



Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we have another episode of our “Listen and Learn” series – this one discussing property intentional torts and defenses. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that’s me. We’re here to demystify the law school and early legal career experience, so you’ll be the best law student and lawyer you can be. We’re the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl’s Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don’t hesitate to reach out to us. You can reach us via the [contact form](#) on LawSchoolToolBox.com, and we’d love to hear from you. And with that, let’s get started.

Lee Burgess: Let’s start with the basics. Intentional torts are exactly what they sound like – torts committed with intent. There are seven intentional torts you are likely responsible for: battery, assault, false imprisonment, intentional infliction of emotional distress, trespass to land, trespass to chattel, and conversion. Today’s episode is going to focus on trespass to land, trespass to chattel, and conversion. These three intentional torts are all related in that the harm is done to property instead of a person.

Lee Burgess: Let’s start with trespass to land. A defendant is liable for trespass to land if they, (1) intentionally; (2) either (a) physically enter or remain on real property, or (b) propel physical objects or a third person onto the land. That is a mouthful, so let me break it down.

Lee Burgess: Trespass to land is a tort with two elements that must be satisfied. The first is intent to be on the land. This is not the intent to trespass, but just the intent to be on the land itself. There are two ways a plaintiff can prove the defendant intended to be on the land. First, the defendant had the purpose to be on the land, meaning it was their desired outcome to be on the land. Second, the defendant had knowledge to a substantial certainty that they would be on the land.

Lee Burgess: The second element is met if one of two options are satisfied. First, the defendant physically enters or remains on that real property. A situation where a defendant “remains on” real property is if the plaintiff intentionally consented to the defendant being on the land but later revokes that consent. The defendant then has a reasonable amount of time to comply with this revocation and get off the land. If the defendant does not, he is “remaining on” the land. The second option is if the defendant propels physical objects or a third person onto the land. An example of this is the defendant throwing a baseball or garbage onto the plaintiff’s land.



Lee Burgess: To test your knowledge on trespass to land, let's look at this example: After work Kurt went to the bar with his friends. A few hours go by, and Kurt has one too many drinks. Kurt starts to stand on tables and yell at innocent patrons. The bartender asks him to leave, but he refuses. Is Kurt liable for trespass to land?

Lee Burgess: To figure this out, we need to apply the two elements of trespass to land. First, is there intent? Well, Kurt did have the purpose to be inside the bar that night. Remember, Kurt might not have had the intent to trespass, but that is not required. Second, Kurt did physically remain at the bar. Although he was initially allowed to be in the bar, once he refused to leave after being asked to is when he was "remaining on" the property. Since both elements of trespass to land are satisfied, Kurt is liable. You might be thinking, "How can Kurt be liable for trespass to land if there was no damage to the bar itself?" You have a right to be suspicious of this, since many intentional torts do require some sort of harm. However, damage to the land is not required. The plaintiff can sue for nominal damages if they choose to.

Lee Burgess: One more note about trespass to land if you have not caught on already, is that trespass to land applies to real property, or land. This is different from the final two property intentional torts. Trespass to chattel and conversion only apply to personal property or the belongings of a person. A defendant is liable for trespass to chattel when, (1) they intentionally interfere with the personal property of another; and (2) the amount of damage is small.

Lee Burgess: A defendant is liable for conversion when, (1) they intentionally interfere with the personal property of another; and (2) the amount of damage is substantial. To satisfy the first element for both, the defendant must have the intent to interfere. This means they must have the purpose to interfere with the personal property of another or have knowledge to a substantial certainty that they will interfere with the personal property of another. To interfere with personal property means that there was either dispossession, which is the plaintiff's loss of use, or harm to the chattel, which is a reduction in the value of the chattel.

Lee Burgess: Trespass to chattel and conversion often cause a lot of confusion for law students and bar exam takers alike. Rightfully so, because they seem very similar. However, there are two key differences. First, trespass to chattel requires small damage to the personal property, while conversion requires substantial damage to the personal property. To cross that line between small and substantial, you want to consider a couple of factors. First, the severity of the damage done. The more severe, the more likely it was substantial. Second, the extent and duration of the actions done by the defendant. The longer the defendant had the property, the more likely it was substantial. Second, the remedy awarded to the plaintiff is different. If a defendant is liable for trespass



to chattel, the plaintiff will be awarded the value of the harm done to the chattel. If a defendant is liable for conversion, the plaintiff will be awarded the full fair market value of the chattel.

- Lee Burgess: Consider these two fact situations to make better sense of these distinctions. First: Vanessa’s laptop broke right before she was going to turn in her final project. She asked to borrow Sheila’s laptop to submit the assignment, and Sheila gladly handed over her laptop. When Vanessa finished and gave Sheila back the laptop, the space key was broken.
- Lee Burgess: Second: Vanessa’s laptop broke right before she was going to turn in her final project. She asked to borrow Sheila’s laptop to submit the assignment, and Sheila gladly handed over her laptop. Right before giving Sheila her laptop back, Vanessa threw it on the ground and shattered it into a million pieces.
- Lee Burgess: This might seem dramatic, but it illustrates the differences between trespass to chattel and conversion pretty well. Assuming in both situations intent to interfere is satisfied, which situation is trespass to chattel and which is conversion?
- Lee Burgess: If you said the first was trespass to chattel and the second is conversion, you would be correct. In the situation with the broken space key, that is small damage. A broken space key is not severe enough to be considered substantial. Rather, Sheila can still use her laptop; she just needs to install one key for it to be perfect again. A shattered laptop, however, is severe enough to constitute substantial. Sheila no longer has a working laptop, and has to go out and purchase a new one.
- Lee Burgess: This is why the remedies awarded for each tort are the way that they are. In trespass to chattel scenarios, the property still works, it can be fixed. So it does not make sense to give the plaintiff the money for a brand new laptop when they only need the money to repair their laptop. In conversion scenarios, the property no longer works and it cannot be repaired. This is why the defendant owes the fair market value for the item, because the plaintiff has to get a brand new one. Let’s put your knowledge of these torts to the test now with a California bar hypo. This one is adapted from the [February 2016 exam](#):
- Lee Burgess: “Jack believed that extraterrestrial aliens had come to earth, were living undercover as humans, and were planning a full-scale invasion in the future. Jack believed that his next-door neighbor Nancy was one of these aliens. He saw Nancy’s car, which he believed to be an alien spaceship, parked on the street. He snuck over to her car and cut the brake lines, hoping Nancy would have a minor accident and be taught a lesson. What tort causes of action, if any, may Nancy bring against Jack?”



- Lee Burgess: Let's start with trespass to land. Did Jack intentionally enter Nancy's property? If you are thinking the answer is "Yes", remember that trespass to land only applies to real property, and a car is personal property. In addition, the facts tell us Nancy's car was parked on the street, not in her driveway. According to the facts, then, Jack never once stepped foot on Nancy's property in an attempt to stop the alien invasion.
- Lee Burgess: Now that we know Jack cannot be liable to trespass to land because the property in question is personal and not real, we are left with trespass to chattel and conversion. First, is there intent to interfere? Definitely! Jack had the purpose to harm the car when he cut the brake lines. Second, was the damage substantial or small? To figure this out, think about the laptop example. Is cutting the brake lines on a car more like breaking a space key or shattering a laptop? Cutting the brake lines is just like breaking a space key, because it can be fixed. Nancy can take her car to the auto shop and have them repair her brakes; she does not have to buy a whole new car. This means the damage was small, and Jack can be liable to Nancy for trespass to chattel.
- Lee Burgess: Now that we finished going through the three property intentional torts, we are going to move on to necessity – the property defense to intentional torts. As with any defense, it should only be raised when the plaintiff can prove a prima facie case of an intentional tort. Once the plaintiff does this, then the defendant can raise a defense to try to negate their liability.
- Lee Burgess: Necessity is special in that it will only apply if a plaintiff proves a prima facie case of trespass to land, trespass to chattel, or conversion. Necessity will not negate battery, assault, false imprisonment, or intentional infliction of emotional distress liability. Necessity allows a defendant to interfere with real or personal property of the plaintiff when their actions are necessary to prevent imminent and substantial threats of harm. In other words, a defendant will not be liable for the harm done to the plaintiff's property if the defendant's intrusion was necessary to prevent serious harm to a person or other property.
- Lee Burgess: There are two types of necessity – public and private. Public necessity is used when the defendant interferes with the plaintiff's property to protect a large group of people, or the public at large, from harm. Public necessity is a complete defense, meaning if the defendant can successfully raise it, they will not be liable for the tort or for the damages.
- Lee Burgess: To illustrate public necessity, imagine this: A small kitchen fire quickly grows out of control and soon the entire house is in flames. The house is in a neighborhood, and the fire is quickly spreading from house to house. The next house about to catch fire is Jane's. Right before it does, the mayor orders for



Jane's house to be demolished in an effort to prevent the fire from spreading even further and causing more destruction. Can the mayor raise a valid public necessity defense?

Lee Burgess: The answer is "Yes". This was clearly an emergency situation, where a fire was rapidly spreading and destroying a neighborhood. Had the mayor not done this, a countless number of other houses would have been destroyed and people would have been injured or killed. It was necessary for the public at large for the mayor to do this. Since the mayor can raise a valid public necessity defense, they would not be liable for the tort or the damages associated with it.

Lee Burgess: Private necessity is used when the defendant interferes with the plaintiff's property to protect himself or a small number of people from harm. Private necessity is an incomplete defense, meaning if the defendant can successfully raise it, they will not be liable for the tort but will be liable for the damages.

Lee Burgess: You might have read the case [Vincent v. Lake Erie Transportation Co.](#) which provides a great example of private necessity. In this, the defendant docked his steamship on the plaintiff's dock to unload cargo. As he was unloading cargo, a violent storm broke out. Due to the storm, there was no way for the defendant to untie his steamship from the dock without it drifting away to sea. The storm threw the steamship into the plaintiff's dock, causing the dock to be destroyed. The court held the defendant had a valid defense of private necessity. It was necessary for the defendant to remain tied to the dock for his and the boat's safety. Thus, the defendant was not liable for the tort but was liable for the money damages to the dock.

Lee Burgess: Public and private necessity are easy to mix up. Just remember, public is for larger groups of people and is a complete defense, while private is for smaller groups of people and is an incomplete defense.

Lee Burgess: Now that we have covered all of the information, let's look at a hypo to test how well you understand it all. This one is adapted from the [February 2022 California bar exam](#):

Lee Burgess: "Diana built a large open-air theater to provide an outdoor multi-use entertainment venue. On weekend evenings, Diana hosts rock concerts at the theater. Revenue from the rock concerts funds most of the operating costs of the venue. When built, its location was near the edge of the city. As time went by, city development expanded to include housing in the vicinity of the theater.

Lee Burgess: Pedro recently purchased a house in a subdivision located adjacent to the theater. As soon as Pedro moved into his new house, he was horrified by the noise and vibration coming from the theater during rock concerts. He could feel



the floor shake and could not have a normal conversation because of the loud noise. Pedro approached Diana. She explained that she had already taken steps to mitigate the negative impact by requiring that all concerts end by 11:00 PM and setting a maximum noise level. Diana explained that the facility could not survive economically without rock concerts, and that rock concerts were, by their nature, loud.

Lee Burgess: A few days later, in an effort to find out if she might be able to relieve Pedro of some of his discomfort, Diana went to his house to determine whether sound-deadening materials might be added. She forgot to tell Pedro that she was coming. Diana let herself into Pedro's backyard, took some measurements, and left without disturbing anything. A few days after that, Pedro snuck behind the theater and cut the speaker wires into tiny pieces. He figured this would allow him to have at least a day or two of peace and quiet.

Lee Burgess: Discuss all torts and defenses present."

Lee Burgess: Let's start with any claims Pedro might have against Diana. Diana let herself onto Pedro's property, took measurements, and left without disturbing anything. Because Diana was on Pedro's real property, we want to do a trespass to land analysis. Diana will be liable for trespass to land if, (1) she intentionally; (2) physically entered on real property. First, Diana did intend to be on Pedro's property. She purposely went to his backyard to take measurements – something she could not do anywhere else. Second, Diana did physically enter Pedro's property when she let herself into his backyard. Remember that it does not matter that Diana left without disturbing anything, because damage to property is not a requirement for trespass to land to be satisfied. This means Diana will be liable to Pedro for trespass to land.

Lee Burgess: What about claims Diana might have against Pedro? Pedro cut her wires into tiny pieces. Since wires are a belonging, and not land, we should look towards trespass to chattel and conversion. First, there was intent. It was Pedro's purpose to interfere with the wires and cut them up, because he wanted to stop the loud music. Second, is this substantial or small? Does Diana have to purchase completely new wires or can she get hers repaired? Because the wires were cut up into tiny pieces, she is going to have to purchase all new wires; a repairman is not able to fix them. Thus, Pedro will be liable to Diana for conversion, meaning Pedro is liable for the full fair market value of the wires.

Lee Burgess: But wait, are there any valid defenses Pedro can raise? You might be thinking about private necessity, since Pedro committed a property tort in an effort to save himself from harm – the noise. If you are thinking this, you are forgetting a key component of necessity – it is only used in emergency situations. It cannot



be said that noise is an emergency situation that warrants committing a tort. If that were the case, then every person who lived next to a college house would have full liberty to commit property torts against their neighbors. Because this is not an emergency situation, Pedro cannot validly raise the defense of private necessity, meaning he would still be liable for the damages and the tort.

Lee Burgess: We are running out of time, so let's quickly recap what we learned. Today we talked about property intentional torts and the defenses available only to those torts. First, we talked about trespass to land, which is when the defendant intentionally either physically enters or remains on real property, or propels physical objects or a third person onto land. Next, trespass to chattels is when the defendant intentionally interferes with personal property in a small way. Finally, conversion is when the defendant intentionally interferes with personal property in a substantial way.

Lee Burgess: We then talked about necessity – the defense only available to property intentional torts. Public necessity is raised by a defendant in an emergency situation to help save a large group of people from harm. Private necessity, on the other hand, is used in emergency situations to help save the defendant or a small group of people from harm.

Lee Burgess: Alright, that's a wrap for today. Glad you could join me as we discussed property intentional torts and defenses! If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website [contact form](https://www.lawschooltoolbox.com/contact-form) at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

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