Colby, 67 Me. 169 (1878); Thorp v. Burling, 11 Johns. 285 (N.Y. 1814); McAnelly v. Chapman, 18 Tex. 198 (1856); Dodson v. Economy Equipment Co., 188 Wash. 340, 62 P.2d 708 (1936); Beckwith v. Independent Transfer & Storage Co., 105 W. Va. 26, 141 S.E. 443 (1928); Powell v. Hoyland, 6 Exch. 67, 155 Eng. Rep. 456 (1851).

[40] Zaslow v. Kroenert, 29 Cal. 2d 541, 176 P.2d 1 (1946); Bush v. Lane, 293 P.2d 465 (Cal. App. 1956); Lucas v. Durrance, 25 Ga. App. 264, 103 S.E. 36 (1920); Lash v. Ames, 171 Mass. 487, 50 N.E. 996 (1898); Shea v. Inhabitants of Milford, 145 Mass. 525, 14 N.E. 769 (1888); Geisler v. David Stevenson Brewing Co., 126 App. Div. 715, 111 N.Y. Supp. 56 (1st Dep't 1908); Hammond v. Sullivan, 112 App. Div. 788, 99 N.Y. Supp. 472 (3d Dep't 1906); O. J. Gude Co. v. Farley, 25 Misc. 502, 54 N.Y. Supp. 998 (Sup. Ct. App. T., N.Y. County 1898); Lee Tung v. Burkhart, 59 Ore. 194, 116 Pac. 1066 (1911); Browder v. Pbinney, 37 Wash. 70, 79 Pac. 598 (1905). Cf. Farnsworth v. Lowery, 134 Mass. 512 (1883) (taking glass plate out of case and carrying off case; not a conversion of tbe plate).

[41] Forsdick v. Collins, 1 Starkie 173, 171 Eng. Rep. 437 (N.P. 1816). Cf. Electric Power Co. v. Mayor of New York, 36 App. Div. 383, 55 N.Y. Supp. 460 (2d Dep't 1899).

17. The same facts as in Illustration 15, except that A does not notify B, or does not follow the instructions which B gives him as to where to send the goods. This is a conversion.[42]

18. The same facts as in Illustration 15, except that while the furniture is in the warehouse, and before B can remove it, it is destroyed by fire. This is a conversion.[43]

19. The same facts as in Illustration 15, except that A moves the furniture to the warehouse and stores it in his own name with the intent to keep it for himself. This is a conversion.[44]

20. A finds B's car parked on the street. Desiring to use the parking space for himself, A moves the car half a block, and tells B where it is. This is not a conversion.[45]

21. The same facts as in Illustration 20, except that A moves the car to a concealed spot behind a building and does not tell B, so that B does not recover his car for a week. This is a conversion.[46]

22. A steals goods from B. He delivers them to C, a truck driver, who in good faith transports them across the city, and redelivers them to A, or according to A's orders. This is not a conversion by C.[47]

23. The same facts as in Illustration 22, except that C transports the goods with knowledge that they are stolen. This is a conversion.[48]

TRANSFERRING THE CHATTEL

24. A ships goods over B carrier, consigned to himself. By mistake B delivers the goods to C. B discovers the mistake immediately, and within twenty-four hours recovers the goods from C, and delivers them to A. This is not a conversion.[49]

25. The same facts as in Illustration 24, except that the goods are

[42] McGonigle v. Victor H. Belleisle Co., 186 Mass. 310, 71 N.E. 569 (1904); Borg & Powers Furniture Co. v. Reiling, 213 Minn. 539, 7 N.W.2d 310 (1943).

[43] McCurdy v. Wallblom Furniture & Carpet Co., 94 Minn. 326, 102 N.W. 873 (1905). Cf. Ryan v. Chown, 160 Mich. 204, 125 N.W. 46 (1910); Tobin v. Deal, 60 Wis. 87, 18 N.W. 634 (1884).

[44] Hicks Rubber Co. Distributors v. Stacy, 133 S.W.2d 249 (Tex. Civ. App. 1939).

[45] See cases cited supra note 40.

[46] See cases cited supra note 41.

[47] Shellnut v. Central of Georgia R.R., 131 Ga. 404, 62 S.E. 294 (1908); Williams v. Roberts, 59 Ga. App. 473, 1 S.E.2d 587 (1939); Gurley v. Armstead, 148 Mass. 267, 19 N.E. 389 (1889); Strickland v. Barrett, 20 Pick. 415 (Mass. 1838); Namson v. Jacob, 193 Mo. 331, 6 S.W. 246 (1887). "The carrier and the packing agent are generally held not to have converted because by their acts they merely purport to change the position of the goods and not the property." Barker v. Furlong, 2 Ch. Div. 172, 182 (1891).

The rule relieving carriers and other bailees of liability for conversion is sometimes said to be one of commercial convenience, which protects those who engage in such occupations against the necessity of inquiry as to the title to goods delivered to them, and protects their patrons against the delay attending such inquiry. It is also frequently said that the interference itself is not a sufficiently serious denial of the plaintiff's right to the goods to constitute a conversion.

[48] See cases cited supra note 39.

[49] Gulf, C. & S.F.R.R. v. Wortham, 154 S.W. 1071 (Tex. Civ. App. 1913).

not recovered by B, and remain in the possession of C. This is a conversion.[50]

26. A leaves his car in B's garage over night. C, a thief, steals a duplicate parking ticket, and presents it to B's employee in the morning. The employee, reasonably believing C to be the owner of the car, delivers it to him. This is a conversion.[51]

27. A leaves his furniture in B's house with B's consent. B sells and delivers the house to C, telling C that the furniture belongs to A, and C agrees to hold it for A until he calls for it. B neglects to notify A of the transfer for a month, during which time A makes no demand for the furniture. This is not a conversion.[52]

28. A has possession of B's goods, as bailee, agent, servant, finder, or otherwise. He sells and delivers them to C. This is a conversion.[53]

29. The same facts as in Illustration 28, except that A sells the goods to C, but does not deliver them. This is not a conversion.[54]

30. A steals B's automobile. He stores it in C's garage. In good faith, and without notice of the theft, C returns the car to A. This is not a conversion.[55]

31. The same facts as in Illustration 30, except that C is A's agent or servant, to whom A delivers the car for safekeeping. This is not a conversion.[56]

32. The same facts as in Illustration 31, except that A sells the car

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[50] Hall v. Boston & Worcester R.R., 14 Allen 439 (Mass. 1867); Marshall & Michel Grain Co. v. Kansas City & Ft. Scott R.R., 176 Mo. 480, 75 S.W. 632 (1903); Knapp v. Guyer, 75 N.H. 397, 74 Atl. 873 (1909); Suzuki v. Small, 214 App. Div. 541, 212 N.Y. Supp. 589 (1st Dep't 1925); Hiort v. Bott, L.R. 9 Ex. 86 (1874); Youl v. Harbottle, 1 Peake 49 (N.P. 1791).

[51] Sullivan & O'Brien v. Kennedy, 107 Ind. App. 457, 25 N.E.2d 267 (1940); Baer v. Slater, 261 Mass. 153, 158 N.E. 328 (1927); Potomac Ins. Co. v. Nickson, 64 Utah 395, 231 Pac. 445 (1924). Compare, as to misdelivery by one who receives goods by mistake, Cowen v. Pressprich, 117 Misc. 663, 192 N.Y. Supp. 242 (Sup. Ct. App. T., N.Y. County 1922), rev'd on other grounds, 202 App. Div. 796, 194 N.Y. Supp. 926 (1st Dep't 1924).

[52] Brandenburg v. Northwestern Jobbers Credit Bureau, 128 Minn. 411, 151 N.W. 134 (1915).

[53] Poggi v. Scott, 167 Cal. 372, 139 Pac. 815 (1914); Miller v. Long, 131 N.E.2d 348 (Ind. App. 1956); Kenney v. Ranney, 96 Mich. 617, 55 N.W. 982 (1893); Royal-Liverpool Ins. Co. v. McCarthy, 9 S.E.2d 881 (S.C. 1956); Presley v. Cooper, 284 S.W.2d 138 (Tex. 1955); Morrill v. Moulton, 40 Vt. 242 (1867). Cf. Crocker v. Gullifer, 44 Me. 491 (1858) (lease).

[54] Traylor v. Horrall, 4 Blackf. 317 (Ind. 1837).

[55] Thomas v. D. C. Andrews & Co., 54 F.2d 250 (2d Cir. 1931); Nelson v. Iverson, 17 Ala. 216 (1850); Steele v. Marsicano, 102 Cal. 666, 36 Pac. 920 (1894); Coleman v. Francis, 102 Conn. 612, 129 Atl. 718 (1925); Shellnut v. Central of Georgia R.R., 131 Ga. 404, 52 S.E. 294 (1908); Gurley v. Armstead, 148 Mass. 267, 19 N.E. 389 (1889); Leonard v. Tidd, 3 Metc. 6 (Mass. 1841); Nansen v. Jacob, 93 Mo. 331, 6 S.W. 246 (1887); Shellenberg v. Fremont E. & M. Valley R.R., 45 Neb. 487, 63 N.W. 859 (1895); Manny v. Wilson, 137 App. Div. 140, 122 N.Y. Supp. 16 (1st Dep't 1910), aff'd, 203 N.Y. 535, 96 N.E. 1121 (1910).

[56] See cases cited note 55 supra.

to D, and C delivers it to D in good faith and pursuant to A's orders. This is not a conversion.[57]

33. The same facts as in Illustration 32, except that C negotiates the sale from A to D, and makes delivery of the car to D. This is a conversion.[58]

34. The same facts as in Illustration 32, except that C makes the delivery to D after he is notified of the theft. This is a conversion.[59]

WITHHOLDING THE CHATTEL

35. A takes possession of a house, and finds in it some of B's furniture. In order to keep out intruders, A changes the locks on the doors, as a result of which B, coming to get his furniture, is prevented from obtaining it for one day, until he can find A and get the keys. This is not a conversion.[60]

36. The same facts as in Illustration 35, except that A changes the locks with the intention of appropriating the furniture and preventing B from recovering it. This is a conversion.[61]

37. A stores his car in B's locked garage. A comes to get the car

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[57] Ashcraft v. Tucker, 73 Colo. 363, 215 Pac. 877 (1923); Hodgson v. St. Paul Plow Co., 78 Minn. 172, 80 N.W. 956 (1899); Leuthold v. Fairchild, 35 Minn. 99, 27 N.W. 503 (1886); Walker v. First Nat'l Bank, 43 Ore. 102, 72 Pac. 635 (1903); In re Samuel v. Kerman, [1945] Ch. 408; National Mercantile Bank v. Rymill, 44 L.T. 767 (Ct. App. 1881).

[58] Swim v. Wilson, 90 Cal. 126, 27 Pac. 33 (1891); Flannery v. Hanley, 117 Ga. 483, 43 S.E. 765 (1903); Johnson v. Martin, 87 Minn. 370, 92 N.W. 221 (1902); Richtmyer v. Mutual Live Stock Commission Co., 122 Neb. 317, 240 N.W. 315 (1932); Kelly v. Lang, 62 N.W.2d 770 (N.D. 1953); First Nat'l Bank v. Siman, 65 S.D. 514, 275 N.W. 347 (1937); Nahm v. J. R. Fleming & Co., 116 S.W.2d 1174 (Tex. Civ. App. 1938); Consolidated Co. v. Curtis, 1 Q.B. 495 (1892); Barker v. Furlong, 2 Ch. Div. 172 (1891).

[59] Edwards v. Max Thieme Chevrolet Co., 191 So. 569 (La. App. 1939); Thorp v. Burling, 11 Johns. 285 (N.Y. 1814); Beckwith v. Independent Transfer & Storage Co., 105 W. Va. 26, 141 S.E. 443 (1928); Dodson v. Economy Equipment Co., 188 Wash. 340, 62 P.2d 708 (1936); Powell v. Hoyland, 6 Exch. 67, 155 Eng. Rep. 456 (1851).

Where a bailee, agent or servant redelivers the chattel to his bailor, principal or master, more than mere notice of the right of a third person is required to make him a converter. The common law developed the rather anomalous rule that the bailee was not entitled to dispute the right to possession of the person from whom he received possession. The practical justification for the rule has been one of commercial convenience for the protection of the bailee himself, against the conflicting claims to which he might otherwise be exposed. The rule is often stated in the form of an "estoppel" to dispute the title of the bailor. See Hill v. Hayes, 38 Conn. 532 (1871); Succession of Macon, 150 La. 1026, 91 So. 441 (1922); Rembaugh v. Phipps, 75 Mo. 422 (1882); Paccos v. Rosenthal, 137 Wash. 423, 242 Pac. 651 (1926); Restatement, Agency § 417 (1933).

If, however, the true owner makes a claim for the goods, the bailee then redelivers it to his bailor at his peril, and is liable if it turns out that the bailor is not entitled to the goods. Hattiesburg Auto Sales Co. v. Mossiron, 136 Miss. 632, 101 So. 690 (1924); Maser v. Farmers' & Merchants' Bank, 90 Mont. 33, 300 Pac. 307 (1931); Bonner v. McDonald, 162 N.Y. Supp. 324 (Sup. Ct. App. T., N.Y. County 1916); Roberts v. Yarboro, 41 Tex. 449 (1874). The bailee's remedy in such case is, of course, interpleader, or deposit in court.

[60] Zaslow v. Kroenert, 29 Cal. 2d 451, 176 P.2d 1 (1946); Edinburg v. Allen Squire Co., 299 Mass. 206, 12 N.E.2d 718 (1938); Poor v. Oakman, 117 Mass. 309 (1870).

[61] Thomas v. Westbrook, 206 Ark. 841, 177 S.W.2d 931 (1944); Kirby v. Porter, 144 Md. 261, 125 Atl. 41 (1923); Jones v. Stone, 78 N.H. 504, 102 Atl. 377 (1917); Henderson v. Biggs, 207 S.W. 565 (Tex. Civ. App. 1918).

and demands it. B intentionally delays half an hour in giving A the key to the garage. This is not a conversion.[62]

38. The same facts as in Illustration 37, except that B delays a month. This is a conversion.[63]

39. The same facts as in Illustration 37, except that during the delay of half an hour a fire breaks out in the garage, and the car is destroyed before it can be removed. This is a conversion.[64]

40. Goods are shipped to A over carrier B. On their arrival, A demands delivery, offering to pay the freight charges stated in the bill of lading in his possession. A waybill in the hands of B's agent shows higher freight charges, which A refuses to pay. The agent refuses to surrender the goods until he can telegraph the point of shipment and determine the correct charges. This is not a conversion.[65]

41. The same facts as in Illustration 40, except that the agent waits a month before telegraphing. This is a conversion.[66]

42. The same facts as in Illustration 40, except that the agent refuses to deliver the goods unless he is paid the higher charges. This is a conversion.[67]

43. The same facts as in Illustration 40, except that the agent un-

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[62] Cf. Peck v. Patterson, 125 A.2d 813, 815 (Vt. 1956). The plaintiff bought the defendant's automobile at an execution sale. The defendant removed the keys from the ignition, and asked plaintiff to step into his house, where he handed the keys to his daughter, and showed the plaintiff registration papers on the car. The plaintiff promptly left without demanding the keys. " . . . we cannot hold that the defendant did such a positive unlawful act as to amount to a conversion of the truck. The defendant's act was equivocal."

Also Daggett v. Davis, 53 Mich. 35, 18 N.W. 548 (1884) (detention of stock certificate, without interfering in any way with the exercise of the rights of the stockholder).

[63] No cases have been found.

[64] Donnell v. Canadian Pacific R.R., 109 Me. 500, 84 Atl. 1002 (1912).

[65] See Beasley v. Baltimore & Potomac R.R., 27 App. D.C. 595 (1906); cf. Bolling v. Kirby, 90 Ala. 215, 7 So. 914 (1889); Fletcher v. McMillan, 103 Mich. 494, 61 N.W. 791 (1894); Stahl v. Boston & Maine R.R., 71 N.H. 57, 51 Atl. 176 (1906); Hett v. Boston & Maine R.R., 69 N.H. 139, 44 Atl. 910 (1897).

In accord are cases in which the goods are detained for a reasonable time to investigate their ownership, such as Banque de France v. Equitable Trust Co., 33 F.2d 202 (S.D.N.Y. 1929); Stroup v. Bridger, 124 Iowa 401, 100 N.W. 113 (1904); Whiting v. Whiting, 111 Me. 13, 87 Atl. 381 (1913); Hanson v. Village of Ralston, 145 Neb. 838, 18 N.W.2d 213 (1945); Bradley v. Roe, 282 N.Y. 525, 27 N.E.2d 35 (1940); McEntee v. New Jersey Steamboat Co., 45 N.Y. 34 (1871); Wolfe v. Lewisburg Trust & Savings Deposit Co., 305 Pa. 583, 158 Atl. 567 (1931); Buffington v. Clarke, 15 R.I. 437, 8 Atl. 247 (1887).

In most of these cases the decision that there is no conversion is put upon the ground that the defendant has a privilege to detain the goods. In some of them, however, it is said that the interference with the plaintiff's rights is not sufficiently serious to amount to the tort.

[66] Beasley v. Baltimore & Potomac R.R., 27 App. D.C. 595 (1906).

[67] Long-Lewis Hardware Co. v. Abston, 235 Ala. 599, 180 So. 261 (1938); Semple v. Morganstern, 97 Conn. 402, 116 Atl. 906 (1922); Jones v. Tarleton, 9 M. & W. 675, 152 Eng. Rep. 285 (Exch. 1842); cf. Pennsylvania Fire Ins. Co. v. Levy, 85 Colo. 365, 277 Pac. 779 (1929); Boiseau v. Morrisette, 78 A.2d 777 (Mun. App. D.C. 1951); Citizens Industrial Bank v. Oppenheim, 92 S.W.2d 312 (Tex. Civ. App. 1936).

qualifiedly refuses to deliver the goods, without explanation. This is a conversion.[68]

DAMAGING OR ALTERING THE CHATTEL

44. A intentionally shoots B's horse, as a result of which the horse dies. This is a conversion.[69]

45. The same facts as in Illustration 44, except that the horse is lamed, so that its utility as a horse is destroyed. This is a conversion.[70]

46. The same facts as in Illustration 44, except that the horse suffers a slight wound, which incapacitates it for a few days, after which it fully recovers. This is not a conversion.[71]

47. A stores his fur coat with B. Without A's knowledge or consent, B repairs a hole in the lining of the coat. This is not a conversion.[72]

48. The same facts as in Illustration 47 except that B alters the coat by cutting down its size so that A can no longer wear it. This is a conversion.[73]

49. A stores a large number of cakes of ice in his icehouse. B opens the wall of the icehouse and allows a current of warm air to enter. As a result part of the ice is melted, and the remainder is fused into a large mass, which can be separated into cakes again only with great labor and expense. This is a conversion, not only of the ice melted, but of all of it.[74]

50. In the midst of an American city, A slashes the tire of B's automobile. This is a conversion of the tire, but not of the automobile.[75]

51. The same facts as in Illustration 50, except that the car is at the time in the midst of the desert of Gobi, where a new tire can not be obtained without a delay of a month and a journey of four hundred miles. This is a conversion of both the tire and the automobile.[76]

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[68] Molski v. Bendza, 116 Conn. 710, 164 Atl. 387 (1933); Hanna v. Phelps, 7 Ind. 21 (1855); Pantz v. Nelson, 234 Mo. App. 1043, 135 S.W.2d 397 (1939); Smith v. Durham, 127 N.C. 417, 37 S.E. 473 (1900); Vilas v. Mason, 25 Wis. 310 (1870); Boardman v. Sill, 1 Camp. 410 (N.P. 1809).

[69] Simmons v. Sikes, 2 Ired. 98 (N.C. 1841); Keyworth v. Hill, 3 B. & Ald. 684, 106 Eng. Rep. 811 (K.B. 1820).

[70] Cf. Dench v. Walker, 14 Mass. 500 (1780) (adulterating rum); Richardson v. Atkinson, 1 Strange 576, 93 Eng. Rep. 710 (N.P. 1723) (drawing out part of wine and substituting water).

[71] Cf. G.W.K., Ltd. v. Dunlop Rubber Co., 42 T.L.R. 376 (K.B. 1926); Simmons v. Lillystone, 8 Ex. 431, 155 Eng. Rep. 1417 (1853); Philpott v. Kelley, 3 Ad. & El. 106, 111 Eng. Rep. 353 (K.B. 1835).

[72] Donovan v. Barkhausen Oil Co., 200 Wis. 194, 227 N.W. 940 (1929).

[73] Douglas v. Hart, 103 Conn. 685, 131 Atl. 401 (1925); May v. Georger, 21 Misc. 622, 47 N.Y. Supp. 1057 (Sup. Ct. App. T., 1897). Cf. Jackson v. Innes, 231 Mass. 558, 121 N.E. 489 (1919).

[74] Aschermann v. Philip Best Brewing Co., 45 Wis. 262 (1878). Cf. Symphony Player Co. v. Hackstadt, 182 Ky. 546, 206 S.W. 803 (1918); Jackson v. Innes, 231 Mass. 558, 121 N.E. 489 (1919); Peltola v. Western Workman's Pub. Society, 113 Wash. 283, 193 Pac. 691 (1920) (commingling so identification impossible).

[75] No cases have been found.

[76] No cases have been found.

USING THE CHATTEL

52. A entrusts an automobile to B, a dealer, for sale. On one occasion B drives the car, on his own business, for ten miles. This is not a conversion.[77]

53. The same facts as in Illustration 52, except that B drives the car 2,000 miles. This is a conversion.[78]

54. The same facts as in Illustration 52, except that B uses the car for the illegal transportation of narcotics, as a result of which it is confiscated by the federal government. This is a conversion.[79]

55. The same facts as in Illustration 52, except that B drives the car with the intent to appropriate it, and to deprive A of its use. This is a conversion.[80]

56. A rents an automobile to B to drive to X City and return. In violation of the agreement, B drives to Y City, ten miles beyond X City. No harm is done to the car. This is not a conversion.[81]

57. The same facts as in Illustration 56, except that Y City is a thousand miles beyond X City. This is a conversion.[82]

58. The same facts as in Illustration 56, except that while the car is in Y City it is seriously damaged in a collision, with or without negligence on the part of B. This is a conversion.[83]

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[77] Jeffries v. Pankow, 112 Ore. 439, 223 Pac. 903. Cf. Johnson v. Weedman, 5 Ill. 495 (1843) (agister to feed horse rode him fifteen miles); Frome v. Dennis, 45 N.J.L. 515 (Sup. Ct. 1883) (using plow for three days); McNeill v. Brooks, 9 Tenn. 73 (1882) (horse rented for riding used to carry goods).

[78] Miller v. Uhl, 37 Ohio App. 276, 174 N.E. 591 (1929). Cf. E. J. Caron Enterprises v. State Operating Co., 87 N.H. 371, 179 Atl. 665 (1935) (theater fixtures used in wrong theater); West Jersey R.R. v. Trenton Car Works Co., 32 N.J.L. 517 (Ct. Err. & App. 1866) (car which defendant was under a duty to forward used in its own service).

[79] Vermont Acceptance Corp. v. Wiltshire, 103 Vt. 219, 153 Atl. 199 (1931). Cf. Collins v. Bennett, 46 N.Y. 490 (1871) (boarded horse used and foundered).

[80] Cheshire R.R. v. Foster, 51 N.H. 490 (1871); Forster v. Juniata Bridge Co., 16 Pa. 393 (1851); Oakley v. Lyster, [1931] 1 K.B. 148.

[81] Farkas v. Powell, 86 Ga. 800, 13 S.E. 200 (1891); Daugherty v. Reveal, 54 Ind. App. 71, 102 N.E. 381 (1915); Doolittle v. Shaw, 92 Iowa 348, 60 N.W. 621 (1894); Wentworth v. McDuffie, 48 N.H. 402 (1869); Harvey v. Epes, 12 Gratt. 153 (Va. 1855); Carney v. Rease, 60 W. Va. 676, 55 S.E. 729 (1906). See Clark, "The Test of Conversion," 21 Harv. L. Rev. 408 (1908), and the excellent Note, 21 Cornell L.Q. 112 (1935), both of which approach the conclusions of this article.

[82] Cf. Fitzgerald v. Burrill, 106 Mass. 446 (1871) (forwarding registered letter by unregistered mail); Laverty v. Snethen, 68 N.Y. 522 (1877) (surrendering note without payment); McMorris v. Simpson, 21 Wend. 610 (N.Y. 1839) (sending goods to unauthorized market); Juzeler v. Buchli, 63 N.D. 657, 249 N.W. 790 (1933) (surrendering check on compromise of collection); Syeds v. Hay, 4 Term. Rep. 260, 100 Eng. Rep. 1008 (K.B. 1791) (landing goods with wharfinger).

[83] Palmer v. Mayo, 80 Conn. 353, 68 Atl. 369 (1907); Perham v. Coney, 117 Mass. 102 (1875); Hall v. Corcoran, 107 Mass. 251 (1871); Wheelock v. Wheelwright, 5 Mass. 103 (1809); Baxter v. Woodward, 191 Mich. 379, 158 N.W. 137 (1916); Fisher v. Kyle, 27 Mich. 454 (1873); Woodward v. Hubbard, 25 N.H. 67 (1862); Disbrow v. Tenbroeck, 4 E.D. Smith 397 (N.Y. 1855); Towne v. Wiley, 23 Vt. 355 (1851).

Cf. Ledbetter v. Thomas, 130 Ala. 299, 30 So. 342 (1901); Cartlidge v. Sloan, 124 Ala. 596, 26 So. 918 (1899); Stewart v. Davis, 31 Ark. 518 (1876); Mayor of Columbus v. Howard, 6 Ga. 213 (1848); Wallace v. Seales, 36 Miss. 63 (1858); Fryer v. Cooper, 53

59. A lends his automobile to B, with permission to drive it. A then sells the car to C. Neither A nor C notifies B of the sale, and B continues to drive the car. This is not a conversion.[84]

CONCLUSION

The conclusion to be drawn from all this has already been stated, in black letter form.[85] Conversion is distinguished from other interferences with chattels by the measure of damages—the recovery of the full value of the goods, and their forced sale to the defendant. In part quite deliberately, and in part as the result of unexpressed and more or less instinctive agreement, the courts have limited it to those interferences which are so important and serious as to justify the drastic remedy.

The importance and seriousness of the interference which justifies the remedy is determined in part by the character of the defendant's conduct, and in part by the consequences to the plaintiff. As was recognized as long ago as the case which Lincoln won in 1843,[86] these consequences relate back to the act and affect it, so that they may transform a mere trespass into a conversion. In this respect conversion is unique among torts, that its existence may depend upon the degree of the damages.

There is, however, no one factor which is controlling in all cases, although any one of them may be sufficient in a particular case. Conduct which is sufficiently aggravated to constitute a major defiance and infringement of the plaintiff's right, such as the deliberate theft of the chattel, may be sufficient in itself for a conversion, even though the plaintiff promptly recovers the goods and suffers no actual harm. Conduct which is relatively innocent, or trivial, becomes a conversion only if the consequences are a major interference with the plaintiff's interests.

S.D. 286, 220 N.W. 485 (1928); Spencer v. Pilcher, 8 Leigh 565 (Va. 1837); De Voin v. Michigan Lumber Co., 64 Wis. 616, 25 N.W. 552 (1885).

In Spooner v. Manchester, 133 Mass. 270 (1882), where the driver unintentionally deviated from his route, and the horse was injured while he was trying to get back to it, it was held that there was no conversion.

[84] Fifield v. Maine Central R.R., 62 Me. 77 (1873).

[85] Supra, text at note 24.

[86] Supra, text at note 18.