

# Insights



## Andrew Stafford KC and James Chapman-Booth: The English Tort of Conversion is Falling Behind the Digital Age

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Though much of English law has developed to adapt to the rise of digital assets, the tort of conversion has not followed, depriving claimants of a tool to recoup losses from third parties. Kobre & Kim's Andrew Stafford KC and James Chapman-Booth explained the shortfall in an article for *New Law Journal*.

Until relatively recently, wealth was largely held or based upon physical goods (*choses in possession*), and the tort of conversion proceeded based on physical possession. The question was whether a plaintiff had a right to possess certain goods and whether a defendant, having found those goods, had converted them to their own use. The tort can be a powerful weapon – if a claim for conversion is sustained, a defendant will be liable even if they acted innocently. However, the rule was that intangible property could not be converted.

In 2007, the UK House of Lords in *OBG Ltd v Allan* refused to adapt the tort of conversion to intangible forms of property. Since then, digital technology has progressed dramatically, yet English law remains frozen even as other jurisdictions, including the U.S., have evolved. Mr. Stafford and Mr. Chapman-Booth conclude, "If the English law is to continue to innovate, and to match the pace of technological progress it must be freed from the legal fiction which has shackled it to a form of property that is becoming decreasingly relevant in the digital age."

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