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TORTS TO GOODS

Three Distinct Torts

1. Trespass to goods – interference with goods in plaintiff's possession
2. Conversion – dealings repugnant to plaintiff's possession
3. Detinue – refusal to return contrary to plaintiff's right to possession

These are in place to protect *possessory* interests, not *ownership* interests.

→ Physical possession OR → Constructive possession OR → **Right to immediate possession**

Title to Sue for Each Tort:

Trespass to Goods	Conversion	Detinue
Actual or constructive possession	BOTH	Right to immediate possession

Bailment – Where a bailor transfers possession (not ownership) to the Bailee with the understanding that it will be returned, can either be for a fixed period or a bailment at will.

Trespass to Goods:

1. **Title to sue: Plaintiff must have possession OR be the bailor in a bailment at will**
→ As per *Penfolds Wines v Elliot* a right to immediate possession is sufficient title if:
 - a) Bailment at will
 - b) The interference was not committed by the Bailee or with consent of the Bailee (third party)
2. **Direct interference with the goods**
→ Goods must either have been directly damaged, taken or transported without consent, handled without authority or consent *Slaveski v Victoria*. Locking a room with goods inside is *not* a direct interference.
3. Interference is intentional or negligent
→ Defendant does not need to bad intentions, but needs to have intended to interfere with the goods *Kirk v Gregory*. To handle the goods without consent is to intentionally interfere.

Conversion:

1. **Title to sue: Plaintiff must either have had possession or right to immediate possession.** *Slaveski v Victoria*
→ If Bailee acts in a manner repugnant to the terms of the bailment OR sells the property prior to the end of the bailment term *Citicorp v BS Stilwell*
2. **Repugnant Dealing**
→ An interference so inconsistent with the true owner's right to possession that it denies that right
→ Exercise of dominion over the goods, claiming it ownership of a lost item and refusing to return *Trover*
Conversion includes: *disposal of goods by way of sale, or pledge, or other intended transfer of an interest. unauthorised assumption of the powers of the true owner.* *Penfolds Wines v Elliot*
 - Hiding the goods so that the plaintiff cannot repossess is conversion as per *Volvo Finance*
 - Use of goods can amount to repugnant dealing if asked to return but not all uses *Bunnings Group v CHEP*
 - Mere possession is not enough *Gold v Aus Diamond Training Corp*
3. **Fault**
→ The repugnant dealing or actions must have been intentional *Bunnings Group v CHEP*
→ Must be an intention to deprive the true owner of his immediate right to possession *Dixon in Penfolds*
Aggravate damages in cases of repugnant dealings (Market value of asset, compensation for loss in value)

Detinue: (Often overlaps with conversion)

1. **Title to sue:** Plaintiff must have right to immediate possession.
2. **Demand for return**
→ Demand either verbal or written must be specific (when, where, how) as per *Flowfill Packaging Machines v Fytore*
3. **Wrongful refusal**
→ Either express refusal to return or purposefully avoiding/failing to respond
→ Defendant must have reasonable time to respond
→ Bailee refuses to return because they sold them off or because they have lost or destroyed them *Papathanasopoulos v Vacopoulos*

TORTS TO GOODS		
<i>Penfold Wines v Elliot</i>	(Bailor/plaintiff) distributed bottles to his brother (bailee) who then gave them to Hotelier (sub bailee/third party/defendant). The interference with the goods by a third party was done with the consent of the sub-bailee and hence the bailor.	Third party must have consent of Bailee to change the goods for the exception to apply. If the third party does not have consent of the Bailee, <i>then</i> there are grounds for trespass to goods.
<i>Slaveski v Victoria</i>	D/police handled papers when executing a search warrant. P argued that there was trespass to goods as the papers were not under the search warrant.	Held that by just moving the goods without consent constitutes a direct interference as the search warrant did not extend to it – no lawful authority.
<i>Kirk v Gregory</i>	D moves the P's jewellery without consent but with good intention; to prevent it from being stolen by someone else. P sues D for trespass.	Held that unlawful intention is not required in the tort of trespass to goods, though there does need to be intention to interfere with the goods.
<i>Citicorp Aus v BS Stillwell Ford</i>	D tried selling the car (goods) before the end of the Bailment for a term.	Held that this was a form of conversion as they are trying to sell the property without authority.
<i>Volvo Finance</i>	D takes goods with the intention of keeping them as an act of theft. Hiding trucks in the bush to prevent P from repossessing them.	Held that taking a good and hiding it so that it cannot be repossessed by owner with immediate right to possess is conversion/repugnant dealing.
<i>Fouldes v Willoughby</i>	D moves P's horses off his ferry in hopes that the P would disembark too.	Temporary dominion over something is not a conversion.
<i>Bunnings v Chep</i>	D uses wooden pallets owned by P to display goods – a matter not approved by P. P demands D to stop using the goods in this way but D refuses to.	Held that the act of unlawfully using another person's goods in a way that conflicts with their ownership rights is repugnant dealing or conversion.
<i>Flowfill Packaging v Fytore</i>	P leased packaging machines to D. D defaults on loan and P demands the return within 10 days. Machines not returned, P did not attempt to collect.	The court held that it was sufficient for the D to make the goods available to the P by saying where they were and indicating that repossession would not be obstructed. Conversion but not detinue as D never wrongfully refused return.
<i>Papathanasopoulos v Vacopoulos</i>	P and D engaged. P gives ring to D. Break up, D refuses to return saying that it was a gift. D then throws the ring away.	Deemed wrongful refusal after losing it - detinue as the ring also comes with the promise or obligation of marriage as a step to possession.