

By the terms of a written contract signed by both parties on January 15, an electronics store agreed to sell a specific personal computer to a college student for \$3,000, and the college student agreed to pick up and pay for the computer at the store on February 1. The college student unjustifiably repudiated on February 1. Without notifying the college student, the electronics store subsequently sold at private sale the same specific computer to another customer, who paid the same price (\$3,000) in cash. The personal computer at issue is a popular product. The electronics store can buy from the manufacturer more units than it can sell at retail.

If the electronics store sues the college student for breach of contract, what will the electronics store probably recover?

- A. \$3,000 (the contract price), because the college student intentionally breached the contract by repudiation.
- B. Nothing, because the electronics store failed to give the college student proper notice of its intention to resell.
- C. Nothing, because the electronics store received a price on resale equal to the contract price that the college student had agreed to pay.
- D. The electronics store's anticipated profit on the sale to the college student plus incidental damages, if any, because the electronics store lost that sale.

### **Explanation:**

When a buyer repudiates (ie, refuses to perform) a contract for the sale of goods, the **seller's remedies** include **compensatory damages** for the seller's actual losses. If the seller chooses to resell the goods, then the standard measure of damages is the difference between the contract price and the resale price plus incidental damages. But this measure of damages is inadequate when the seller is a **lost-volume seller**—ie:

has a **practically inexhaustible inventory** of the type of goods in question (eg, electronics store can buy more personal computers of the kind at issue than it can sell at retail) *and* **but for the breach**, would have made **two sales** (and two profits) rather than one (eg, personal computer at issue is a popular product).

In such cases, the seller is entitled to the **lost profit from the original sale plus incidental damages** arising from the breach (eg, storage or shipping costs). Therefore, the electronics store can recover the anticipated profit on the sale to the college student plus incidental damages, if any, because it lost that sale **(Choice C)**.

**(Choice A)** The fact that the college student intentionally breached the contract by repudiation does not entitle the electronics store to the full contract price. But had the store been unable to resell the computer after making reasonable efforts to do so at a reasonable price, then it may have been able to recover the \$3,000 contract price.

**(Choice B)** A seller must reasonably notify the buyer of its intention to resell goods at a private sale only if the seller seeks to recover the standard measure of damages. But here, the store would seek its lost profit from the breach since the standard measure would yield no damages (\$3,000 contract price - \$3,000 resale price = \$0).

### **Educational objective:**

When a seller has a practically inexhaustible inventory of the goods and but for a buyer's breach would have made two sales and two profits rather than one (ie, lost-volume seller), the seller is entitled to lost profit from the original sale plus incidental damages.

### **References**

U.C.C. § 2-708 (Am. Law Inst. & Unif. Law Comm'n 2020) (seller's damages for nonacceptance or repudiation).

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**UCC seller's damages**  
(from buyer's nonacceptance or repudiation)

**Default rule** = Contract  
price - Market or  
resale price + Incidental  
damages

**Lost-volume  
seller** = Lost  
profit + Incidental  
damages

**UCC** = Uniform Commercial Code

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