

## OVERVIEW OF ELEMENTS

In this matter, the plaintiff has alleged the parties had a contract and the defendant breached or violated that contract, which caused the plaintiff to suffer damages. The parties create an enforceable contract when they agree to material terms and intend to be bound by that agreement.

A breach of contract occurs when a party fails to comply with one or more material or significant terms of the contract. In order to succeed on this claim, the plaintiff must prove each of the following elements by a preponderance of the evidence:

*First:* that there is a binding contract, including proof of the terms of the contract;

*Second:* that the plaintiff performed (his / her / their / its) obligations under the contract (or because of the conduct of the other party, is excused from performance);

*Third:* that the defendant breached or violated the contract; and

*Fourth:* that the plaintiff suffered damages as a result of the breach of contract.

*If some elements have been stipulated:* **In this case, the parties have agreed that *[list stipulated elements]* so you need not deliberate on those elements; you may treat them as already proven by the plaintiff. Instead, you should focus on the remaining elements which are not in agreement and which the plaintiff must prove by a preponderance of the evidence.**

**I will discuss each of these elements in more detail.**

*Situation Management System, Inc. v. Malouf, Inc.*, 430 Mass. 875, 878 (2000) (“It is axiomatic that to create an enforceable contract, there must be agreement between the parties on the material terms of that contract, and the parties must have a present intention to be bound by that agreement.”)