

Breach of Fiduciary Duty

PLF claims that DFT violated her/his fiduciary duty by *<insert specifics>*. Certain special relationships between individuals create what we call a “fiduciary duty.” A fiduciary duty requires one person to act with honesty, fairness, and loyalty toward the other person. In other words, a fiduciary duty requires one person to act in the other person’s best interests and not out of self-interest.

To prove this claim, PLF must prove three things:

1. PLF had a special relationship with DFT that created a fiduciary duty;¹
2. DFT violated that duty; and
3. PLF suffered harm or loss as a result.²

I will now explain each of these items in more detail.

¹ *Doe v. Harbor Schs.*, 446 Mass. 245, 252 (2006).

² *Estate of Moulton v. Puopolo*, 467 Mass. 478, 492 (2014); *MAZ Partners LP v. Shear*, 265 F. Supp. 3d 109, 116 (D. Mass. 2017), citing *Hanover Ins. Co. v. Sutton*, 46 Mass. App. Ct. 153 (1999).

(a) Existence of a Duty³

< NOTE: Parties in certain kinds of relationships (for example attorney/client, trustee/beneficiary, or partnership) have a fiduciary relationship as a matter of law.⁴ But a fiduciary relationship may also arise in other situations where one person puts their trust and confidence in, and is dependent upon, the other person's judgment, honesty, and integrity.⁵ There are three main ways that the existence of a fiduciary relationship must be addressed in final jury instructions.>

< First, if it is undisputed that the parties had a relationship giving rise to fiduciary duties as a matter of law, then delete the "existence of duty" element, instruct the jury that the parties were in such a relationship (explaining its nature) and that DFT therefore owed PLF a fiduciary party, and instruct on the nature of the duties owed in the particular case.>

< Second, if plaintiff claims but defendant disputes they had a relationship that would give rise to fiduciary duties as a matter of law, give appropriate instruction. Models concerning different kinds of relationships are set forth below, under "Possible Alternative Instructions.">

³ The Massachusetts Supreme Judicial Court has recognized fiduciary relationships in limited circumstances. See, e.g., *Berish v. Bornstein*, 437 Mass. 252, 269 n.29 (2002) (trustee of condominium association owed fiduciary duty to association but not individual unit owners); *Patsos v. First Albany Corp.*, 433 Mass. 323, 333-334 (2001) (stockbroker is fiduciary of customer in certain circumstances, such as where entrusted with discretion); *Demoulas v. Demoulas*, 424 Mass. 501, 504-505 (1997) (sole voting trustee to family business breached fiduciary duty to shareholders by exploiting control over assets); *Merola v. Exergen Corp.*, 423 Mass. 461, 464 (1996) (stockholders in close corporation owe one another fiduciary duty); *Matter of Pressman*, 421 Mass. 514, 518 (1995) (attorneys owe fiduciary duty to clients); *Zimmerman v. Bogoff*, 402 Mass. 650, 660 (1988) (joint venturers owe one another fiduciary duties); *Chelsea Indus., Inc. v. Gaffney*, 389 Mass. 1, 11 (1983) (trusted executives owed fiduciary duty to employer). The "prudent investor" fiduciary duty is commonly applicable to trustees, who owe a special responsibility to beneficiaries of a trust when investing trust assets. See, e.g., *Berish v. Bornstein*, supra; *Chase v. Pevear*, [383 Mass. 350](#), 362-364 (1981) (trustee of testamentary trust owed "prudent man" fiduciary duty to beneficiaries).

⁴ See *UBS Financial Services, Inc. v. Aliberti*, 483 Mass. 396, 406 (2019).

⁵ *Id.* at 406-408.

< Third, if plaintiff is not claiming the existence of a fiduciary duty as a matter of law, instruct as follows. >

PLF must first prove that DFT had a duty to act in PLF's best interest because they had a special relationship of trust.

To prove that DFT owed PLF a fiduciary duty, PLF must prove that:

- PLF put his/her trust and confidence in DFT's judgment, honesty, and integrity;⁶
- DFT knew that PLF was relying on DFT and accepted PLF's trust and confidence.⁷

You should consider all of the circumstances surrounding the relationship to decide whether PLF and DFT had the type of special relationship that gives rise to a fiduciary duty. You should consider any difference in PLF's and DFT's skills, experience, and knowledge concerning the issues in this case. A large difference in the capabilities of PLF and DFT may point to a special relationship. You should also consider whether PLF actually relied on DFT's specialized knowledge.

(b) Breach of Duty

Second, PLF must prove that DFT violated her/his fiduciary duty.

A breach of fiduciary duty may occur by taking some action or through an intentional failure to act. PLF does not have to show corruption, dishonesty, or bad faith to prove that DFT breached her/his fiduciary duty. A fiduciary does not breach her/his fiduciary duty by a mistake of judgment or if s/he

⁶ *UBS Financial Services, Inc. v. Aliberti*, 483 Mass. 396, 408 (2019) ("fiduciary duties may arise wherever 'faith, confidence, and trust' is reposed by one party 'in another's judgment and advice'" (quoting *Doe v. Harbor Sch., Inc.*, 446 Mass. 245, 252 (2006); *Estate of Moulton v. Puopolo*, 467 Mass. 478, 492 (2014) ("A fiduciary relationship is one founded on the trust and confidence reposed by one party in the integrity and fidelity of another.")).

⁷ See *Baker v. Goldman, Sachs & Co.*, 771 F.3d 37, 59 (1st Cir. 2014) (recognizing that under Massachusetts law "a fiduciary relationship exists only if the plaintiff justifiably reposed trust in the defendant and the defendant knew of and accepted that trust).

reasonably believed in good faith that her/his actions were loyal to PLF's best interests.

(c) Harm or Loss

Finally, if DFT breached her/his fiduciary duty, PLF must then prove that the breach caused her/him loss or harm. We often refer to this loss or harm as damages.

In order for you to award damages, PLF must convince you that:

- PLF lost benefits, legal rights, money or suffered some other financial harm without receiving equivalent value in return; and
- DFT's breach of fiduciary duty was a cause of that loss. That means that DFT's breach of duty must have made a difference in the result. It does not matter whether other causes also contributed to PLF's loss as long as DFT's breach of fiduciary duty was a cause of the damages.⁸

Sometimes there is an element of uncertainty in proving one or more area of damages. Uncertainty does not necessarily prevent you from awarding full and fair compensation. On the other hand, you may not determine PLF's damages by speculation or guesswork. You may award damages if the evidence allows you to draw fair and reasonable conclusions about the extent of the damages. We leave the amount of damages to your judgment, sometimes upon meager evidence.⁹

⁸ See *Doull v. Foster*, 487 Mass. 1, 11 (2021) ("[T]he purpose of this but-for standard is to separate the conduct that had no impact on the harm from the conduct that caused the harm.").

⁹ See, e.g., *O'Brien v. Pearson*, 449 Mass. 377, 388 (2007) ("The question is whether the facts prove within a reasonable degree of certainty that the breach, i.e., the wrongful conduct of the defendants, caused [plaintiff] to suffer the damages he sought to establish.").

Possible Alternative Instructions

(a) Partnership

PLF claims that DFT violated the fiduciary duty that partners owe each other. In order to determine if PLF has proven her/his claim, the first thing you must decide is whether PLF and DFT were in a partnership.

Massachusetts law defines a partnership as an association of two or more persons who are co-owners of a for-profit business.¹⁰ This means that PLF must prove that s/he and DFT agreed to share the profits and losses of their business. The agreement may be written or oral or a combination of the two.

< *if no written partnership agreement* > Since there is no written agreement in this case, you should look at PLF's and DFT's words and actions to decide whether they intended to operate an enterprise as partners.

While an agreement to share profits is essential for there to be a partnership, it is not enough standing by itself.

You should weigh the following additional factors to decide whether PLF and DFT formed a partnership.

- Did each bring something of value to the enterprise, such as money, property, knowledge, efforts, skills, and the like?
- Did each have the right to participate in the management or control of the enterprise?
- Did each have the obligation to share in losses, debts, and similar obligations of the enterprise?¹¹

¹⁰ G.L. c. 108A, § 6; see *Boyer v. Bowles*, 310 Mass. 134, 138 (1941); *Gemini Investors, Inc. v. Ches-Mont Disposal, LLC*, 629 F. Supp. 2d 163, 166 (D. Mass. 2009).

¹¹ *Sullivan v. Lawlis*, 93 Mass. App. Ct. 409, 413, 415 (2018). quoting *Fenton v. Bryan*, 33 Mass. App. Ct. 688, 691 (1992); *Saunwin Int'l Equities Fund LLC v. Donville Kent Asset Mgmt., Inc.*, 2018 WL 3543533, at *8 (D. Mass. July 20, 2018), quoting *Kansallis Fin. Ltd. v. Fern*, 40 F.3d 476, 478–79 (1st Cir. 1994), quoting *Fenton v. Bryan*, 33 Mass. App. Ct. at 691. General Laws Chapter 108A, § 7 lists a set of factors that may be appropriate to include, depending on the circumstances.

No one factor will decide whether there was a partnership. On the other hand, PLF does not need to show that all factors exist. Rather, it is up to you to weigh the evidence presented on the various factor to decide whether PLF has proven that s/he and DFT were partners.

(b) Joint Venture

PLF claims that DFT violated the fiduciary duty that joint venturers owe each other. To prevail on this claim, PLF first must prove that s/he and DFT agreed to jointly undertake a particular project or venture and share in the profits.

[*<add the following sentence if also instructing on partnership>*

A joint venture is similar to a partnership except that it has a more limited scope or duration.]

You should weigh the following factors to decide whether PLF has proven s/he and DFT were in a joint venture.

- Did PLF and DFT agree to join together in a particular project or undertaking for joint profit? The agreement may be oral or written or a combination of the two.
- *<if no written agreement>*
Since there is no written agreement in this case, you should look at PLF's and DFT's words and actions to decide whether they intended to operate as joint venturers.
- Did each bring something of value to the project or undertaking, such as money, property, knowledge, efforts, skills, and the like?
- Did each have the right to participate in the management or control of the project or undertaking?
- Did each have the right to share in any profit and the obligation to share in any loss?

No one factor will decide whether there was a joint venture. On the other hand, PLF does not need to show that all factors exist. Rather, you should

weigh the evidence presented on the various factors to decide whether PLF has proven s/he and DFT were engaged in a joint venture.¹²

(c) Officer and Director

PLF claims that DFT violated the fiduciary duty that an officer/director owes to the corporation and its shareholders.¹³ As an officer/director, DFT was required to act with the greatest honesty, fairness, and loyalty toward the corporation and its shareholders and to put their interests above her/his self-interest.

(d) Attorney to a Client

As a lawyer, DFT owed PLF a fiduciary duty as a matter of law. *< If the existence of an attorney client relationship is disputed, give instruction from professional negligence on determining whether there is such a relationship >*

Therefore, you only need to decide whether DFT violated that duty and, if so, whether DFT's conduct harmed PLF.

¹² See *Massachusetts Prop. Ins. Underwriting Ass'n v. Georgaklis*, 77 Mass. App. Ct. 358, 361 (2010), quoting *Gurry v. Cumberland Farms, Inc.*, 406 Mass. 615, 623 (1990). See also *Shain Inv. Co., Inc. v. Cohen*, 15 Mass. App. Ct. 4, 7 (1982).

¹³ *Estate of Moulton v. Puopolo*, 467 Mass. 478, 492 (2014) ("Directors of a corporation stand in a fiduciary relationship to that corporation and have a duty to protect its interests 'above every other obligation.'" (citing cases); *Demoulas v. Demoulas Super Mkts., Inc.*, 424 Mass. 501 (1997).