

504.12 CONTRACTS - ISSUE OF UCC REMEDY - BUYER'S REMEDY OF
JUSTIFIABLE REVOCATION OF ACCEPTANCE.

The (*state number*) issue reads:

"Did the plaintiff justifiably revoke *his* acceptance of the (*name good*) purchased from the defendant?"¹

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

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, three things:

First, that the plaintiff accepted the (*name good*) [on the reasonable assumption that the non-conformity would be cured, and it was not seasonably cured] [because the plaintiff's acceptance was reasonably induced either by the difficulty of discovery of the non-conformity before acceptance or by the defendant's assurances].

Second, that the non-conformity substantially impaired the value of the (*name good*) to the plaintiff. In making this determination, you may consider the plaintiff's needs, circumstances and *his* actual attitude toward the non-conforming (*name good*). You may also consider whether a reasonable person under the same or similar circumstances would have the same attitude as the plaintiff toward the non-conforming (*name good*) after taking into account²

[the market value of the (*name good*)]

[the reliability of the (*name good*)]

[the safety of the (*name good*)]

[the utility of the (*name good*)]

[the efficiency of the (*name good*)]

[the feasibility of repairing the (*name good*)]

[the [willingness] [ability] of the defendant to repair the (*name good*)].

And Third, that the plaintiff notified the defendant of the revocation of acceptance within a reasonable time after *he* discovered or should have discovered the ground for the revocation (and before any substantial change in the condition of the (*name good*)³ not caused by its own defects).⁴ Formal notice that acceptance is being revoked is not necessary. Any conduct by the plaintiff manifesting to the defendant that *he* is seriously dissatisfied with the (*name good*) and expects satisfaction is sufficient.⁵ In determining whether revocation was made within a reasonable time, you may consider all of the surrounding circumstances, including the nature of the defect, the difficulty of its discovery, the complexity of the (*name good*) and the sophistication of the plaintiff.⁶

(Where a seller attempts to make adjustments to cure the non-conformity or where a seller makes repeated assurances that the non-conformity can be and will be cured, it is reasonable for a buyer to delay revocation and continue to use the (*name good*) to see if the seller will or can meet *his* assurances.)⁷

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff justifiably revoked *his* acceptance of the (*name good*), then

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it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, it would be your duty to
answer this issue "No" in favor of the defendant.

1. N.C. Gen. Stat. § 25-2-608. Note, however, that other statutes also permit revocation of certain types of goods under certain circumstances. See, e.g., N.C. Gen. Stat. § 20-351.3 (the "Lemon Law"), § 25A-40(a) (Retail Home Sales Solicitation Act) and § 143-143.21A(b) (manufactured home purchase).

2. This is the "personalized objective test." *Allen v. Rouse Toyota Jeep, Inc.*, 100 N.C. App. 737, 740-741, 398 S.E.2d 64, 65-66 (1990). See, e.g., *Ray Burt Enterprises, Inc. v. Marsh*, 328 N.C. 262, 400 S.E.2d 425 (1991) (fertilizer); *Rose v. Epley Motor Sales*, 288 N.C. 53, 61, 215 S.E.2d 573, 578 (1975) (vehicle); *Performance Motors, Inc. v. Allen*, 280 N.C. 385, 186 S.E.2d 161 (1972) (mobile home); *Riley v. Ken Wilson Ford, Inc.*, 109 N.C. App. 163, 426 S.E.2d 717 (1993) (vehicle); *Cato Equip. Co. v. Matthews*, 91 N.C. App. 546, 372 S.E.2d 872 (1988) (crank shaft); *Whitehurst v. Crisp R.V. Center, Inc.*, 86 N.C. App. 521, 358 S.E.2d 542 (1987) (vehicle); *Warren v. Guttanit, Inc.*, 69 N.C. App. 103, 317 S.E.2d 5 (1984) (building materials); *Wright v. O'Neal Motors, Inc.*, 57 N.C. App. 49, 291 S.E.2d 165, *disc. rev. denied*, 306 N.C. 393, 294 S.E.2d 221 (1982) (vehicle); *Harrington Mfg. Co. v. Logan Tontz Co.*, 40 N.C. App. 496, 253 S.E.2d 282, *disc. rev. denied*, 297 N.C. 454, 256 S.E.2d 806 (1979) (fasteners); *Davis v. Colonial Mobile Homes*, 28 N.C. App. 13, 220 S.E.2d 802 (1975), *disc. rev. denied*, 289 N.C. 613, 223 S.E.2d 391 (1976) (mobile home).

3. *Ace Chemical Corp. v. Atomic Paint Co.*, 31 N.C. App. 221, 223, 229 S.E.2d 55, 57 (1976).

4. *Rose*, 288 N.C. 53, 215 S.E.2d 573 (vehicle destroyed by fire within hours of purchase).

5. *Performance Motors, Inc.*, 280 N.C. 385, 186 S.E.2d 161 (constant complaints followed by cessation of payments).

6. *Harrington Mfg. Co.*, 40 N.C. App. 496, 253 S.E.2d 282.

7. *Allen*, 100 N.C. App. 737, 398 S.E.2d 64 (repeated assurances).