

806.00 CONVERSION.¹

The (*state number*) issue reads:

"Did the defendant convert the (*name personal property*) of the plaintiff?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, two things:

First, that until the time the defendant came into possession of the (*name personal property*), the plaintiff was its lawful owner and was entitled to its immediate possession.²

Second, that the defendant converted the (*name personal property*) to *his* own use. Conversion is

[the unauthorized exercise of a right of ownership over personal property belonging to another]

[the unauthorized alteration of the condition of personal property belonging to another]³

[the unauthorized exclusion of an owner from exercising *his* rights of ownership over *his* own personal property]

[the unauthorized retention of personal property after the owner has made a demand for its return].⁴

The plaintiff need not prove that the defendant had a wrongful intent. Good faith, honest intentions and innocence are not defenses.

(Use Where Converted Personal Property Is Sold Or Transferred By

the Original Converter to Another. A person who buys or receives personal property from one who has converted it is *himself* liable to the lawful owner, even though *he* does so innocently, in good faith and after paying good value for it.⁵⁾

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence, that the defendant converted the (*name personal property*) of the plaintiff, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. See *Wall v. Colvard, Inc.*, 268 N.C. 43, 49, 149 S.E.2d 559, 564 (1966); *Peed v. Burlison's Inc.*, 244 N.C. 437, 439, 94 S.E.2d 351, 353 (1966); W. Prosser, *Law of Torts*, § 15 (4th ed. 1971).

2. In *McNeil v. Minter*, the court held that the action for conversion applied to goods and personal property, and not to real property. 12 N.C. App. 144, 182 S.E.2d 647 (1971).

3. Conversion may also exist where the defendant takes the personal property of the lawful owner and, through his efforts and labor alters the form or type of the property, such as corn into whiskey or timber into a house. Under these circumstances, a demand for return of the converted property is not required. 89 C.J.S. *Trover & Conversion* § 47 (1955).

4. However, after an act of conversion has become complete, an offer to return or restore the property by the wrongdoer will not bar the cause of action for conversion. *Wall*, 268 N.C. at 49, 149 S.E.2d at 564 (citing *Stephens v. Koonce*, 103 N.C. 266, 9 S.E. 315 (1889)).

5. *State v. West*, 293 N.C. 18, 235 S.E.2d 150 (1977).