

KELLEY v. LaFORCE, 288 F.3d 1 (1st Cir. 2002). Defendants, police officers, helped a man who claimed to be the owner of a pub oust the plaintiff from possession of it by threatening to arrest the plaintiff's employee if he did not leave and also by causing or permitting locks to be changed. This excluded the plaintiff from possession of his goods, including his stock of alcohol. Held, summary judgment for the officers was error. "Although defendants may not have acted with the intent to appropriate the appellants' personal property for themselves, appellants offered evidence to show that the defendants acted with intent to deprive the alleged owners of their property. Under Massachusetts law, intentional deprivation of property from the rightful owner is sufficient to demonstrate "dominion or control." Moreover, even if defendants be-

lieved they were just putting the Pub and the personal property back into possession of the rightful owner, this is no defense. Defendants have still exercised "the rights of an owner" by depriving appellants of their property.

Notes

1. **Intent.** Conversion is an intentional tort. The defendant must intend to exercise substantial dominion over the chattel. But, as in the case of trespass to land, there is no requirement that the defendant be conscious of wrongdoing. One who takes another's watch in the honest belief that it is her own is still a converter if the dominion thus exercised is sufficiently substantial.

2. **How conversion is accomplished.** In each of the following cases, suppose the defendant reasonably but mistakenly believes he has a right to deal with the property.

(a) Defendant decides to burn his copy of a torts casebook and throws it in the fire. By mistake he got the plaintiff's copy instead.

(b) Defendant restaurant holds a coat checked by A and also one checked by B. By mistake defendant gives B's coat to A, who disappears and is never found. B's coat is far more valuable than A's.

(c) Defendant, honestly believing that Turvey has the right to sell a watch, buys it from him. The watch in fact was stolen from plaintiff.

All these cases are cases of conversion.

One of the more difficult issues is what constitutes such dominion. It is clear that dominion is exercised in all the above cases, and also where the property is substantially damaged by the defendant. But in other cases defendant merely takes the property for a short period of time, as in the case of a joyride. If he takes a car for a joyride and it is destroyed in the process, he is no doubt liable. But suppose he takes it and returns it. Is this a conversion? These facts and many variations on them raise questions of degree which cannot be resolved firmly on principle. The American Law Institute concludes that it is all a matter of how serious the interference is. Since a finding of conversion will mean that the defendant pays the full value of the chattel, the ALI concluded that the interference should be serious enough to justify imposing such liability and that a number of factors were important including:

- (a) extent and duration of control;
- (b) the defendant's intent to assert a right to the property;
- (c) the defendant's good faith;
- (d) the harm done; and
- (e) expense or inconvenience caused.

See RESTATEMENT SECOND OF TORTS § 222A (1965).