

CONVERSION--DEFENSE OF GIFT.¹

The (state number) issue reads:

"Did the plaintiff make a gift of the (name personal property) to the defendant?"

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 the plaintiff had the intent² to give up all *his* ownership and control of the (name personal property) immediately.³ Intent is a determination to act in a certain way or to do a certain thing. Every person is presumed to have intended the natural and probable consequences of his voluntary actions.

And Second, that the plaintiff [actually] [constructively] delivered the (name personal property) to the defendant.⁴ [Actual delivery occurs when there is a direct transfer to another of ownership and control of something.] [Constructive delivery occurs when, although there is no actual delivery,

¹*Plymouth Pallet Co. v. Wood*, 51 N.C. App. 702, 704, 277 S.E.2d 462, 464 (1981), *disc. rev. denied*, 303 N.C. 545, 281 S.E.2d 343 (1981) (error to fail to give defense of gift to claim of conversion).

²For an alternate instruction on intent, see N.C.P.I.-Civil 101.46.

³*Plymouth Pallet*, 51 N.C. App. at 704, 277 S.E.2d at 464; *Fesmire v. First Union National Bank*, 267 N.C. 589, 591, 148 S.E.2d 589, 592 (1966).

⁴*Plymouth Pallet*, 51 N.C. App. at 704, 277 S.E.2d at 464; *Sinclair v. Travis*, 231 N.C. 345, 351, 57 S.E.2d 394, 398-99 (1950); *Buffaloe v. Barnes*, 226 N.C. 313, 318, 38 S.E.2d 222, 225 (1946), *reh. den.*, 226 N.C. 778, 39 S.E.2d 599 (1946).

CONVERSION--DEFENSE OF GIFT. (Continued.)

ownership and control of something is indirectly transferred.^{5]}

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 made a gift of the (*name personal property*) to the defendant, 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.

⁵"[D]elivery may be actual, constructive or symbolic, and no absolute rule as to the sufficiency of delivery, applicable to all cases, may be laid down." 15 Strong's N.C. Index 4th, Gifts, § 7 (citing *Taylor v. Coburn*, 202 N.C. 324, 162 S.E. 748 (1932)).