

504.33 CONTRACTS - ISSUE OF UCC REMEDY - SELLER'S RESALE DAMAGES.

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 seller has resold (the undelivered balance of) the goods concerned in good faith and in a commercially reasonable manner, the seller may recover from the buyer any shortfall between the resale price and the contract price.¹

(In addition to any shortfall between the resale price and the contract price, the seller may also recover any incidental damages.²

Incidental damages include any commercially reasonable charges, expenses or commissions incurred [in stopping delivery of the goods] [in the transportation, care and custody of the goods after the buyer's breach] [in connection with the return or resale of the goods].³)

(The buyer is entitled, however, to a credit for any expenses the seller saved or avoided in consequence of the buyer's breach.)⁴

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 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.

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1. N.C. Gen. Stat. § 25-2-706(1).
 2. *Id.*
 3. N.C. Gen. Stat. § 25-2-710.
 4. N.C. Gen. Stat. § 25-2-706(1).