

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--OWNER'S MEASURE OF RECOVERY FOR LOSS OF RENT DUE TO A LESSEE'S, OCCUPIER'S OR POSSESSOR'S BREACH OF A LEASE OF REAL ESTATE OR PERSONAL PROPERTY.

NOTE WELL: Use this instruction where the lease does not specify a rent or the rent applicable to a given circumstance (e.g., holdover tenant).

Direct damages are the economic losses that usually or customarily result¹ from a breach of contract. In this case, you will determine direct damages, if any, by determining the fair rental value² of (*describe property*) on [the date that (*describe events constituting breach*)] [(*specify date*)] for the period of time (if any) that the plaintiff was deprived of rent by reason

¹"In awarding damages, compensation is given for only those injuries that the defendant had reason to foresee as a probable result of his breach when the contract was made. If the injury is one that follows the breach in the usual course of events, there is sufficient reason for the defendant to foresee it; otherwise, it must be shown specifically that the defendant had reason to know the facts and to foresee the injury.'" *Stanback v. Stanback*, 297 N.C. 181, 187, 254 S.E.2d 611, 616 (1979) (*quoting* the RESTATEMENT OF THE LAW OF CONTRACT, § 330, p. 509). The foreseeability limitation on recovery was first enunciated in *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854).

²See N.C.G.S. §42-4.

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--OWNER'S MEASURE OF RECOVERY FOR LOSS OF RENT DUE TO A LESSEE'S, OCCUPIER'S OR POSSESSOR'S BREACH OF A LEASE OF REAL ESTATE OR PERSONAL PROPERTY. (Continued).

of the breach.³ Fair rental value is the amount which would be agreed upon as a fair rent by an owner who wishes to lease, but is not compelled to do so, and a tenant who wishes to lease, but is not compelled to do so (less any commissions the plaintiff would have been required to pay on such rent).

³A party who is injured by a breach of contract is entitled to compensation for the injury sustained and is entitled to be placed, as near as this can be done with money, in the same position he would have occupied if the contract had been performed. *Perkins v. Langdon*, 237 N.C. 159, 169-70, 74 S.E.2d 634, 643 (1953). The measure of damages for the breach of a contract to pay rent is the amount which would have been received if the contract had been performed as made, which means the value of the contract, including the profits and advantages which are its direct results and fruits. *Id.* The damages recoverable are such as may reasonably be supposed to have been in the contemplation of the parties when the contract was made. *Troitino v. Goodman*, 225 N.C. 406, 412, 35 S.E.2d 277, 281 (1945). The injured party is entitled to full compensation for his loss and the true measure of damages is the amount that would have been received if the contract had been kept and which will completely indemnify the injured party for the breach. *Id.* Whether special damages arising from the breach may be recoverable, would depend upon the information communicated or the knowledge of the parties at the time and the reasonable foreseeability of such damages. *Id.*