

1 **14-1602.** [“Market value”; defined].<sup>1</sup>

2 [“Market value” means the price at which the property could ordinarily be bought or  
3 sold at the time of the alleged \_\_\_\_\_ (*criminal act*)<sup>2</sup>.

4 USE NOTES

5 1. For use if market value is in issue. This instruction should be given immediately  
6 after UJI 14-1601 NMRA, UJI 14-1640 NMRA, UJI 14-1641 NMRA or UJI 14-1650 NMRA.

7 2. Theft, receipt of stolen goods, etc.

8 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending  
9 or filed on or after December 31, 2025.]

10 **Committee commentary.** — This instruction is used with the following crimes: larceny – [40A-  
11 ~~16-1 NMSA 1953 Comp.~~ [30-16-1 NMSA 1978]] NMSA 1978, § 30-16-1; fraud – [40A-16-6 [30-  
12 16-6 NMSA 1978]] NMSA 1978, § 30-16-6; embezzlement – [40A-16-7 [30-16-8 NMSA  
13 1978]] NMSA 1978, § 30-16-8; receiving stolen property – [40A-16-11 [30-16-11 NMSA  
14 1978]] NMSA 1978, § 30-16-11. All four statutes use the term [“value”] without further  
15 qualification.

16 This instruction by its terms should not limit the type of evidence that is admissible to prove market  
17 value; nor was it the intent of the committee to indicate what evidence is sufficient to prove market  
18 value in a particular case. For New Mexico cases on this issue *see: State v. Gallegos*, 1957-NMSC-  
19 052, 63 N.M. 57, 312 P.2d 1067[~~-(1957)~~]; *State v. Landlee*, 1973-NMCA-112, 85 N.M. 449, 513  
20 P.2d 186[~~-(Ct. App. 1973)~~]; *State v. Williams*, 1972-NMCA-011, 83 N.M. 477, 493 P.2d 962[~~-(Ct.~~  
21 ~~App. 1972)~~].

22 Market value as the best test is supported by decisions in other jurisdictions. *See, e.g., People v.*  
23 *Cook*, [233 ~~Cal. App. 2d 435~~], 43 Cal. Rptr. 646 (Cal. Dist. Ct. App. 1965); *State v. Cook*, [263

1 ~~N.C. 730,~~ 140 S.E.2d 305 (N.C. 1965);~~[-] Cunningham v. State,~~~~[90 Tex. Crim. 500,~~] 236 S.W.  
2 89 (~~Tex. Crim. App.~~ 1921); 4 Nichols, Eminent Domain § 12.31. Use of market value as a test  
3 distinguished petty larceny from grand larceny at common law on the theory that the more serious  
4 crime required stricter proof. *See generally*, Perkins, *Criminal Law* at 273-74 (2d ed. 1969); Note,  
5 59 Dick. L. Rev. 377 (1955). For a discussion of when property may be aggregated under a single  
6 ~~[“]“transaction, [“]”~~ *see State v. Klasner*, 1914-NMSC-015, 19 N.M. 474, 145 P. 679 (1914). *See*  
7 *also*, Annot., 37 A.L.R.3d 1407 (1971); Annot., 136 A.L.R. 948 (1942).

8 The owner is competent to testify as to the market value of ~~[his]~~owner’s property. *State v.*  
9 *Zarafonetis*, 1970-NMSC-064, 81 N.M. 674, 472 P.2d 388~~[-(Ct. App. 1970)]~~. ~~[His]~~Owner’s  
10 testimony may be sufficient to withstand a motion for a directed verdict. *State v. Romero*, 1975-  
11 NMCA-017, 87 N.M. 279, 532 P.2d 208~~[-(Ct. App. 1975)]~~.

12 The definition used in this instruction is derived from the instruction used in *State v. Gallegos*,  
13 *supra*. *See also*, *Stephens v. State*,~~[4 Ala. App. 159,~~] 55 So. 940 (Ala. Ct. App. 1911); *Hoffman v.*  
14 *State*,~~[24 Okla. Crim. 236,~~] 218 P. 176 (Okla. Crim. App. 1923).

15 The market value of an item is the retail price. Gross receipts tax is not to be considered when  
16 determining ~~[“]“value, [“]”~~ unless the advertised retail or actual market price included this tax.  
17 *Tunnell v. State*, 1983-NMSC-013, 99 N.M. 446, 659 P.2d 898~~[-(1983)]~~.

18 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]