Note: The sample instructions set forth in these appendices include definitional instructions where possible in the statement of issues, see Gallegos v. Citizens Ins. Agency, Inc., 108 N.M. 722, 779 P.2d 99 (1989), and only those instructions, or portions thereof, that are pertinent to the particular matters in dispute, see Introduction to Chapter 8 of the Uniform Jury Instructions - Civil. “Stock” instructions are omitted and damage instructions are only provided where especially helpful to the practitioner. Also, some instructions require a threshold determination by the court, see, e.g., UJI 13-825 NMRA.


[The following is an example of a simple contracts case where both parties are claiming money damages.]

Statement of facts

John Garcia owns his own business in which he sells his services as a computer programmer and a consultant in computer software design. He entered into a contract with Albuquerque Construction Company to design a computer software system for use by the Albuquerque Construction Company in their accounting and bookkeeping functions, general ledger functions, account receivables and accounts payable functions, inventorying and capital asset control. The contract called for Mr. Garcia to be paid in installments according to certain “milestones.” The last “milestone” required payment of $7,500 upon satisfactory installation of the software in Albuquerque Construction Company’s computer. The contract included the following terms:
Article III

Seller shall design, prepare and install the software in buyer’s computer within a reasonable time after buyer has provided seller with the “detailed statement of criteria” called for and described in Article II [above] of this contract.

Article IV

Seller agrees to provide to buyer, at no additional cost, adequate instruction manuals on the software, training of buyer’s personnel upon installation of the software and backup and consultation services for one year after installation of the software.

Albuquerque Construction Company provided Garcia with the “detailed statement of criteria” on February 15, 1988. Garcia did not deliver and install the software until October 30, 1988. Albuquerque Construction claims that this delay was unreasonable and in breach of contract. Garcia installed the software in Albuquerque Construction’s computer, held a one-day training session for Albuquerque Construction’s staff, and provided Albuquerque Construction with a training manual. Because of the delay in the installation, however, Albuquerque Construction refused to pay Garcia the last $7,500 installment on the purchase price of the software. In addition, Albuquerque Construction claims that because of the delay in the installation, it was required to expend $11,000 in additional outside accounting services that would not have been expended if the software had been installed by July 1, 1988, the commencement of Albuquerque Construction’s fiscal year. Finally, in December 1988, a power surge wiped out a considerable part of the database on Albuquerque Construction’s computer. Albuquerque Construction believed that it had its database “backed up” in a backup file but was having difficulty finding the backup file on the RCR No. 483
computer’s “hard disk.” Albuquerque Construction called Garcia for “backup” assistance and consultation in finding the backup files on the hard disk. Garcia refused, claiming that the request was not for “backup” services and because Albuquerque Construction did not pay the last $7,500 milestone. As a consequence, Albuquerque Construction Company hired someone for $3,500 to retrieve the backup files.

Albuquerque Construction brought suit against Garcia for damages, claiming breach of contract in the late delivery and in the failure to provide backup. Garcia defended in counterclaim for the $7,500 payment at the final milestone.


In this civil action Albuquerque Construction Company seeks compensation from Mr. John Garcia for damages which Albuquerque Construction Company claims were proximately caused by the breach by Mr. Garcia of the contract entered into between Mr. Garcia and Albuquerque Construction Company.

To establish its claim of breach of contract on the part of Mr. Garcia, Albuquerque Construction Company has the burden of proving one or more of the following contentions:

1. That Mr. Garcia failed to deliver and install the computer software within a “reasonable time” as required by the contract; or
2. That Mr. Garcia failed to provide “backup” or “consultation” services as required by the contract.

In addition, Albuquerque Construction Company contends and has the burden of proving that any breach of contract caused Albuquerque Construction Company to incur damages as a consequence of Mr. Garcia’s breach of contract.

Mr. Garcia denies that he breached any of his contract obligations to Albuquerque Construction Company. Specifically, Mr. Garcia:

1. Denies that he did not deliver and install the computer software within a “reasonable time;” and

2. Contends that any requests made by Albuquerque Construction Company were not for “backup” services and, therefore, he did not fail to provide backup services as called for under the contract.

In addition, as to the claim of breach of contract for failure to provide backup services, Mr. Garcia contends and has the burden of proving that he was excused from performing any backup services because Albuquerque Construction Company itself breached the contract by failing to make the final payment to Mr. Garcia.

In addition, Mr. Garcia counterclaims against Albuquerque Construction Company under the contract, claiming that Albuquerque Construction Company breached its contract obligations to Mr. Garcia by failing to pay the called for final payment of $7,500. To establish his claim for breach of contract on the part of Albuquerque Construction Company, Mr. Garcia has the burden of proving that Albuquerque Construction Company failed to pay $7,500 as called for under the contract.
contract. Albuquerque Construction Company denies that it breached any contract obligation to
Mr. Garcia and contends and has the burden of proving that it is excused from paying Mr. Garcia
$7,500 because Mr. Garcia failed to perform his obligations under the contract.

[13-822 NMRA] Breach of contract; definition

For you to find Mr. Garcia liable to Albuquerque Construction Company, you must find
that Mr. Garcia breached his contract with Albuquerque Construction Company. A person may
breach a contract by failing to perform a contractual obligation when that performance is called
for (unless that performance is otherwise excused).

[13-823 NMRA] Breach of contract; failure to perform

Albuquerque Construction Company contends that there has been a material breach of the
contract. A material breach occurs when a party fails to do something that is so important to the
contract that the failure to perform that obligation defeats an essential purpose of the parties in
making the agreement.

Albuquerque Construction Company has the burden of proving that Mr. Garcia committed
a material breach.

Material breach by one party excuses the other from performing its obligations under the
contract.

[13-825 NMRA] Ambiguity in term or terms; general rule of interpretation

There is a dispute as to the meaning of the following term in the contract: backup services.
You shall give the term that meaning which you find to be most reasonable, taking into
consideration all the circumstances, including the following:
the intentions of the parties,

the words that the parties used,

the purposes the parties sought to achieve,

custom in the trade, and

whether a party, at the time the contract was entered into, knew or should have known that

the other party interpreted the term differently.

[13-826 NMRA] Custom in the trade

A custom in the trade is any manner of dealing that is commonly followed in a place or

trade so as to create a reasonable expectation that it will be followed with respect to the transaction

between the parties.

[13-831 NMRA] Reasonable time

Mr. Garcia was obligated to perform the contract within a reasonable time. What is a

reasonable time should be determined by you from the surrounding circumstances.

[13-822 NMRA] Breach of contract; definition

For you to find Albuquerque Construction Company liable to Mr. Garcia, you must find

that Albuquerque Construction Company breached its contract with Mr. Garcia. A person may

breach a contract by failing to perform a contractual obligation when that performance is called

for (unless that performance is otherwise excused).

[13-823 NMRA] Breach of contract; failure to perform
Mr. Garcia contends that there has been a material breach of the contract. A material breach occurs when a party fails to do something that is so important to the contract that the failure to perform that obligation defeats an essential purpose of the parties in making the agreement.

Mr. Garcia has the burden of proving that Albuquerque Construction Company committed a material breach.

Material breach by one party excuses the other from performing its obligations under the contract.

[13-843 NMRA] Contracts; measure of damages; general instruction

If you should decide in favor of Albuquerque Construction Company on either of its claims for breach of contract, then you must fix the amount of money which will reasonably and fairly compensate Albuquerque Construction Company for damages that resulted from Mr. Garcia’s breach.

1. On its claim that Mr. Garcia failed to deliver and install the computer software within a “reasonable time” as required by the contract, Albuquerque Construction Company seeks direct damages for the following:

   $11,000 it paid for additional outside accounting services.

2. On its claim that Mr. Garcia failed to provide “backup” or “consultation” services as required by the contract, Albuquerque Construction Company seeks direct damages for the following:

   $3,500 it paid to retrieve the backup files.
Direct damages are damages that arise naturally and necessarily as the result of the breach.

The direct damages that you award for breach of contract must be the amount of money that will place Albuquerque Construction Company in the position it would have been in if the contract had been performed.

Whether any of these elements of damages has been proved by the evidence is for you to determine. Your verdict must be based upon proof, and not upon speculation, guess, or conjecture.

Further, sympathy for a person, or prejudice against any party, should not affect your verdict and is not a proper basis for determining damages.

[13-843 NMRA] Contracts; measure of damages; general instruction

If you should decide in favor of Mr. Garcia for his claim for breach of contract, then you must fix the amount of money which will reasonably and fairly compensate Mr. Garcia for damages that resulted from Albuquerque Construction Company’s breach.

1. Mr. Garcia seeks direct damages for the following: Albuquerque Construction Company’s failure to pay the last $7,500 milestone.

Direct damages are damages that arise naturally and necessarily as the result of the breach.

The direct damages that you award for breach of contract must be the amount of money that will place Mr. Garcia in the position he would have been in if the contract had been performed.

Whether any of these elements of damages has been proved by the evidence is for you to determine. Your verdict must be based upon proof, and not upon speculation, guess, or conjecture.

Further, sympathy for a person, or prejudice against any party, should not affect your verdict and is not a proper basis for determining damages.

Statement of facts

Smith, an avid hunter, owns a prize hunting dog named Zeke that is much admired by his friend Jones. Smith is in the National Guard. An international conflict erupts in the Middle East, and Smith’s unit is activated. Anticipating a long absence from the country, Smith writes to his friend: “I feel bad about having to put Zeke in a kennel. I would sell him to a good home if I could get $500 for him.” Jones writes back immediately: “Five hundred is a fair price for Zeke, but things are pretty tight here and I wish you would take $400 and my old shotgun instead.”

The Middle East conflict is unexpectedly brief, and several days later Smith writes to Jones: “I am back to civilian life already. Thank goodness I won’t be selling Zeke.” Jones claims never to have received this letter. The next month, Jones comes to visit Smith and brings $400 cash and his shotgun. Smith refuses to part with Zeke. Jones pulls out some more cash and offers Smith $500, still to no avail. Zeke is worth $1000. Jones sues Smith for damages for breach of contract.

Note: These sample instructions are prepared by including definitional instructions where possible in the statement of issues, see Gallegos v. Citizens Ins. Agency, Inc., 108 N.M. 722, 779 P.2d 99 (1989), and by including only those instructions, or portions thereof, that are pertinent to the particular matters in dispute, see Introduction to UJI ch. 8. “Stock” instructions and damage instructions are omitted from this example.
In this civil action the plaintiff Jones seeks compensation from the defendant Smith for damages that plaintiff says were caused by breach of contract.

A contract is a legally enforceable promise. [It is formed by an offer and an acceptance.] In this case, the parties dispute whether there was an offer and an acceptance.

To establish his claim of breach of contract on the part of Smith, Jones has the burden of proving each of the following:

1. Smith offered to sell Jones his dog for $500.
2. Jones accepted Smith’s offer.
3. Smith refused to sell the dog to Jones.

Jones also contends and has the burden of proving that such breach of contract was a cause of his damages.

To establish his claim of breach of contract on the part of Smith, Jones has the burden of proving each of the following:

1. Smith offered to sell Jones his dog for $500.
2. Jones accepted Smith’s offer.
3. Smith refused to sell the dog to Jones.
Jones has the burden of proving that such breach of contract was a cause of his damages.]

[13-302C NMRA] **Statement of denial and affirmative defense**

Smith denies that he offered to sell his dog to Jones. In the alternative, Smith contends and has the burden of proving that he withdrew any offer to sell the dog before Jones accepted the offer or that Jones failed to accept the offer within a reasonable time.

[13-805 NMRA] **Offer; definition**

An offer is a communication of a willingness to enter into a contract. The communication must satisfy four conditions:

First, the communication must have included a definite promise by Smith showing his willingness to contract;

Second, the material terms upon which that willingness was based must have been definite;

Third, the terms must have been communicated to Jones;

Fourth, by the communication Smith must have intended to give Jones the power to create a contract by accepting the terms.

In this case, the parties agree that the terms at issue were communicated to Jones. What is in dispute is whether the terms were definite and whether the communication was one which included a definite promise by Smith showing his willingness to contract and by which Smith intended to give Jones the power to create a contract by accepting the terms.

[13-807 NMRA] **Acceptance; definition**
An acceptance is a statement or conduct made by one party to the other, showing that party’s agreement to the terms of the other party’s offer. For Jones to have accepted Smith’s offer, he must have informed Smith by a statement or conduct that he agreed to the terms of the offer.

[13-808 NMRA] Acceptance; terms of the offer

[A reply is not an acceptance if it adds a material qualification or requests a new condition not in the offer. If, however, you determine that Jones’s reply departs from the terms of Smith’s offer, that reply is still an acceptance if Jones makes it clear in the reply that his acceptance is not dependent on Smith’s agreement to the new term.]

If Jones responded to an offer by conditioning acceptance on new terms that added, varied or changed any term of the offer, the response was a rejection of the original offer and operated as a new offer that could be accepted or rejected by Smith.

If Jones’ response to an offer included additional or different terms but did not condition acceptance on agreement to those terms, the response operated as an acceptance of the original offer.

[13-806 NMRA] Offer; revocation; effect of performance

An offer may be withdrawn at any time before notice of its acceptance has been received. To have withdrawn his offer, Smith must have notified Jones that the offer was withdrawn.

Once notice of withdrawal has been received, the offer may no longer be accepted and any attempt to accept thereafter will not be effective. If Jones was notified that the offer was withdrawn, Jones could no longer accept the offer.

[13-813 NMRA] Acceptance; timeliness of acceptance; power of revocation
In order for a communication to be an acceptance, it must have been received by Smith within a reasonable time. What constitutes reasonable time should be determined by you from the surrounding circumstances.

[13-804 NMRA] Contract; intentions of the parties

You should determine the intentions of the parties by examining their language and conduct, the objectives they sought to accomplish, and the surrounding circumstances.

[13-822 NMRA] Breach of contract; definition

For you to find Smith liable to Jones, you must find that Smith breached his contract with Jones. A person may breach a contract by failing to perform a contractual obligation when that performance is called for.

[As amended, effective March 1, 2005; as amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed on or after December 31, 2020.]