

A seller entered into an agreement to sell a machine to a buyer for \$5,000. At the time of the order, the buyer gave the seller a down payment of \$1,000. The buyer then built a foundation for the machine at a cost of \$250. The seller failed to deliver the machine.

The buyer made reasonable efforts to find a similar machine and bought one for \$5,500 that did not fit on the foundation. The buyer sued the seller for breach of contract.

Which of these amounts claimed by the buyer, if any, could best be described as restitution?

- A. The \$250 cost of the foundation.
- B. The \$500 difference in price.
- C. The \$1,000 down payment.
- D. None of the claimed amounts.

## Explanation:

### Restitutionary damages

**Definition** Damages awarded to restore to claimant the value of whatever benefit was conferred upon recipient

**Purpose** Prevent unjust enrichment

**Measure** Reasonable value of work performed or services rendered (ie, cost of recipient obtaining comparable performance)  
If applicable, extent to which recipient's property has increased in value or recipient's other interests have been advanced

**Restitutionary damages** are awarded to **restore** to a contracting party the **value of any benefit** conferred on the other party. Under the **UCC**, where the **seller fails to deliver the promised goods** or the buyer rightfully rejects the goods, the **buyer is entitled** to the **return of any payment made** on the goods as restitution.

Here, the buyer paid the seller a \$1,000 down payment for a machine that the seller failed to deliver. As a result, the \$1,000 down payment is the amount that could best be described as restitution (**Choice D**).

**(Choices A & B)** Neither the \$250 cost of the foundation nor the \$500 difference between the contract price of the seller's machine and the price of the substitute machine (ie, cost of cover) conferred a benefit on the *seller* (not restitution).

### Educational objective:

Where a seller fails to deliver the promised goods or the buyer rightfully rejects them, the buyer is entitled to the return of any payment made on the goods as restitution.

**UCC** = Uniform Commercial Code

### References

Restatement (Second) of Contracts § 344 (Am. Law Inst. 1981) (purpose of remedies).

U.C.C. § 2-711 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer's remedies in general).

U.C.C. § 2-713 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer's damages for nondelivery/repudiation).

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