

GENERAL OVERVIEW OF THE ARGUMENTS

First: Imputing a Fiduciary Relationship After the Breach of the Covenant of Good Faith.

Using a bank as an example: Normally a bank's obligation is merely to return the funds deposited by the customer when requested. (See Am. Jur. 2d, Banks § 339;) As explained in the Senate hearings in February 2025 on Debanking, Supplemental Memorandum “Analysis of CFPB Consumer Complaints Related to Debanking,” page 2, bullet point 3, the Consumer Financial Protection Bureau (CFPB) points out there has been a serious problem with a “lag time” in banks returning customer funds.

The problem is that allowing banks to delay in the returning of their customer funds can lead to an inflation of assets on the ledgers of the banks' books. Banks can benefit by these increased assets in many ways: The most simple is that banks lend out at a higher rate of interest than they pay their customers.ⁱ What has been missed legally is that if banks purposely begin to increase the time in returning the funds (i.e. “lag time”) they have breached the covenant of good faith in the contract. The importance of this and what has been overlooked, is that breach of good faith opens the door to a “process” in which the bank has an obligation to preserve the customers' funds so that they can eventually be returned. This changes the “relationship” which the bank has with the customer. The bank now holds a special relationship with customer and that special relationship is one of a fiduciary nature. A fiduciary relationship may carry (1) punitive damages as well as (2) legal fee shifting.ⁱⁱ

To illustrate this argument further, if a client hires a financial advisor, (broker) it creates a fiduciary relationship through the contract for the broker to hold the clients' money. Why wouldn't misappropriation or theft by the broker of further funds owned by the client's create the same fiduciary relationship concerning the broker holding those funds? It may seem odd to expect a someone who misappropriated someone else's property to have an legal obligation to maintain the property so that it can be returned but: (1) consider the fact that Al Capone was sentenced to 11 years at Alcatraz for not telling the government that he had stolen money; and (2): consider the amount of money and resources that society spends in an attempt to, or in order to, recovery stolen or misappropriated property.

This can also be illustrated by a different example which is not white-collar crime: The theft of a car by a street thief. Once he steals the property, the victim is never legally dispossessed of their ownership of the property: they are only physically dispossessed of the property. If the victim finds the property or if it is recovered by law enforcement, the victim can take it back. If the car is returned a few days later but the thief left it out in a storm and caused severe damage to the car, the thief would be liable for the increase in damages (diminution in value) and not just the return of the property. This legal liability applies “throughout to entire time” the thieves hold the property. Also, the thief is liable for all consequential damages from the theft and during their possession. The law of liability follows the property. It is important to realize that increased damages and consequential damages also establishes due process notification (ignorance of the law is no excuse, but these are obvious well-known features of the law known to thieves anyway). This imputes upon the thieves a legal obligation to preserve the

property and if that sounds odd consider what happened to Al Capone when he didn't tell the government that he stole the property. The significance of imputing a fiduciary relationship upon the wrongful acquisition of property is that it allows for deterrence and full compensation to the victims. This is done through punitive damages as well as fee sifting. Also, as to deterrence, bankruptcy is not allowed for intentional misconduct as that would be against public policy. There is one more aspect of the theft which also underscores the legal obligation to maintain the stolen or misappropriated property's value: As discussed below, there may be tax crimes involved because the victim is limited to fair market value when they are deducting the stolen property on their taxes and this represents an illegal interference with tax reporting.

Unfortunately, this is a world full of deceit, fraud, dishonesty, bad faith, etc. The elements of bad faith will try to deny that the continuum of legal obligations and liability occurring after their illegal acquisition of property does not constitute a "duty" to preserve the property. However, sometimes the most effective way to establish an argument is to express it in the simplest terms possible:

"If you take my property, you better make sure you take good care of it ! "

Second: Applying the Doctrine of Transferred Intent to Punitive Damages.

There's a lot of debate concerning crime and how to deal with it. Some groups favor a more psychological/sociological approach to criminal behavior, others strict law enforcement: There is one thing that everyone has in common and that is no one wants more evil mindedness. This new theory being proposed is applying the theory of transferred intent to civil punitive damages. Transferred intent is the theory used when a defendant intends to harm one person but unintentionally harms a second person instead. In this case, the defendant's intent transfers from the intended victim to the actual victim and can be used to satisfy the mens rea element of the crime that the defendant is being charged with (see Cornell Law School Legal Information Institute "Transferred Intent" and see also the renowned professor William L. Prosser, Transferred Intent, 45 TEX. L. REV. 650 (1967) and his other multiple writing on the subject).

In civil law punitive damages are awarded to punish the maliciousness of the bad actor and not to compensate the victim. However, the evaluation of the evil-mindedness of the bad actor is unfortunately done by looking at the harm caused to the victim. This misses the foundational concept of punitive damages. However, consider the following hypothetical:

Four women are living in a sorority house and three of them are gone. A man breaks in and sexually assaults one of the women and then flees the property when he hears the other three women returning. The woman that was assaulted has causes of action for sexual assault, trespass and invasion of privacy. The other three women have causes of action for trespassing and invasion of privacy. However, the evil mindedness of the perpetrator is actually the same for all four women. The fact that the other three women were fortunate enough to be off the premises at the time the house was invaded has no relevance to the perpetrators state of mind.

Therefore, the argument is that the full punitive monetary award (the “evil-mindedness) should be transferred to other three women and the perpetrator would pay four (4) times entire monetary punitive amount. This transferring of intent in civil actions would be subject to all judicial limitation doctrines such as foreseeability and proximate cause etc. There is a state’s rights argument here because a state has the right to protect its citizens, and under the Equal Protection Clause, a group of citizens would not be receiving accurate punitive damages, nor the concomitant deterrence affect for their safety. The determination of guilt would be decided by the civil standard of clear and convincing evidence rather than the criminal standard of beyond a reasonable doubt. Punitive penalties are not capable of being discharged in bankruptcy because it is intentional misconduct. Therefore, there is enormous financial pressure on a perpetrator or any accessory involved. A reward may not be satisfactory if an accessory is compromised. However, an accessory may change their attitude, and they may decide to reveal their knowledge and testify against perpetrators. The deterrence effect in terms of assisting law enforcement may be enormous by fighting malicious conduct. I have used the Nancy Guthrie case to illustrate.

Example: The Nancy Guthrie Kidnapping Case.

Putting the emotional damages aside for just a moment, Savanna Guthrie could not work and therefore there is an action for Interference with a Contractual Relationship with full punitive damages. However, if you transfer the intent all the people under contract at her business whose contracts were significantly affected by the interference, they would all be entitled to the entire amount of the punitive damages awarded to Savanna Guthrie (subject to all judicial limitation doctrines). The full monetary award times the entire number of people affected. Then the same approach would apply to the count of Intentional Infliction of Emotional Distress and each person foreseeably affected to the significant decree would receive the full punitive amount awarded to Savanna Guthrie. Again: the full monetary amount awarded to Savanna Guthrie times the entire number of people affected.

This would apply not only to the perpetrators of the kidnapping itself, but to anyone who could be considered an accessory etc. And the standard applied would be that of clear and convincing proof not beyond a reasonable doubt. The financial pressure is enormous especially since bankruptcy is not allowed for intentional misconduct (against public policy). This might cause anyone who had made even tangential contribution to the crime to step forward and to reveal what they know to seek release. Again, this is completely under the control of the courts which can apply its limitation doctrines. There was also a security camera stolen which may involve tax crimes (discussed below).

Third: Tax crimes: There are tax crimes concerning stolen or misappropriated property because, for example, stolen business property losses are deductible, but the victim would be limited to Fair Market Value when deducted. Fair Market Value may not be accurate especially when the victim is denied examination of the property for valuation purposes. Therefore, tax liability could be found under (1) 26 U.S. Code§ 7212 - Attempts to interfere with administration of internal revenue laws" The penalty for that is "fined not more than \$5,000, or imprisoned not more than 3 years, or both" And see Marinello v. United States, 584 U.S. — (2018), The United States Supreme Court concluded Section 7212(a) applied only when the

defendant was going through or reasonably expected an IRS proceeding. However, it is totally foreseeable that the victims of theft are going to be filling out their income taxes and claiming their deductions (assuming the property is income producing property). In the Nancy Guthrie case, the security camera could be deductible if there was any type of home business being conducted.

Under 18 U.S.C. Sec 241 Conspiracy Against Rights: “If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or.....” Violation under 18 U.S.C. Sec 241 may generate a cause of action from both the (1) government and the (2) victim. This is because of the agreement between citizens and the government regarding the payment of taxes. Citizens want to pay their taxes, or else they would not create and vote in favor of them.

Fourth: Punitive damages should be adjusted for inflation. For example, the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9 to -5.17 enacted in 1995, allows for damages of \$350,000 or five times compensatory damages whichever is greater. The “five (5) times” compensatory damages limit is automatically adjusted for present day values by the jury/factfinder through the compensatory award. However, the \$350,000 limit is not. Adjusting for inflation, the \$350,000 in 1995 is actually \$747,093.33 in 2025 (see <https://www.inflationtool.com/>). Over twice the value. The pandemic certainly exasperated the problem, but 30 years without adjustment is also a long time. This would not be judicial activism; it gives the legislature exactly what it asked for. There is also an Equal Protection Clause argument here because two classes of citizens are being given two different monetary awards based solely on the time that they arrive at the courthouse, and the difference is enormous. In an age where college education is extremely expensive and critical towards societal advancement, the same person receiving hundreds of thousands of dollars less simply because there is no adjustment for inflation due to a time deferential is simply not fair under the Equal Protection Clause.

ⁱ <https://www.bankrate.com/banking/what-banks-do-with-deposits/>.

ⁱⁱ Examples of cases where punitive damages were allowed against banks: First Nat'l Bank v. Acra, 462 N.E.2d 1345-46, 1349 (Ind. Ct. App. 1984) C-K Enters, Inc. v. Depositors Trust Co., 438 A.2d 262 (Me. 1981) Northshore Bank v. Palmer, 525 S.W.2d 718, 17 U.C.C. Rep. 488 (Tex. Civ. App. 1975). Also, in terms of attorney fee shifting, the New Jersey Supreme Court allowed attorney fee shifting in Gannett Satellite Info. Network, LLC v. Township. of Neptune 254 NJ 242 (2023) involving breaches of fiduciary duties.