

Table of Contents

Volume 1

CHAPTER 1. INTRODUCTION

I. CONTRACT REMEDIES

- § 1:1 Contract remedies: In general
- § 1:2 —Compulsion or relief
- § 1:3 —Restitution, reliance, or expectation
- § 1:4 —Specific or substitutional relief
- § 1:5 —Cost to complete or diminution in value
- § 1:6 —Loss or avoidable loss
- § 1:7 —Loss or foreseeable loss
- § 1:8 —Preponderance of evidence or certainty

II. RESEARCH AIDS

- § 1:9 Bibliography

CHAPTER 2. SELECTING AMONG SELLERS' DAMAGE REMEDIES

I. INTRODUCTION

- § 2:1 Scope of chapter
- § 2:2 Catalog of sellers' remedies
- § 2:3 Necessity of making proper selection
- § 2:4 —Three basic questions
- § 2:5 —Four basic propositions

II. GENERAL DAMAGE REMEDIES

- § 2:6 Action for price
- § 2:7 Resale formula
- § 2:8 Market formula
- § 2:9 Profit formula
- § 2:10 —Recovery of overhead
- § 2:11 —Determining whether or not to complete manufacture
- § 2:12 Summary

III. INCIDENTAL DAMAGES

- § 2:13 In general

- § 2:14 Distinguished from direct and consequential damages
- § 2:15 Criticism of rule denying sellers' recovery of consequential damages
- § 2:16 Types of incidental damages
- § 2:17 —Interest and finance charges
- § 2:18 —Limitations on recovery
- § 2:19 —Conceptual gap

IV. IMPORTANCE OF MARKET FORMULA

- § 2:20 Proving market formula as alternative measure of damages

V. RESEARCH AIDS

- § 2:21 Bibliography
- APPENDIX 2A. Litigation Guide

CHAPTER 3. ACTION FOR THE PRICE

I. INTRODUCTION

- § 3:1 Scope of chapter
- § 3:2 What it is; What it is not
- § 3:3 U.C.C. § 2-709
- § 3:4 Exclusive remedy

II. AVAILABILITY OF ACTION FOR PRICE

- § 3:5 Goods accepted
- § 3:6 —Consequences of acceptance
- § 3:7 —What it is; What it is not
- § 3:8 — —Acceptance is not dependent upon title
- § 3:9 — —Acceptance is not dependent upon possession
- § 3:10 —Burden of proof
- § 3:11 —Effective but wrongful rejection
- § 3:12 — —The prepaying buyer in possession exception
- § 3:13 —Wrongful revocation of acceptance
- § 3:14 — —Procedurally ineffective revocation of acceptance
- § 3:15 — —Substantively wrongful revocation of acceptance
- § 3:16 — — —Seller's duty to resell goods
- § 3:17 —Breach of warranty as counterclaim or defense
- § 3:18 — —Claims other than breach of warranty
- § 3:19 — —Deduction of damages from price
- § 3:20 Goods lost or damaged after passage of risk
- § 3:21 —Effect of breach
- § 3:22 — —Deficiency in effective insurance coverage
- § 3:23 —Unanswered questions

TABLE OF CONTENTS

- § 3:24 —Consignment sales
- § 3:25 —Sample cases
- § 3:26 Identified goods not reasonably resalable
- § 3:27 —Mitigation of damages
- § 3:28 —Problems of proof
- § 3:29 — —Need for particularization
- § 3:30 — —Uniqueness and marketability
- § 3:31 — —Reasonable price
- § 3:32 —Identified (existing) goods
- § 3:33 — —Completion of goods unfinished at breach

III. MISCELLANEOUS

- § 3:34 Expenses saved (proceeds of resale)
- § 3:35 Variation by agreement
- § 3:36 When price becomes due
- § 3:37 Incidental damages

IV. RESEARCH AIDS

- § 3:38 Bibliography

APPENDIX 3A. Litigation Guide

CHAPTER 4. RESALE

I. INTRODUCTION

- § 4:1 Scope of chapter
- § 4:2 U.C.C. § 2-706
- § 4:3 Mitigation of damages
- § 4:4 The requirements
- § 4:5 —Identified goods, identified resale
- § 4:6 Caveat

II. NOTICE REQUIREMENT

- § 4:7 In general
- § 4:8 Who must give
- § 4:9 Content of notice
- § 4:10 Consequences of failure to give notice
- § 4:11 Notice excused
- § 4:12 Burden of proof, burden of pleading
- § 4:13 Waiver of notice

III. GOOD FAITH AND COMMERCIAL REASONABLENESS

- § 4:14 In general

- § 4:15 —Question of fact
- § 4:16 —Good faith
- § 4:17 Specific requirements
- § 4:18 Specific allowances
- § 4:19 —Public vs. private resale
- § 4:20 —Unit or parcels
- § 4:21 —Seller may buy
- § 4:22 Best possible price, mitigation
- § 4:23 —Reasonable time, unreasonable delay
- § 4:24 Burden of proof
- § 4:25 Consequences of failure to prove

IV. MEASURING DAMAGES

- § 4:26 In general
- § 4:27 —Incidental damages
- § 4:28 —Expenses saved
- § 4:29 Seller not accountable for profit
- § 4:30 —When buyer prepays
- § 4:31 Credit contracts; Discount to present value
- § 4:32 When resale fixes damages
- § 4:33 When resale is mandatory
- § 4:34 —Mitigation of incidental damages

V. MISCELLANEOUS

- § 4:35 Resale by buyer
- § 4:36 —Resale by person in position of seller
- § 4:37 Variation by agreement

VI. RESEARCH AIDS

- § 4:38 Bibliography

APPENDIX 4A. Litigation Guide

CHAPTER 5. PROFIT FORMULA

I. INTRODUCTION

- § 5:1 Scope of chapter
- § 5:2 U.C.C. § 2-708(2)

II. PARAMETERS OF PROFIT FORMULA

- § 5:3 Lost volume seller
- § 5:4 Full capacity seller; Mitigation of damages
- § 5:5 Incomplete goods; Component sellers
- § 5:6 Completion of goods unfinished at breach

TABLE OF CONTENTS

- § 5:7 Other cases, where there is no market
- § 5:8 When market formula provides windfall

III. CALCULATION OF DAMAGES

- § 5:9 In general
- § 5:10 Recovery of overhead
- § 5:11 —Computation of overhead
- § 5:12 —Variable overhead costs
- § 5:13 Costs reasonably incurred
- § 5:14 Due credit for payments or proceeds of resale
- § 5:15 Incidental damages
- § 5:16 Mitigation of damages

IV. LITIGATION ASPECTS OF SECTION 2-708(2)

- § 5:17 Burdens of pleading and proof
- § 5:18 Requisite precision of damage calculation

V. RESEARCH AIDS

- § 5:19 Bibliography
- APPENDIX 5A. Litigation Guide

CHAPTER 6. MARKET FORMULA

I. INTRODUCTION

- § 6:1 Scope of chapter
- § 6:2 U.C.C. § 2-708(1)
- § 6:3 When use required

II. RESTRICTIONS ON USE OF MARKET FORMULA

- § 6:4 In general
- § 6:5 Incomplete goods
- § 6:6 Other abuse situations
- § 6:7 —Full capacity sellers
- § 6:8 —“Lost volume” sellers
- § 6:9 —When there is no market

III. PROVING DAMAGES BASED ON MARKET PRICE

- § 6:10 In general
- § 6:11 —Time and place for tender
- § 6:12 —Substitute market
- § 6:13 —Anticipatory repudiation

§ 6:14 Future damages: Market price and contract price

IV. MISCELLANEOUS

§ 6:15 Incidental damages and expenses saved

§ 6:16 Variation by agreement

§ 6:17 Impact of statute of frauds

V. RESEARCH AIDS

§ 6:18 Bibliography

APPENDIX 6A. Litigation Guide

CHAPTER 7. OVERVIEW OF BUYERS' DAMAGE REMEDIES

I. INTRODUCTION

§ 7:1 Scope of chapter

§ 7:2 Choosing from catalog of buyers' remedies

§ 7:3 —Other remedies

§ 7:4 Comparison with sellers' remedies

II. GENERAL DAMAGES REMEDIES

§ 7:5 Damages for accepted goods

§ 7:6 Cover remedy

§ 7:7 Market based damages

III. INCIDENTAL AND CONSEQUENTIAL DAMAGES

§ 7:8 Special damages

§ 7:9 Incidental damages

§ 7:10 Consequential damages

IV. MISCELLANEOUS

§ 7:11 Importance of proving damages under Sections 2-713 and 2-714 as alternate remedies

§ 7:12 Sellers beware Section 2-713

V. RESEARCH AIDS

§ 7:13 Bibliography

APPENDIX 7A. Litigation Guide

CHAPTER 8. COVER

I. INTRODUCTION

§ 8:1 Scope of chapter

TABLE OF CONTENTS

- § 8:2 U.C.C. § 2-712
- § 8:3 Cover remedy: Mitigation of damages
- § 8:4 —Consequential damages
- § 8:5 —Specific performance and replevin
- § 8:6 —Availability of market formula once buyer covers
- § 8:7 What constitutes cover: Mitigation of damages
- § 8:8 —Goods not identical
- § 8:9 —“In substitution”
- § 8:10 —Market price

II. REQUIREMENTS FOR PROPER COVER

- § 8:11 In general
- § 8:12 Good faith
- § 8:13 Reasonable purchase
- § 8:14 Without unreasonable delay

III. CALCULATION OF DAMAGES

- § 8:15 In general
- § 8:16 Cost of cover
- § 8:17 Contract price
- § 8:18 Incidental damages
- § 8:19 Consequential damages
- § 8:20 —Foreseeability
- § 8:21 —Causation and certainty
- § 8:22 —Mitigation
- § 8:23 Expenses saved
- § 8:24 Requisite precision of damage calculation

IV. LITIGATION ASPECTS OF COVER REMEDY

- § 8:25 Burden of proof

V. RESEARCH AIDS

- § 8:26 Bibliography

APPENDIX 8A. Litigation Guide

CHAPTER 9. MARKET FORMULA FOR BUYERS

I. INTRODUCTION

- § 9:1 Scope of chapter
- § 9:2 U.C.C. § 2-713
- § 9:3 Relevancy of Section 2-713
- § 9:4 —Section 2-713 as back-up alternative

II. LIMITATIONS ON AVAILABILITY AND APPLICATION OF Section 2-713

- § 9:5 In general
- § 9:6 —When buyer has covered
- § 9:7 —In anticipatory repudiation cases
- § 9:8 —When recovery limited to profit lost
- § 9:9 —When there is no market

III. PROVING DAMAGES BASED ON MARKET PRICE

- § 9:10 Burden of proof
- § 9:11 Formula
- § 9:12 Place for determining market
- § 9:13 Admissibility of market quotations
- § 9:14 Time when buyer learned of breach
- § 9:15 —Rejection and revocation of acceptance cases
- § 9:16 —When buyer learns of breach subsequent thereto
- § 9:17 —Anticipatory repudiation cases
- § 9:18 —Buyer's right to await performance following seller's repudiation
- § 9:19 Contract price
- § 9:20 Consequential damages
- § 9:21 —Avoidable consequences
- § 9:22 —Calculating consequential damages
- § 9:23 —Incidental damages
- § 9:24 —Expenses saved

IV. MISCELLANEOUS

- § 9:25 Mitigation and minimization of damages

V. RESEARCH AIDS

- § 9:26 Bibliography

APPENDIX 9A. Litigation Guide

CHAPTER 10. BUYER'S DAMAGES FOR BREACH IN REGARD TO ACCEPTED GOODS

I. INTRODUCTION

- § 10:1 Scope of chapter
- § 10:2 U.C.C. § 2-714
- § 10:3 Notice requirement

TABLE OF CONTENTS

II. CALCULATION OF DAMAGES

- § 10:4 General rule: Section 2-714(1)
- § 10:5 Damages for breach of warranty: Section 2-714(2)
- § 10:6 —Cost of repair
- § 10:7 —Value as warranted
- § 10:8 —Value as accepted
- § 10:9 — —Case synopsis: *Chatlos Systems, Inc. v. National Cash Register Corp.*
- § 10:10 —“Special circumstances” exception
- § 10:11 —“Special circumstances” exception—Case synopsis: *City of New York v. Pullman, Inc.*
- § 10:12 —Breach of warranty of title
- § 10:13 —Incidental and consequential damages: Section 2-714(3)

III. LITIGATION ASPECTS OF DAMAGES FOR ACCEPTED GOODS

- § 10:14 Burden of proof
- § 10:15 Sufficiency of evidence
- § 10:16 Mitigation of damages

IV. RESEARCH AIDS

- § 10:17 Bibliography
- APPENDIX 10A. Litigation Guide

Volume 2

CHAPTER 11. INCIDENTAL AND CONSEQUENTIAL DAMAGES

I. INTRODUCTION

- § 11:1 Scope of chapter
- § 11:2 U.C.C. § 2-715
- § 11:3 Distinguishing incidental and consequential damages

II. INCIDENTAL DAMAGES

- § 11:4 In general
- § 11:5 Requirements for recovery
- § 11:6 Types of incidental damages
- § 11:7 Disclaiming or limiting incidental damages by agreement

III. CONSEQUENTIAL DAMAGES

- § 11:8 In general

- § 11:9 Foreseeability
- § 11:10 —“Reason to know” standard
- § 11:11 — —Case examples
- § 11:12 —Of amount of loss
- § 11:13 —Causation
- § 11:14 — —Losses arising from joint or intervening causes
- § 11:15 — —Multiple causation and foreseeability
- § 11:16 Mitigation
- § 11:17 —Cover
- § 11:18 —“Or otherwise”: In general
- § 11:19 —“Or otherwise”: Discontinuing use of defective goods
- § 11:20 —Accompanying benefit rule
- § 11:21 —Expenses saved
- § 11:22 —Burden of proof
- § 11:23 Certainty as to amount of loss

IV. PROVING VARIOUS TYPES OF CONSEQUENTIAL LOSS

- § 11:24 In general
- § 11:25 Lost profits
- § 11:26 —Easier case (purchases for resale)
- § 11:27 —Harder case (purchases for production)
- § 11:28 —Recently established businesses: New business rule
- § 11:29 —Contemplated business rule
- § 11:30 —Frustrated expenses
- § 11:31 Loss of goodwill
- § 11:32 Third-party claims; Indemnification
- § 11:33 Loss of use
- § 11:34 Interest as consequential damages
- § 11:35 Attorney’s fees and costs of litigation
- § 11:36 Punitive damages
- § 11:37 Property damages
- § 11:38 Personal injury
- § 11:39 —Mental suffering

V. RESEARCH AIDS

- § 11:40 Bibliography
- APPENDIX 11A. Litigation Guide
- APPENDIX 11B. Drafting Guide

CHAPTER 12. CONTRACTUAL LIMITATIONS ON REMEDIES

I. INTRODUCTION

- § 12:1 Scope of chapter

TABLE OF CONTENTS

§ 12:2 U.C.C. § 2-719

II. MODIFICATION OR LIMITATION OF REMEDIES

- § 12:3 In general
- § 12:4 Standards for validation
- § 12:5 Exclusivity of the remedy limitation
- § 12:6 Conspicuousness

III. FAILURE OF ESSENTIAL PURPOSE

- § 12:7 In general: Purpose
- § 12:8 In general: Failure
- § 12:9 Latent defects: The *Wilson Trading* case
- § 12:10 —Other cases
- § 12:11 —Unconscionability
- § 12:12 Repair or replacement remedy
- § 12:13 Where goods are destroyed or damaged beyond repair
- § 12:14 Seller's defenses; Reasonable opportunity

IV. REMEDIES AVAILABLE UPON FAILURE OF EXCLUSIVE REMEDY/LIMITATION OR EXCLUSION OF CONSEQUENTIAL DAMAGES

- § 12:15 In general: A perspective
- § 12:16 —Unconscionability
- § 12:17 —Caveat: Complex, experimental or prototype goods
- § 12:18 Case law
- § 12:19 —Failure of essential purpose of agreed remedy
- § 12:20 —Unconscionability under U.C.C. § 2-719(3): In general
- § 12:21 — —Willful failure to honor agreed limited remedy
- § 12:22 — —“Intervening” unconscionability
- § 12:23 — —Latent defect cases
- § 12:24 Where no independent contract provision excludes consequential damages

V. MISCELLANEOUS

- § 12:25 Personal injuries in consumer cases
- § 12:26 Trade usage and course of dealing
- § 12:27 Magnuson-Moss Warranty Act
- § 12:28 Excluding liability for incidental damages

VI. RESEARCH AIDS

- § 12:29 Bibliography
- APPENDIX 12A. Litigation Guide

CHAPTER 13. LIQUIDATED DAMAGES

I. INTRODUCTION

- § 13:1 Scope of chapter
- § 13:2 U.C.C. § 2-718(1)
- § 13:3 Historical background
- § 13:4 Applicability in contracts for sale of goods

II. CRITERIA OF SECTION 2-718

- § 13:5 “Take-or-Pay” Clauses; Provisions for Alternative Performances
- § 13:6 U.C.C. § 2-718(1): In general
- § 13:7 —Restatement Second, Contracts
- § 13:8 —Judicial interpretation of U.C.C. § 2-718(1)
- § 13:9 Anticipated or actual harm
- § 13:10 Difficulties of proof of loss
- § 13:11 Inconvenience or nonfeasibility of otherwise obtaining adequate remedy
- § 13:12 Liquidated damages as exclusive remedy
- § 13:13 Unreasonably large liquidated damages
- § 13:14 Unreasonably small liquidated damages

III. LITIGATION AND DRAFTING ASPECTS

- § 13:15 Litigation
- § 13:16 Drafting

IV. RESEARCH AIDS

- § 13:17 Bibliography
- APPENDIX 13A. Litigation Guide

CHAPTER 14. RELIANCE DAMAGES AND MONEY RECOVERIES IN RESTITUTION

I. INTRODUCTION

- § 14:1 Scope of chapter
- § 14:2 Statute

II. RELIANCE DAMAGES

- § 14:3 In general
- § 14:4 “Promissory estoppel”
- § 14:5 Where damages for lost expectation cannot be proved
- § 14:6 In excuse cases

TABLE OF CONTENTS

III. RESTITUTION

- § 14:7 In general
- § 14:8 Implied in fact contracts
- § 14:9 Restitution as remedy for breach
- § 14:10 Quasi contracts
- § 14:11 —Defaulting seller or buyer

IV. RESEARCH AIDS

- § 14:12 Bibliography
- APPENDIX 14A. Litigation Guide

**CHAPTER 15. LEASE OF GOODS:
DAMAGES UNDER Article 2A**

I. INTRODUCTION

- § 15:1 Scope of chapter
- § 15:2 Overview of Article 2A
- § 15:3 Application of Article 2A: True lease of goods
- § 15:4 Remedies: In general

II. LESSOR'S REMEDIES

- § 15:5 In general
- § 15:6 Cancellation: Goods-oriented remedies
- § 15:7 —Withhold delivery of goods
- § 15:8 —Stop delivery of goods
- § 15:9 —Right to possession of goods previously delivered
- § 15:10 —Damage remedies
- § 15:11 — —Action for rent
- § 15:12 — —Action to dispose of goods and recover rent
- § 15:13 — —Lessor's damages for nonacceptance, failure to pay, repudiation, or other default: Market formula
- § 15:14 — — —Profit formula

III. LESSEE'S REMEDIES

- § 15:15 In general
- § 15:16 Cover remedy
- § 15:17 Market formula
- § 15:18 Damages for accepted goods

IV. AGREED REMEDIES

- § 15:19 Liquidated damages
- § 15:20 Other agreed remedies

V. RESEARCH AIDS

§ 15:21 Bibliography

APPENDIX 15A. Litigation Guide

Table of Laws and Rules

Table of Cases

Index