

## CIVIL ACTIONS FOR CONVERSION (THEFT) IN CALIFORNIA



### Conversion (Theft) - General Concepts

Conversion is an intentional tort that evolved to protect against interference with possessory and ownership interests in personal property. It consists of the wrongful exercise of dominion or control over personal property, which so seriously interferes with another's right to control the property that the converter is required to pay the other the full value of the property as damages for the conversion.

Three elements required to establish a cause of action for conversion: (1) plaintiff's ownership or right to possession of the property at the time of the alleged conversion; (2) defendant's conversion by a wrongful act or disposition of plaintiff's property rights; and (3) damages.

The difference between a cause of action for conversion and one for trespass against personal property turns on the degree of the defendant's alleged interference with the plaintiff's rights in the property. The gist of a cause of action for conversion is proof of the defendant's actual and substantial exercise of dominion or control over the plaintiff's personal property, interfering with the plaintiff's rights in the property. In contrast, any wrongful interference or exercise of dominion over the personal property of another may give rise to a cause of action for trespass.

Where personal property has been converted, the plaintiff may choose either to sue for the tort, or waive the tort and sue in "assumpsit" either for the value of the property converted or for money had and received. In such a case, the plaintiff consents to, or subsequently ratifies, the conversion, and then proceeds on a theory of implied contract.

### Property Which May Be Converted

Property Owned Or Possessed By The Plaintiff: To establish a conversion, a plaintiff must show actual interference with his or her ownership or right to possess property. When the plaintiff neither has title to the allegedly converted property, nor possession of it, he or she cannot maintain an action for conversion. Legal title to the property is not required, but the plaintiff must have either actual possession of the property at the time of the alleged conversion or the right to immediate possession

Tangible Personal Property: California statutes do not define the type or character of personal property that is subject to an action for conversion. Under the common law of California, conversion traditionally applied only to wrongful interference with specific, identifiable pieces of tangible personal property. Conversion did not apply to intangible, indefinite, or uncertain property rights, such as the good will of a

business, trade secrets, or a newspaper route.

Intangible Property: The common law rule requiring tangible property has been modified by the courts, and conversion now applies to certain classes of intangibles that are represented by documents. The California Uniform Commercial Code imposes liability for the conversion of instruments. [Civ. Code, §3420] The definition of "instrument" includes negotiable instruments. [Civ. Code, §3104, subd. (b)] California courts also have upheld causes of action for the conversion of corporate stock certificates and the shares represented by the certificates. Bonds also may be the subject of a conversion action.

Money: Money cannot be the subject of an action for conversion unless a specific, identifiable sum is involved. However, it is not necessary that each bill or coin be earmarked. Thus, when an agent is required to turn over to his or her principal a definite sum received on the principal's behalf, conversion is the proper remedy for failure to deliver. However, where the money or fund is not identified as a specific thing, the appropriate remedy is in implied contract or an action on the debt, not conversion.

## **Acts Constituting Conversion**

Actual Substantial Interference With Possessory Or Ownership Interests In Property: To establish a conversion, the plaintiff generally must prove an actual interference with his or her ownership or right to possess property. The defendant must actually interfere with the plaintiff's dominion over the property in a manner inconsistent with, or in denial of, the plaintiff's right to own or possess the property. The mere act of removing personal property from one place to another, without any assertion of ownership and without preventing the owner from exercising his or her ownership rights in the property, does not amount to a conversion. Accordingly, the act of a landlord in wrongfully and forcibly entering an apartment and removing the tenant's personal property to a warehouse for storage in the tenant's name did not constitute a conversion of the tenant's goods. However, a landlord who locked plaintiffs out of their apartment and denied them access to their personal property inside was liable for conversion.

In addition to actual interference with the plaintiff's rights in the property, to establish conversion the plaintiff also must show that the interference was substantial. To prove substantial interference, the plaintiff must show an intention or purpose to convert the goods and to exercise ownership over them, or to keep the owner from taking possession of the property. Where the defendant intermeddles with, uses, or damages plaintiff's property to some degree, but the conduct complained of falls short of the substantial interference required to prove conversion, the owner may have a cause of action for trespass or an action on the case. However, unlike conversion, which normally allows recovery of the full value of the property affected, these theories of liability allow recovery only for the actual damages suffered by reason of the impairment of the property or the loss of its use.

Intentional Conduct - Strict Liability: While the act constituting the alleged conversion must be done intentionally or knowingly, it is not necessary to prove any wrongful intent, knowledge, or motive on the part of the alleged converter. The cause of action rests solely on the defendant's substantial and unwarranted interference with the plaintiff's legal dominion over property resulting in injury to the property.

Methods Of Conversion: Any act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with, the other's rights in the property may constitute conversion. It is not necessary to prove that the property was taken manually or removed from the plaintiff's possession although a wrongful taking of personal property by force or fraud generally amounts to a conversion.

The plaintiff is not required to allege or prove that the defendant applied the property in question to his or her own use or benefit, so long as the plaintiff shows an assumption of control or ownership of the property inconsistent with the plaintiff's possessory or ownership rights.

## **Damages**

Presumed Measure Of Damages: Under Civ. Code §3336 there is a statutory presumption regarding the detriment caused by the wrongful conversion of personal property. The measure of damages is presumed to be [Civ. Code, §3336]:

1. the value of the property at the time of the conversion, with interest from that time, or
2. an amount sufficient to indemnify the injured party for the natural, reasonable, and proximate results of the wrongful act complained of and which a proper degree of prudence on the plaintiff's part would not have averted, and
3. fair compensation for time and money properly spent in pursuit of the property.

Determining Value Of Converted Property: The value of converted property is determined at the time of the conversion. [Civ. Code, §3336] The value is also calculated as of the place of the conversion even where it is a foreign place.

Ordinarily, the value of the property is determined by its market value at the time of the conversion. Evidence of the cost of the property, along with other circumstances such as the extent of use of the property and its condition and depreciation, may be considered in determining the value at the time of the conversion. Evidence of the contract price of the property also is admissible, not as showing the value conclusively, but to aid in determining the value at the time and place of conversion.

Property of Peculiar Value To The Plaintiff: Under Civ. Code §3355 there is a separate measure of damages for the conversion of property of peculiar value to the plaintiff. Where property has a "peculiar value" to a person recovering damages for deprivation of the property or injury to it, damages are deemed to be the peculiar value against one who had prior notice of the particular value, or against a "willful wrong-doer." [Civ. Code, §3355] For example, the court applied Civ. Code §3355 in an action for damages resulting from defendant's delay in transporting theatrical scenery, equipment, and costumes. [Artists Embassy v. Hunt (1958, 2nd Dist) 157 Cal App 2d 371, 320 P.2d 924]

Expenses In Pursuit Of The Property And Attorney's Fees: Under Civil Code §3336, the detriment caused by the wrongful conversion of personal property is presumed to include fair compensation for time and money properly expended in pursuit of the property. To entitle a party to compensation for time and money spent in pursuit of converted property, the evidence should show that money was properly paid out and time properly lost in pursuit of the property, and the amounts. Such evidence should be definite and certain. Expenses incurred in preparation for litigation and not in pursuit of property are not compensable as damages under Civ. Code §3336.

Unless there is express statutory authority or contractual liability, attorney's fees are not a proper item of recovery from the adverse party, either as costs, damages, or otherwise. Accordingly, because Civ. Code §3336 does not expressly provide for attorney's fees for conversion actions, such fees are not recoverable.

Interest: The recovery of interest on the value of the property from the time of the conversion is expressly authorized. [Civ. Code §3336] This provision is an exception to the general rule that an unliquidated claim does not bear interest. Interest on the value of the converted property is awarded in lieu of the value of the use, not in addition to it.

Exemplary Or Punitive Damages: Exemplary or punitive damages are properly awarded in a conversion action, given the required proof by the plaintiff of malice, fraud or oppression. Even on the clearest proof of malice in fact, the granting or withholding of the award for punitive damages is entirely within the control of the jury.

Mitigation Of Damages: An offer to return converted property, made after the conversion, has no effect as a defense against plaintiff's cause of action for conversion.

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