

806.01 CONVERSION - DEFENSE OF ABANDONMENT.

*NOTE WELL: In deciding the issue of abandonment, the courts have said that the intent to relinquish the property permanently is an essential element and thus the question of abandonment is almost always a fact question for the jury.<sup>1</sup>*

The (*state number*) issue reads:

"Did the plaintiff abandon the (*name personal property*)?"

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

First, that plaintiff had the intent to give up all claim to the (*name personal property*) on a permanent basis, and

Second, that the plaintiff showed this intent by positive and unequivocal conduct. Intent is a determination to act in a certain way or to do a certain thing. Every person is presumed to intend the natural consequences of *his* voluntary actions.

When an owner abandons something, *he* does so without being forced. A gift is not an abandonment. A sale is not an abandonment. An owner abandons something simply because *he* no longer desires to possess it.<sup>2</sup>

If an owner<sup>3</sup> of personal property terminates *his* ownership by abandonment, ownership passes to the first person who thereafter takes possession. (The mere lapse of time or other delay by an owner in asserting *his* claim of ownership will not amount to abandonment unless such lapse or other delay is accompanied by acts clearly inconsistent with *his* ownership.<sup>4</sup>)

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

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 plaintiff.

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1. *Kitchen v. Wachovia Bank & Trust Company*, N.A., 44 N.C. App. 332, 260 S.E.2d 772 (1979). "[A]s a result of abandonment, ownership of personality is lost; the former owner of the property is divested of title to the property. The original owner cannot reassert his ownership rights after abandonment, to the prejudice of those who in the meantime appropriated the property." *Id.* 44 N.C. App. at 334-335, 260 S.E.2d at 774.

2. See *State v. West*, 293 N.C. 18, 30, 235 S.E.2d 150, 156 (1977). Justice Lake, quoting from *Church v. Bragaw*, 144 N.C. 126, 56 S.E. 688 (1907), wrote:

"Abandonment must be made by the owner without being pressed by any duty, necessity or *utility* to himself, but simply because he desires no longer to possess a thing; and, further, it must be made without a desire that any other person shall acquire the same; for if it were made for a consideration, it would be a barter or sale, and if without consideration, but with an intention that some other person should become the possessor, it would be a gift."

*Id.* (emphasis in original).

3. In some cases, the facts may involve an agent of the owner whose acts are contended to be an abandonment of the property. Whether an agent can abandon property on behalf of *his* owner is a question of agency law and a general agency issue should be submitted. See N.C.P.I.-Civil 103.10. Note, however, that *State v. West* instructs that an agent is not to be *presumed* to have the authority to dispose of *his* principal's property. 293 N.C. 18, 30, 235 S.E.2d 150, 157 (1977) (emphasis added). "Obviously, neither careless disregard nor intentional misconduct by the clerk will show an intent by the owner of the documents in question to abandon them." *Id.* 293 N.C. at 30, 235 S.E.2d at 157.

4. *State v. West*, 293 N.C. at 30, 235 S.E.2d at 156.