

Buyer's Remedies Under the Uniform Commercial Code

by Sophia



WHAT'S COVERED

In this lesson, you will learn about contract remedies for buyers under the Uniform Commercial Code. Specifically, this lesson will cover:

1. Buyer's Remedies in General

The seller can do the following three things by way of defaulting:

- Repudiate the contract.
- Fail to deliver the goods.
- Deliver or tender **nonconforming goods**.

Section 2-711 of the UCC provides the following remedies for the buyer.

Where the seller fails to make delivery or repudiates, or the buyer rightfully rejects or justifiably revokes, then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract, the buyer may:

1. Cancel the contract; and
2. recover as much of the price as has been paid; and
3. "cover" and get damages; and
4. recover damages for non-delivery.

Where the seller fails to deliver or repudiates, the buyer may also:

1. Recover the goods if they have been identified; or
2. obtain specific performance (if it is a proper case); or
3. **replevy** the goods.

On rightful rejection or justifiable revocation of acceptance, a buyer has a **security interest** in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care, and custody and may hold such goods and resell them in like manner as an aggrieved seller.

If the buyer has accepted non-conforming goods and notified the seller of the non-conformity, the buyer can

recover damages for the breach, per UCC Section 2-714.

In addition, the buyer may:

1. Recover incidental damages; and
2. recover consequential damages, per UCC Section 2-715.

Thus, the buyer's remedies can be divided into two general categories:

- Remedies for goods that the buyer does not receive or accept
- Remedies for goods accepted

Throughout the following sections, let's use the same scenario from the previous lesson, but now assume that Howard, rather than Bunker, breaches, and all other circumstances are the same. That is, Howard had delivered twenty-five prints, twenty-five more were en route, the original painting hung in Howard's living room, another twenty-five prints were in Howard's factory, and the final twenty-five prints were in production.



TERMS TO KNOW

Nonconforming Goods

When the goods ordered are not available, but similar goods are provided. In this case, the UCC gives the buyer the right to reject the nonconforming goods or to revoke acceptance of nonconforming goods. The buyer may also accept them.

Replevy

Refers to the action of replevying, which means redelivering goods to their rightful owner. Replevy is the verb form whereby a possessor redelivers goods to the original possessor.

Security Interest

An interest in real or personal property that may be sold on default in order to satisfy an obligation. An example is a mortgage on real property.

2. Remedies for Goods Not Received/Accepted

The UCC sets out buyer's remedies if goods are not received or if they are rightfully rejected or acceptance is rightfully revoked.

2a. Cancel, Recover the Price, and Cover

Per UCC Sections 2-711(1), 2-106, 2A-508(1)(a), and 2A-505(1), if the buyer has not yet received or accepted the goods (or has justifiably rejected or revoked acceptance because of their nonconformity), he may cancel the contract and - after giving notice of his cancellation - he is excused from further performance.

Whether or not the buyer cancels, he is entitled to recover the price paid above the value of what was accepted.

In the sample case, Bunker (the buyer) may **cover** and have damages.

➞ **EXAMPLE** Bunker may make a good-faith, reasonable purchase of substitute goods. He may then recover damages from the seller for the difference between the cost of cover and the contract price.

This is the buyer's equivalent of the seller's right to resell. Thus, Bunker could try to purchase seventy-

five additional prints from some other manufacturer. But his failure or inability to do so does not bar him from any other remedy open to him.



TERM TO KNOW

Cover

The right of a buyer in the event of the seller's breach to purchase substitute goods so long as such purchase is done in good faith and without unreasonable delay. The buyer is then entitled to the difference in cost plus other damages minus expenses saved, if any.

2b. Sue for Damages for Non-Delivery

Bunker could sue for damages for non-delivery. Under Section 2-713 of the UCC, the measure of damages is the difference between the market price at the time when the buyer learned of the breach and the contract price (plus incidental damages, minus expenses saved).

➞ **EXAMPLE** Suppose Bunker could have bought seventy-five prints for \$125 on the day Howard called to say he would not be sending the rest of the order. Bunker would be entitled to \$1,875— the market price (\$9,375) minus the contract price (\$7,500). This remedy is available even if he did not in fact purchase the substitute prints.

➞ **EXAMPLE** Suppose that at the time of breach, the original painting was worth \$15,000 (Howard having just sold it to someone else at that price). Bunker would be entitled to an additional \$5,000, which would be the difference between his contract price and the market price.

For leases, Section 2A-519(1) of the UCC provides the following:

“The measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.”

2c. Recover the Goods

If the goods are unique, as in the case of the original Bruegel, Bunker is entitled to specific performance— that is, recovery of the painting. This section of the UCC is designed to give the buyer rights comparable to the seller's right to the price, and modifies the old common-law requirement that courts will not order specific performance except for unique goods.

It permits specific performance “in other proper circumstances,” and these might include particular goods contemplated under output or requirements contracts or those available from one market source.

Even if the goods are not unique, the buyer is entitled to replevy them if they are identified to the contract and he cannot recover them after good-faith effort. Replevying is the name of an ancient common-law action for recovering goods that have been unlawfully taken; in effect, it is not different from specific performance, and the UCC makes no particular distinction between them in Section 2-716. Section 2A-521 holds the same for leases.

➞ **EXAMPLE** In our case, Bunker could replevy the twenty-five prints identified and held by Howard.

➞ **EXAMPLE** Bunker also has the right to recover the goods should it turn out that Howard is insolvent. Under UCC, Section 2-502, if Howard were to become insolvent within ten days of the day on which Bunker paid the first installment of the price due, Bunker would be entitled to recover the original and the prints, as long as he tendered any unpaid portion of the price.

For security interest in goods rightfully rejected, if the buyer rightly rejects nonconforming goods or revokes acceptance, he is entitled to a security interest in any goods in his possession.

➞ **EXAMPLE** Bunker need not return the twenty-five prints he has already received unless Howard reimburses him for any payments made and for any expenses reasonably incurred in their inspection, receipt, transportation, care, and custody. If Howard refuses to reimburse him, Bunker may resell the goods and take from the proceeds the amount to which he is entitled.

3. Remedies for Goods Accepted

The buyer does not have to reject nonconforming goods. He may accept them anyway or he may effectively accept them because the time for revocation has expired.

In such a case, the buyer is entitled to remedies as long as he notifies the seller of the breach within a reasonable time. In our example, Bunker can receive three types of damages, all of which are outlined here.

3a. Compensatory Damages

Bunker may recover **compensatory damages** for any losses that in the ordinary course of events stem from the seller's breach.

➞ **EXAMPLE** Suppose Howard had used inferior paper that was difficult to detect, and within several weeks of acceptance, the prints deteriorated. Bunker is entitled to be reimbursed for the price he paid.



TERM TO KNOW

Compensatory Damages

A form of monetary award intended to make a victim whole by compensating the victim to place him or her in the position he or she would have been in had the damage not occurred, and nothing more.

3b. Consequential Damages

Bunker is also entitled to **consequential damages**. These are losses resulting from general or particular requirements of the buyer's needs, which the seller had reason to know and which the buyer could not reasonably prevent by cover or otherwise.

➞ **EXAMPLE** Suppose Bunker is about to make a deal to resell the twenty-five prints that he has accepted, only to discover that Howard used inferior ink that faded quickly. Howard knew that Bunker was in the business of retailing prints and therefore he knew or should have known that one requirement of the goods was that they be printed in long-lasting ink. Because Bunker will lose the resale, he is entitled to the profits he would have made. If Howard had not wished to take the risk of paying for consequential damages, he could have negotiated a provision limiting or excluding this remedy.

The buyer has the burden of proving consequential damages, but the UCC does not require mathematical

precision.

➞ **EXAMPLE** Suppose customers come to Bunker's gallery and sneer at the faded colors. If he can show that he would have sold the prints were it not for the fading ink (perhaps by showing that he had sold Bruegels in the past), he would be entitled to recover a reasonable estimate of his lost profits.



TERM TO KNOW

Consequential Damages

Damages that occur from loss or injury that do not flow immediately or directly from the act of the liable party but only from the consequences or result of the act. Typically, the law requires such damages to be foreseeable in order to be compensable.

CASE STUDY: *De La Hoya v. Slim's Gun Shop*

In *De La Hoya v. Slim's Gun Shop*, the plaintiff purchased a handgun from the defendant, a properly licensed dealer. While the plaintiff was using it for target shooting, he was questioned by a police officer, who traced the serial number of the weapon and determined that - unbeknownst to either the plaintiff or the defendant - it had been stolen.

The plaintiff was arrested for possession of stolen property and incurred, in 2010 dollars, \$3,000 in attorney fees to extricate himself from the criminal charges. He sued the defendant for breach of the implied warranty of title and was awarded the amount of the attorney fees as consequential damages. On appeal, the California court held it foreseeable that the plaintiff would get arrested for possessing a stolen gun, and "once the foreseeability of the arrest is established, a natural and usual consequence is that the [plaintiff] would incur attorney's fees."

De La Hoya v. Slim's Gun Shop, 146 Cal. Rptr. 68 (Super. 1978).

3c. Incidental Damages

Section 2-715 of the UCC allows **incidental damages**, which are:

"damages resulting from the seller's breach including expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach."

Section 2A-520(1) of the UCC is similar for leases.



TERM TO KNOW

Incidental Damages

Damages incurred in commercial shipping where a delay or breach of contract by the seller results in costs of storage, inspection, or some other commercially foreseeable cost.



SUMMARY

In this lesson, you learned the remedies provided to a buyer by Article 2 of the Uniform Commercial Code if a seller defaults on a contract. **Buyer's remedies in general** can be divided into remedies for goods that the buyer does not receive or accept, and remedies for non-conforming goods that the buyer accepts.

The **remedies for goods not received/accepted** include the option to **cancel, recover the price, and cover**, meaning the buyer is excused from the contract, may recover the price paid, and may seek damages for the cost of purchasing substitute goods. The buyer may also **sue for damages for non-delivery**. In some cases, such as with unique or one-of-a-kind goods, the buyer is entitled to **recover the goods** through specific performance. If a buyer chooses to accept non-conforming goods, the **remedies for goods accepted** include the receipt of **compensatory, consequential, and incidental damages** that stem from the seller's breach.

Best of luck in your learning!

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