

3.10: Substantive Law - Monetary Punishment Sentences

Fines

Fines, or a sum of money the offender has to pay as punishment for the crime, are generally viewed as the least severe of all possible punishments. Fines may either supplement imprisonment or probation, or they may be the sole punishment. Criminal codes generally authorize fines as punishment for most crimes, but some of the older criminal codes did not authorize fines for murder.

The Model Penal Code proposed legislative guidelines on the use of fines, but states have generally rejected this provision. Instead, judges are given extremely broad discretion in setting the fine amounts, and there are few limits on the judge's ability to impose a fine. Frequently, the criminal statute will specify the highest permissible fine. The Eighth Amendment's Cruel and Unusual Punishment Clause prohibits excessive fines, but courts rarely have found a fine to violate this provision. In *Tate v. Short*, 401 U.S. 395 (1971), the Court found that fines that punish poor people more harshly than rich people, and thus, violate the Equal Protection Clause. Historically, magistrates had given offenders the option of paying a fine or serving a jail sentence. Sentences were frequently "thirty dollars or thirty days". If defendants were too poor to pay the fine, they went to jail. The *Tate* Court reasoned that the state could imprison Tate for committing the crime, but by requiring either time or a fine, the state was really incarcerating Tate because he was too poor to pay the fine. After *Tate*, courts began using installment plans that permit poor defendants to pay fines over a period of several months. This practice may nonetheless subject the poor to an increased punishment if the court administration requires interest or some fee associated with a payment plan.

Civil Forfeiture

Federal law allows **civil forfeiture**, the process by which the government confiscates the proceeds (property or money) of criminal activities. See, 18 USCA §§981-982. Laws that allow the state to forfeit the property used in illicit drug activity are particularly controversial. In deciding whether forfeiture is legal, state courts generally look to constitutional provisions dealing with excessive fines. In *Austin v. United States*, 509 US 602, at 622 (1993), the Supreme Court said that civil forfeiture "constitutes payment to a sovereign as punishment for some offense" . . . and, as such, is subject to the limitations of the Eighth Amendment's Excessive Fines Clause." However, the court left it to state and lower federal courts to determine the test of "excessiveness" in the context of forfeiture. The Illinois Supreme Court said that three factors should be considered in this regard: (1) the gravity of the offense relative to the value of the forfeiture, (2) whether the property was an integral part of the illicit activity, and (3) whether the illicit activity involving the property was extensive. ^[1] Federally, a \$357,144 forfeiture for failing to report to U.S. Customs that more than \$10,000 was being taken out of the country was found to be "grossly disproportionate" to the offense. ^[2] In one Pennsylvania case, the court found that forfeiture of a house used as a base of operations in an ongoing drug business was not excessive. ^[3]

Defendants, whose property has been taken through civil forfeiture, have argued that either the forfeiture hearing or the criminal trial (whichever happened last) violated their rights to be free from double jeopardy. However, the courts have not agreed. Instead, they hold that the double jeopardy prohibition is not triggered because forfeiture is a civil sanction and not considered a new criminal action. *United States v. Ursery* 518 U.S. 267 (1996). On February 20th, 2019, the Court perhaps provided a different form of attack on civil forfeitures. In a unanimous opinion in *Timbs v. Indiana*, ___ U.S. ___ (2019), Justice Ginsberg wrote that the Eighth Amendment's excessive fines clause applies to the states as well as the federal government, and that when Indiana civilly forfeited Timbs' \$42,000 land rover after he sold a couple of hundred dollars worth of heroin, it was imposing an excessive fine.

In order to satisfy due process, the owner is entitled to a hearing before the property can be forfeited. *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993). Courts have found that civil forfeiture is constitutional even when the owner was not aware of the property's criminal use. For example, in *Bennis v. Michigan*, 516 U.S. 442 (1996), the Court upheld the government's seizure and forfeiture of Mrs. Bennis's car, even though she claimed she did not know that her husband was using their car to engage in prostitution.

In 2000, Congress approved the Civil Asset Forfeiture Reform Act. This Act curbed the government's asset forfeiture authority and added additional due process guarantees to ensure that property is not unjustly taken from innocent owners. Under the Act, the government must show by a preponderance of the evidence that the property was used in some criminal venture. The Act also limited the statute of limitations to five years and made it a crime to move or destroy property to prevent seizure for forfeiture. In a similar vein, Oregon voters passed Ballot Measure 3, the Oregon Property Protection Act of 2000, in the November election. This constitutional amendment imposed limits on government forfeiture, allowing forfeiture only if the person from whom the property

was seized had been already convicted of the crime, and only if the government could prove by a clear and convincing evidence standard that the property was a proceed or instrument of the crime.

Link to <http://www.osbar.org/publications/bulletin/06nov/forfeiture.html>, for a discussion of the recent history of asset forfeiture in Oregon and the debate about Ballot Measure 3 and subsequent forfeiture cases and statutes.

Restitution and Compensatory Fines

Restitution refers to the “return of a sum of money, an object, or the value of an object that the defendant wrongfully obtained in the course of committing the crime.” ^[4] When the judge’s sentence includes restitution, the amount should be enough money to place the victim in the same position they would have been had the crime not been committed. Restitution orders can include the actual cost of destroyed property, medical bills, counseling fees, and lost wages. Several state laws require offenders to pay restitution as a condition of probation. Judges may order defendants to pay restitution for all damages incurred during a criminal episode, even if the charge is dismissed through negotiations. Judges may also order the defendant to pay restitution to some party other than the victim.

Ordering restitution is not always practical. When offenders are sentenced to incarceration, they frequently are unable to pay fines and restitution. Even offenders sentenced to probation may not be able to make restitution payments. In order to assist crime victims when offenders cannot pay restitution, several states have established **victims’ compensations commissions**. Statewide, defendants make their restitution payments to these commissions that pay out restitution claims to victims across the state. Because of the statewide pot of money, victims can then get some, if not all, of what is needed to “make them whole.” Also, these commissions make it possible for the victim to get compensated without having to maintain contact with the offender.

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1. *Waller v. 1989 Ford F350 Truck*, 642 N.E. 2d 460 (Ill. 1994). ↩
 2. *United States v. Bajakajian*, 524 U.S. 321 (1998). ↩
 3. *In re King Properties*, 6235 A.2d 128 (Pa 1983). ↩
 4. Scheb, J.M. & Scheb, J.M. II (2012). *Criminal Procedure* (6th ed., pp. 268). Belmont, CA: Wadsworth, Cengage Learning. ↩
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