

ICJI 1301 FELONY MALICIOUS INJURY TO PROPERTY

INSTRUCTION NO.

In order for the defendant to be guilty of Felony Malicious Injury to Property, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] maliciously
4. [injured] [destroyed] (description of property)

[5. which was not the defendant's own.]

[or]

[5. which was jointly owned by the defendant and (name(s) of joint owner(s)), and
6. the other owner(s) did not give the defendant permission to injure or destroy such property.]

[or]

[5. which was community property.]

and

[6][7] [the damage to the property exceeded \$1,000 in value]

[or]

[the defendant committed a series of violations of these provisions as part of a common scheme or plan, and the damage to the property from those violations when considered together exceeded \$1,000 in value].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The word "maliciously" means the desire to annoy or injure another or the intent to do a wrongful act.

[The term "community property" means all property acquired during the marriage of the defendant and (name of

spouse). Community property does not include what is called "separate property," which is defined as any property that a spouse owned before marriage; any property that a spouse acquired by gift or inheritance during marriage; or any property that either spouse acquired with the proceeds of separate property. Community property also includes the amount by which the value of separate property was increased during the marriage by the expenditure of community property funds or the labor of either spouse.]

As used in this instruction, "value" means the lesser of the following amounts:

- (a) The difference between the fair market value of the property before it was injured or destroyed and its fair market value afterward.
- (b) The reasonable cost of repairing the injury caused to the property.

The term "fair market value" means the price that a reasonably prudent purchaser would pay for the property under the market conditions prevailing at the time in question.]

Comment

I.C. §§ 18-7001 & 18-101(4).

In using the term "maliciously" in I.C. § 18-7001, the legislature did not intent to proscribe and punish merely negligent conduct. *State v. Nunes*, 131 Idaho 408, 958 P.2d 34 (Ct. App. 1988). The definition of "malice" in I.C. § 18-101(4) leaves no room for an interpretation of the term to include negligence. *State v. Nastoff*, 124 Idaho 667, 862 P.2d 1089 (Ct. App. 1993).

"Value" means either the diminution of the property's fair market value or the reasonable cost of repair, but the cost of repair cannot exceed the value of the property before it was damaged. *State v. Hughes*, 130 Idaho 698, 946 P.2d 1338 (Ct. App. 1997). Upon a showing that fair market value cannot be established, the state may show the economic value of the loss caused by the defendant through such factors as original purchase price, replacement cost, the property's general use and purpose, and salvage value. *Id.* If the State attempts to prove value through replacement cost, the State must produce some evidence that the

replacement item is of a quality and design comparable to that of the destroyed item. *Id.*

ICJI 1302 MALICIOUS INJURY TO PROPERTY

INSTRUCTION NO.

In order for the defendant to be guilty of Malicious Injury to Property, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] maliciously
4. [injured] [destroyed] (description of property)

[5. which was not the defendant's own.]

[or]

[5. which was jointly owned by the defendant and (name(s) of joint owner(s)), and

6. the other owner(s) did not give the defendant permission to injure or destroy such property.]

[or]

[5. which was community property.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The word "maliciously" means the desire to annoy or injure another or the intent to do a wrongful act.

[The words "community property" means all property acquired during the marriage of the defendant and (name of spouse). Community property does not include what is called "separate property," which is defined as any property that a spouse owned before marriage; any property that a spouse acquired by gift or inheritance during marriage; or any property that either spouse acquired with the proceeds of separate property. Community property also includes the amount by which the value of separate property was increased during the marriage by the expenditure of community property funds or the labor of either spouse.]

Comment

I.C. §§ 18-7001 & 18-101(4).

In using the term "maliciously" in I.C. § 18-7001, the legislature did not intent to proscribe and punish merely

negligent conduct. *State v. Nunes*, 131 Idaho 408, 958 P.2d 34 (Ct. App. 1988). The definition of 'malice" in I.C. § 18-101(4) leaves no room for an interpretation of the term to include negligence. *State v. Nastoff*, 124 Idaho 667, 862 P.2d 1089 (Ct. App. 1993).

ICJI 1303 ARSON IN THE FIRST DEGREE

INSTRUCTION NO.

In order for the defendant to be guilty of Arson [in the First Degree], the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully,
4. by fire or explosion,
5. damaged

[6. (a dwelling, whether occupied or not) (a structure, whether occupied or not, in which persons are normally present) (a structure that the defendant had reasonable grounds to believe was occupied by a human being)].

[or]

[6. (real)(personal) property, whether the property of the defendant or of another, and

7. the defendant did so with the intent (to deceive or harm any insurer)(to deceive or harm any person with a legal or financial interest in the property)(to obtain any financial gain for the defendant or another person).]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The word "damaged", in addition to its ordinary meaning, includes causing any charring, scorching, burning or breaking, and includes any diminution in the value of any property as a consequence of the act.

[The word "dwelling" means any structure used or intended for use as human habitation.]

[The word "structure" means any building of any kind, including fixtures and appurtenances attached thereto, any coliseum, bridge or carport, any tent or other portable building, or any vehicle, vessel, watercraft or aircraft.]

[The phrase "any structure, whether occupied or not, in which persons are normally present" includes without limitation a (jail) (prison) (detention center) (hospital) (nursing home) (health care facility) (department store) (office building) (business establishment) (church) (educational institution).]

[The words "real property" mean any land and any crops growing on the land.] [The words "personal property" mean any tangible property, including anything severed from land.]

Comment

I.C. §§ 18-80218-801(1)-(5).

The arson statutes were substantially amended in 1993. For the elements of this offense prior to July 1, 1993, consult the statutes that were in effect at that time.

The jury need not agree on which special circumstance exists to constitute First Degree Arson. *Schad v. Arizona*, 501 U.S. 624, 111 S.Ct. 2491, 115 L.Ed.2d 555 (1991).

ICJI 1304 ARSON IN THE SECOND DEGREE

INSTRUCTION NO.

In order for the defendant to be guilty of Arson in the Second Degree, the State must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully
4. by fire or explosion
5. damaged
6. a structure.

If you find any of the above have not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The word "damaged", in addition to its ordinary meaning, includes causing any charring, scorching, burning or breaking, and includes any diminution in the value of any property as a consequence of the act.

The word "structure" means any building of any kind, including fixtures and appurtenances attached thereto, any coliseum, bridge or carport, any tent or other portable building, or any vehicle, vessel, watercraft or aircraft. It does not matter whether the structure was the property of the defendant or of another person.

Comment

I.C. §§ 18-803& 18-801(1)&(3). This instruction reflects the legislative revisions of the crime of Arson in 1993 Sess. Laws Ch. 107, p. 273, applicable on or after July 1, 1993. For offenses occurring prior to July 1, 1993, ICJI 1302 to ICJI 1306 should be used.

The arson statutes were substantially amended in 1993. For the elements of this offense prior to July 1, 1993, consult the statutes that were in effect at that time.

ICJI 1305 ARSON IN THE THIRD DEGREE

INSTRUCTION NO.

In order for the defendant to be guilty of Arson in the Third Degree, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully,
4. by fire or explosion,
5. damaged
6. [any (real) (personal) property of another] [or] [any forest land].

If you find any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty[of Arson in the Third Degree]. If each of the above had been proven beyond a reasonable doubt, then you must find the defendant guilty of Arson[in the Third Degree].

The word "damaged", in addition to its ordinary meaning, includes any charring, scorching, burning or breaking, and shall include any diminution in the value of the property as a consequence of the act.

[The words "real property" mean any land and any crops growing on the land.] [The words "personal property" mean any tangible property, including anything severed from land.] [The words "forest land" mean any brush covered land, cut-over land, forest, prairie, grasslands, wetlands, or woods.]

Comment

I.C. § 18-804.

The arson statutes were substantially amended in 1993. For the elements of this offense prior to July 1, 1993, consult the statutes that were in effect at that time.

ICJI 1306 AGGRAVATED ARSON

INSTRUCTION NO.

In order for the defendant to be guilty of Aggravated Arson, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully,
4. by fire or explosion,
5. damaged

[6. (a dwelling, whether occupied or not) (a structure, whether occupied or not, in which persons are normally present) (a structure that the defendant had reasonable grounds to believe was occupied by a human being)],

[or]

[6. (real)(personal) property, whether the property of the defendant or of another, and

7. the defendant did so with the intent (to deceive or harm any insurer)(to deceive or harm any person with a legal or financial interest in the property)(to obtain any financial gain for the defendant or another person)]

[or]

[6. a structure]

[or]

[6. [any (real) (personal) property of another] [or] [any forest land]

and

[7][8] the defendant's commission of such offense resulted, directly or indirectly, in [great bodily harm to] [the permanent (disability) (disfigurement) (death) of] [name of victim].

If you find any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty of Aggravated Arson. If each of the above had been proven beyond a reasonable doubt, then you must find the defendant guilty of Aggravated Arson.

The word "damaged", in addition to its ordinary meaning, includes causing any charring, scorching, burning or breaking, and includes any diminution in the value of any property as a consequence of the act.

[The word "dwelling" means any structure used or intended for use as human habitation.]

[The word "structure" means any building of any kind, including fixtures and appurtenances attached thereto, any coliseum, bridge or carport, any tent or other portable building, or any vehicle, vessel, watercraft or aircraft.]

[The phrase "any structure, whether occupied or not, in which persons are normally present" includes without limitation a (jail) (prison) (detention center) (hospital) (nursing home) (health care facility) (department store) (office building) (business establishment) (church) (educational institution).]

[The words "real property" mean any land and any crops growing on the land.] [The words "personal property" mean any tangible property, including anything severed from land.]

[The words "forest land" mean any brush covered land, cut-over land, forest, prairie, grasslands, wetlands, or woods.]

Comment

I.C. §§ 18-805 & 18-801(1)-(7).

The arson statutes were substantially amended in 1993. For the elements of this offense prior to July 1, 1993, consult the statutes that were in effect at that time.

The statute requires that the injury be to "a firefighter or any other person." The word "firefighter" is defined as "any person assisting in the suppression or extinguishment of any fire or explosion." I.C. § 18-801(7). That definition does not require that the person be employed as a firefighter. Therefore, the phrase "or any other person" is not limited to those who are assisting in the suppression or extinguishment of the fire or explosion. It means any person.

INSTRUCTION NO.

In order for the defendant to be guilty of Trespassing, the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] wilfully refused to immediately depart from real property
4. after being notified, either in writing or verbally, to do so
5. by the owner or the owner's authorized agent, and
6. the defendant was not on the real property under a landlord-tenant relationship.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-7008(8).