

741.35 WARRANTIES IN SALES OF GOODS - REMEDIES - RIGHTFUL REJECTION.

The (*state number*) issue reads:

"Did the plaintiff rightfully reject the defendant's [delivery] [tender] of the (*name good*)?"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 the plaintiff must prove, by the greater weight of the evidence, two things:

First, that the plaintiff rejected the (*name good*) within a reasonable time after its [delivery] [tender] by the defendant. (The plaintiff cannot reject the (*name good*) if *he* has already accepted it.)²

Second, that the plaintiff seasonably notified the defendant of the rejection. (If the defect is ascertainable by reasonable inspection and the defendant could have cured it had *he* known what it was, the plaintiff's notice must state the particular defect.)³

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 rightfully rejected the defendant's [delivery] [tender] of the (*name good*), then 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. § 25-2-601(a) and § 25-2-602(1) (1995).

2. N.C. Gen. Stat. § 25-2-607(2) (1995) and *HPS, Inc. v. All Wood Turning Corp.*, 21 N.C. App. 321, 324-325, 204 S.E.2d 188, 190 (1974). See N.C. Gen. Stat. § 25-2-606 (1995) for a statement as to what conduct constitutes "acceptance."

3. N.C. Gen. Stat. § 25-2-605(1)(a) (1995).