

## Introduction

These instructions cover common law contracts actions. Former Chapter 17 (Uniform Commercial Law (UCC)) was deleted in 1991. The remaining UCC instructions pertaining to the sale of goods in this chapter were withdrawn in 2017. Practitioners are encouraged to consult the UCC, Sections 55-1-101 to 55-12-111 NMSA 1978, in drafting appropriate instructions for cases involving the sale of goods under the UCC.

The instructions in this contracts chapter are divided into five subdivisions. First are the instructions dealing with the formation of a contract. These instructions include not only definitional elements, but also instructions addressing modification of a contract and the rights and obligations of third parties to a contract. Second are the instructions dealing with breach of contract. Third are the instructions dealing with interpretation of contract terms. Fourth are the instructions dealing with defenses available to breach of contract claims. Fifth are the instructions dealing with remedies available for breach of contract.

The instructions in this chapter have been written in an attempt to personalize the instructions to the names of the parties and to tailor the instructions to the particular factual disputes arising from the claimed breach of contract. Therefore, the instructions seek to avoid the use of the terms “plaintiff” and “defendant” or “promisor” and “promisee” or “seller” and “buyer.” Instead, the names of the parties should be inserted. Similarly, the instructions call for the insertion of the particular contract terms that are in dispute or the particular ways in which the parties claim that the contract has been breached. As with other chapters in these instructions, the key to the use of the instructions lies in the proper use of the “theory of the case” instruction, UJI 13-302 NMRA, which should bear a large share of the burden of focusing the jury's attention on what is in dispute and what law should apply. The theory of the case instruction should be followed only by those instructions that are pertinent to the particular matters in dispute. Definitional instructions should be used only where a matter is in dispute and the definition is essential to guide the jury to the proper determination of the factual issue.

Definitional instructions can be incorporated in the statement of issues and, where this is done, need not be repeated. This technique is especially useful in contract actions to reduce the instructions given to the jury. When preparing instructions under this chapter the trial court and counsel are encouraged to study and employ the recommendations of the Supreme Court in *Gallegos v. Citizens Ins. Agency*, 1989-NMSC-055, ¶¶ 8-9, 108 N.M. 722, 779 P.2d 99.

As a final caution, most contractual issues are determined by the trial court and not the jury. The inclusion of an instruction in this chapter does not mean that the issue should be submitted to the jury. Jury submission requires a genuine issue of fact arising from conflicting evidence. Where reasonable minds may not differ upon an issue the trial court makes the determination as a matter of law. Contract actions more than other civil cases give rise to issues properly determined by the judge and not the jury.

Breach of contract claims will often arise in disputes that touch on other areas of the law as well. Agency questions may be involved, requiring the inclusion of instructions from Chapter 4 (Agency; Respondeat Superior). Negligence or other tort questions such as fraud or misrepresentation may arise, requiring instructions from Chapters 14 (Products Liability) or 16 (Tort Law—Negligence). Chapter 14 (Products Liability) also contains instructions which may implicate implied warranties as set forth in Article 2 of the UCC.

[Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 18-8300-013, effective for all cases pending or filed on or after December 31, 2018.]