INTENT

I. SPECIFIC INTENT

I have already instructed you that one of the things that the Commonwealth must prove beyond a reasonable doubt is that at the time of the offense the defendant intended to _____ . A person's intent is his or her purpose or objective.

This requires you to make a decision about the defendant's state of mind at that time. It is obviously impossible to look directly into a person's mind. But in our everyday affairs, we often must decide from the actions of others what their state of mind is. In this case, you may examine the defendant's actions and words, and all of the surrounding circumstances, to help you determine what the defendant's intent was at that time.

As a general rule, it is reasonable to infer that a person ordinarily intends the natural and probable consequences of any acts that he does intentionally. You may draw such an inference, unless there is evidence that convinces you otherwise.

You should consider all the evidence, and any reasonable inferences you draw from the evidence, in determining whether the Commonwealth

has proved beyond a reasonable doubt, as it must, that the defendant acted with the intent to _____ .

Specific intent is "a conscious act with the determination of the mind to do an act. It is contemplation rather than reflection and it must precede the act." *Commonwealth v. Nickerson,* 388 Mass. 246, 253-254, 446 N.E.2d 68, 73 (1983). It is a person's purpose or objective, *Commonwealth v. Blow,* 370 Mass. 401, 407, 348 N.E.2d 794, 798 (1976), and corresponds loosely with the Model Penal Code term "purpose," *United States v. Bailey,* 444 U.S. 394, 405, 100 S.Ct. 624, 632 (1980). Specific intent means that "a defendant must not only have consciously intended to take certain actions, but that he also consciously intended certain consequences." *Commonwealth v. Gunter,* 427 Mass. 259, 269, 692 N.E.2d 515, 523 (1998). It is usually proved by circumstantial evidence, since there is no way to look directly into a person's mind. *Commonwealth v. Blake,* 409 Mass. 146, 150, 564 N.E.2d 1006, 1010 (1991); *Commonwealth v. Niziolek,* 380 Mass. 513, 528, 404 N.E.2d 643, 651 (1980), habeas corpus denied sub nom. *Niziolek v. Ashe,* 694 F.2d 282 (1st Cir. 1982); *Commonwealth v. Scanlon,* 373 Mass. 11, 17-19, 364 N.E.2d 1196, 1199-1200 (1977); *Commonwealth v. Sandler,* 368 Mass. 729, 741, 335 N.E.2d 903, 911 (1975); *Commonwealth v. Eppich,* 342 Mass. 487, 493, 174 N.E.2d 31, 34 (1961); *Commonwealth v. Ronchetti,* 333 Mass. 78, 81, 128 N.E.2d 334, 336 (1955); *Commonwealth v. Kelly,* 1 Mass. App. Ct. 441, 448-449, 300 N.E.2d 443, 448 (1973).

In defining specific intent, "[w]e see no need for a judge to refer to the defendant's *specific* intent to do something as an element of a crime. A reference to intent is sufficient." *Commonwealth v. Sires,* 413 Mass. 292, 301 n.8, 596 N.E.2d 1018, 1024 n.8 (1992). Nor should a judge define specific intent by contrasting it with "general intent," in the sense of unconscious or reflex actions. Such *noncriminal* "general intent" (which differs from *criminal* general intent, or "scienter") does not refer to any mental state which is required for the conviction of a crime, and its use in a specific intent definition is "unnecessary and confusing." *Commonwealth v. Sibinich,* 33 Mass. App. Ct. 246, 249 nn.1&2, 598 N.E.2d 673, 675 nn.1&2 (1992).

The judge may properly charge that the jury may draw a permissive inference that a person intends the natural and probable consequences of acts knowingly done. *Commonwealth v. Doucette,* 391 Mass. 443, 450-452, 462 N.E.2d 1084, 1093 (1984); *Commonwealth v. Ely,* 388 Mass. 69, 75-76, 444 N.E.2d 1276, 1280-1281 (1983); *Lannon v. Commonwealth,* 379 Mass. 786, 793, 400 N.E.2d 862, 866-867 (1980). But it is error to charge that a person is "presumed" to intend the natural and probable consequences of his or her acts, since this unconstitutionally shifts the burden of proof to the defendant, *Sandstrom v. Montana,* 442 U.S. 510, 524, 99 S.Ct. 2450, 2459 (1979); *DeJoinville v. Commonwealth,* 381 Mass. 246, 408 N.E.2d 1353 (1980), even if the judge indicates that the "presumption" is rebuttable, *Francis v. Franklin,* 471 U.S. 307, 105 S.Ct. 1965 (1985), and such a charge is harmless error only if intent is not a live issue, *Connecticut v. Johnson,* 460 U.S. 73, 87-88, 103 S.Ct. 969, 978 (1983).

For two excellent discussions of intent, see R. Bishop, *Prima Facie Case, Proof and Defense* § 1362 (1970), and G. Mottla, *Proof of Cases in Massachusetts* § 1201 (2d ed. 1966).

II. GENERAL INTENT

In determining whether the defendant acted "intentionally," you should give the word its ordinary meaning of acting voluntarily and deliberately, and not because of accident or negligence. It is not necessary that the defendant knew that he (she) was breaking the law, but it is necessary that he (she) intended the act to occur which constitutes the offense.

This instruction is recommended for use only in response to a jury question, since in instructing on a general intent crime, the judge is not required to charge on the defendant's intent as if it were a separate element of the crime. *Commonwealth v. Lefkowitz,* 20 Mass. App. Ct. 513, 519 & n.12, 481 N.E.2d 227, 231 & n.12 (1985). One way to describe general intent is whether the defendant "intended the act to occur," as contrasted with an accident. See *Commonwealth v. Saylor,* 27 Mass. App. Ct. 117, 122, 535 N.E.2d 607, 610 (1989); *Commonwealth v. Fuller,* 22 Mass. App. Ct. 152, 159, 491 N.E.2d 1083, 1087 (1986). General intent corresponds loosely with the Model Penal Code term "knowingly." *Bailey, supra.*

Criminal mens rea is normally required for all criminal offenses, except for minor, strict-liability "public order" offenses clearly so designated by statute. *Commonwealth v. Buckley,* 354 Mass. 508, 510-511, 238 N.E.2d 335, 337 (1968); *Commonwealth v. Murphy,* 342 Mass. 393, 397, 173 N.E.2d 630, 632 (1961); *Commonwealth v. Wallace,* 14 Mass. App. Ct. 358, 363-364, 439 N.E.2d 848, 852 (1982).

NOTES:

1. **Intoxication or mental disease as negating intent**. Where supported by the evidence, the defendant is entitled to an instruction that alcohol or drug intoxication, or mental condition, may negate specific intent. See Instructions 9.180 (Intoxication with Alcohol or Drugs) and 9.220 (Mental Impairment Short of Insanity).

2. **Wanton or reckless conduct**. Wanton or reckless conduct is often equivalent to intentional conduct. See Instructions 6.140 (Assault and Battery) and 5.140 and 5.160 (Homicide by a Motor Vehicle).

3. **Wilful conduct.** While the term "wilful" was traditionally defined as knowledge with an evil intent or "bad purpose," in modern times it is appropriate to charge a jury that "wilful means intentional" (as opposed to accidental) without making reference to any ill will or malevolence. *Commonwealth v. Luna,* 418 Mass. 749, 753, 641 N.E.2d 1050, 1053 (1994). For the definition of "wilful and malicious" with respect to property destruction, see Instruction 8.280 (Wilful and Malicious Destruction of Property).