18.02 CONVERSION/Intentional Interference with Chattels — Prima Facie Case

In this case, the plaintiff claims that the defendant's act or omission involving (insert item of property) caused the plaintiff’s loss.

For the plaintiff to win on this claim, you must decide that it is more likely true than not true that:

(1) the plaintiff had the right to possess the (insert item of property);

(2) the defendant interfered with the plaintiff’s possession of the (insert item of property) by (insert alleged act or omission);

(3) the defendant’s conduct was intentional; and

(4) the defendant's intentional interference was a substantial factor in causing the plaintiff’s loss.

If you decide each of these four things is more likely true than not true, then you must decide [whether there was a legal excuse for the defendant's act or omission] [how much the defendant must pay to the plaintiff]. Otherwise, you must return a verdict for the defendant on this claim.

I will now explain to you what "intentional" means and what “substantial factor” means.

# **Use Note**

This instruction is intended to be used in cases claiming conversion of property or intentional interference with a chattel. Instruction 18.03 (Intent) and Instruction 3.06 (Substantial Factor) should be given with this instruction.

# **Comment**

“The tort of conversion is ‘an intentional exercise of dominion and control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” *K & K Recycling, Inc*. v. Alaska Gold *Co*., 80 P.3d 702, 717. (Alaska 2003). *See* *McKibben v. Mohawk Oil*, 667 P.2d 1223, 1228 (Alaska 1983)(quoting Restatement, *supra,* at § 222A); *Dressel v. Weeks*, 779 P.2d 324, 328 (Alaska 1989). Trespasses are less serious interferences. *See* Restatement, *supra*, at § 222A comment c.

The elements of conversion set forth in this instruction are taken from *Silvers v. Silvers*, 999 P.2d 786, 793, (Alaska 2000);*see* *K & K Recycling, Inc. v. Alaska Gold Co*., 80 P.3d 702, 717 (Alaska 2003). Trespass to chattels and conversion are actions which seek to protect interests in the physical condition, use, and possession of personality. F. Harper, F. James & 0. Gray, *The Law of Torts* 130 (1986) [hereinafter Harper & James]. The Restatement lists the protected interests in chattels as including: "(1) the interest in the physical condition and use of chattels, (2) the interest in the retention of the possession of chattels, and (3) the interest in the availability of chattels to immediate or future possession." Restatement, *supra,* at 413 scope note. Both the possessor and anyone entitled to possession of an item have interests in the item, although these interests are not identical. *See id.* at 413‑14.

The first requirement is that the plaintiff establish a possessory interest in the item at the time of the wrongful act. *McKibben v. Mohawk Oil Co*., 667 P.2d at 1228. The Alaska Supreme Court has not enumerated the factors to be considered to determine whether the plaintiff has such an interest. The Restatement states that "a person who is in possession of a chattel is one who has physical control of the chattel with the intent to exercise such control on his own behalf, or on behalf of another." Restatement, *supra*, at § 216. The plaintiff's possessory interest must be superior to that of the defendant.

*See Weaver v. O'Meara Motor Co*., 452 P.2d 87, 92 (1969) (repossession under terms of contract not a conversion).

The instruction can also be used when the plaintiff has only a right to future possession. *McKibben v. Mohawk Oil Co*., 667 P.2d at 1228; *see also* Restatement, *supra*, at § 220, 243. For example, "The defendant received money from X on behalf of the plaintiff."

The second element focuses on the conduct of the defendant. The Restatement, *supra*, at § 223 lists various acts that can constitute a conversion:

(a) dispossessing another of a chattel as stated in § 221 and 222;

(b) destroying or altering a chattel as stated in § 226;

(c) using a chattel as stated in § 227 and 228;

(d) receiving a chattel as stated in § 229 and 231;

(e) disposing of a chattel as stated in § 233;

(f) misdelivering a chattel as stated in § 234 and 235 (See Instruction 21.07B);

(g) refusing to surrender a chattel as stated in § 237‑241 (See Instruction 21.07A).

The Restatement, *supra*, at § 217 lists the acts that can constitute a trespass to chattels:

(a) dispossessing another of the chattel, or

(b) using or intermeddling with a chattel in the possession of another.

*See Prentzel v. State,* 169 P.3d 573, 583 (Alaska 2007)(”Trespass to chattels is a lesser form of conversion: it ‘can be committed when a party intentionally dispossesses another of the chattel or intentionally uses or interferes with a chattel in another's possession.’”)

Care should be used in cases where the defendant's initial possession of the property is lawful, but the defendant refuses to return the property to the plaintiff on demand. Most such situations will involve a bailment and the bailment instructions (Article 21) should be used. However, in cases where the defendant merely obtains custody of the property rather than a bailment, such as where goods are entrusted by the master to a servant, a conversion may arise when the servant uses the goods for his own purposes. In such cases, this instruction is appropriate.

The Alaska Supreme Court has recognized that money as well as personal property can be the subject of conversion. *See Dressel v. Weeks,* 779 P.2d at 327. The use of estate funds by an administrator without permission of the court constitutes conversion. *In re Estate of Gregory,* 487 P.2d 59, 63 (Alaska 1971). Diverting, to one's own use, money received in a fiduciary capacity can constitute conversion. *In re Cornelius,* 520 P.2d 76, 86 (Alaska 1974). An attorney's acceptance of fees for services not performed may constitute conversion. *See Alaska Bar Ass'n. v. Martin,* 537 P.2d 516, 517 (Alaska 1975). In *Knox v. Pickles*, 451 P.2d 347 (Alaska 1969), the court affirmed the award of damages against a bailee for converting stored goods by having a portion of them hauled to the dump. The sale and transfer of another's property to a third person constitutes conversion. *See Braund, Inc. v. White*, 486 P.2d 50 (Alaska 1971).

The third element of the plaintiff's case is intent. In most cases this element will not be contested or particularly difficult. Instruction 18.03 defines intent.

The final element is causation. Restatement, *supra*, at § 217 Comment d, 435A, 435B. The general rule is that a plaintiff must have suffered some harm to maintain an action for trespass. Harper & James*, supra*, at § 2.3; *see* Restatement, *supra*, at § 218 comment e. This instruction does not include an explicit requirement that the jury find that the plaintiff suffered harm, but element four does require the jury to find the defendant’s act or omission was a substantial factor in causing the loss. "Substantial factor" is defined in Instruction 03.06. The element of actual harm is included in the damage instructions.

The instruction can be modified for use in most replevin (claim and delivery) actions. The elements in such an action are:

(1) The plaintiff must be the owner of the property claimed or be lawfully entitled to its possession; and

(2) The property must have been wrongfully detained by the defendant.

*See Kelly v. Miller*, 575 P.2d 1221, 1224 (Alaska 1978).