

**CONTRACTS: MATERIAL BREACH: REMEDIES;
EXCUSE FROM PERFORMANCE**

**MATERIAL BREACH OF CONTRACT: REMEDIES;
EXCUSE FROM PERFORMANCE**

As I stated earlier, one of the things the plaintiff must prove by a preponderance of the evidence is that the defendant breached the contract. The defendant breached the contract if the defendant failed to comply with one or more terms of the contract including the implied covenant of good faith and fair dealing. In this case, the plaintiff claims that the defendant *[describe alleged breach]*.

A breach of contract is either material or immaterial. A breach is a material breach when it involves an essential term of the contract; that is, it goes to the heart of the agreement and defeats its purpose. A breach is immaterial when it involves something that is not an essential term of the contract.

If a contract is breached in a material way, then the injured party is excused from performing (his / her / their / its) obligations under the contract and may elect to rescind or cancel it. In the alternative, (he / she / they / it) may affirm the contract and sue to recover damages.

If a contract is breached in an immaterial way, the injured party can sue for damages, but cannot stop performing (his / her / their / its) obligations under the contract.

**It is for you, the jury, to decide if there was a breach of contract
and if that breach was material or immaterial.**

Lease-It, Inc. v Massachusetts Port Auth., 33 Mass. App. Ct. 391, 396-96 (1992); E. Allan Farnsworth, Contracts § 8:16 (Little, Brown & Co., 1990); but see *Dalrymple v. Town of Winthrop*, 97 Mass. App. Ct. 547, 556 (2020) (when materiality is undisputed, the court should decide the issue).