

University of Miami School of Law
Contracts

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REMEDIES: REVIEW PROBLEMS

A number of review problems follow. They range from some that are very easy to some with wicked and nasty twists and turns. Some of them cannot be “answered” at all; the best anyone can do is offer plausible arguments for both plaintiff and defendant. In every case you should try to ask yourself both what is the answer and why it is the answer. Furthermore, you should remember that “the whys” always involve at least two levels of analysis: (1) what rule of law interpreted how yields an answer or possible answers, and (2) why do we have such a rule of law, and what impact is it likely to have on what kinds of people.

Each sub-part of a question is independent of the other sub-parts. S means seller and B means buyer.

Assume the Uniform Commercial Code is in force in the jurisdiction, but it has been interpreted as not applying to building contracts.

1. Purchase and sale of tomatoes. The contract price is \$100. The market value of the tomatoes at the delivery date is \$110.

- a. S breaches. What are B’s damages?
- b. B breaches. What are S’s damages?

2. Purchase and sale of tomatoes. The contract price is \$100. The market value of the tomatoes at the delivery date is \$90.

- a. S breaches. What are B’s damages?
- b. B breaches. What are S’s damages?
- c. B breaches. S resells the tomatoes for \$100.
What are S’s damages?

3. Purchase and sale of tomatoes. The contract price is \$100. B pays \$20 as a down payment when the contract is made. The market value of tomatoes at the delivery date is \$110.

- a. S breaches. What are B's damages?
- b. B breaches. What are S's damages? Can B recover any of its down payment? (Some people answer this question too hastily.)

4. Builder agrees to build a house for Owner on Owner's lot, and Owner agrees to pay \$120,000 for it. Builder can build the house at a total cost to him of \$110,500. The only other contractor available to build the house will do so for \$120,800. No work has yet begun.

- a. Builder breaches. What are Owner's damages?
- b. Owner breaches. What are Builder's damages?

5. Builder agrees to build a house for Owner on Owner's lot, and Owner agrees to pay \$120,000 for it when the house is completed. Builder can build the house at a total cost to him of \$115,000. The only other contractor available to build the house will do so for \$120,800. Builder commences work and spends \$30,000 on it. At this point, it would cost Builder \$85,000 to complete the work, but it would cost Owner \$94,000 to have the work completed by the only other contractor available. Owner has paid nothing to Builder.

- a. Builder breaches. How much can Owner recover on a breach of contract theory? On a restitution theory?
- b. Owner breaches. How much can Builder recover on a breach of contract theory? On a restitution theory?

6. Builder agrees to build a house for Owner on Owner's lot, and Owner agrees to pay \$100,000 for it. Builder begins work on the house. Before Owner has made any payment to Builder, Owner breaches the contract by preventing Builder from doing further work on the house. At the time of breach, Builder had spent \$50,000 for labor and for materials actually incorporated into the structure. In addition, Builder spent \$10,000 to rent machinery needed to construct the house. This machinery has not yet been used by Builder on this project, but it cannot be used on any of Builder's other jobs. The machinery has been brought to the site. Builder also spent \$20,000 on materials which would have

been incorporated into the structure had the job been completed but which had not been used by the time of Owner's breach. Builder has resold these materials for \$10,000, and this was a reasonable price. Builder's reasonable estimate of the cost of completing the job had Owner not breached is \$50,000. This figure does not include any of the expenses already listed. A real estate appraiser estimates that the value of Owner's land, together with the partially completed structure, is \$10,000 more than it would be had Builder done no work at all.

- a. What recovery would Builder be entitled to under Restatement (Second) Contracts § 347?
- b. What recovery would Builder be entitled to under Restatement (Second) Contracts § 349?
- c. What recovery would Builder be entitled to under Restatement (Second) Contracts § 371?
- d. Which recovery would be most just? Why?

7. Contract for the sale of a widget, a movable good, for \$5,000. B pays \$2,000 when the contract is signed. The balance is due on delivery. The contract requires delivery to XYZ Transport Co. on June 1. The expected shipping time by XYZ to B's factory is three days.

- a. S fails to deliver the widget to XYZ on June 1. B purchases a substitute widget on June 6 for \$6,000. However, the market price on June 1 was \$5,000. B, however, did not learn of S's failure to deliver until June 4. On June 4 the market price of the widget was \$5500. What recovery, if any, for B?
- b. B breaches and S retains possession of the widget. S resells the widget for \$5,000. S's expenses of resale are \$200. To what extent, if at all, can B recover his down payment?

8. Peter Pitch is a piano tuner. On Monday Toni Tonedead entered a contract to have Peter tune her piano for \$50. Peter agreed to come to her house the next Saturday morning at 10:00 a.m. On Wednesday, Toni called Peter and told him not to come. This was a breach of their contract. On Thursday Peter arranged to tune Arthur Artiste's piano for \$50 at 10:00 a.m. on Saturday morning, the time originally scheduled for Toni's piano. Is Peter entitled to any damages as a result of Toni's breach?

9. Pearl had inherited a Guarneri violin from her father, a well known concertmaster. She decided to sell the violin. She believed it was worth \$60,000. She planned to invest \$50,000 of the proceeds in the stock of ARA, Inc., a local manufacturing company. She contacted a musical instrument dealer who agreed to try to arrange a sale for her in exchange for a 5% commission. The broker, Saul Smith, believed he knew of a musician who was particularly interested in acquiring a Guarneri. Sure enough, 10 days later Saul reported that Dennis Darcy had offered to buy the violin for \$62,000. Pearl knew Darcy, and accepted the offer. The written agreement provided that Pearl was to personally deliver the violin to Darcy on September 1, in Los Angeles. Pearl paid Saul Smith the \$3100 commission for arranging the sale.

She flew to Los Angeles (at a cost of \$600 for the round trip) to deliver the violin. When she arrived Darcy examined the violin and refused to accept it. He alleged that it had been cracked and repaired and was not worth the amount which he had agreed to pay. However, it had in fact never been cracked. Darcy apparently refused to buy the violin because friends had persuaded him that the price was too high, and so he fabricated the story about the crack. Pearl returned to Miami. She contacted Saul Smith who, upon hearing the tale, returned \$1550 of the commission to her. Smith was not legally obligated to do this under his contract with Pearl.

Pearl then flew to New York (at a round-trip cost of \$400) and left the violin with an auctioneer who was about to conduct an auction of musical instruments. The auction was held each year and was widely publicized. The auctioneer was entitled to a commission of 7%. The violin was sold on October 15 for \$58,000. Pearl received a check for \$53,940. She invested \$50,000 of the proceeds in the ARA stock the next day. The stock had risen in value since September -- in fact \$50,000 of stock in ARA on September 1 would have been worth \$58,000 on October 15.

How much can Pearl recover?

10. This last summer Paula decided to start a printing/advertising business in Miami to publish newsletters for regional companies and charitable organizations. She concluded that to be successful she needed a professional artist on her staff. She contacted Employment Agency. She agreed to pay them a fee of \$500 if they identified an artist whom she subsequently signed to an employment contract. Agency arranged for Dave to interview Paula, and on August 10th Paula signed an employment contract with Dave. The contract was for one year, to begin on October 1, and provided that Dave was to be paid \$24,000 plus \$800 for moving expenses.

On September 29 Dave called Paula and said that he would not be able to take the job. He had decided that he couldn't leave Cleveland. Dave explained further that he had already shipped a load of furniture to Miami, and so he couldn't return the \$800 moving expenses.

Paula desperately needed the services of an artist since, in anticipation of having an artist on board by October 1, Paula had taken on a project with an October 30 deadline. Paula contacted the Agency again and, for a fee of \$600, they located another artist, Rachel, who agreed to quit her existing job and begin work for Paula on October 15th. Somewhat ironically Rachel lived in Hollywood, a town just a few miles from Miami, and hadn't been identified in the earlier search because of a computer-coding error. On October 10th, Paula signed a one-year contract with Paula providing for an annual salary of \$25,000. Rachel also demanded a bonus of \$1500 because of having to change jobs on such short notice in order to work on the special project due October 30.

You should also know that Paula had previously arranged to make a presentation to a prospective client on October 6. The presentation was made but did not lead to a contract. Paula is convinced that this was because the client wanted to meet Paula's staff artist. This was impossible since Dave had repudiated and Rachel hadn't been hired yet. Paula believes, based on conversations with a friend who worked in the office of the potential client, that had an artist been available she would have landed the job and made an \$11,000 profit.

Paula has come to you and asked you to represent her in a suit against Dave. Please write a memo to the file in which you evaluate all aspects of the claim which Paula could make against Dave. Discuss all credible arguments which you can make for both Paula and Dave.