

Embezzlement: criminal law and expert witness

[Law](#), [Crime](#)



Embezzlement is a white-collar crime, it mostly occurs in corporations when a person uses the funds or assets of the employer for individual interests. Embezzlement is also common when we refer to the misappropriation of public funds. This usually occurs when the culprit has permissible access to the property and funds, as he or she has been entrusted with its handling and care. Embezzlement is a serious crime that carries penalties in both the civil and criminal court. Employees who care for public funds are most likely to be given harsh punishment, keeping in mind the severity and repercussions of the crime. There are three major differences between civil court and criminal court in embezzlement. Firstly, in civil law, a case starts when a complaint is filed by a party, which may be an individual, an organization, a company or a corporation, against another party. " Civil fraud trials are typically started by the party suffering the loss and may result in a judgment for reimbursement for actual losses and attorneys' fees. Civil trials do not result in imprisonment. Criminal fraud involves violation of a law (known as a statute) enacted by the state or federal legislation. Criminal fraud is prosecuted by the state and may result in punishment, such as fines, restitution, and/or prison time" (Hanson). In most cases, criminals face criminal charges first, and then move on to civil court later so that the company can reclaim what it lost. In other words, you will likely be in jail with no money for the commissary. Secondly, " in a criminal court case, the prosecutor must establish the guilt of the defendant, but in a civil court case, the plaintiff must only establish the liability of the defendant. In the former, the defendant is either guilty or not guilty of a crime, while in the latter, the defendant is either responsible or not for monetary damages suffered by the

plaintiff. In civil court cases, the plaintiff should only win by a preponderance of evidence, which means that the defendant is more than 50% likely to be liable for whatever transpired" (Thompson). If the defendant is accused of criminal mischief, the prosecutor must prove to the jury that the defendant committed the crime beyond a reasonable doubt. In a civil court case, however, the plaintiff must only prove through evidentiary means and testimony that the defendant is probably liable for the damages. At last, in a criminal court, the penalties for embezzlement usually include a jail sentence and a fine, both of which can be substantial. The United States Code, Title 18, deals with all forms of embezzlement, of which there are many. The sentence will depend on the nature of the crime committed and the amount of money or value of property stolen. For example, " fine of not more than \$500, 000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both" (United States Criminal Code, Title 18). In other words, according to the statute, if you embezzle \$200, 000, you could be fined up to \$400, 000. The civil penalties for embezzlement are not any better, and can be pursued with or without a criminal conviction to back up the plaintiff's claims. In most cases, civil suits are brought by the company or entity. If you've been convicted of misuse of public funds, civil suits are from the government. A lawsuit can take many years to settle, but the outcome is rarely pretty. An expert witness is a person who can provide suggestions about the situation based on insight developed through education, experience, and training. In the process of a court proceeding, the judge rules on whether an expert witness is qualified to provide evidence on the matter before the court. The

need for an expert witness usually occurs when there is an argument involving some area of accounting expertise. “ Generally, the role of the fraud examiner or forensic accountant when working with attorneys and other persons related to legal matters is to: educate counsel, reconstruct cash flows and performance from records, guide additional investigation and discovery, make connections, draw conclusions and offer observations, determine whether evidence supports theories of case, provide objective evaluations of the information, data and evidence, draft report and exhibits and offer deposition and trial testimony” (PPT: chapter 16). Fraud examiners conduct civil and criminal investigations. Fraud investigators interview complainants, employers and witnesses, research records and obtain documentation related to personnel, medical and other evidence pertinent to the case. They obtain statements of fact, depositions, or confessions. They also must understand and adhere to legal requirements and responsibilities gathering evidence. In either case, the expert must provide the basis for their opinions and the facts, data and other information relied upon. Expert witnesses will often have to provide deposition and courtroom testimony. They can testify about the facts of the case and can also give opinions. Regardless of how educated, experienced, and trained forensic accountants may be, their credibility is weakened if they are unprepared or not familiar with the facts of the case. Fraud examiners often find a use for their skills into the civil justice system, not only in matters where fraud claim are made but also where lost profit, wages and other allegations are made on behalf of a victim plaintiff. Whether the parties generally control the pace in civil cases or the government controls the case in criminal courts, fraud

examiners need to know your rights and protections under the law to protect records and evidence. Reference Hanson, Richard. " Forensic Accounting. " [Http://www.encyclopedia.com/topic/Forensic_accounting.aspx](http://www.encyclopedia.com/topic/Forensic_accounting.aspx). 2007. Web. 2 June 2012. Thompson, Steve. " Civil & Criminal Court Cases: The Differences." Yahoo! Contributor Network. Web. 02 June 2012. . " 18 USC Æ, § 1956 - Laundering of Monetary Instruments." 18 USC Æ, § 1956. Web. 02 June 2012. .