

## **Actions To Recover Possession of Personal Property**

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### **A Look Back**

John buys a 14-year-old car with lots of mileage from Fast Eddie's Used Cars. He pays cash, buckles up, and makes it almost all the way home before the car simply stops running. He sues FE for a complete refund. FE defends, saying he (1) never said the car would work, and (2) any idiot would know . . . .

Do you rule in favor of John?

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## A Look Back

Sam buys a car from John, signing a written contract agreeing to pay \$500 now and \$2000 in six months. John sues for \$500, testifying that Sam made one payment of \$1500, but that he never paid the final \$500. Sam wants to testify that three months after he signed the agreement, the parties agreed that John would knock \$500 off the purchase price if Sam made a \$1500 payment immediately. Does the parol evidence rule prohibit your consideration of this evidence?

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## TODAY'S LESSON ON ACTIONS TO RECOVER PERSONAL PROPERTY

Or, Dona bitches some more about the complaint form . . .

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# AOC-CVM-202

WHEN PLAINTIFF IS A SECURED PARTY	
<p>The defendant is a resident of the county named above. I have a security interest in the personal property described in the attached security agreement. The total current value of this property is as shown below. The defendant has defaulted in the payment of the debt which the property secures or has otherwise breached the terms of the security agreement giving me the right to claim immediate possession of the property described below. I demand recovery of this property and reimbursement for court costs.</p>	
Description Of Personal Property In Which You Have A Secured Interest (attach copy of security agreement)	Total Value Of Property To Be Recovered
	\$
Date	Signature Of Plaintiff Or Attorney
WHEN PLAINTIFF IS NOT A SECURED PARTY	
<p>The defendant is a resident of the county named above. The defendant has in his/her possession the personal property described below which belongs to me. I am entitled to immediate possession of the property, but the defendant has refused on demand to deliver it to me. The defendant has unlawfully kept possession of this property since the date listed below and has therefore deprived me of its use. The damage due me for the loss of use and physical damage to the property is set out below. I demand recovery of this property and damages in the total amount set out below, plus interest and reimbursement for court costs.</p>	
Description Of Personal Property You Own Which is In Possession Of Defendant	Total Value Of Property To Be Recovered
	\$
Date Defendant Wrongfully Took Or Kept Property	Damage Due For Loss Of Use ▶ \$
	Physical Damage To Property ▶ \$
	<b>Total Amount Of Damages</b> ▶ \$
Date	Name Of Plaintiff Or Attorney (type or print) Signature Of Plaintiff Or Attorney

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# Classification Activity

<p>Non-secured party?</p> <p>“He took my property!”</p>	<p>Secured party?</p> <p>“She defaulted!”</p>
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## Two Wrongs, Each With Two Remedies

Wrong Done	Remedy Sought	Governing Law
<b>Δ has property belonging to me (Tort)</b>	<b>\$ (conversion)</b> Recovery of property (+\$) *	Mostly case law
Δ bought property from me & failed to pay for it. (Breach of contract)	\$ Recovery of property	UCC-Art. 2, RISA, . . . UCC-Art. 9, RISA, . . . .

\*Maybe also criminal prosecution

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## Action for Conversion Remedy Sought: Forced Sale/\$

- Plaintiff is the owner of property.
- Property was wrongfully taken or wrongfully retained from him.
- Defendant is person who wrongfully took or retained property.
- Remedy is fair market value of property at time wrongfully taken or retained, plus interest at 8% from that date until paid.

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## Action for Conversion

### Remedy Sought: Return of property

#### Essential Elements

- Plaintiff is the owner of property.
- Property was wrongfully taken or wrongfully retained.
- Defendant is in possession of the property.
- Remedy is return of the property and damages for physical damage to property and loss of use.

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## Action by Secured Party

### ACTIVITY: LEARNING THE LINGO

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## Recover Possession Secured Party

- Plaintiff is seller of goods or lender of money.
- Valid security agreement.
- Security interest in property seeking.
- Buyer defaulted in payment.
- Remedy is possession of the property.
  - All property listed as security if purchased at one time
  - Otherwise apply RISA, if applicable

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## Valid Security Agreement

- In writing.
- Contains a description of property to be security.
- Indicates an intention to create a security agreement.
- Authenticated by the debtor.
- If consumer credit contract, dated.

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## FAQs

- Which remedy should  $\pi$  seek?
- Can  $\pi$  change her mind at trial?
- What if  $\pi$  fills out complaint wrong?

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 $\pi$  can correct errors by amending complaint at trial, but careful if  $\Delta$  is not present!

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## Note well:

- Damage calculation for tort depends on whether  $\pi$  wants \$ (forced sale) or return of property.
- For secured party, valid SA is a **BIG DEAL**.
- Self-help allowed if no breach of peace.
- RISA rule for allocation of payment . . .
- **Amount** of debt not relevant in SP action for property.
- Things to come: **commercially reasonable sale**

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## RISA Rule for Allocation of Payment

- 8/5/15 chair \$500
- 2/15/16 couch \$1,000
- 8/23/16 dining room set \$2,500
- Defaults on 11/1/16.

All purchases from same seller, with each new contract consolidated with old. Monthly payments of \$85 (\$15 interest).

Each month's \$70 payment toward principal must be allocated to chair = FIFO.

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## What makes this fair:

- Debtor has paid \$4000 toward \$4500 debt.
- Secured party sells vehicle for \$3000.
- After deducting \$200 for expenses, \$500 goes to SP to pay off debt, and \$2300 is returned to Debtor.

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## Likely lawsuit #2: Action for the deficiency

- Debtor has paid \$1000 toward \$5000 debt.
- Secured party sells vehicle for \$3000.
- After deducting \$200 for expenses, \$2800 goes to SP, decreasing balance due to \$1200.
- SP brings action for money owed for \$1200. Debtor may defend by challenging CRM of sale.

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## Alternate version of lawsuit #2

- Debtor has paid \$4000 toward \$4500 debt.
- Secured party sells vehicle for \$1000.
- After deducting \$200 for expenses, \$500 goes to SP to pay off debt, and \$300 is returned to Debtor.
- Debtor sues, challenging sale based on statutory requirement that sale be conducted in CRM. If CR sale would have yielded \$3000, Debtor entitled to damages in amount of \$2000 +.