



ISSN 1935-0007

Cite as: 2008 (3) AELE Mo. L. J. 301

Jail & Prisoner Law Section – March, 2008

Legal Issues Pertaining to Inmate Property

Contents

1. Introduction
2. Important Supreme Court Cases on Inmate Property
3. Possession of Particular Property
4. Keeping Specific Amounts of Property in Cells
- 5. Compensation for Loss of Property**
6. Resources

1. Introduction.

This article reviews a variety of issues concerning inmate funds and property. When jails and prisons take prisoners into custody, they necessarily also frequently take custody of property which is in their possession. A wide variety of issues therefore arise concerning which property inmates may possess, and what disposition may be made of property which they are prohibited from possessing.

Long ago, in British common law, a convicted felon not only did not have a property right in the product of his work in prison, but he also forfeited all rights to personal property. See 1 William Blackstone, Commentaries 299. Under the Fourteenth Amendment of the U.S. Constitution, however, no one may be deprived of property without "due process of law." Prisoners do not lose all property rights in the U.S. today.

The article that follows examines the parameters of such rights under federal constitutional law, as well as taking a brief look at compensation for loss of inmate property, and litigation on rules concerning the keeping of specific property. Finally, links are given to some sample policies and resources. It does not address issues concerning possession of prisoner property arguably required for medical or religious worship purposes. A discussion of this issue as it relates to religious apparel can be found in the Monthly Law Journal Article: [Religious Freedom in Correctional Facilities \(II\) --Appearance and Apparel](#) 2007 (4) AELE Mo. L. J. 301.

2. Important U.S. Supreme Court Cases on Inmate Property.

Two important U.S. Supreme Court cases form the essential foundation for most case law concerning prisoner property. In [Parratt v. Taylor](#), #79-1734, 451 U.S. 527 (1981), an inmate at a Nebraska correctional facility ordered by mail certain hobby materials valued at \$23.50. The hobby materials were lost and the prisoner filed a federal civil rights lawsuit to recover their value. His claim was that his property was negligently lost by prison officials in violation of his rights under the due process clause of the Fourteenth Amendment to the U.S. Constitution.

Property rights, it should be noted in passing, are not "created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." [Board of Regents v. Roth](#), #71-162, 408 U.S. 564 (1972). In this case, there was no question that the prisoner had property rights in the purchased hobby materials under Nebraska state law.

In [Parratt](#), the prisoner's ordered hobby materials did arrive at the prison and were signed for by two prison employees, one of whom was a civilian and one of whom was an inmate in a prison work assignment. When the prisoner was later released from segregation (during which he was not permitted to have hobby materials), the packages could not be located.

The U.S. Supreme Court held that, for purposes of the federal civil rights claim, the inmate did not allege a violation of the due process clause, even though the alleged conduct was clearly "under color of state law," the materials fell within the definition of property, and the alleged loss, even if negligently caused, amounted to permanent deprivation of the right to the property. This was so because the deprivation "did not occur as a result of some established state procedure," but rather because of the "unauthorized failure of agents of the State to follow established state procedure."

There was no claim that the procedures for receipt and storage of inmate property themselves were inadequate nor was there any claim that it was "practicable for the State to provide a pre-deprivation hearing," since the loss was not intentional or anticipated. Importantly, the Supreme Court also found that the state of Nebraska satisfied constitutional due process by offering the plaintiff inmate an adequate state law post-deprivation remedy--the right to pursue a claims procedure against the state under which the state hears and pays claims of prisoners housed in its penal institutions, including claims for lost property.

The prisoner did not use that state law procedure, and argued to the Supreme Court that the remedy provided was not adequate because he could pursue claims only against the state itself and not against its individual employees. Further, he objected to the fact that he could not seek to recover punitive damages and that there was no right to a trial by jury. The U.S. Supreme Court found these objections non-meritorious.

"Although the state remedies may not provide the respondent with all the relief which may have been available if he could have proceeded under Sec. 1983, that does not mean that the state remedies are not adequate to satisfy the requirements of due process. The remedies provided could have fully compensated the respondent for the property loss he suffered, and we hold that they are sufficient to satisfy the requirements of due process," the Court concluded.

In a later case, [Hudson v. Palmer](#), #82-1630, 468 U.S. 517 (1984), by way of contrast, the U.S. Supreme Court addressed the issue of property rights in the context of an alleged intentional, as opposed to negligent, deprivation by a governmental employee. In that case, an inmate at a Virginia state penal institution also filed a federal civil rights lawsuit against a correctional officer at the facility, claiming that the officer had conducted an unreasonable "shakedown" search of the inmate's prison locker and cell solely to harass him, and that he had further intentionally destroyed some of the inmate's non-contraband personal property during the search.

The Court extended the principles of [Parratt v. Taylor](#), concerning the due process adequacy of proper post-deprivation remedies, to intentional deprivation of prisoner property. "The state can no more anticipate and control in advance the random and unauthorized intentional conduct of its employees than it can anticipate similar negligent conduct. Arguably, intentional acts are even more difficult to anticipate because one bent on intentionally depriving a person of his property might well take affirmative steps to avoid signaling his intent.

Accordingly, as long as the prisoner has been deprived of property by the unauthorized actions of an individual or individuals employed by a governmental entity, there will be no federal civil rights liability, as long as the state provides the prisoner with some mechanism constituting an adequate post-deprivation remedy--an opportunity to receive compensation for the value of the property itself after the fact.

In a subsequent case, [Daniels v. Williams](#), 84-5872, 474 U.S. 327 (1986), involving personal injury to a prisoner rather than a loss of property, the Court overruled one aspect of Parratt, by concluding that the due process clause "is simply not implicated by a negligent act of an official causing unintended loss of

or injury to life, liberty, or property." This did not disturb the aspect of Parratt concerning the providing of a post-deprivation remedy being adequate when a due process right to property is implicated. Following Daniels, it is clear that any assertion of "mere negligence" is insufficient to state a federal civil right claim.

More recently, in [Ali v. Fed. Bureau of Prisons](#), No. 06-9130, 2008 U.S. Lexis 1212, the U.S. Supreme Court ended a possible avenue under which federal prisoners could assert claims for loss of property through the negligence of federal correctional officers. In this case, a federal prisoner transferred from a facility in Atlanta, Georgia to one in Kentucky allegedly noticed that a number of items were missing from his property, which the federal Bureau of Prisons had shipped to his new facility.

He filed a lawsuit under the Federal Tort Claims Act (FTCA), 28 U.S.C. Sec. 1346, seeking recovery of damages. That statute waives the sovereign immunity of the U.S. government for claims arising out of actions of federal employees, which would otherwise be actionable under state law. Under that statute, claims are brought against the federal government for such things as negligent driving by federal employees, etc.

Section 2680(c) of the statute, however provides that the waiver of sovereign immunity does not apply to claims arising from the detention of property by "any officer of customs or excise or any other law enforcement officer." The issue in the Supreme Court case was whether correctional officers were "law enforcement" officers for purposes of this exception.

The property involved included items of religious and nostalgic significance, including two copies of the Qur'an, a prayer rug, and religious magazines, with an estimated total value of \$177.

The U.S. Supreme Court ruled that the exception to the FTCA's waiver of sovereign immunity for actions of federal employees, which bars liability arising from the detention of any property "by any officer of customs or excise or any other law enforcement officer," 28 U.S.C. Sec. 2680(c), applies to all law enforcement officers, including federal correctional officers.

The Supreme Court therefore upheld the dismissal of the prisoner's lawsuit. Prior to this decision, a number of lower federal courts had been split on this issue, with some holding that federal correctional officers were not "law enforcement officers" for purposes of the exception, and allowing lawsuits concerning the negligent loss of or damage to prisoner property by such officers to go forward.

3. Possession of Particular Property

What about prison or jail rules regulating the possession of particular property? The general legal standard, pursuant to [Thornburgh v. Abbott](#), 87-1344, 490 U.S. 401 (1989), is that prison rules and regulations will ordinarily be upheld as constitutional by federal courts so long as they are rationally related to a legitimate penological interest such as institutional security. Yet in some instances, prisoners may have a right or a need to possess certain particular items of personal property.

Cases involving specific restrictions on possession of particular property include:

* [Singer v. Frank](#), No. 05-C-1040, 2007 U.S. Dist. Lexis 55663 (E.D. Wis.), holding that seizure without a hearing of prisoner's materials concerning fantasy role-playing games, on the basis that materials of this sort had the potential of promoting "gang mentality and an interest in escape" did not violate either the prisoner's due process or First Amendment rights. Post-deprivation remedies available were adequate to protect any possible due process rights, and the prison's policy was reasonably related to curbing gang activity and protecting institutional safety and security.

* [Triplett v. Southern Ohio Correctional Facility](#), No. 06AP-1296, 2007 Ohio App, Lexis 2333 (Ohio App. 10th Dist.), ruling that an Ohio prison did not have the duties or liabilities of an "insurer" with respect to an inmate's property, but rather only had a duty to make a reasonable attempt to protect it. A state administrative regulation which provided that items of property in excess of permitted quantities possessed by an inmate was "minor contraband" which could be destroyed after the issuance of a forfeiture order by a court justified the destruction of four boxes of the inmate's property which were over the 2.4 cubic foot limit on property imposed by the prison.

* [Larson v. Schuetzle](#), No. 20050418, 712 N.W.2d 617 (N.D. 2006), holding that North Dakota state prison rules prohibiting inmates from possessing property, such as religious magazines, received from other prisoners, and classifying such "passed-on" property as contraband were reasonable

* [Will v. Dept. of Rehabilitation and Correction](#), Case No. 2005-06813, 2007 Ohio Misc. Lexis 3 (Ohio Ct. of Claims), stating that Ohio correctional employees properly seized a prisoner's television set as contraband because his name and inmate number were not etched on it as required by the prison's policy, and because the set's top was sanded down.

* [Brett v. U.S. Department of Justice](#), No. 01-5387, 318 F.3d 228 (D.C. Cir. 2003), holding that a ban on possession of electric or electronic instruments in federal prisons (except for use in religious activities) did not violate prisoners' First Amendment rights. The Bureau of Prisons acted reasonably in interpreting a statute barring the use of appropriated federal funds "for use or possession" of such instruments as allowing a prohibition on the possession of the items.

* [McClintick v. Lazaroff](#), #2002-1771, 786 N.E.2d 1284 (Ohio. 2003), which decided that an Ohio prisoner had no constitutional right to a typewriter to begin with, and therefore had no right to retain a memory typewriter with a five page memory, which had earlier been permitted, after state correctional officials altered the rules to only permit typewriters with a one-line memory or less.

* [In Re Alcala](#), #A043385, 271 Cal. Rptr. 674 (App. 1990). Correctional officials could restrict the type of clothing allowed to inmates for security, fire hazards, economic considerations between inmates, and to control gang violence.

4. Keeping Specific Amounts of Property in Cells.

The mere fact that a particular correctional institution has had rules or made a practice of allowing prisoners to keep specific property or specific amounts of property in their cells in the past is no guarantee that the same rule or practice will be followed in the future. Nor does it somehow create a vested right to possess such property. As the requirements of institutional security and management change, and even as the availability of space in an institution are altered by the number of prisoners confined, correctional officials have the discretion to alter property possession rules and practices, and the courts increasingly are loathe to second-guess such changes.

It is necessary to remember, however, that the mere fact that institutional rules about possession of property change does not eliminate the property rights of the prisoners, and when such changes are made, it is important to do so in an orderly fashion, informing prisoners of the changes, and giving them opportunities to arrange to have excess property picked up by family members or else shipped to them.

Illustrating some of these principles is the case of [In re Application for Forfeiture of Unauthorized Items Confiscated From Inmates Pursuant to AR 5120-9-55](#), No. CA2003-05-021, 811 N.E.3d 589 (Ohio App. 12 Dist. 2004), ruling that a prisoner was not entitled to relief from correctional institution's seizure and forfeiture of personal property which exceeded rules concerning space limitations for such property in his cell. The prisoner failed to show that the state lacked a

"legitimate interest" in regulating the volume of property kept in prisoner cells, including legal materials, and the court rejected the argument that he had an unqualified right to keep all of his legal material in his cell. Prison rules allowed him to keep legal materials so long as they fit within the 2.4 cubic feet limitation generally applicable to all personal property kept in inmate cells.

Other cases of interest include:

* [Ashley v. Snyder](#), #4-99-0712, 739 N.E.2d 897 (Ill. App. 2000), in which the court held that an Illinois prisoner had no vested right to continue to possess any particular quantity of personal property in his cell. The court upheld a prison rule restricting inmate property to what would fit in a storage box of a particular size.

* [Cooper v. Corderman](#), #WD-42760, 809 S.W.2d 11 (Mo. App. 1991). The court ruled that restricting the amount of legal material an inmate could keep in his cell does not violate his right of access to the courts. They were removed as presenting a fire, safety or security hazard, but they were inventoried and kept in another area from which the inmate could get them for court (limited to 2 boxes).

* [Blum v. State](#), #1-CA-CV-91-121, 829 P. 2d 1247 (Ariz. App. 1992), holding that a rule requiring inmates to designate disposition of excess property or else have it disposed of by prison authorities violated a state statute which required prisoner property to be stored and returned to prisoners upon their release. The institutions had an approved property list, and any property not on the list was not allowed and had to be sent out. The prisoner had 90 days to designate a person to receive it or it would be disposed of by the institution.

5. Compensation for Loss of or Damage to Property.

When there are adequate post-deprivation remedies provided under state law for loss of prisoner property, such losses cannot then be the subject of federal civil rights litigation.

For many correctional agencies and employees, keeping litigation and claims over loss of prisoner property confined to the state courts or state claims systems is important for a variety of reasons, including the fact that, pursuant to 42 U.S.C. Sec. 1988, awards of reasonable attorneys' fees are routinely available to prevailing plaintiffs in federal civil rights lawsuits under 42 U.S.C. Sec. 1983, and most often are not available in state law actions seeking compensation for lost property.

The availability of adequate state law post-deprivation remedies will defeat a federal civil rights claim for loss of or damage to property. In [Brown v. Ammon](#),

No. 1:07-cv-60, 2007 U.S. Dist. Lexis 25736 (M.D. Ga.), the court ruled that a Georgia prisoner could not recover damages for the alleged loss of his radio headphones and adapter from his cell under theories of either negligence or intentional theft. Simple negligence was insufficient to support a claim for a federal civil rights violation, and, because the State of Georgia provides adequate post-deprivation remedies for the loss of property, he also could not recover damages under 42 U.S.C. Sec. 1983 for violation of his constitutional rights.

See also, Dunlap v. Fulghum, #01-6373, 35 Fed. Appx. 163 (6th Cir. 2002) (Federal civil rights claim over damage to television set mailed to inmate was properly dismissed because the plaintiff had an adequate state remedy available to him to address this alleged deprivation. The plaintiff prisoner's claim was also properly dismissed as frivolous for seeking \$1.4 billion for the loss).

Similarly, see, Batchelder v. Arnold, 291 F. Supp. 2d 820 (N.D. Ind. 2003) (Former prisoner could not pursue federal civil rights claim over personal property allegedly taken from him and not returned to him when he was released from county jail when Indiana state law provided adequate procedures for asserting claims for losses of property caused by state employees), and, Craft v. Mann, 265 F. Supp. 2d 970 (N.D. Ind. 2003), (Indiana prisoner's claim that state officials took away his watch were not sufficient to state a federal civil rights claim when there were adequate remedies under state law for the loss of personal property).

Some other cases of interest include:

* Walker v. Page, No. 00-3990, 59 Fed. Appx. 896 (7th Cir. 2003), in which the court ruled that Illinois prison officials failed to prove that plaintiff prisoner did not exhaust his available administrative remedies on his federal civil rights lawsuit asserting that they violated his constitutional rights by not shipping 99 boxes, containing over 2,800 pounds of his property to California after he was transferred there. The prisoner stated that he did not know, until after his transfer, that the material would not be shipped, and it was "doubtful" that he could use Illinois administrative remedies once he was in a California prison. The prisoner's federal lawsuit was barred, however, by his prior Illinois state court mandamus action seeking to force the shipment of the boxes, in which the state court had rejected his claim.

* Britford v. Pickaway Correctional Inst., No. 2006-05055, 2007 Ohio Misc. Lexis 33 (Ohio Ct. of Claims), which the court found that an Ohio prison was liable, under state law, for \$192.26 for property a prisoner lost during a transfer from a prison to a hospital because of negligence, but that he could not receive further damages for "mental anguish" he allegedly experienced as a result of the loss.

* [Harris v. Chabries](#), No. 04-4139, 114 Fed. App. 363 (10th Cir. 2004), in which a Utah prisoner failed to show that prison officials violated his due process rights by allegedly taking certain items of his personal property, in the absence of any showing that post-deprivation remedies under state law were inadequate. The federal appeals court also rejected the prisoner's claims that his right of access to the courts was violated, when there was no showing that the alleged deprivation of requested legal resources interfered with any attempt to pursue a non-frivolous claim.

* [Walker v. Horne](#), No. 04-30287, 114 Fed. Appx. 598 (5th Cir. 2004), holding that when Louisiana state law provided a prisoner with adequate post-deprivation remedies for the alleged loss of his watch and wedding ring, he could not pursue a federal civil rights lawsuit asserting that their loss violated his due process rights.

* [Jackson v. Carpenter](#), 9-1575, 921 F.2d 68 (5th Cir. 1991), in which a federal appeals court, unamused by inmate's claim that sheriff "removed from his head a silver dollar worth \$126 million," upheld a \$30 monetary sanction against the plaintiff inmate.

6. Resources

The Federal Bureau of Prisons (BOP) has established rules under which Inmates may possess only that property which is authorized by policy to be retained upon admission to the institution, is issued while the inmate is in custody, is purchased in the institution commissary, or is approved by staff to be mailed to, or otherwise received by an inmate. See [Inmate Property, 28 C.F.R. pt. 553](#), and [Program Statement 5580.07, Personal Property, Inmate](#).

The BOP believes that these rules contribute to the management of inmate personal property in the institution and contribute to a safe environment for staff and inmates by reducing fire hazards, security risks, and sanitation problems. See also [Program Statement 4400.05 Property Management Manual](#).

Other useful resources include:

State of Connecticut [Inmate Property Policy](#).

Florida Department of Corrections [Rule on Inmate Property](#)

Oklahoma Department of Corrections [Rule on Inmate Property](#)

"[Taking a Second Look at Prisoners' Property](#)," pages 1-8, [Point of View](#), published by the Alameda County, California, District Attorney's Office (Fall 2005).

AELE Monthly Law Journal

Bernard J. Farber
Jail & Prisoner Law Editor
841 W. Touhy Ave.
Park Ridge IL 60068-3351 USA
E-mail: bernfarber@aol.com
Tel. 1-800-763-2802

© 2008, by the AELE Law Enforcement Legal Center
Contents may be downloaded, stored, printed or copied
but may not be republished for commercial purposes.

[AELE Home Page](#) --- [Publications Menu](#) --- [Seminar Information](#)