

CONTRACTS--ISSUE OF UCC REMEDY--AMOUNT OF LIQUIDATED DAMAGES.

The (*state number*) issue reads:

"What amount of stipulated damages 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. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damage resulting from the breach.

The plaintiff may also be entitled to recover stipulated 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 stipulated damages to which he is entitled, if any, as a result of the breach.

The plaintiff's stipulated damages are to be reasonably determined from the evidence presented.

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 the amount of stipulated damages to which the plaintiff is entitled by reason of the defendant's breach of contract, then it would be your duty to write that amount in the blank space provided.

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If, on the other hand, you fail to so find, then it would be your duty to write a nominal amount such as "One Dollar" in the blank space provided.