

Seller's Remedies Under the Uniform Commercial Code

by Sophia



WHAT'S COVERED

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

1. Article 2 in General and Remedies on Breach

Article 2-703 of the UCC lists the four things the buyer can do by way of default, and it lists (slightly paraphrased here) the seller's remedies (2A-523(1) is similar for leases).

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract, then also with respect to the whole undelivered balance, the aggrieved seller may:

1. Withhold delivery of such goods.
2. Stop delivery by any **bailee**.
3. Identify to the contract conforming goods not already identified.
4. Reclaim the goods on the buyer's **insolvency**.
5. Resell and recover damages.
6. Recover damages for non-acceptance or repudiation.
7. In a proper case, recover the price.
8. Cancel.

Items 1-4 address the seller's rights to deal with the goods; items 5-7 deal with the seller's rights as regards the price, and item 8 deals with the continued existence of the contract.

IN CONTEXT

To illustrate the UCC's remedy provision throughout the sections that follow, we assume these facts: Howard, of Los Angeles, enters into a contract to sell and ship one hundred prints of a Pieter Bruegel painting, plus the original, to Bunker in Dallas. Twenty-five prints have already been

delivered to Bunker, another twenty-five are en route (having been shipped by common carrier), another twenty-five are finished but haven't yet been shipped, and the final twenty-five are still in production. The original is hanging on the wall in Howard's living room.

Bunker, the buyer, breaches the contract. He sends Howard an e-mail stating that he won't buy and will reject the goods if delivery is attempted. The following sections detail the cumulative remedies available to Howard.



TERMS TO KNOW

Bailee

The person to whom personal property is delivered under a contract of bailment. A bailment places personal property to another in trust, such as an automobile being delivered to a parking attendant.

Insolvency

The financial inability by a debtor (individual or business) to pay debts as they come due.

2. Withhold Further Delivery and Stop Delivery

Howard may simply refuse to send the third batch of twenty-five prints that are awaiting shipment.

Howard may also stop the shipment. If Bunker is insolvent, and Howard discovers it, Howard would be permitted to stop any shipment in the possession of a carrier or bailee.

If Bunker is not insolvent, the UCC permits Howard to stop delivery only of carload, truckload, planeload, or larger shipment. The reason for limiting the right to bulk shipments in the case of non-insolvency is that stopping delivery burdens the carrier, and requiring a truck to stop and the driver to find a small part of the contents could pose a sizable burden.

3. Identify to the Contract Goods in Possession

Howard could "identify to the contract" the twenty-five prints in his possession. Section 2-704(1) of the UCC permits the seller to denote conforming goods that were not originally specified as the exact objects of the contract, if they are under his control or in his possession at the time of the breach.

➞ **EXAMPLE** Assume that Howard had five hundred prints of the Bruegel painting. The contract did not state which one hundred of those prints he was obligated to sell, but once Bunker breached, Howard could declare that those particular prints were the ones contemplated by the contract. He has this right whether or not the identified goods could be resold.

Moreover, Howard may complete production of the twenty-five unfinished prints and identify them to the contract, too, if in his "reasonable commercial judgment" he could better avoid loss—for example, by reselling them. If continued production would be expensive and the chances of resale slight, the seller should cease manufacture and resell for scrap or salvage value.

4. Resell

Howard could resell the seventy-five prints still in his possession as well as the original. As long as he proceeds in good faith and in a commercially reasonable manner, per Section 2-706(2) and Section 2A-527(3), he is entitled to recover the difference between the resale price and the contract price, plus **incidental damages** (but less any expenses saved, like shipping expenses).

Incidental damages include any reasonable charges or expenses incurred because delivery had to be stopped, new transportation arranged, storage provided for, and resale commissions agreed on.

The seller may resell the goods in virtually any way he desires as long as he acts reasonably; he may resell them through a public or private sale. If the resale is public (at auction), only identified goods can be sold, unless there is a market for a public sale of futures in the goods (as there is in agricultural commodities, for example).

In a public resale, the seller must give the buyer notice unless the goods are perishable or threaten to rapidly decline in value. The goods must be available for inspection before the resale, and the buyer must be allowed to bid or buy.

The seller may sell the goods item by item or as a unit. Although the goods must relate to the contract, it is not necessary for any or all of them to have existed or to have been identified at the time of breach. The seller does not owe the buyer anything if resale or re-lease results in a profit for the buyer, as explained in the Uniform Commercial Code, Sections 2-706 and 2A-527.



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.

5. Recover Damages

The seller may recover damages equal to the difference between the market price (measured at the time and place for tender of delivery) and the unpaid contract price, plus incidental damages, but less any expenses saved because of the buyer's breach.

➔ **EXAMPLE** Suppose Howard's contract price was \$100 per print plus \$10,000 for the original and that the market price on the day Howard was to deliver the seventy-five prints was \$75 (plus \$8,000 for the original). Suppose too that the shipping costs (including insurance) that Howard saved when Bunker repudiated were \$2,000 and that, to resell the prints, Howard would have to spend another \$750.

Howard's damages, then, would be calculated as follows: original contract price (\$17,500) minus market price (\$13,625) = \$3,875, minus \$2,000 in saved expenses = \$1,875, plus \$750 in additional expenses = \$2,625 net damages recoverable.

If the formula would not put the seller in as good a position as performance under the contract, then the measure of damages is lost profits—that is, the profit that Howard would have made had Bunker taken the original painting and prints at the contract price, again deducting expenses saved and adding additional

expenses incurred, as well as giving credit for proceeds of any resale, as per Section 2-708(2) of the Uniform Commercial Code.

Section 2A-528(2) is similar. This provision becomes especially important for so-called lost volume sellers. Howard may be able to sell the remaining seventy-five prints easily and at the same price that Bunker had agreed to pay.

Then why isn't Howard whole? The reason is that the second buyer was not a substitute buyer, but an additional one; that is, Howard would have made that sale even if Bunker had not reneged on the contract. So, Howard is still short a sale and is out a profit that he would have made had Bunker honored the contract.

6. Recover the Price

In certain scenarios, Howard could recover from Bunker for the price of the twenty-five prints that Bunker holds.

➞ **EXAMPLE** Suppose they had agreed to a shipment contract, so that the risk of loss passed to Bunker when Howard placed the other prints with the trucker, and that the truck crashed en route and the cargo destroyed. Howard could recover the price.

➞ **EXAMPLE** Or suppose there was no market for the remaining seventy-five prints and the original. Howard could identify these prints to the contract and recover the contract price.

If Howard did resell some prints, the proceeds of the sale would have to be credited to Bunker's account and deducted from any judgment. Unless sold, the prints must be held for Bunker and given to him upon his payment of the judgment.

7. Cancel the Contract

When Bunker repudiated, Howard could declare the contract cancelled. This would also apply if a buyer failed to make a payment due on or before delivery. Cancellation entitles the non-breaching party to any remedies for the breach of the whole contract or for any unperformed balance. This is what happens when Howard recovers damages, lost profits, or the price.

Note again that these UCC remedies are cumulative. That is, Howard could withhold future delivery and stop delivery en route, and identify to the contract goods in his possession, and resell, and recover damages, and cancel.

8. Remedies on Insolvency

The above remedies apply when the buyer breaches the contract. In addition to those remedies, the seller has remedies when he learns that the buyer is insolvent, even if the buyer has not breached.

Insolvency results, for example, when the buyer has "ceased to pay his debts in the ordinary course of business," or the buyer "cannot pay his debts as they become due," as stated in UCC, Section 1-201(23).

➞ **EXAMPLE** Upon learning of Bunker's insolvency, Howard could refuse to deliver the remaining

prints unless Bunker pays cash not only for the remaining prints, but for those already delivered. If Howard learned of Bunker's insolvency within ten days of delivering the first twenty-five prints, he could make a demand to reclaim them.

If within three months prior to delivery, Bunker had falsely represented that he was solvent, the ten-day limitation would not cut off Howard's right to reclaim. If he does seek to reclaim, Howard will lose the right to any other remedy with respect to those particular items.

However, according to UCC Section 2-702 (3), Howard cannot reclaim goods already purchased from Bunker by a customer in the ordinary course of business. The customer does not risk losing her print purchased several weeks before Bunker has become insolvent. In a lease situation, of course, the goods belong to the lessor, so the lessor can repossess them if the lessee defaults.



SUMMARY

In this lesson, you learned that **Article 2 in general** of the Uniform Commercial Code lists the remedies available to buyers and sellers when a contract is broken. If a buyer breaches a contract, the seller has a number of rights related to the goods, the price, and the continued existence of the contract.

These **remedies on breach** include **stopping delivery** or **withholding further delivery** of the goods, and **identifying to the contract goods in possession** if the contract involved conforming goods that were not originally specified. The seller may then **resell** the goods in a reasonable manner and **recover damages**, including incidental damages, related to the resale and unpaid contract price. If the goods are already in the possession of the buyer, or if there is no resale market for the goods, a seller may **recover the price**. In any case, the seller may **cancel the contract** with the buyer. Even if a buyer has not breached, a seller has certain **remedies on insolvency** as well.

Best of luck in your learning!

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