

CONTRACTS--ISSUE OF UCC REMEDY--VALIDITY OF LIQUIDATED DAMAGES
PROVISION.

The (*state number*) issue reads:

"Did the plaintiff and the defendant enter into a valid agreement stipulating the amount of damages defendant would owe the plaintiff in the event the defendant breached the contract?"

(You will answer this (*state number*) 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, that the plaintiff and the defendant agreed to an amount of damages that one would owe the other in the event of a breach of contract that was reasonable under the circumstances.¹ In determining whether the damages amount stipulated by the parties was reasonable under the circumstances, you may consider²

[the harm the parties anticipated would be caused by a breach]

[the harm actually caused by the breach]

[the difficulties of proof of loss]

¹N.C.G.S. §25-2-718(1). Note also that N.C.G.S. §25-2-718(2) establishes liquidated damages in certain situations where the parties have not otherwise provided for them.

²N.C.G.S. §25-2-718(1).

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[the inconvenience of otherwise obtaining an adequate
remedy]

[the nonfeasibility of otherwise obtaining an adequate
remedy].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 and the defendant
entered into a valid agreement stipulating the amount of damages
defendant would owe the plaintiff in the event the defendant
breached the contract, 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, then it would
be your duty to answer this issue "No" in favor of the
defendant.

³*Coastal Leasing Corp. v. T-Bar S Corp.*, 128 N.C. App. 379, 382-83, 496
S.E.2d 795, 798 (1998) acknowledges that the liquidated damages standard
under N.C.G.S. §25-2-718(1) may be more stringent than a common law type
standard.