

**8.41            CONVERSION (3/10)**

**A.     General**

The measure of damages to be awarded to a plaintiff entitled to a verdict is the fair market value of the converted chattel<sup>1</sup> at the time of conversion by the defendant, with interest from the date of conversion. Fair market value is defined as the price which would be agreed upon in good faith negotiations between a willing seller without any compulsion to sell and a willing buyer without any compulsion to buy under usual and ordinary circumstances.

**Cases:**

*Arnold v. Hamilton*, 132 N.J.L. 10 (Sup. Ct. 1944), *aff'd per curiam* 132 N.J.L. 419 (E. & A. 1944); *Ward v. Huff*, 94 N.J.L. 81 (Sup. Ct. 1920); rule cited with approval in *Winkler v. Hartford Acc. and Ind. Co.*, 66 N.J. Super. 22, 27 (App. Div. 1961), *certif. denied*, 34 N.J. 581 (1961).

Punitive damages may be assessed. *Winkler v. Hartford Acc. and Ind. Co.*, *supra* at 22, 29.

**B.     Upon Return of Converted Chattel**

If the plaintiff has accepted return of the converted chattel, the measure of damages is the difference between the fair market value at the time of its conversion and the fair market value at the time of its return plus interest during such period, or in

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<sup>1</sup> Note that the tort of conversion can be applied to money rather than chattels. See *Chicago Title Ins. Co. v. Ellis*, 409 N.J. Super. 444 (App. Div.), *certif. denied*, 200 N.J. 506 (2009).

the alternative, any damages flowing naturally and proximately from the wrong complained of, including the loss of use of the chattel.

**Cases:**

*Taylor v. Brewer*, 94 N.J.L. 392 (Sup. Ct. 1920).

Plaintiff is permitted to recover all damages flowing naturally and proximately from the wrong complained of, including the loss of the use of the chattel. See *Ward v. Huff*, *supra*, as modified by *Winkler v. Hartford Acc. and Ind. Co.*, *supra* at 22. This is the common law measure of damages in the action of trespass *de bonis asportatis*.

Loss of use has been defined as those damages occasioned to the plaintiff by reason of the detention, including personal loss, inconvenience and capital outlay. *Taylor v. Brewer*, *supra* at 392, 393 (Sup. Ct. 1920), as modified by *Winkler v. Hartford Acc. and Ind. Co.*, *supra* at 22.

Punitive damages may be assessed. *Winkler v. Hartford Acc. and Ind. Co.*, *supra* at 22, 29.

**C. Chose in Action Other Than Marketed Securities**

When the action is for conversion of written evidence of a debt, the measure of damages is the value of the property converted, plus interest from the date of conversion. The face value of an instrument for payment of money is *prima facie* its actual value. The defendant is liable only for the actual value if, in fact, less than the face value.

**Cases:**

*Arnold v. Hamilton Inv. Co., Inc.*, *supra*.

**D. Marketed Securities**

If the converted property is stocks or bonds, commercial securities or instruments of fluctuating value on the market, the measure of damages is the highest intermediate fair market value between the time of the conversion and a reasonable time after notice of the conversion within which to replace the securities, plus interest from the date of conversion.

**Cases:**

*Dimock v. United States Nat. Bank*, 55 N.J.L. 296 (E. & A. 1893) following the rule of *Galigher v. Jones*, 129 U.S. 193, 32 L.Ed. 658, 9 S.Ct. 335 (1889).