

2200 CONVERSION: DISPOSSESSION

A conversion is committed by a person who without consent of the owner (controls) (takes) property of another in a way that it seriously interferes with the right of the owner to control the property permanently or for an indefinite period of time. Before you may find that (defendant) committed a conversion of property belonging to (owner), you must find the following:

1. That (defendant) intentionally (controlled) (took) property belonging to (owner);
2. That (defendant) (controlled) (took) the property without the consent of (owner) or without lawful authority; and
3. That (defendant)'s act with respect to the property seriously interfered with the right of (owner) to possess the property.

Wrongful or unlawful intent is not an element of conversion. Thus, it is not necessary that (defendant) knew that (owner) was entitled to possession of the property or that (defendant) intended to interfere with (owner)'s possession. It is simply enough that (defendant) intended to deal with the property in a way that would seriously interfere with (owner)'s possession. Thus, a person may be liable for conversion where the person has exercised control over property even though he or she may be unaware of the existence of the rights with which he or she interferes.

COMMENT

This instruction and comment were originally approved in 1963 and revised in 1986. The instruction was revised in 1991. The comment was updated in 1995, 1999, 2009, and 2014.

Midwestern Helicopter v. Coolbaugh, 2013 WI App 126, 351 Wis.2d 211, 839 N.W.2d 167; H.A. Friend & Co. v. Professional Stationery, Inc., 2006 WI App 141, 294 Wis.2d 754, 720 N.W.2d 96. Production Credit Ass'n v. Nowatzski, 90 Wis.2d 344, 353, 280 N.W.2d 18 (1979); Production Credit Ass'n v. Equity Coop. Livestock, 82 Wis.2d 5, 10, 261 N.W.2d 127 (1977); Price v. Ross, 62 Wis.2d 335, 346, 214 N.W.2d 770 (1974); Schara v. Thiede, 58 Wis.2d 489, 497, 206 N.W.2d 129 (1974); Heuer v. Wiese, 265 Wis. 6, 60

N.W. 2d 385 (1953); Adams v. Maxcy, 214 Wis. 240, 252 N.W. 598 (1934); Farm Credit Bank of St. Paul v. F&A Dairy, 165 Wis.2d 360, 477, Wis.2d 357 (Ct. App. 1991); Methodist Manor Health Center, Inc. v. Py, 2008 WI App 31, 307 Wis.2d 501, 746 N.W.2d 824. See also Bruner v. Heritage Co., 225 Wis.2d 728, 593 N.W.2d 814 (Ct. App. 1999). Prosser, Torts, § 15 (1971). See also Restatements, Second, Torts §§ 222-242 (1965).

Types of Conversion. Acts of conversion are ordinarily classified as: (1) a taking from the owner without his or her consent; (2) an unwarranted assumption of ownership; (3) an illegal use or abuse of the property; (4) a wrongful detention after demand. Donovan v. Barkhausen Oil Co., 200 Wis. 194, 198, 227 N.W. 940 (1929).

Conversion is an intentional interference with another person's rights to possession of property. The intent required is not necessarily a matter of conscious wrongdoing. Wrongful intent or bad faith are not essential elements of conversion. Donovan v. Barkhausen Oil Co., supra at 199. Regas v. Helios, 176 Wis. 56, 186 N.W. 165 (1922). Conversion cannot be based on a negligent interference with the property. Lund v. Keller, 203 Wis. 458, 233 N.W. 769 (1931). It requires some intentional dominion or control over property which is inconsistent with the owner's rights. Prosser, Torts, § 15, p. 83 (1971). Thus, every theft is a conversion, but not every conversion is a theft.

Verdict Form. If there is a dispute in the evidence as to whether the plaintiff was entitled to possession at the time of conversion, a special verdict question should be included dealing with the plaintiff's possessory interest.

A conversion may consist of an assumption of complete control and dominion over the property without an actual taking or carrying away. Thus, a cause of action for conversion can include illegally withholding personal property by changing locks to the building in which the property was stored. Schara v. Thiede, supra at 497.

An agent may be liable for conversion if the principal engaged in the wrongful activity. The agent's good faith and lack of knowledge of a security on the property are not good defenses. Production Credit Ass'n v. Equity Coop. Livestock, supra at 8-9. Thus, an auctioneer may be held liable for the sale of personal property in which another holds a security interest. For another decision on the transfer of property subject to a security interest see Metropolitan Sav. & Loan Ass'n v. Zuelke's, Inc., 46 Wis.2d 568, 175 N.W.2d 634 (1970).

Conspiracy to Convert. For a civil conspiracy to convert, see Bruner v. Heritage Co., supra.

Causation. There is no causation element in conversion; the conversion must result in interference with the owner's rights to possess the property. Midwestern Helicopter v. Coolbaugh, supra; H.A. Friend & Co. v. Professional Stationery, Inc., supra.

Whether an unauthorized exercise of dominion is a conversion depends on the severity of interference with the owner's right to control. Midwestern Helicopter v. Coolbaugh, supra.