

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--  
EMPLOYER'S MEASURE OF RECOVERY FOR EMPLOYEE'S WRONGFUL  
TERMINATION OF AN EMPLOYMENT CONTRACT.

Direct damages are the economic losses that usually or customarily result<sup>1</sup> from a breach of contract. In this case, direct damages consist of the difference between the fair market value of the defendant's services and the rate of compensation for those services fixed by the contract over the unexpired term of the contract.<sup>2</sup> You will determine this difference as follows: First, you will determine the fair market value of the (*describe services*) that the defendant was to have performed during the unexpired term of *his* contract with the plaintiff. The "fair market value" of (*describe services*) must be determined as of [the date that (*name employee*) terminated his employment] [(*specify date*)]. Fair market value is the amount that a willing employer would pay and a willing employee would accept,

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<sup>1</sup>"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).

<sup>2</sup>Generally, for a breach of contract, the injured party is entitled as compensation to be placed, insofar as this can be done by money, in the same position he would have occupied if the contract had been performed. *Pleasant Valley Promenade v. Lechmere, Inc.*, 120 N.C. App. 650, 665, 464 S.E.2d 47, 59 (1995); *First Union Nat. Bank v. Naylor*, 102 N.C. App. 719, 725, 404 S.E.2d 161, 164 (1991) (*quoting* *Perfecting Serv. Co. v. Product Dev. & Sales Co.*, 259 N.C. 400, 415, 131 S.E.2d 9, 21 (1963)).

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neither being under any compulsion to deal with the other.<sup>3</sup>

Second, if the fair market value of the defendant's services for the unexpired term of *his* contract exceeds the amount of compensation fixed in the contract for those same services, this difference is the amount of direct damages that the plaintiff has suffered.

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<sup>3</sup>An alternative definition of "fair market value" is as follows: "Fair market value is the amount that a willing employer would pay, but is not obliged to do so, and a willing employee would accept, but is not compelled to so." See *Huff v. Thornton*, 287 N.C. 1, 12, 213 S.E.2d 198, 206 (1975).