

CONTRACTS--ISSUE OF UCC REMEDY--BUYER'S REMEDY OF RIGHTFUL REJECTION.

The *(state number)* issue reads:

"Did the plaintiff rightfully reject the defendant's [delivery] [tender] of the *(name good)*?"<sup>1</sup>

(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.<sup>2</sup> (The plaintiff cannot reject the *(name good)* once he has accepted it. Acceptance occurs and the plaintiff's right to reject is cut off if, after the plaintiff has a reasonable opportunity to inspect the *(name good)*,

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<sup>1</sup>N.C.G.S. §§25-2-601(a) and 25-2-602(1). Note that the buyer's remedy of rejection may be limited in the event the contract that is breached is an installment contract, N.C.G.S. §25-2-612 and in the event the parties have otherwise agreed. N.C.G.S. §§25-2-718 and 25-2-719.

<sup>2</sup>N.C.G.S. §25-2-607(2). *Design Plus Store Fixtures, Inc. v. Citro Corp.*, 131 N.C. App. 581, 508 S.E.2d 825 (1998); *Williams V. Hyatt Chrysler-Plymouth, Inc.*, 48 N.C. App. 308, 269 S.E.2d 184, *disc. rev. denied*, 301 N.C. 406, 273 S.E.2d 451 (1980); *Performance Motors, Inc. v. Allen*, 280 N.C. 385, 186 S.E.2d 161 (1972); *appeal after remand*, 20 N.C. App. 445, 201 S.E.2d 513 (1974).

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[the plaintiff communicates to the defendant that the (name good) conforms to the contract]<sup>3</sup>

[the plaintiff communicates to the defendant that he will take and retain the (name good) in spite of its non-conformity]<sup>4</sup>

[the plaintiff fails to make an effective rejection of the (name good)]<sup>5</sup>

[the plaintiff proceeds to [use] [sell] or take any other act inconsistent with the defendant's ownership of the (name good)]<sup>6</sup>)

And Second, that the plaintiff notified the defendant of the rejection, and that such notice was seasonable. Notice is "seasonable" when it is [given at or within the time agreed]

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<sup>3</sup>N.C.G.S. §25-2-606(1)(a).

<sup>4</sup>*Id.*

<sup>5</sup>N.C.G.S. §25-2-606(1)(b).

<sup>6</sup>N.C.G.S. §25-2-606(1)(c). Thus, continuing to use the good sold will undo the rejection and constitute acceptance. *Danjee, Inc. v. Addressograph Multigraph Corp.*, 44 N.C. App. 626, 633, 262 S.E.2d 665, 669, *disc. rev. denied*, 300 N.C. 196, 269 S.E.2d 623 (1980); *HPS, Inc. v. All Wood Turning Corp.*, 21 N.C. App. 321, 324-325, 204 S.E.2d 188, 190 (1974). On the other hand, if the continued use is born of necessity (as where the buyer temporarily has no other option), the rejection may still be valid. *Davis v. Colonial Mobile Homes*, 28 N.C. App. 13, 220 S.E.2d 802 (1975), *disc. rev. denied*, 289 N.C. 613, 223 S.E.2d 391 (1976). Furthermore, the Uniform Commercial Code permits a buyer who rightfully rejects to handle or otherwise deal in the rejected goods for certain limited purposes, including retendering them to the seller, salvage, disposition to recover purchase price paid and the like. None of these actions precludes or vitiates an otherwise effective rejection. See N.C.G.S. §25-2-601, 25-2-602 and 25-2-603. If the buyer's inconsistent act is wrongful as against the seller, it is only an acceptance if ratified by the seller.

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[within a reasonable time if there is no time agreed].<sup>7</sup> (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.)<sup>8</sup>

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.

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<sup>7</sup>N.C.G.S. §25-1-204(3).

<sup>8</sup>N.C.G.S. §25-2-605(1)(a).

