

504.18 CONTRACTS - ISSUE OF UCC REMEDY - BUYER'S DAMAGES AFTER
ACCEPTANCE AND RETENTION OF GOODS.

The (*state number*) issue reads:

"What amount of money damages is the plaintiff entitled to recover from the defendant for breach of contract?"

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, if any, as a result of the breach.

The law provides that where a buyer has accepted goods notwithstanding the seller's breach of contract and has given the seller notice of the breach within a reasonable time after the buyer discovers or should have discovered the breach,¹

[the buyer may recover as damages for any non-conforming tender the loss resulting in the ordinary course of events from the seller's breach as determined by you in any manner that is reasonable]²

[the buyer may recover as damages for breach of warranty the difference between the value of the (*name good*) as it would have been at the time and place of acceptance if it had conformed to the contract and the value of the (*name good*) as it was at the time and place of

acceptance]³

[the buyer may recover as damages for breach of warranty the amount which, by reason of special circumstances, is necessary to place the buyer in the same position *he* would have occupied had there been no breach of contract]⁴

(plus)

(the buyer may recover incidental damages proximately resulting from the seller's breach. (These include any reasonable expense incident to the delay or other breach))⁵

(plus)

(the buyer may 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 seller at the time of contracting had reason to know and which could not reasonably have been prevented by the purchase of substitute goods or otherwise (and injury to person or property proximately resulting from any breach of contract).)⁶

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 upon 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 by reason of the defendant's breach of contract, 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. N.C. Gen. Stat. § 25-2-607(3)(a). "[T]he buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy."

2. N.C. Gen. Stat. § 25-2-714(1).

3. N.C. Gen. Stat. § 25-2-714(2).

4. N.C. Gen. Stat. § 25-2-714(2) and § 25-1-103. See *Wright v. T&B Auto Sales, Inc.*, 72 N.C. App. 449, 454, 325 S.E.2d 493, 496 (1985); *Williams v. Hyatt Chrysler-Plymouth, Inc.*, 48 N.C. App. 308, 316, 269 S.E.2d 184, 189 *disc. rev. denied*, 301 N.C. 406, 273 S.E.2d 451 (1980), and *Lyon v. Shelter Resources Corp.*, 40 N.C. App. 557, 562-63, 253 S.E.2d 277, 281 (1979). For example, costs incurred by the buyer to repair a non-conforming good to put it in its warranted condition may be commercially reasonable conduct under the circumstances and, therefore, an acceptable measure of damages. See also *ITT-Industrial Credit Co. v. Milo Concrete Co., Inc.*, 31 N.C. App. 450, 462, 229 S.E.2d 814, 822 (1976).

5. N.C. Gen. Stat. § 25-2-714(3) and § 25-2-715(1).

6. N.C. Gen. Stat. § 25-2-714(3) and § 25-2-715(2).