

A designer properly placed a client's advance payment of anticipated fees into a client trust account. Several weeks later, the designer was asked by the state's Art and Design Association to serve as the chairperson of a committee overseeing an auction dinner to raise funds for the group. Lacking sufficient personal funds, the designer used money in the client trust account to pay for various expenses related to the dinner. The designer intended to fully repay the money in the trust account when the client abruptly fired the designer.

Is the designer guilty of embezzlement?

- A. No, because the designer did not take the money to benefit himself.
- B. No, because the designer intended to repay the money.
- C. Yes, because the designer had failed to repay the money when the client fired him and thereby became entitled to the funds.
- D. Yes, because the designer took the money for the benefit of someone other than the client.

Explanation:

Comparison of property offenses

	Actus reus	Mens rea
Embezzlement	Conversion of <i>lawfully</i> possessed property that belongs to another	Specific intent to defraud/permanently deprive
Larceny	<i>Unlawful</i> taking & carrying away of another's property	
Larceny by trick	Knowingly misrepresenting a material fact to obtain <i>possession</i> of another's property	
False pretenses	Knowingly misrepresenting a material fact to obtain <i>title</i> to another's property	

Embezzlement is the **fraudulent conversion** of the **property of another** by a **person** who is in **lawful possession** of that property—typically pursuant to a trust agreement. Conversion is the inappropriate use of property that substantially interferes with the *owner's* right to the property. This occurs when the defendant treats the property as his/her own or uses it for his/her own purposes.

Here, the designer was the trustee of the advance payment received from his client for anticipated services. The designer treated the money in the client trust account as his own and used it for his own purposes when he used it to pay for auction dinner expenses—not for fees incurred by the client. Therefore, the designer fraudulently converted the money and is guilty of embezzlement.

(Choice A) A defendant need not personally benefit from the conversion to be convicted of embezzlement. Therefore, it is irrelevant that the designer did not take the money to benefit himself.

(Choices B & C) An intent to return the *exact* property that is converted, coupled with the ability to do so at the time that intent is formed, negates the intent to defraud required for conversion. But a mere intent to return similar property or the cash value of the property does not negate the requisite intent. As a result, it makes no difference that the designer intended to repay the money or that he was fired before he could do so.

Educational objective:

Embezzlement is the fraudulent conversion of the property of another by a person who is in lawful possession of the property. To be found guilty, the defendant need not personally benefit from the conversion of the property.

References

26 Am. Jur. 2d Embezzlement § 3 (2020); Wayne R. LaFare, 1 Substantive Criminal Law § 19.6(b) (3d ed. 2020) (discussing the conversion requirement for embezzlement).

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