

THEFT OF IMMOVABLE PROPERTY
(N.J.S.A. 2C:20-3b)

Count _____ of the Indictment charges defendant with theft by unlawful taking or disposition of immovable property. The indictment reads as follows:

[Read the appropriate portion of the indictment]

The statute upon which the indictment is based provides in pertinent part that:

A person is guilty of theft if he unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not entitled thereto.

To find defendant guilty, the State must prove each of the following elements beyond a reasonable doubt:

- (1) That defendant unlawfully transferred any interest in immovable property;
- (2) That defendant knew that the transfer was unlawful;
- (3) That defendant knew the immovable property was property of another;
and
- (4) That defendant's purpose was to benefit himself/herself or another not entitled thereto.

The first element which the State must prove beyond a reasonable doubt is that defendant unlawfully transferred any interest in immovable property.

Property means anything of value, including [select appropriate phrases] real estate, tangible and intangible personal property, trade secrets, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power, financial instruments, information, data, and computer software, in either human readable or computer readable form, copies or originals.¹

In order for me to explain to you what immovable property is, I must first define what movable property is. Movable property means property the location of which can be changed, including things growing on, affixed to, or found in land, and documents, although the rights

¹ N.J.S.A. 2C:20-1g.

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represented thereby have no physical location.² Immovable property is all other property.³

Interest is defined as title or right of possession to such property or any other right derived from ownership or possession of immovable property.⁴

[If the allegation involves real property, charge the following: A transfer of an interest in real estate means the sale, gift, creation or extinguishment of an interest in real estate.]⁵

The second element the State must prove beyond a reasonable doubt is that defendant knew that the transfer was unlawful.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning. Knowingly is a state of mind and cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that witnesses be produced by the State to testify that a defendant said that he/she knowingly did something. his/her knowledge may be gathered from his/her acts and his/her conduct and from all he/she said and did at the particular time and place and from all the surrounding circumstances reflected in the testimony [and evidence adduced at trial].

In this case, the State alleges that the interest transferred in immovable property is as follows [describe interest as listed in the indictment and developed at the trial].

[If appropriate add, “The defendant alleges that _____.”]

The third element that the State must prove beyond a reasonable doubt is that defendant knew that the immovable property was property of another. Property of another includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was

² N.J.S.A. 2C:20-1e.

³ Ibid.

⁴ N.J.S.A. 2C:20-1(o); N.J.S.A. 1:1-2; State v. Kosch, 444 N.J. Super. 368, 381 (App. Div.), certif. denied, 227 N.J. 369 (2016).

⁵ N.J.S.A. 25:1-10; State v. Kosch, 444 N.J. Super. 368, 382 (App. Div), certif. denied, 227 N.J. 369 (2016).

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used in an unlawful transaction or was subject to forfeiture as contraband.⁶ Property in the possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.⁷ The terms property and property of another are broadly defined so as to include services and intangibles, anything of value.⁸ Anything of value is defined as any direct or indirect gain or advantage to any person.⁹

The fourth element which the State must prove beyond a reasonable doubt is that defendant's purpose in his/her unlawful transfer was to benefit himself/herself or another not entitled thereto.¹⁰

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she believes or hopes that they exist. A person acts purposely if he/she acts with design, with a specific intent, with a particular object or purpose, or if he/she means to do what he/she does.

Purpose is a condition of the mind that cannot be seen and that can be determined only by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

If you find that the State has proven all four elements beyond a reasonable doubt, then you must find defendant guilty. If you find that the State has failed to prove any of the elements

⁶ N.J.S.A. 2C:20-1h.

⁷ Ibid.

⁸ State v. Dixon, 114 N.J. 111 (1989).

⁹ N.J.S.A. 2C:20-1n.

¹⁰ [Read if appropriate: Mere use of land of another without permission, even illegal, destructive use, does not deprive the owner of the property and is not a crime under this section of the Code of Criminal Justice. State v. Garofola, 252 N.J. Super. 356 (Law Div. 1988); State v. Kosch, 444 N.J. Super. 368, 384 (App. Div.), certif. denied, 227 N.J. 369 (2016).

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beyond a reasonable doubt, then you must find defendant not guilty.

Since the value of the immovable property [or specific type of property] determines the degree or severity of the crime, the State must prove its value beyond a reasonable doubt [or the immovable property taken beyond a reasonable doubt]. If you find defendant guilty, then you must indicate the value of the property (or whether the movable property is a specifically enumerated item). **[Read to the jury the Gradation of Theft Offenses charge, N.J.S.A. 2C:20-2b].**