

WANTON DESTRUCTION OF PROPERTY

G.L. c. 266, § 127

The defendant is charged with wanton destruction of property (of a value over \$1,200).

In order to prove the defendant guilty of this offense, the Commonwealth must prove the following (two) (three) things beyond a reasonable doubt.

***First:* That the defendant injured or destroyed the (personal property) (dwelling house) (building) of another; (and)**

***Second:* That the defendant did so wantonly.**

If value of property is alleged to be greater than \$1,200, add third element.

(and)

***Third:* That the amount of damage inflicted to the property was more than \$1,200.**

Effective April 13, 2018, St. 2018, c. 69, increased the felony threshold for this offense from \$250 to \$1,200. For offenses committed prior to April 13, 2018, insert "\$250" in place of "\$1,200."

An act of destruction is "wanton" if the person was reckless or indifferent to the fact that his (her) conduct would probably cause

substantial damage. Someone acts “wantonly” when he (she) consciously disregards, or is indifferent to, this probability.

Conduct is wanton if (1) the defendant knew it would create a risk of substantial damage or destruction to another’s property, or (2) a reasonable person – knowing what the defendant knew – would have realized the act posed a risk of substantial damage to or destruction of another’s property.

It is not enough for the Commonwealth to prove that the defendant acted negligently – that is, acted in a way that a reasonably careful person would not. The Commonwealth must prove that the defendant’s actions went beyond mere negligence and amounted to wanton conduct as I have defined that term.

The defendant must have intended his (her) act, in the sense that it did not happen accidentally.

If relevant to evidence. If you find that the defendant’s act occurred by accident, then you must find the defendant not guilty.

Commonwealth v. McGovern, 397 Mass. 863, 868 (1987); *Commonwealth v. Dellamano*, 393 Mass. 132, 137 (1984); *Commonwealth v. Welansky*, 316 Mass. 383, 398-99 (1944); *Commonwealth v. Ruddock*, 25 Mass. App. Ct. 508, 512-14 (1988); *Commonwealth v. Peruzzi*, 15 Mass. App. Ct. 437, 440-44 (1983).

[If value of property is alleged to be greater than \$1,200.] If you determine that the Commonwealth has proved beyond a reasonable doubt that the defendant is guilty of wanton destruction of property, you must go on to determine whether the Commonwealth also proved beyond a reasonable doubt that the reasonable cost of repair of the damaged property – or the reasonable cost of replacement if it cannot be repaired – was in excess of \$1,200.

See *Commonwealth v. Kirker*, 441 Mass. 226, 228-29 (2004); *Commonwealth v. Deberry*, 441 Mass. 211, 221-22 (2004).

SUPPLEMENTAL INSTRUCTION

[Likelihood of substantial damage.] A person cannot be convicted of wanton damage to property unless it was likely that his actions would result in substantial damage to others or their property. It is not enough that some slight or insignificant damage was likely to result. A person acts “wantonly” only if it is likely that his actions will result in substantial harm.

However, it is not necessary that the damage actually was substantial, only that such actions were likely to cause substantial damage. The actual outcome of someone's actions is sometimes a matter of luck, and here the law measures the nature of the actions, not the outcome.

Commonwealth v. Ruddock, 25 Mass. App. Ct. 508, 512-14 (1988).

NOTES:

1. **Distinction between “willful and malicious” and “wanton” destruction.** Wilful and malicious property destruction is a specific intent crime requiring proof that the defendant intended both the conduct and its harmful consequences, while wanton property destruction requires only a showing that the actor's conduct was indifferent to, or in disregard of, the probable consequences. *Commonwealth v. Armand*, 411 Mass. 167, 170-171 (1991). The essence of the distinction “appears to lie in the fact that a wilful actor intends both his conduct and the resulting harm, whereas a wanton or reckless actor intends his conduct but not necessarily the resulting harm.” *Commonwealth v. Smith*, 17 Mass. App. Ct. 918, 920 (1983). As an example, if youths throw rocks from a bridge and one strikes a car passing below, the act is wanton if the rocks were thrown casually, without thought of striking any cars, but the act is wilful and malicious if the rocks were aimed at passing cars. *Commonwealth v. Cimino*, 34 Mass. App. Ct. 925, 927 (1993).

2. **“Wanton” destruction is not lesser included offense of “willful and malicious” destruction.** Wanton property destruction is not a lesser included offense of wilful and malicious property destruction (see Instruction 8.280), since wanton conduct requires proof that the likely effect of the defendant's conduct was substantial harm, but wilful and malicious conduct does not. *Commonwealth v. Schuchardt*, 408 Mass. 347, 352 (1990).

3. **Value.** The value of the property destroyed or injured is a question for the jury and must be established beyond a reasonable doubt before it may be relied on to increase the range of punishment. *Commonwealth v. Beale*, 434 Mass. 1024, 1025 (2001); *Commonwealth v. Lauzier*, 53 Mass. App. Ct. 626, 633 n.10 (2002). Where the damage is repairable, the value of the property is to be measured by the pecuniary loss (usually the reasonable repair or replacement cost), and not by the fair market value of the whole property or of the damaged portion. *Deberry*, 441 Mass. 211, 221-22 (2004), rev'g 57 Mass. App. Ct. 93 (2003). “Of course, in certain circumstances a seemingly minor type of damage may effectively destroy the value of an entire property, such as a tear in a valuable painting or a chip in an antique cup.” *Id.* at 222 n.20.