

503.91 CONTRACTS - ISSUE OF COMMON LAW REMEDY - DEFENSE
(OFFSET) FOR FAILURE TO MITIGATE - AMOUNT OF CREDIT.

The (*state number*) issue reads:

"What amount of the damages incurred by the plaintiff could reasonably have been mitigated by the plaintiff's use of ordinary care?"

(You will answer this issue only if you have answered the (*state number*) issue "Yes" in favor of the defendant.)

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, the amount of the damages incurred by the plaintiff which could reasonably have been mitigated by the plaintiff's use of ordinary care.

Finally, as to the (*state number*) issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence the amount of the damages incurred by the plaintiff which could reasonably have been mitigated by the plaintiff's use of ordinary care, then it would be your duty to answer this issue in favor of the defendant by writing that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue in favor of the plaintiff by writing "zero" or "none" or some trivial amount such as "One Dollar" in the blank space provided.