

Remedies in General Under the Uniform Commercial Code

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WHAT'S COVERED

In this lesson, you will receive an overview of the role of the Uniform Commercial Code in contract remedies. Specifically, this lesson will cover:

1. Specifying Remedies

The general policy of the Uniform Commercial Code (UCC) is to put the aggrieved party in as good of a position as possible, as close to as if the other party had fully performed and there had been a timely delivery of conforming goods.

The UCC provisions are to be read liberally to achieve that result if possible. Thus, the seller has a number of potential remedies when the buyer breaches, and likewise the buyer has a number of remedies when the seller breaches.

The UCC allows people to make almost any contract they want (as long as it's not **unconscionable**). Just as the parties may specify details of performance in the contract, so they may provide for and limit remedies in the event of breach.

➞ **EXAMPLE** A typical limitation of remedy would be “Seller’s sole obligation in the event goods are deemed defective by the seller is to replace a like quantity of non-defective goods”

A remedy is optional unless it is expressly agreed that it is the exclusive remedy. However, parties are not free to eliminate all remedies. The UCC requires that parties accept the legal consequences of breach of contract.



TERM TO KNOW

Unconscionable

An adjective to describe something that is completely unfair and lacking a meaningful choice on the part of a party. The term typically applies to very one-sided contracts where the disadvantaged party lacked bargaining power. As a noun, the term is unconscionability.

1a. Exemptions

There are three exemptions from the general rule that parties are free to make their contract up any way they want in regards to remedies:

1. When circumstances cause the agreed-to remedy to fail or be ineffective, the default UCC remedy will operate.
2. **Consequential damages** (i.e., damages that result from breach even though they may not be direct, such as a loss of business that results from failure to timely deliver, for example, a machine part to a manufacturing plant) may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is considered to be *prima facie* unconscionable, but limitation of damages where the loss is commercial is not.
3. The parties may agree to **liquidated damages**. According to Section 2-718 of the UCC, “Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.” The Code’s equivalent position on leases is interestingly slightly different. UCC 2A-504(1) says damages may be liquidated “but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused” by the breach. It leaves out anything about difficulties of proof or inconvenience of obtaining another adequate remedy.



TERMS 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.

Liquidated Damages

Damages that have been reduced to an exact dollar amount by a judgment, or, more commonly, to a clause in a contract that anticipates what the dollar amount of damages would be in the event of a breach of a particular term.

2. Statute of Limitations

The UCC statute of limitations for breach of any sales contract is four years. The parties may “reduce the period of limitation to not less than one year but may not extend it” (Uniform Commercial Code, Section 2-725). Article 2A-506(1) is similar, but omits the prohibition against extending the limitation.

Article 2-725(2) goes on: “A cause of action accrues when the breach occurs, regardless of the aggrieved party’s lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.”

This is also referred to as the **discovery rule**.



TERM TO KNOW

Discovery Rule

A rule that provides an exception to a time limit for making a claim when the claimant could not have made the claim due to lack of knowledge. In such a case, the time limit will be held to accrue when the claimant knew or should have known of the claim. Commonly used in medical

malpractice cases when a patient could not know that medical malpractice had been committed until symptoms occur.



SUMMARY

In this lesson, you learned that the Uniform Commercial Code (UCC) allows for a number of remedies for both buyers and sellers in the event of a contract breach. Parties to a contract that falls under the UCC may **specify remedies** or limit them at will, with three **exemptions**: if an agreed-upon remedy fails, if limits on or exclusions of consequential damages are deemed unconscionable, or if the contract specifies unreasonable liquidated damages. You also learned that there is a **statute of limitations** under the UCC for breach of sales contracts.

Best of luck in your learning!

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