
Foreword

by Lord Neuberger of Abbotsbury

The subject of this book is one which is fraught with paradoxes. Every lawyer, whether practitioner, academic or student, knows that the tort of conversion exists, but it is a subject about which very few of us know much, if anything. Conversion is also an issue which frequently requires to be considered in relation to a legal problem or dispute, but, despite the number of legal books that get published these days, it is not the subject of any modern or comprehensive treatment. Further, although it is a tort which has an important part to play in modern society, it has been developed by the judges over the centuries, and therefore it carries an enormous amount of historical baggage—both procedural and substantive. Conversion is also very much of an English law concept, but it has nonetheless been imported into other common law systems. Finally, although a lay person would consider a claim in conversion to be very much of a practical matter, it is hedged around with technicalities and limitations.

In these circumstances, the publication of an authoritative, practical, comprehensive and comprehensible book on the tort of conversion is both very welcome and a great challenge. It is very welcome from the viewpoint of lawyers, whether in the professions, researching and teaching, or studying and learning; indeed, it is very welcome in the public interest. But it is also a great challenge—to anyone embarking on the task of writing such a book. I am delighted to say that Sarah Green and John Randall have risen to the challenge, and have succeeded in producing a book which is thorough but readable, practical but rigorous, comprehensive but engaging, and detailed but well-structured. The authors have rightly cast their net widely, looking not merely at what English judges have said, but also referring to a number of important judgments from judges in other jurisdictions, such as the United States, Canada, and Australia, as well as citing Law Commission reports and learned articles. Further, while stating the law as it is laid down in the cases, the authors quite rightly give their own views as to how the judges (or, failing them, the legislature) should develop, and even change, the law.

Like any common law concept, in order to be properly understood, conversion has to be set in its historical and intellectual context. As reading chapter two demonstrates, the historical context spreads over a long period. The history of the tort, as set out in that chapter, is not only instructive and interesting, but it also provides a vignette of the course of the common law over the centuries. Chapter three discusses the tort in a way which, unusually and interestingly, enables the

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reader to perceive the difference between a common law system and a civil law system. The chapter additionally enables the reader to understand the tort of conversion in terms of its relationship with other torts, as well as setting out the fundamental components of the tort. The importance and meaning of that difficult concept, 'possession', is also rightly highlighted. Chapter three also helps explain why conversion is concerned with personal property, a theme taken up in chapter four.

Chapter four also contains an impressive explanation as to why there is a doctrine of relativity of title and how it works. The doctrine, which often seems to produce counter-intuitive results in individual cases, is of fundamental importance in a number of areas of law. Chapter five, which deals with the subject matter of conversion, explains the limitations of the reach of the tort, and contains vivid examples of the challenges which are presented to established legal principles by modern developments—whether technological, practical or moral. The discussion relating to digitized products demonstrates the challenges presented by technological change, and the challenge thrown up by a change of practical perception is highlighted by the discussion on intangible rights. And the earlier analysis of the law in relation to the human body contains interesting and challenging material which could be said to reflect technological, practical and moral developments.

The relationship between conversion and economic torts is yet another area which is intellectually demanding and important. The economic torts are probably less well known and less frequently encountered than conversion, although, like conversion, they have recently been attracting attention from academics and judges. In chapter six, the authors explain the law on this topic, and go on to suggest, with considerable force, how the law could—and indeed should—be developed to keep pace with modern commercial standards. The remedies section, chapter seven, discusses topics familiar to lawyers, such as remoteness and foreseeability, in a characteristically illuminating and interesting way.

To write a book which will be of as much interest and help to practical lawyers and judges as to academic lawyers and students is a real achievement. That is all the more true when, as here, the subject matter of the book is deceptively simple on its face, but turns out on examination to be technical and complex. Sarah Green, with her distinguished academic experience, and John Randall, with his justifiably formidable reputation at the Bar, have produced a book which reflects the strengths of both the academic legal world and the practical legal world, while avoiding the weaknesses of either. All lawyers, and their clients and students, have much to thank them for.

David Neuberger
House of Lords, May 2009

Preface

It became obvious to both of us that this was a book which needed to be written. In our respective realms of legal academe and practice, the absence of any extended analysis of the tort of Conversion was both notable and remarkable. It has been a highly rewarding subject to research and to analyse, and one which we hope will appeal more to others as a result of our efforts to present it as a useful and important action. The challenge, as we saw it, was to produce a book which would on the one hand inform and interest legal academics yet, on the other hand, provide a user-friendly, practical resource for busy practitioners. Though maintaining the balance between a scholarly work and a practitioner text has at times proved delicate, in our view we have managed to achieve our desired result. Along the way, this exercise has operated as a powerful practical demonstration of a point which many might acknowledge as a matter of theory, but is far too seldom put into practice: each of the two worlds can benefit enormously from the wisdom and experience of the other.

The final product owes much to the many people who have helped us with this project over the last two years. We acknowledge the contributions of many individuals, and thank them for their invaluable help. Amongst others, we would like to name: Guy Holborn, Catherine McArdle and their colleagues at Lincoln's Inn library, Kate Brookson-Morris, Tanya Corrigan, Caroline Covington and Paul Mora for their tireless research assistance; Andrew Bell, John Bell, Simon Deakin, James Lee, Rob Merkin, John Miller, John Murphy and Djakhongir Saidov, for their incisive comments on various draft chapters; George Applebey, Michael Bridge, Rob Cryer, PJ Denning, Robert Denning, Martin George and William Swadling for their assistance on the matters in which they are expert; and Jonathan Harris for suggesting that someone needed to undertake this project in the first place. We would both also like to express our gratitude to Richard Hart and Rachel Turner at Hart Publishing for their enthusiasm, encouragement and support throughout the writing of this book.

Responsibility for any lapses is, of course, entirely our own. We have endeavoured to state the law as at Easter, 2009.

Personal thanks from Sarah Green

First, thank you to John Randall for being a patient, efficient and good-humoured co-author, for being a fellow pedant, and for proving that, sometimes,

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two heads are better than one. I would also like to thank many of my colleagues; particularly Sharon Jones, John Baldwin, Claire McIvor, Joanne Thacker, Graham Gee and Kelly Chilton for helping to make Birmingham Law School such a congenial environment in which to write this book, and Jonathan Harris and Sonia Harris-Short for their ongoing advice and guidance, which I value a great deal. Thanks are also most definitely due to Rosie the Ridgeback, without whose hours of peaceful companionship, my work on this book would have been much more solitary, and much less serene, than it in fact was. I owe an enormous debt to my parents, Pat and Terry, for their belief in me and in whatever I choose to do; without them, I would never have been in a position to write this book. Finally, and most importantly, I would like to thank my husband, Alan Bogg, to whom my work on this book is dedicated; he is my counsel, my best friend and my soul mate.

Personal thanks from John Randall

I would first thank my co-author Sarah Green for accepting that an academic-practitioner collaboration could be made to work, for her willingness to put in the many extra hours required to achieve it, and for her good-natured tolerance of the long periods during which the demands of practice caused all input from me to dry up. I remain deeply grateful to Alistair Wyvill, now (though not, I trust, causally) of William Forster Chambers, Darwin NT, Marc Brown of St Philips Chambers here in Birmingham, and John Harris for their unstinting work and support in preparing *OBG Ltd v Allan* for the House of Lords, a Herculean task indeed (see Lord Nicholls at [139]). Working on that case did much to stimulate my interest in this subject, and brought me into contact with my co-author in the first place. I am greatly indebted to my parents Jean and Richard for their support and encouragement from my very beginning, to Peter Glazebrook for my grounding in the law, and to Brendan Edgeworth and many of my other occasional colleagues on the faculty at the University of New South Wales Law School in Sydney for nurturing my resumed involvement in university life after a quarter of a century 'treading the boards' at the bar. Last but by no means least, I thank my long-suffering wife Christine for extending me, with good grace, resigned tolerance of yet further hours spent in my study or in libraries preparing this work; I appreciate her love and support immensely.

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Birmingham, 2009

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