

Against all those who possess without the right of possession and who are not custodians, provided always they be privy or consenting to the original trespass or wrong. Thus goods may be recaptured from a trespasser, a thief, a second trespasser, a second thief, a bailee who has determined his bailment by breaking bulk conversion, etc. It should be noted, however, that according to some authorities the proviso of privity and consent to the original trespass or wrong should be omitted.

What things are subject to the right of recaption?

All chattels (but not chattels real). In connection with this it should be remembered that in former times human beings were included in this category, while cases of accession, confusion, and specification form an exception to the above generality. Instead of creating difficulties by formulating general principles, our law leaves the court free to award or apportion the combined, altered or mixed goods as may see most fair, with the assistance of damages. It would therefore seem that in these cases recaption has no place in our law, on the grounds of its being a usurpation of judicial functions.

Under what circumstances may the right of recaption be exercised?

Whenever goods have been taken from the possession of one of the persons entitled to the exercise of the right, without claim of title, and which therefore involves a breach of the peace, either actual (as in a felonious taking), or constructive (as in the case of a wrongful taking).

A claim of title will arise:

In the transferee on a transfer for value, i.e., a sale.

In the mortgagee, pledgee, or creditor on a transfer under a mortgage or as a pledge or security.

In the donee on a transfer as a gift.

In the bailee on a transfer under a bailment.

In the vendor, mortgagor, pledgor, debtor, donor, or bailor on a failure to fulfil all the conditions of the sale, mortgage, pledge, agreement, gift, or bailment by the vendee, mortgagee, pledgee, creditor, donee, or bailee.