

**THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION**  
**OF PROPERTY RECEIVED**  
**(N.J.S.A. 2C:20-9)**

The indictment charges the defendant with the offense of theft by failure to make required disposition of property received. That section of our statute reads in pertinent part:

A person who purposely obtains or retains property upon agreement or subject to a known legal obligation to make specified payments or other disposition whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition.

In order to find the defendant guilty of this theft offense, the State must prove each of the following elements beyond a reasonable doubt:

- (1) That the defendant purposely obtained or retained the property;
- (2) That the defendant did so upon agreement, or subject to legal obligation;
- (3) That this agreement or legal obligation required the defendant to make specified payment or other disposition from the property itself or its proceeds, or from his/her own property to be reserved in equivalent amount;
- (4) That this legal obligation was known to the defendant;
- (5) That the defendant purposely dealt with the property as if it were his/her own; and
- (6) That the defendant purposely failed to make the required payment or disposition.

**(Charge the following only if applicable to the facts of the case)**

Any payment made with a subsequently dishonored negotiable instrument, for example, a bad check, shall constitute evidence of the actor's failure to make the required payment or disposition. You may infer therefrom that the actor did not intend to make the required payment or other disposition.

**OR**

If you find that the defendant is an officer or employee of the government or of any financial institution then you may infer;

- (a) That he/she had knowledge of his/her legal obligation to make the specified payment or other disposition. **And**

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- (b) If you find that he/she failed to pay or account upon lawful demand or if an audit revealed a shortage or falsification of accounts then you may infer that he/she dealt with the property as his/her own.

However, you are never required or compelled to draw an inference. It is your exclusive province to determine whether the facts and circumstances shown by the evidence support any inferences and you are always free to accept or reject them if you wish.

**CONTINUE WITH THE CHARGE**

With respect to some of the words used in defining the elements, I instruct you as follows:

The word "obtain" means to bring about a transfer or purported transfer of a legal interest in the property, either to the defendant himself/herself or another person.

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 the person is aware of the existence of such circumstances or believes or hopes that they exist. "With purpose", "Designed", "With Design", or equivalent terms have the same meaning.

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.

The word "Property" is defined as anything of value including tangible or intangible personal property.

I further instruct you that the foregoing applies even though it may be impossible to identify particular property as belonging to the victim at the time the defendant allegedly failed to make the required payment or disposition because the victim's property may have been mixed with or joined with other property.

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If after a review of all the evidence you find that the State has failed to prove any one of the elements of this offense beyond a reasonable doubt, then you must find the defendant not guilty of the charge.

If you find that the State has proved all of the elements above beyond a reasonable doubt. Then you must find the defendant guilty of the charge.