

BURNING PERSONAL PROPERTY, MOTOR VEHICLE, ETC.

The defendant is charged with unlawfully burning a _____.

Section 5 of chapter 266 of our General Laws provides as follows:

“Whoever wilfully and maliciously

(sets fire to) (burns) (destroys or injures by burning) (causes to
be burned or otherwise so destroyed or injured) (aids,
counsels or procures the burning of)

(any personal property [belonging to another person and] . . .
exceeding a value of twenty-five dollars . . .)

(or) (any boat, motor vehicle . . . or other conveyance, whether
[belonging to] himself or another . . .)

shall be punished”

In order to prove the defendant guilty of this offense, the

Commonwealth must prove four things beyond a reasonable doubt:

First: That the property in question was (personal property belonging to another person with a value of more than \$25) (a boat belonging to the defendant or another person) (a motor vehicle belonging to the defendant or another person) (a conveyance belonging to the defendant or another

person);

Second: That the defendant (set fire to or burned the property) (caused the property to be burned) (aided, counseled, or procured the property to be burned);

Third: That the defendant did so wilfully — that is, intentionally and not by accident; and

Fourth: That the defendant did so maliciously — that is, it was done with some wrong and unlawful motive and without excuse.

SUPPLEMENTAL INSTRUCTIONS

1. "Wilfully."

"Wilful" means intentionally and by design, and this eliminates accidental or negligent burnings. However, a person who negligently ignites a fire and then makes no attempt to extinguish or report it may be found to have acted wilfully.

See *Commonwealth v. McKenzie*, 376 Mass. 148, 150, 379 N.E.2d 1100, 1101 (1978).

2. "Maliciously."

The "malice" that must be shown does not require any particular ill will against someone. A burning is

malicious if it is done with a wrong and unlawful motive or purpose; if it is the wilful doing of a harmful act without lawful excuse.

Commonwealth v. Niziolek, 380 Mass. 513, 527, 404 N.E.2d 643, 651 (1980),
habeas corpus denied sub nom. *Niziolek v. Ashe*, 694 F.2d 282 (1st Cir. 1982);
Commonwealth v. Lamothe, 343 Mass. 417, 419-420, 179 N.E.2d 245, 246 (1961).