

503.12 CONTRACTS - ISSUE OF COMMON LAW REMEDY - DIRECT
DAMAGES - BUYER'S MEASURE OF RECOVERY FOR A SELLER'S BREACH OF
CONTRACT TO CONVEY REAL PROPERTY.

Direct damages are the economic losses that usually or customarily result¹ from a breach of contract. In this case, you will determine direct damages, if any, by first determining the fair market value of (*describe real property*) on [the date that (*describe events constituting breach*)] [*(specify date)*]. Fair market value is the amount which would be agreed upon as a fair price by a seller who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so.² [If the fair market value is greater than the contract price agreed upon by the parties, you will subtract the contract price from the fair market value (and add it to any amount already paid by the plaintiff under the contract).] [If the fair market value is equal to or less than the contract price agreed upon by the parties, you will not award any damages for loss of the value of the contract (however, the plaintiff is entitled to recover any amount already paid under the contract).]³

1. "In awarding damages, compensation is given for only those injuries that the defendant had reason to foresee as a probable result of his breach when the contract was made. If the injury is one that follows the breach in the usual course of events, there is sufficient reason for the defendant to foresee it; otherwise, it must be shown specifically that the defendant had reason to know the facts and to foresee the injury." *Stanback v. Stanback*, 297 N.C. 181, 187, 254 S.E.2d 611, 616 (1979)(*quoting* the RESTATEMENT OF THE LAW OF CONTRACT, § 330, p. 509). The foreseeability limitation on recovery was first enunciated in *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854).

2. *Huff v. Thornton*, 287 N.C. 1, 12, 213 S.E.2d 198, 206 (1975).

3. *Johnson v. Metropolitan Life Ins. Co.*, 219 N.C. 445, 450, 14 S.E.2d 405, 407 (1941); *Maxwell v. Proctor & Gamble Distributing Co.*, 204 N.C. 309, 318-19, 168 S.E. 403, 407-08 (1933).