

CONTRACTS--ISSUE OF COMMON LAW REMEDY--STATEMENT OF DAMAGES  
ISSUE.

NOTE WELL: *This is the first component of the compensatory damages series which runs through N.C.P.I.--Civil 503.79 (Contracts--Issue of Common Law Remedy--Damages Mandate). Select, as appropriate, from among the following direct damages components and, in proper cases, incidental and consequential damages.*

The (state number) issue reads:

"What amount 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.<sup>1</sup> Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damage resulting from the breach.<sup>2</sup>

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<sup>1</sup>*Bowen v. Fidelity Bank*, 209 N.C. 140, 144, 183 S.E. 266, 268 (1936); *Delta Environmental Consultants of North Carolina, Inc. v. Wysong & Miles Co.*, 132 N.C. App. 160, 171-72, 510 S.E.2d 690, 698, disc. rev. denied, 350 N.C. 379, 536 S.E.2d 70 (1999); *Cole v. Sorie*, 41 N.C. App. 485, 490, 255 S.E.2d 271, 274, disc. rev. denied, 298 N.C. 294, 259 S.E.2d 911 (1979).

<sup>2</sup>Nominal damages consist of some trifling amount and are recoverable where some legal right has been invaded but no actual loss or substantial injury has been sustained. Nominal damages are awarded in recognition of the right and of the technical injury resulting from its violation. *Hairston v. Atlantic Greyhound Corporation*, 220 N.C. 642, 644, 18 S.E.2d 166, 168 (1942) (quoting *Hutton & Bourbonnais v. Cook*, 173 N.C. 496, 92 S.E. 355 (1917)).

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ISSUE. (Continued).

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 actual damages sustained as a result of the breach.

A person damaged by a breach of contract is entitled to be placed, insofar as this can be done by money, in the same position he would have occupied if there had been no breach of the contract.<sup>3</sup>

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<sup>3</sup>*Lee Cycle Center, Inc. v. Wilson Cycle Center, Inc.*, 143 N.C. App. 1, 9, 545 S.E.2d 745, 750 (2001) (quoting *Perfecting Serv. Co. v. Product Dev. & Sales Co.*, 259 N.C. 400, 415, 131 S.E.2d 9, 21 (1963)).