

504.15 CONTRACTS - ISSUE OF UCC REMEDY - BUYER'S DAMAGES UPON
JUSTIFIABLE REVOCATION OF ACCEPTANCE.

The (*state number*) issue reads:

"What amount of money damages is the plaintiff entitled to recover from the defendant for breach of contract after justifiably revoking acceptance of the (*name good*)?"

If you have answered the (*state number*) issue "Yes" in favor of the plaintiff, the plaintiff is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damage resulting from the breach.

The plaintiff may also be entitled to recover actual damages. 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, the amount of damages sustained as a result of the breach of contract after justifiably revoking acceptance of the (*name good*).

The law provides that where a buyer justifiably revokes *his* acceptance of a (*name good*), the buyer may cancel the contract but, whether or not *he* cancels, *he* may also recover so much of the (unrecovered)¹ purchase price as has been paid to the seller.²

(plus)

(*Select one of the two damage measures below as is supported by the evidence - do not give both.*)

[Cover Measure. A buyer may cover for the seller's non-conforming good by making a reasonable purchase of a substitute (*name good*) in

good faith and without delay. If you find that the plaintiff reasonably covered for the non-conforming good, the plaintiff may also recover the difference between the cost of the substitute (*name good*) and the contract price.]³

[Contract-Market Measure. A buyer may recover damages for the seller's non-conforming good. To determine such damages, you must first find the market price⁴ of the (*name good*) at the place it was delivered and at the time the plaintiff learned of the non-conformity. From that market price you must subtract the parties' contract price. The difference is the plaintiff's damages for the non-conforming good].⁵)

(plus)

(a buyer may also recover incidental damages proximately resulting from the seller's breach. These include expenses [reasonably incurred in the inspection, receipt, transportation and care and custody of goods whose acceptance have been justifiably revoked]⁶ [any commercially reasonable charges, expenses or commissions in connection with effecting cover] [any other reasonable expense incident to the delay or other breach])⁷

(plus)

(a buyer may also recover consequential damages proximately resulting from the seller's breach. These include any loss resulting from general or particular requirements and needs of which the defendant at the time of contracting had reason to know and which could not reasonably have been prevented by the plaintiff)⁸

(less)

(a credit to the defendant for any expenses saved or avoided by the

plaintiff as a consequence of the defendants' breach).⁹

The plaintiff's damages are to be reasonably determined from the evidence presented. The plaintiff is not required to prove with mathematical certainty the extent of the financial injury in order to recover damages. Thus, the plaintiff should not be denied damages simply because they cannot be calculated with exactness or a high degree of mathematical certainty. However, an award of damages must be based on evidence which shows the amount of the plaintiff's damages with reasonable certainty. You may not award any damages based upon mere speculation or conjecture.

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 the amount of damages sustained by the plaintiff for breach of contract after justifiably revoking acceptance of the (*name good*), then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal amount such as "One Dollar" in the blank space provided.

1. The buyer obtains a security interest in the goods rejected or revoked until his purchase price and expenses of holding and disposition are recovered. N.C. Gen. Stat. § 25-2-711(3). Any proceeds from liquidation of the buyer's security interest is a self-help recovery and must be credited to the seller.

2. N.C. Gen. Stat. § 25-2-711(1). *Davis v. Colonial Mobile Homes*, 28 N.C. App. 13, 220 S.E.2d 802 (1975), *cert. denied*, 289 N.C. 613, 223 S.E.2d 391 (1976).

3. N.C. Gen. Stat. § 25-2-711(1)(a). *Harrington Mfg. Co. v. Logan Tontz Co.*, 40 N.C. App. 496, 505, 253 S.E.2d 282, 287, *disc. rev. denied*, 297 N.C. 454, 256 S.E.2d 806 (1979).

4. N.C. Gen. Stat. § 25-2-723.

5. N.C. Gen. Stat. § 25-2-711(1)(b).

6. Note that the literal language of N.C. Gen. Stat. § 25-2-711(1) limits these expenses to situations where non-conforming goods are rightfully rejected. However, there is no reason not to permit these types of expenses to be recovered where the plaintiff has justifiably revoked acceptance. See *William D. Hawkland, Uniform Commercial Code Series*, § 2-715:02 at 584.

7. N.C. Gen. Stat. §§ 25-2-711(1) and 25-2-715(1).

8. N.C. Gen. Stat. §§ 25-2-711(1) and 25-2-715(2).

9. N.C. Gen. Stat. § 25-2-711(1).