

4.10 BILATERAL CONTRACTS

I. MODIFICATION (Approved 5/98)

The plaintiff claims that the original contract was later modified to [state modification]. The defendant denies this.¹ The defendant contended that [state contention]. To establish the modification, the plaintiff must prove that:

1. The parties agreed to the modification.
2. There was some outward indication of their agreement.
3. The terms were reasonably certain, meaning the parties could identify what they are required to do and determine at some future date whether or not the terms have been fulfilled.
4. The defendant received some new value² in exchange for agreeing to the modification.

¹*Ball v. Metal-Wash Machinery Co., Inc.*, 132 N.J.L. 285 (E. & A. 1939); *Mangone v. Mangone*, 202 N.J. Super. 505, 510 (Ch. Div. 1985); *Troth v. Millville Bottle Works*, 89 N.J.L. 219 (E. & A. 1916); *Headlye v. Cavileer*, 82 N.J.L. 735 (E. & A. 1912); *Bollinger v. Ward*, 34 N.J. Super. 583, 587 (App. Div. 1955).

²See definition of consideration in 4.10C.