

4.10 BILATERAL CONTRACTS

A. THE CONTRACT CLAIM — GENERALLY (Approved 5/98)

NOTE TO JUDGE

In preparing the 1998 revisions to this charge, the Committee patterned much of its work on Robert E. Kehoe, Jr.'s two volume treatise entitled *Jury Instructions for Contract Cases* (Comerford & Boyd 1995). The instructions contained in the treatise have been used or in some cases reprinted with the express consent of the copyright holder.

To establish its contract claim against the defendant, plaintiff must prove that:

1. The parties entered into a contract containing certain terms.
2. The plaintiff did what the contract required the plaintiff to do.
3. The defendant did not do what the contract required the defendant to do. This failure is called a breach of the contract.
4. The defendant's breach, or failure to do what the contract required, caused a loss to the plaintiff.

If you find plaintiff proved these four elements, then your verdict must be for the plaintiff. If you find that plaintiff has not proved these elements, then your verdict must be for the defendant. *[When an affirmative defense is argued, add the following: "If the plaintiff has proved all of these elements, then you will consider the defense of(____)"]*.

NOTE TO JUDGE

This charge includes the four basis elements plaintiff must prove in breach of contract cases. In most instances the actual dispute will involve one or more of these basis elements. The charges that follow are designed to supplement or be incorporated into whichever principle or principles are at issue. For example, the first basic element concerns the existence of a contract. This element could be supplemented with many potential issues dealt with in the following charges, such as those dealing with disputed meaning of terms or implied terms. The second basis element deals with the plaintiff's contractual obligations. Therefore, as another example, if the defendant claims that plaintiff materially breached or failed to satisfy a condition precedent, or both, the specific charges that follow dealing with those points are designed to supplement or modify the basic charge as needed. In addition if the nature of the contract would render substantial performance sufficient for plaintiff to recover, then the basic charge should be modified by not only incorporating the specific charge on substantial performance, but also by inserting the word "substantially" in the basic charge to describe plaintiff's performance obligations.

Besides supplementing and modifying the basic charge by incorporating the specific charges that follow, a number of affirmative defense charges 4.10N (a) through (o) can be utilized in the same way by adding the appropriate affirmative defense charge following the last sentence of the basic elements charge.

In addition, all of the following charges contemplate a typical contract case where plaintiff promisee sues the defendant promisor. The charges can be modified to reflect counterclaims and cross-claims by changing the existing party references.

When dealing with the sale or else of goods, the U.C.C. must be consulted concerning its contract requirements. *N.J.S.A. 12A:2-101 et seq.* and *12A:2A-101 et seq.*