

## CONTRACTS

### 700.00

## CONTRACTS

### INTRODUCTION

These instructions deal with a cause of action for breach of contract when the plaintiff is seeking money damages. A cause of action for breach of a construction contract will be covered by future instructions. Employment contract disputes (including Intentional Interference with Prospective Economic Advantage, Civil Conspiracy, and Breach of Fiduciary Duty) will be covered by future instructions. Particularized areas of contract law, such as the Uniform Commercial Code, warranty, and those with equitable relief such as rescission, reformation, or specific performance are not specifically covered by these instructions. Modification of these instructions will be required by court and counsel to instruct the jury on those areas of contract law not intended to be covered by these instructions.

#### I. GENERAL CONTRACT LAW

A contract is a promise or set of promises between two or more competent parties, supported by legal consideration, to do or not to do a particular act and for the breach of which the law recognizes a remedy. *Steinberg v. Chi. Med. Sch.*, 69 Ill. 2d 320, 371 N.E.2d 634, 639, 13 Ill. Dec. 699 (1977); *Wagner Excello Foods v. Fearn Int'l, Inc.*, 235 Ill. App. 3d 224, 229, 176 Ill. Dec. 258, 601 N.E.2d 956 (1st Dist. 1992); *White v. Village of Homewood*, 256 Ill. App. 3d 354, 356–57, 628 N.E.2d 616, 618, 195 Ill. Dec. 152, 154 (1st Dist. 1993).

The requirements of a valid contract are offer and acceptance, consideration, competent parties, legal purpose, and, if agreed to by the parties, a written agreement. *Lal v. Naffah*, 149 Ill. App. 3d 245, 500 N.E.2d 699, 702, 102 Ill. Dec. 806 (1st Dist. 1986).

A contract may be express or implied. Express contracts are those in which the terms of the contract are disclosed in the words or writings of the parties. *Bull v. Mitchell*, 114 Ill. App. 3d 177, 448 N.E.2d 1016, 1023, 70 Ill. Dec. 138 (3d Dist. 1983); *Lampe v. Swan Corp.*, 212 Ill. App. 3d 414, 415, 571 N.E.2d 245, 246, 156 Ill. Dec. 658, 659 (5th Dist. 1991). Implied contracts are those where the agreement is inferred from the acts or conduct or course of dealings of the parties. *In re Estate of Brumshagen*, 27 Ill. App. 2d 14, 169 N.E.2d 112, 116 (2d Dist. 1960); *Dallis v. Don Cunningham & Assocs.*, 11 F.3d 713, 716 (7th Cir. 1993).

Certain contracts are required by the Statute of Frauds to be in writing. [740 ILCS 80/1, 80/2—formerly Ill.Rev.Stat.1991, ch. 59, § 0.01—which references an agreement to pay the debt of another; an agreement to sell an interest in land; an agreement made by the executor/administrator of an estate; an agreement to marry, plus an agreement that cannot be performed within one year from its making; cf. 810 ILCS 5/2-201, which references an agreement for sale of goods for \$500.00 or more under the Uniform Commercial Code.] Although normally a question of law for the court, under certain circumstances factual issues relating to the applicability, or the satisfaction of the requirements, of the Statute of Frauds may be questions for the jury. *Gaffney v. McCarron*, 45 Ill. App. 3d 944, 360 N.E.2d 508, 509, 4 Ill. Dec. 572 (1st Dist. 1977); *Am. Coll. of Surgeons v. Lumbermens Mut. Cas. Co.*, 142 Ill. App. 3d 680, 491 N.E.2d 1179, 1191, 96 Ill. Dec. 719 (1st

Dist. 1986). Otherwise, an oral contract with definite and certain terms is enforceable. *Rybak v. Provenzale*, 181 Ill. App. 3d 884, 537 N.E.2d 1321, 1325, 130 Ill. Dec. 852 (2d Dist. 1989); *Kemp v. Bridgestone/Firestone, Inc.*, 253 Ill. App. 3d 858, 865, 625 N.E.2d 905, 910, 192 Ill. Dec. 750, 755 (4th Dist. 1993).

The burden of proving the existence of a contract rests on the party who seeks enforcement of the contract. *C. Iber & Sons, Inc. v. Grimmett*, 108 Ill. App. 2d 443, 248 N.E.2d 131, 133 (3d Dist. 1969). The plaintiff in a breach of contract action also has the burden of proving all of the material terms of the contract. *Vandevier v. Mulay Plastics, Inc.*, 135 Ill. App. 3d 787, 90 Ill. Dec. 558, 482 N.E.2d 377, 380 (1st Dist. 1985); *DeHeer-Liss v. Friedman*, 227 Ill. App. 3d 422, 427, 592 N.E.2d 13, 17, 169 Ill. Dec. 526, 530 (1st Dist. 1991).

If there is no dispute as to the language used by the parties or the facts essential to a purported contract, the issue of the existence of a contract is a question of law to be decided by the court. *Bank of Benton v. Cogdill*, 118 Ill. App. 3d 280, 454 N.E.2d 1120, 1125, 73 Ill. Dec. 871 (5th Dist. 1983); *Ogle v. Hotto*, 273 Ill. App. 3d 313, 320, 652 N.E.2d 815, 819, 210 Ill. Dec. 13, 17 (5th Dist. 1995). If there is a dispute as to the language used or the facts essential to a purported contract, the issues of whether a contract exists, the terms of the contract, and the intent of the parties concerning the contract formation are questions of fact for the jury. *In re Estate of Kern*, 142 Ill. App. 3d 506, 491 N.E.2d 1275, 1280, 96 Ill. Dec. 815 (1st Dist. 1986); *Emmenegger Constr. Co., Inc. v. King*, 103 Ill. App. 3d 423, 431 N.E.2d 738, 742, 59 Ill. Dec. 237 (5th Dist. 1982); *Mulliken v. Lewis*, 245 Ill. App. 3d 512, 516, 615 N.E.2d 25, 28, 185 Ill. Dec. 730, 733 (4th Dist. 1993).

## II. CONTRACT FORMATION

### A. OFFER and ACCEPTANCE

An offer is an act by one person (offeror) that gives to another (offeree) the power to accept the offer according to its terms. *McCarty v. Verson Allsteel Press Co.*, 89 Ill. App. 3d 498, 411 N.E.2d 936, 942, 943, 44 Ill. Dec. 570 (1st Dist. 1980); *In re Marriage of Bennett*, 225 Ill. App. 3d 828, 832, 587 N.E.2d 577, 580, 167 Ill. Dec. 308, 311 (4th Dist. 1992). The offer must be communicated to the offeree. *Carroll v. Preferred Risk Ins. Co.*, 34 Ill.2d 310, 215 N.E.2d 801, 803 (1966). In order to create a contract, the offer must be accepted. *Zinni v. Royal Lincoln-Mercury, Inc.*, 84 Ill. App. 3d 1093, 406 N.E.2d 212, 214, 40 Ill. Dec. 511 (1st Dist. 1980); *Mike Schlemer, Inc. v. Pulizos*, 267 Ill. App. 3d 393, 395, 642 N.E.2d 200, 201, 204 Ill. Dec. 738, 739 (5th Dist. 1994). The acceptance must be communicated to the offeror. *Rosin v. First Bank of Oak Park*, 126 Ill. App. 3d 230, 466 N.E.2d 1245, 1249, 81 Ill. Dec. 443 (1st Dist. 1984); *Energy Erectors, Ltd. v. Indus. Comm'n*, 230 Ill. App. 3d 158, 162, 595 N.E.2d 641, 644, 172 Ill. Dec. 280, 283 (5th Dist. 1992); *Cowger v. Indus. Comm'n*, 728 N.E.2d 789, 793, 245 Ill. Dec. 707, 711 (5th Dist. 2000). The acceptance must comply strictly with the terms of the offer. *Anand v. Marple*, 167 Ill. App. 3d 918, 522 N.E.2d 281, 283, 118 Ill. Dec. 826 (3d Dist. 1988). Mutuality of assent may be established by conduct indicating agreement with the terms of the offer, even though subjective agreement is lacking. *In re Marriage of Kloster*, 127 Ill. App. 3d 583, 469 N.E.2d 381, 383, 82 Ill. Dec. 847 (2d Dist. 1984). Objective manifestation of intent, when present, controls the determination of mutual assent. Only when there is no objective indicia of intent or there is ambiguity in the description of the subject matter of the bargain, must the subjective intent of the

parties be considered. *Caporale v. Mar Les, Inc.*, 656 F.2d 242, 244 (7th Cir. 1981). But see *Robbins v. Lynch*, 836 F.2d 330, 332 (7th Cir. 1988).

In order to constitute a contract between the parties there must be mutual consent by the contracting parties on the essential terms and conditions of the subject matter of the contract. *Bank of Marion v. Robert Fritz, Inc.*, 9 Ill. App. 3d 102, 291 N.E.2d 836, 839, 840 (5th Dist. 1973), *aff'd*, 57 Ill. 2d 120, 311 N.E.2d 138 (1974). This mutual consent may be gathered from either the language used by the parties or as manifested by the words and acts of the parties. *Artoe v. Cap*, 140 Ill. App. 3d 980, 489 N.E.2d 420, 423, 95 Ill. Dec. 199 (1st Dist. 1986). The issue of whether a contract is ambiguous is a question of law, and once so determined, the trier of fact determines the intent of the parties. *A.W. Wendell & Sons, Inc. v. Qazi*, 254 Ill. App. 3d 97, 105, 626 N.E.2d 280, 287, 193 Ill. Dec. 247, 254 (2d Dist. 1993); *City of Northlake v. Ill. Fraternal Ord. of Police Lab. Council, Lodge 18*, 333 Ill. App.3d 329, 336. 775 N.E.2d 1013, 1020, 266 Ill. Dec. 941, 948 (1st Dist. 2002); *Mayfair Constr. Co. v. Waveland Assocs. Phase 1 Ltd. P'ship*, 249 Ill. App. 3d 188, 197, 619 N.E.2d 144, 151, 188 Ill. Dec. 780, 787 (1st Dist. 1993).

## B. CONSIDERATION

Consideration is the promise or performance bargained for or given in exchange for the promise. Traditionally, any act or promise that is of benefit to one party or of detriment to another party may constitute sufficient consideration. *Libertyville Twp. v. Woodbury*, 121 Ill. App. 3d 587, 460 N.E.2d 66, 71, 77 Ill. Dec. 270 (2d Dist. 1984); *In re Marriage of Bennett*, 225 Ill. App. 3d 828, 832, 587 N.E.2d 577, 580, 167 Ill. Dec. 308, 311 (4th Dist. 1992). The essential element of consideration is a bargained for exchange of promises or performances and may consist of a promise, act, forbearance, or the creation, modification, or destruction of a legal relation. *Martin v. Fed. Life Ins. Co.*, 109 Ill. App. 3d 596, 440 N.E.2d 998, 1002, 1003, 65 Ill. Dec. 143 (1st Dist. 1982); *Aqua-Aerobic Sys., Inc. v. Ravitts*, 166 Ill. App. 3d 168, 172, 520 N.E.2d 67, 70, 117 Ill. Dec. 77, 78 (2d Dist. 1988). If the requirement of consideration is met (Illinois courts deal with consideration and refer to its "technical meaning"), there is no additional requirement of a gain or benefit to the promisor, nor a loss or detriment to the promisee, nor equivalence in values exchanged, nor "mutuality of obligation." See *Hamilton Bancshares, Inc. v. Leroy*, 131 Ill. App. 3d 907, 476 N.E.2d 788, 791, 792, 87 Ill. Dec. 86 (4th Dist. 1985); *F.H. Prince & Co. v. Towers Fin. Corp.*, 275 Ill. App. 3d 792, 798, 656 N.E.2d 142, 147, 211 Ill. Dec. 950, 955 (1st Dist. 1995). The issue of whether there is consideration is a question of law for the court. *O'Neill v. DeLaney*, 92 Ill. App. 3d 292, 415 N.E.2d 1260, 1265, 47 Ill. Dec. 947 (1st Dist. 1980); *Lesnik v. Estate of Lesnik*, 82 Ill. App. 3d 1102, 403 N.E.2d 683, 687, 38 Ill. Dec. 452 (1st Dist. 1980); *Johnson v. Johnson*, 244 Ill. App. 3d 518, 528, 614 N.E.2d 348, 355, 185 Ill. Dec. 214, 221 (1st Dist. 1993).

## C. COMPETENCY

All parties to a contract must be competent at the time the contract is made. A contract, other than for necessities, is voidable if one party lacks competency due to minority. *Iverson v. Scholl Inc.*, 136 Ill. App. 3d 962, 483 N.E.2d 893, 897, 91 Ill. Dec. 407 (1st Dist. 1985); *Sheller by Sheller v. Frank's Nursery & Crafts Inc.*, 957 F. Supp. 150, 153 (N.D. Ill. 1997). A contract is also voidable if one party is incompetent due to insane delusions or other mental illness. *Eubanks v. Eubanks*, 360 Ill. 101, 195 N.E. 521, 526 (1935). The requirements necessary to render a party

incompetent due to mental illness include that the party must be incapable of comprehending the nature of the transaction and incapable of protecting his or her own interests plus there must be a showing of a degree of mental weakness affecting that person's ability to comprehend the nature of the transaction and to protect his or her interest. *Estate of Gruske*, 179 Ill. App. 3d 675, 534 N.E.2d 692, 695, 128 Ill. Dec. 510 (3d Dist. 1989). Persons of mature age are presumed to be mentally competent; their incompetence cannot be inferred merely from old age, physical illness, or defective memory. Impairment of the mind incident to old age and disease will not invalidate a transaction so long as the person in question was able to comprehend the nature of the transaction and to protect his or her interest. *Estate of Gruske*, 179 Ill. App. 3d at 678, 534 N.E.2d at 695, 128 Ill. Dec. at 513.

#### D. LEGAL PURPOSE

A contract designed to accomplish an unlawful purpose is illegal and void. *Merch. Nat'l Bank of Chi. v. Kolber*, 50 Ill. App. 3d 365, 365 N.E.2d 688, 692, 8 Ill. Dec. 450 (1st Dist. 1977) (agreement to defraud); *Am. Buyers Club of Mt. Vernon, Ill., Inc. v. Grayling*, 53 Ill. App. 3d 611, 368 N.E.2d 1057, 1059, 11 Ill. Dec. 449 (5th Dist. 1977); *Swavely v. Freeway Ford Truck Sales, Inc.*, 298 Ill. App. 3d 969, 976, 700 N.E.2d 181, 187, 233 Ill. Dec. 80, 86 (1st Dist. 1998) (contracts in violation of either federal or Illinois statute); *O'Sullivan v. Conrad*, 44 Ill. App. 3d 752, 358 N.E.2d 926, 929, 3 Ill. Dec. 383 (5th Dist. 1976) (contract in restraint of trade or profession). A contract is also void if it violates some public policy. *Laughlin v. France*, 241 Ill. App. 3d 185, 607 N.E.2d 962, 971, 180 Ill. Dec. 662 (2d Dist. 1993) (contract to make a will); *Corti v. Fleisher*, 93 Ill. App. 3d 517, 417 N.E.2d 764, 775, 776, 49 Ill. Dec. 74 (1st Dist. 1981) (agreement between attorney and former employer to transfer files without client's permission). Whether a contract is illegal or violates public policy is a question of law for the court. *Huszagh v. City of Oakbrook Terrace*, 41 Ill. 2d 387, 243 N.E.2d 831, 833 (1968).

#### E. AFFIRMATIVE DEFENSES TO CONTRACT ENFORCEMENT

Affirmative defenses, such as lack of capacity, duress, fraud, misrepresentation, undue influence, and mistake of fact, all relate to the issue of mutual consent and make a contract voidable. The burden of pleading and proving such defenses rests on the party asserting them. 735 ILCS 5/2-613(d) (1994); *Stoltze v. Stoltze*, 393 Ill. 433, 66 N.E.2d 424, 428 (1946).

##### 1. DURESS

Duress exists when a party is compelled to enter into a contract by the wrongful acts or threats of another under circumstances depriving that party of the exercise of his or her own free will. *First Sec. Bank of Glendale Heights v. Bawoll*, 120 Ill. App. 3d 787, 458 N.E.2d 193, 198, 76 Ill. Dec. 54 (2d Dist. 1983); *Enslin v. Village of Lombard*, 128 Ill. App. 3d 531, 470 N.E.2d 1188, 1190, 83 Ill. Dec. 768 (2d Dist. 1984); *Kathy O. v. Counseling & Fam. Servs.*, 107 Ill. App. 3d 920, 438 N.E.2d 695, 700, 63 Ill. Dec. 764 (3d Dist. 1982). Duress is a question of fact. *First Sec. Bank of Glendale Heights v. Bawoll*, 120 Ill. App. 3d 787, 458 N.E.2d 193, 198, 76 Ill. Dec. 54 (2d Dist. 1983). In certain circumstances, the duress may be exerted by one not a party to the

dispute. *Restatement (Second) of Contracts*, §§ 175(2) & 177(3); *Regenold v. Baby Fold, Inc.*, 68 Ill. 2d 419, 369 N.E.2d 858, 867, 868, 12 Ill. Dec. 151 (1977).

## 2. UNDUE INFLUENCE

Undue influence exists when one person wrongfully exercises control over another so as to substitute that person's will for the will of the other. *Britton v. Esson*, 260 Ill. 273, 103 N.E. 218 (1913). In certain circumstances, the undue influence may be exerted by one not a party to the dispute. *Restatement (Second) of Contracts* § 177(3). Undue influence cases involve the existence of a fiduciary relationship (arising as a matter of law or fact) when a special confidence is reposed in one who in equity and conscience is bound to act in good faith and with due regard to the interest of the other party. A fiduciary relationship exists as a matter of law between attorney and client, guardian and ward, principal and agent, and may exist in other cases where one party is heavily dependent upon the advice of another. *Carey Elec. Contracting, Inc. v. First Nat'l Bank of Elgin*, 74 Ill. App. 3d 233, 392 N.E.2d 759, 763, 30 Ill. Dec. 104 (2d Dist. 1979); *Oil Exp. Nat., Inc. v. Burgstone*, 958 F. Supp. 366, 370 (N.D. Ill. 1997). Once a fiduciary relationship has been established, there is a presumption that any transaction that benefits the dominant party at the expense of the other party is the result of undue influence. *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 448 N.E.2d 872, 69 Ill. Dec. 960 (2nd Dist. 1983); *Brown v. Com. Nat'l Bank of Peoria*, 42 Ill. 2d 365, 247 N.E.2d 894, 896 (1969); *Turner v. Black*, 19 Ill. 2d 296, 166 N.E.2d 588, 593 (1960); *Works v. McNeil*, 1 Ill. 2d 47, 115 N.E.2d 320, 322 (1953).

## 3. FRAUD and MISREPRESENTATION

Fraud may be a defense to contract enforcement at the option of the injured party. *Grane v. Grane*, 143 Ill. App. 3d 979, 493 N.E.2d 1112, 1116, 98 Ill. Dec. 91 (2d Dist. 1986). In order to establish fraud by clear and convincing evidence, there must be a showing of a misrepresentation of a material fact, made for the purpose of inducing the other party to act; it must be known by the maker to be false, or be made in reckless disregard of its truth or falsity; but it must be reasonable to have believed it and it must be relied upon by the other party. *Cent. States Joint Bd. v. Cont'l Assurance Co.*, 117 Ill. App. 3d 600, 453 N.E.2d 932, 935, 73 Ill. Dec. 107 (1st Dist. 1983); *Century Universal Enter., Inc. v. Triana Dev. Corp.*, 158 Ill. App. 3d 182, 510 N.E.2d 1260, 1271, 110 Ill. Dec. 229 (2d Dist. 1987); *Warner v. Lucas*, 185 Ill. App. 3d 351, 353, 541 N.E.2d 705, 706, 133 Ill. Dec. 494, 495 (5th Dist. 1989); *Regensburger v. China Adoption Consultants, Ltd.*, 138 F.3d 1201, 1207 (7th Cir. 1998); *Douglass v. Wones*, 120 Ill. App. 3d 36, 458 N.E.2d 514, 521, 76 Ill. Dec. 114 (2d Dist. 1983); *Gerill Corp. v. Jack L. Hargrove Builders*, 128 Ill. 2d 179, 538 N.E.2d 530, 536, 131 Ill. Dec. 155 (1989); *City of Chi. v. Mich. Beach Hous. Co-op.*, 297 Ill. App. 3d 317, 323, 696 N.E.2d 804, 809, 231 Ill. Dec. 508, 513 (1st Dist. 1998); *Buechin v. Ogden Chrysler-Plymouth, Inc.*, 159 Ill. App. 3d 237, 511 N.E.2d 1330, 1335, 1336, 111 Ill. Dec. 35 (2d Dist. 1987); *Chapman v. Hosek*, 131 Ill. App. 3d 180, 475 N.E.2d 593, 598, 86 Ill. Dec. 379 (1st Dist. 1985).

Usually there is no misrepresentation of a material fact when the representation relates to an expression of: (1) opinion [*Wilkinson v. Appleton*, 28 Ill. 2d 184, 190 N.E.2d 727, 730 (1963)];

(2) a matter of law [*Hooker v. Midland Steel Co.*, 215 Ill. 444, 448, 74 N.E. 445 (1905)]; or (3) a statement of value [*Johnson v. Miller*, 299 Ill. 276, 132 N.E. 490, 492 (1921)].

An innocent misrepresentation of a material fact may serve as a defense to contract enforcement, provided the fact was relied upon in entering into the contract. *Puskar v. Hughes*, 179 Ill. App. 3d 522, 533 N.E.2d 962, 966, 127 Ill. Dec. 880 (2d Dist. 1989); *Geist v. Lehmann*, 19 Ill. App. 3d 557, 312 N.E.2d 42, 45 (2d Dist. 1974).

#### 4. MISTAKE

Under certain circumstances, mistake of fact can provide the basis for equitable relief, such as rescission or reformation of a contract. *Keller v. State Farm Ins. Co.*, 180 Ill. App. 3d 539, 536 N.E.2d 194, 200, 129 Ill. Dec. 510 (5th Dist. 1989); *Village of Oak Park v. Schwerdtner*, 288 Ill. App. 3d 716, 718, 681 N.E.2d 586, 588, 224 Ill. Dec. 271, 273 (1st Dist. 1997); *Wil-Fred's Inc. v. Metro. Sanitary Dist. of Greater Chi.*, 57 Ill. App. 3d 16, 372 N.E.2d 946, 953, 14 Ill. Dec. 667 (1st Dist. 1978); *People ex rel. Dep't of Pub. Works & Bldgs. v. S. E. Nat'l Bank of Chi.*, 131 Ill. App. 2d 238, 266 N.E.2d 778, 780 (1st Dist. 1971).

### III. PERFORMANCE/BREACH

The rights and remedies of the parties in a suit for breach of contract depend upon 1) whether the alleged breach was material and, where mutual breaches are alleged, 2) which party was the first to breach, and 3) whether either party elected to terminate the contract as a result of the other's prior material breach. *PML Dev. LLC v. Vill. of Hawthorn Woods*, 2023 IL 128770.

#### A. SUBSTANTIAL PERFORMANCE/MATERIAL BREACH

Substantial performance is a necessary element of a breach of contract claim. *Id.*, ¶50. Therefore, generally, to recover on a breach of contract claim, the claimant must prove that it substantially performed its part of the contract. *Id.*

“Substantial performance is the ‘honest and faithful performance of the contract in its material and substantial parts, with no willful departure from, or omission of, the essential elements of the contract.’” *LB Steel, LLC v. Carle Steel Corp.*, 2018 IL App (1st) 153501 ¶3, quoting *Doornbos Heating & Air Conditioning, Inc. v. James D. Schlenker, M.D., S.C.*, 403 Ill. App. 3d 468, 483 (1st Dist. 2010). Whether a party to a contract rendered substantial performance is a question of fact. *W.E. Erickson Constr., Inc. v. Congress-Kenilworth Corp.*, 115 Ill. 2d 119, 126 (1986); *LB Steel*, 2018 IL App (1st) 153501 ¶37.

While no Illinois case says so explicitly, it appears that a party has either substantially performed or is in material breach. *LB Steel*, 2018 IL App (1st) 153501 ¶¶31-38. In other words, a party who has not substantially performed under a contract is in material breach. *Id.* “Substantial performance is the antithesis of material breach; if it is determined that a breach is material, or goes to the root or essence of the contract, it follows that substantial performance has not been rendered, and further performance by the innocent party is excused.” 15 Williston on Contracts § 44:55 (4th ed. 2014) (footnotes omitted). “A material breach of contract constitutes

the ‘failure to do an important or substantial undertaking set forth in a contract.’” *LB Steel*, ¶31, quoting *Mayfair Constr. Co. v. Waveland Assocs. Phase I Ltd. P’ship*, 249 Ill. App. 3d 188, 202-03 (1st Dist. 1993). Whether a material breach of contract has been committed is also a question of fact. *Id.*

“Under the doctrine of substantial performance, a contractor may recover where there has been substantial performance of a contract even though there may be some omissions and defects in the contract's performance, as measured by the strict terms of the contract.” *LB Steel, LLC v. Carlo Steel Corp.*, 2018 IL App (1st) 153501, ¶37, quoting *Nat’l Wrecking Co. v. Midwest Terminal Corp.*, 234 Ill. App. 3d 750, 761 (1<sup>st</sup> Dist. 1992). Where a party has materially breached a contract and is the first to materially breach, the general rule is that the initial breaching party cannot recover on a breach of contract claim. *PML*, ¶50. This is known as the “first to breach rule.” “The first-to-breach rule excuses a party's duty to perform under the contract if the other party materially breaches the agreement first.” *Id.* “In other words, the first-to-breach rule excuses the injured party from future performance and allows the injured party to pursue its breach of contract claims. Conversely, subject to the below exception the first breaching party cannot seek to enforce the contract against the injured party.” *Id.*

## **B. PARTIAL BREACH RULE -- PML EXCEPTION TO FIRST TO BREACH RULE**

In *PML*, 2023 IL 128770, the Illinois Supreme Court recognized an exception to the first to breach rule. Where a non-breaching party continues to perform or accepts the benefits of the contract after and despite the other party's material breach, the nonbreaching party may lose its right to assert the first-to-breach rule. By continuing the contract, the injured party remains bound by its obligation to perform. This is referred to as the "partial" breach doctrine, *id.* ¶51, although courts recognize the doctrine is “badly named.” *Id.* (Justice Rochford specially concurring); *Emerald Invs. Ltd. P’ship v. Allmerica Fin. Life Ins. & Annuity Co.*, 516 F.3d 612, 618 (7th Cir. 2008).

Under the partial breach rule, by accepting the continued benefits of the contract, the injured party waives its right to declare the contract terminated but does not waive its right to damages for the first material breach. As performance progresses, the injured party may become liable to the first breaching party if the injured party subsequently breaches the contract. *PML*, ¶¶51-52. Under the “partial” breach rule, “both parties may be guilty of breaches, each having a right to damages.” *Id.* ¶66, quoting *InsureOne Indep. Ins. Agency, LLC v. Hallberg*, 2012 IL App (1st) 092385, ¶ 33. Whether a party has elected to continue performing after and despite a material breach is a factual question. *Id.* ¶58.

One implication of *PML* is that a party suing for breach has the burden of proving either that it has substantially performed its obligations or that the opposing party has elected to continue the contract despite the suing party’s prior material breach.

## **C. MATERIAL BREACH – RIGHT TO DAMAGES UNDER QUANTUM MERUIT**

It should be noted that even a party that has materially breached the contract may be entitled to recover in *quantum meruit* from the non-breaching party. *LB Steel*, ¶39. In such cases, the

measure of damages is “reasonable compensation for value received by the [non-breaching party] over and above the injury suffered by the [other's] breach.” *Id.*, quoting *Brewer v. Custom Builders Corp.*, 42 Ill. App. 3d 668, 673 (5th Dist. 1976). “The party seeking recovery has the burden to ‘introduce some evidence specific enough to prove the reasonable value of the benefit ... allegedly received’ by the other party.” *Id.*, quoting *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (1st Dist. 2010).

*Introduction revised November 2025.*

## GENERAL NOTES ON USE

The contract instructions assume each of the itemized/numbered paragraphs are at issue in a case. If an itemized/numbered paragraph is not at issue, it should be eliminated from the instruction and the corresponding verdict form.

Names may be substituted for party identifiers in the instructions and verdict forms. If the case includes multiple defendants, they should be identified by name in these instructions, and the text of the instruction may require additional modification by the court and counsel.

Each issue to be decided by the jury will have a question (found in those instructions with a “V” in the number) that must be included in the single verdict form to be constructed by court and counsel. The logical sequence of these instructions should result in a complete general verdict. The court may consider special interrogatories that are not in conflict with these instructions.

The set of instructions must end with 700.20V.

*General Notes on Use approved November 2025.*

### 700.01 Issues Made by the Pleadings - Breach of Contract

[1] [Under Count] the plaintiff claims [he][she][it] entered into a contract with the defendant that included the following terms:

*[Set forth in simple form without undue emphasis or repetition those relevant allegations of the complaint as to the provisions of the contract that are supported by the evidence.]*

[2] The plaintiff claims the defendant breached the contract in one or more of the following ways resulting in damages to the plaintiff:

*[Set forth in simple form without undue emphasis or repetition those allegations of the complaint as to breach by the defendant that have not been withdrawn or ruled out by the court and are supported by the evidence.]*

[3] The plaintiff claims [he][she][it] substantially performed [his][her][its] obligations under the contract.

[4] In the event that the plaintiff failed to substantially perform [his][her][its] obligations under the contract prior to the defendant's breach, the plaintiff claims the defendant nonetheless elected to proceed with the contract instead of terminating the contract.

[5] In the event that the plaintiff failed to substantially perform [his][her][its] obligations under the contract prior to the defendant's breach, plaintiff claims [his][her][its] performance was excused by the absence of [or the occurrence of] a condition precedent [he][she][it] had a valid reason excusing [his][her][its] performance].

[6] The defendant [denies the existence of a contract between the parties,] [denies the plaintiff substantially performed [his][her][its] obligations under the contract,] [denies electing to proceed with the contract after the plaintiff failed to substantially perform,] [denies accepting the benefits of the contract after the plaintiff failed to substantially perform,] [denies the plaintiff's performance was excused by a condition precedent,] [and] [denies breaching the contract with the plaintiff].

[7] The defendant further denies that the plaintiff sustained damages [to the extent claimed].

[8] The defendant claims the following affirmative defenses excuse [him][her][it] from being liable to the plaintiff:

*[Set forth in simple form without undue emphasis or repetition those affirmative defenses that have not been withdrawn or ruled out by the court and are supported by the evidence.]*

[9] The plaintiff denies the defendant's affirmative defense[s].

### **Notes on Use**

This instruction is an introduction to the issues in the contract dispute in question.

The material terms to be inserted in the instruction are those terms agreed to by the parties or as construed by the court.

This instruction has been drafted to cover multiple contingencies that might arise in a case for breach of contract, including cases in which mutual material breaches are alleged as addressed by the Illinois Supreme Court in *PML Dev. LLC v. Vill. of Hawthorn Woods*, 2023 IL 128770. See *generally Contracts, Introduction § III Performance/Breach*. Not all of the contingencies will be at issue in every case. The pertinent phrases in the brackets should be used if they fit the particular case and omitted when they do not. Additional innovations consistent with the pleadings should, of course, be used whenever required.

Leaving aside the question of mutual material breaches addressed in *PML*, it is important to remember that plaintiff's "substantial performance is a necessary element of a breach of contract claim." *PML*, ¶50. Therefore, generally, to recover on a breach of contract claim, the claimant must prove that it substantially performed its part of the contract. *Id.* Nevertheless, as to the pleading of substantial performance, Illinois Supreme Court Rule 133 provides as follows:

In pleading the performance of a condition precedent in a contract, it is sufficient to allege generally that the party performed all the conditions on his part; if the allegation be denied, the facts must be alleged in connection with the denial showing wherein there was a failure to perform.

Therefore, generally, to the extent that there is a dispute whether plaintiff substantially performed, the defendant's answer will frame the issue in dispute. But the burden of proving the plaintiff's substantial performance remains with the plaintiff.

Affirmative defenses should only be referenced when the defendant has asserted affirmative defenses and adduced evidence to support the affirmative defenses.

The names of the affirmative defenses are inserted as they are identified in instructions 700.14 A-G as appropriate. It is not intended that those entire instructions be inserted in this instruction. The set of instructions must end with 700.20V.

**700.01V Questions for Verdict Form Breach of Contract Issues--(Contract Formation Not in Dispute)**

[WITHDRAWN]

IPI 700.01V is withdrawn.

*Verdict Form withdrawn November 2025.*

## 700.02 Burden of Proof on the Issues – Breach of Contract

[Under Count] the plaintiff claims [he][she][it] is entitled to recover contract damages from the defendant for breach of contract. The plaintiff has the burden of proving each of the following propositions:

First, the existence of a contract between the plaintiff and the defendant.

Second, substantial performance by the plaintiff [[or absence of] [or the occurrence of] a condition precedent excusing the plaintiff’s performance] [or a valid reason why the plaintiff did not have to perform] [and, in the event the plaintiff failed to substantially perform [his][her][its] obligations under the contract, after such failure, an election by the defendant to proceed with the contract or to accept the benefits of the contract instead of terminating the contract].

Third, the defendant’s failure to [adequately] perform [his][her][its] obligations under the contract.

Fourth, that the plaintiff sustained damages as a result of the defendant’s failure to perform.

In this case, the defendant has asserted [an] affirmative defense[s] that:

*[Concisely state affirmative defenses.]*

The defendant has the burden of proving [this][these] affirmative defense[s]. If you find from your consideration of all the evidence that any one of the propositions the plaintiff is required to prove has not been proved [or that the defendant has proved an affirmative defense,] then your verdict shall be for the defendant. If, on the other hand, you find from your consideration of all the evidence that each of these propositions required of the plaintiff has been proved and that [none of] the defendant’s affirmative defense[s] has [not] been proved, then your verdict shall be for the plaintiff.

*Instruction and Notes on Use revised November 2025.*

### Notes on Use

This is the burden of proof instruction for the case. Use this in conjunction with the Issues Instruction 700.01. This instruction should be given with IPI 21.01, which defines the phrase “burden of proof.”

Like the Issues Instruction (700.01), this instruction has been drafted to cover multiple contingencies that might arise in a case for breach of contract, including cases in which mutual material breaches are alleged as addressed by the Illinois Supreme Court in *PML Dev. LLC v. Vill. of Hawthorn Woods*, 2023 IL 128770. See generally *Contracts, Introduction § III Performance/Breach*. Not all of the contingencies will be at issue in every case. The pertinent phrases in the brackets should be used if they fit the particular case and omitted when they do not. Additional innovations consistent with the pleadings should, of course, be used whenever required. This instruction should parallel the issues instruction given in the case.

It is important to remember that plaintiff's "substantial performance is a necessary element of a breach of contract claim." *PML*, ¶50. Therefore, generally, to recover on a breach of contract claim, the plaintiff must prove that it substantially performed its part of the contract. *Id.* Hence, where the defendant denies that plaintiff has substantially performed, it is the plaintiff's burden to prove substantial performance.

Nevertheless, as to the ***pleading*** of substantial performance, Illinois Supreme Court Rule 133 provides as follows:

In pleading the performance of a condition precedent in a contract, it is sufficient to allege generally that the party performed all the conditions on his part; if the allegation be denied, the facts must be alleged in connection with the denial showing wherein there was a failure to perform.

Generally, to the extent that there is a dispute as to plaintiff's performance, the defendant's answer will frame the issue in dispute. Therefore, the issue or issues of performance with respect to which plaintiff must carry its burden of proof will generally be identified in defendant's answer.

The bracketed material should only be used where there is evidence to support the plaintiff's contention or the affirmative defenses of the defendant. The affirmative defenses are inserted from IPI 700.14. The names of the affirmative defenses are inserted as they are identified in instructions 700.14 A-G as appropriate.

**700.02V Questions for Verdict Form (to be used in conjunction with 700.02 Breach of Contract--Dispute as to Contract Formation)**

[WITHDRAWN]

IPI 700.02V is withdrawn.

*Verdict Form withdrawn November 2025.*

### 700.03 Proof of Formation of Contract

The [first] element of a contract claim the plaintiff must prove is the existence of a contract. There is a contract if the plaintiff proves there was an offer by one party, acceptance by the other party [parties] and consideration between the parties.

The plaintiff claims the parties entered into a contract that had the following terms:

*[State material terms of alleged contract.]*

To prove the existence of a contract between [among] the plaintiff and the defendant, the plaintiff has the burden of proving each of the following propositions:

First, the plaintiff must make or have made an offer to [name of offeree].

An “offer” is a communication of a willingness to enter into a contract. The communication must satisfy four conditions:

[1] the communication must have included a definite promise by the person making the communication, showing a willingness to make an agreement;

[2] the important and necessary terms must be definite;

[3] the terms must be communicated by words or conduct to the other party [parties]; and

[4] the communication must give the other party [parties] the power to agree to its terms.

Second, [name of offeree] accepted the offer made by [name of offeror].

“Acceptance” of an offer is a communication of agreement to the terms of the offer. For the acceptance to be valid:

[1] [name of offeree] must agree to all of the material terms in the offer; and

[2] [name of offeree] must have communicated agreement to [name of offeror]

[according to the terms specified in the offer] [by writing, spoken words, actions or any other conduct that would indicate agreement to a reasonable person] [performed the act(s) specified by the offer], or [performed the act(s) that the offer specified].

Third, the agreement included an exchange of promises or value, which is known as consideration. There is sufficient consideration if the plaintiff can prove that something of value was bargained for by the parties and given by one party in exchange for the other's promise. “Something of value” may consist of a promise, an act, a promise to act or not act, or any payment that was of benefit to one party or a disadvantage to the other.

You will address these issues in questions \_\_\_\_ and \_\_\_\_ on your verdict.

*Notes on Use revised November 2025.*

**Notes on Use**

This instruction should be given when there is a dispute as to the formation of the contract.

**700.03V Questions for Verdict Form (Proof of Formation of Contract)**

[--] Did the plaintiff prove there was an offer?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

[--] Did the plaintiff prove there was an acceptance?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions, and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

[--] Did the plaintiff prove there was consideration?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions, and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

*Notes on Use and Comment omitted November 2025.*

#### **700.04 Substantial Performance by Plaintiff**

To recover on [his][her][its] claim, the plaintiff must prove [he][she][it] substantially performed what the contract required of [him][her][it] or [had a valid excuse for not doing so]. In this case, plaintiff must prove [he][she][it]

*[Identify what the defendant claims plaintiff failed to do or state the excuse plaintiff claims for not performing.]*

You will address this issue in question \_\_\_\_ on your verdict.

*Instruction and Notes on Use revised November 2025.*

#### **Notes on Use**

Substantial performance is a necessary element of plaintiff's claim for breach of contract. This instruction assumes that, in conformance with IL. Sup. Ct. R. 133(c), defendant has pled wherein plaintiff has failed to substantially perform. This instruction must be given in conjunction with IPI 700.02, and the alternatives, IPI B700.04, IPI C700.04, and IPI 700.05, should be used when the evidence supports them.

**700.04V Question for Verdict Form (Performance by Plaintiff)**

[--] Did the plaintiff prove [he][she][it] substantially performed [his][her][its] obligations under the contract?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_\_ is NO, then your deliberations [on Count X] are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_\_ is YES, you should then answer question \_\_\_\_\_.

*Verdict Form revised and Notes on Use omitted November 2025.*

**B700.04 Contract -- Excuse of Plaintiff's Performance—Defendant's Prior Material Breach**

The plaintiff's failure to keep [his][her][its] promise is excused if the defendant committed a prior, material breach of the contract.

To excuse the plaintiff's failure to perform, the plaintiff must prove that the defendant committed a prior material breach of contract in one or more of the following respects:

*[State what the party claims was a material breach of the contract by opposing party.]*

You will address this issue in question \_\_\_\_\_ on your verdict.

*Instruction, Notes on Use, and Comment approved October 2007, and revised November 2025.*

**Notes on Use**

This instruction should be given when the plaintiff claims that the defendant's prior material breach of contract excused the plaintiff's performance. It is given with IPI 700.02 because the contract at issue may be previously materially breached and may be given with or as an alternative to IPI 700.07, depending upon whether the plaintiff concedes that plaintiff did not substantially perform or makes alternative claims of substantial performance and defendant's prior material breach. It should also be given with IPI 700.08 which defines material breach.

**Comment**

A plaintiff is excused from performing his promises and may terminate or rescind a contract if the defendant has committed a prior, material breach of contract. *Stanley Gudyka Sales Co. v. Lacy Forest Prods., Co.*, 915 F. 2d 273 (7th Cir. 1990); *Borys v. Rudd*, 207 Ill. App. 3d 610, 566 N.E.2d 310, 152 Ill. Dec. 623 (1st Dist. 1990).

**B700.04V Questions for Verdict Form (Excuse of Plaintiff's Performance—Defendant's Prior Material Breach)**

[--] Did the plaintiff prove [he][she][it] substantially performed [his][her][its] obligations under the contract?

OR

[--] Did the plaintiff prove [he][she][it] had a valid excuse for not substantially performing the contract because the defendant committed a prior material breach of contract?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_\_ is NO, then your deliberations [on Count X] are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_\_ is YES, you should then answer question \_\_\_\_\_.

*Verdict Form and Notes on Use revised November 2025. Comment omitted November 2025.*

**Notes on Use**

Use this verdict form if the plaintiff claims it is excused from substantially performing its obligations under the contract due to the defendant's prior material breach of contract.

**C700.04 Contract—Excuse of Plaintiff’s Failure to Substantially Perform—Defendant’s Election to Proceed**

If the plaintiff committed a material breach of the contract prior to the defendant’s breach of the contract, the plaintiff must prove the defendant elected to proceed with [or accepted the benefits of] the contract after the plaintiff’s breach.

You will address this issue in question \_\_\_\_\_ on your verdict.

*Instruction, Notes on Use, and Comment approved November 2025.*

**Notes on Use**

This instruction should be given when the plaintiff claims his performance under the contract is excused, despite plaintiff’s prior material breach, because the defendant continued to perform or accepted the benefits of the contract after plaintiff’s material breach. See *PML Dev. LLC v. Vill. of Hawthorn Woods*, 2023 IL 128770. It is given with IPI 700.02 because the contract at issue may be previously materially breached, and may be given with or as an alternative to IPI 700.07, depending upon whether the plaintiff concedes that plaintiff did not substantially perform or makes alternative claims of continued performance by the defendant or acceptance of the benefits of the contract. It should also be given with IPI 700.08, which defines material breach.

**Comment**

See the Introduction for a discussion of *PML Dev. LLC v. Vill. of Hawthorn Woods*, 2023 IL 128770.

**C700.04V Questions for Verdict Form (Contract— Excuse of Plaintiff’s Failure to Substantially Perform—Defendant’s Election to Proceed)**

[--] Did the plaintiff prove [he][she][it] substantially performed [his][her][its] obligations under the contract?

OR

[--] Did the plaintiff prove the defendant elected to proceed with [or accepted the benefits of] the contract after a material breach by the plaintiff?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_\_ is NO, then your deliberations are complete [on Count X]. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_\_ is YES, you should then answer question \_\_\_\_\_.

*Verdict Form and Notes on Use approved November 2025.*

**Notes on Use**

Use this verdict form when the plaintiff claims his performance under the contract is excused, despite plaintiff’s prior material breach, because the defendant continued to perform or accepted the benefits of the contract after plaintiff’s material breach.

### **700.05 Anticipatory Breach of Contract by Repudiation**

The plaintiff's failure to keep [his][her][its] promise is excused, if the defendant indicated by [a] definite and unequivocal statement(s) or conduct before the performance was due [he][she][it] would not keep [his][her][its] promise when it became time to do so.

The plaintiff claims [he][she][it] had a valid excuse and did not have to [pay, perform, etc.] because the defendant indicated that [he][she][it][they] would not keep [his][her][its][their] promise.

To excuse the plaintiff's failure to perform, the plaintiff must prove the defendant's indication that [he][she][it][they] would not keep [his][her][its][their] promise before the time the performance was due was definite and unequivocal either from the defendant's statements or conduct.

You will address these issues in question \_\_\_\_ on your verdict.

*Notes on Use revised November 2025.*

#### **Notes on Use**

This instruction should be given when a party claims an anticipatory breach of contract as a valid excuse to his performance. It is given as an alternative to IPI 700.04 on plaintiff's performance.

**700.05V Question for Verdict Form (Anticipatory Breach of Contract by Repudiation)**

[--] Did the plaintiff prove the defendant indicated to the plaintiff in [a] definite and unequivocal statement(s) or conduct [he][she][it][they] would not keep [his][her][its][their] promise before the defendant's performance was due?

YES \_\_\_\_ NO \_\_\_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

*Notes on Use omitted November 2025.*

## **700.06 Existence &/or Failure of Condition Precedent--Conditional Promises**

The defendant claims the parties agreed that the defendant did not have to perform [his][her][its][their] obligations under the contract unless [*insert condition*]. This is known as a condition precedent.

The plaintiff has the burden of proving this condition precedent was not part of the contract.

If the condition precedent was not a part of the contract, then the defendant was required to perform [his][her][its][their] obligations under the contract and you must decide whether the defendant breached the contract.

If the condition precedent was part of the contract, then you must decide whether the condition occurred. If the condition occurred, then the defendant was required to perform [his][her][its][their] obligations under the contract and you must decide whether the defendant breached the contract.

*Instruction and Notes on Use revised November 2025.*

### **Notes on Use**

Where the defendant pleads that [his][her][its] performance was excused by the failure or occurrence of a condition precedent, it is the plaintiff's burden to prove: a) that the condition precedent was not a part of the contract; or b) that the condition precedent occurred or failed to occur, whichever is applicable. Assuming the plaintiff satisfies this burden, plaintiff must then prove that the defendant breached the contract. This instruction addresses the issues surrounding the existence and/or failure of a condition precedent. This instruction must be given in conjunction with IPI 700.01.

In some cases, the contract may express the alleged condition precedent in terms of the occurrence of a condition, while in other cases it may be expressed in terms of the non-occurrence of a condition. The condition precedent might also be dependent on a party's performance or be independent of a party's performance. The parties should modify these instructions to identify clearly the condition precedent that is required by the terms of the contract.

**700.06V Questions for Verdict Form (Existence and/or Failure of Condition Precedent)**

[--] Did the plaintiff prove the condition precedent was not part of the contract as defendant claims?

YES \_\_\_\_ NO \_\_\_\_

If your answer to question \_\_\_\_ is NO, then you should skip the next question and answer question \_\_\_\_\_. If your answer to question \_\_\_\_\_ is YES, then you should answer the next question \_\_\_\_\_.

[--] Did the condition precedent the defendant claimed to be a part of the contract occur?

YES \_\_\_\_ NO \_\_\_\_

If your answer to question \_\_\_\_ is YES, then you should answer question \_\_\_\_\_. If your answer to question \_\_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it.

*Verdict Form revised and Notes on Use omitted November 2025.*

### **700.07 Breach of Contract - Definition**

Generally, if a party fails to perform its obligations according to the terms of the contract, the party has breached the contract. You must decide whether the defendant failed to do what [he][she][it][they] was [were] required to do under the contract.

You will address these issues in question \_\_\_\_ on your verdict.

*Instruction revised and Notes on Use omitted November 2025.*

**700.07V Questions for Verdict Form (Breach of Contract)**

[--] Did the plaintiff prove the defendant breached the contract by failing to [*state plaintiff's allegations*]?

YES \_\_\_\_ NO \_\_\_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

*Verdict Form revised and Notes on Use omitted November 2025.*

### **700.08 Material Breach - Definition**

When I use the phrase “material breach,” I mean the failure to perform an obligation that is of such importance that the parties would not have entered into the contract without it. The test is whether the breach is so substantial and fundamental as to defeat the objectives of the parties in making the agreement, or whether the failure to perform renders performance of the rest of the contract different in substance from the original agreement. The breach must be so serious as to justify the injured party in treating the entire contract as ended.

The terms “substantial performance” and “material breach” are opposites. A party who has materially breached a contract has likewise failed to substantially perform under the contract. A party whose breach of the contract is not material has nonetheless substantially performed under the contract.

The law does not say what constitutes “substantial performance” or “a material breach.” That is for you to decide.

*Instruction and Notes on Use approved November 2025.*

#### **Notes on Use**

See the Introduction for a discussion regarding breach of contract, substantial performance, and material breach.

## **700.09 Election to Proceed/Terminate - Definition**

If you find that the defendant continued to perform under the contract or continued to accept the benefits of the plaintiff's continued performance under the contract, such conduct constitutes a conclusive election by the defendant to proceed with the contract. On the other hand, if you find that the defendant, after learning of the plaintiff's material breach, communicated or engaged in conduct that indicated a clear intent to stop performing his obligations under the contract and stop accepting the benefits of the plaintiff's continued performance, such conduct constitutes an election to terminate the contract.

*Instruction and Notes on Use approved November 2025.*

### **Notes on Use**

This instruction defines the terms "election to proceed" and "election to terminate" as used elsewhere in these instructions.

### **700.10 Damages to Plaintiff as a Result of Defendant's Breach**

The plaintiff must prove [he][she][it] sustained damages resulting from the defendant's breach. To recover on [his][her][its] claim, the plaintiff must prove that because of the defendant's failure to perform the contract, [he][she][it] has [been damaged] [not received] the (benefits) (payment) (performance) to which [he][she][it] is entitled under the contract.

The defendant[s] denies [deny] the plaintiff sustained damage [to the extent claimed.]

You will address the issues in question \_\_\_\_ on your verdict.

*Instruction revised and Notes on Use omitted November 2025.*

**700.10V Question for Verdict Form (Damages to Plaintiff as a Result of Defendant's Breach)**

[--] Did the plaintiff prove [he][she][it] sustained damage as a result of the defendant's[s'] breach of the contract?

YES \_\_\_\_ NO \_\_\_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

*Notes on Use omitted November 2025.*

## **B700.10 Damages to Plaintiff and Defendant – Plaintiff’s Prior Material Breach**

If the plaintiff committed a material breach of the contract prior to the defendant’s breach, but the defendant elected to proceed with [or accept the benefits of] the contract despite plaintiff’s material breach, then the defendant [parties] [is][are] liable to [plaintiff][each other] for the damages caused by [the breach][their respective breaches].

The plaintiff must prove [he][she][it] sustained damages resulting from the defendant’s breach. To recover on [his][her][its] claim, the plaintiff must prove that because of the defendant’s failure to perform the contract, [he][she][it] has [been damaged] [not received] the (benefits) (payment) (performance) to which [he][she][it] is entitled to under the contract.

The defendant has countersued the plaintiff for damages alleging the plaintiff’s material breach of the contract. The defendant/counter-plaintiff must prove [he][she][it] sustained damages resulting from the plaintiff/counter-defendant’s material breach. To recover on [his][her][its] claim, the counter-plaintiff must prove that because of the counter-defendant’s material failure to perform the contract, [he][she][it] has [been damaged] [not received] the (benefits) (payment) (performance) to which [he][she][it] is entitled to under the contract.

The defendant denies the plaintiff sustained damage [to the extent claimed].

The counter-defendant denies the counter-plaintiff sustained damage [to the extent claimed].

You will address these issues in questions \_\_\_\_\_ and \_\_\_\_\_ on your verdict.

*Instruction and Notes on Use approved November 2025.*

### **Notes on Use**

*PML Dev. LLC v. Vill. of Hawthorn Woods*, 2023 IL 128770 recognizes that both parties may have suffered damages, and these damages need to be offset. See the Introduction for a discussion of *PML*.

**B700.10V Questions for Verdict Form (Damages to Plaintiff and Defendant – Plaintiff’s Prior Breach)**

[--] Did one or more of the parties prove [he][she][it][they] sustained damage as a result of another party’s breach of the contract?

YES \_\_\_\_ NO \_\_\_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B and Verdict \_\_ at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

*Verdict Form approved November 2025.*

## **700.11 Contracts--Several Documents**

A written contract may consist of more than one document.

### **Notes on Use**

This instruction should be used only when two or more writings constitute the contract at issue in the case.



## **700.12 Contract--Validity of Oral and Partly Oral Contracts**

[An oral] [A partly oral and partly written] contract is as valid and enforceable as a written contract.

### **Notes on Use**

This instruction may be used in all cases where there is evidence of an oral or a partly oral and partly written agreement, unless there is a factual issue for determination by the jury relevant to a defense based on the Statute of Frauds.

### 700.13 Promissory Estoppel

The plaintiff claims an enforceable promise existed between the parties because the plaintiff justifiably relied on a promise made by the defendant. The plaintiff has the burden of proving:

[1] The defendant promised the plaintiff that [he][she][it] would [*insert terms alleged by plaintiff*].

[2] The plaintiff [*state what plaintiff claims he did or refrained from doing based upon the promise*].

[3] The defendant expected [or reasonably should have expected] that the promise would cause the plaintiff to [*state what plaintiff claims he did or refrained from doing based upon the promise*].

[4] The plaintiff was damaged because [he][she][it] relied on the defendant's promise.

You will address these issues in questions \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ on your verdict.

*Notes on Use revised November 2025.*

#### **Notes on Use**

This instruction should only be given when there is a dispute as to the formation of the contract and there is no written contract. It should be given in conjunction with IPI 700.02. The instruction should be used as an alternative to IPI 700.03 in those cases in which the doctrine of promissory estoppel is used to establish an enforceable contract.

**700.13V Questions for Verdict Form (Promissory Estoppel)**

[--] Did the plaintiff prove the defendant promised the plaintiff that [he][she][it] would [insert terms alleged by plaintiff]?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[--] Did the plaintiff prove [state what plaintiff claims he did or refrained from doing based upon the promise] in reliance on the defendant's promise?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[--] Did the plaintiff prove the defendant expected [or reasonably should have expected] that the promise would cause the plaintiff to [state what plaintiff claims he did or refrained from doing based upon the promise]?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[--] Did the plaintiff prove [he][she][it] was damaged because [he][she][it] relied on the defendant's promise?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

*Notes on Use omitted November 2025.*

## **700.14 Affirmative Defenses to Contract Enforcement**

The law recognizes that sometimes, even though the plaintiff has met [his][her][its] burden of proving that a contract exists, facts or circumstances may exist that would excuse the defendant from being liable to the plaintiff. These facts or circumstances are called affirmative defenses.

In this lawsuit, the defendant[s] has [have] raised and has [have] the burden to prove the following affirmative defense(s):

*[Insert whichever affirmative defense(s) IPI 700.14A-IPI 700.14G is(are) applicable].*

**700.14A [1] Incompetence**

The law provides if the defendant is not competent because [he][she][they] [is][are] a minor(s) or because [he][she][they] [is][are] mentally ill or has insane delusions, then the contract cannot be enforced against [him][her][them].

The defendant[s] [claims][claim] and [has][have] the burden of proving at the time [he][she][they] entered into the contract, [he][she][they] did not have the mental competence or capacity to understand the nature and consequences of the agreement.

In order to be excused from performing the contract, the defendant[s] [has][have]the burden of proving one of the following:

at the time the contract was made the defendant[s] was under 18 years old.

OR

at the time the contract was made, the defendant[s] lacked the mental competence or capacity to understand the nature and consequences of the agreement and was unable to protect [his][her][their] own interests.

Plaintiff denies defendant's claim of incompetence.

You will address these issues in question \_\_\_\_ on your verdict.

## 700.14B [2] Duress

The law provides that if one party forces another party to enter into a contract by wrongful acts or threats that deprive the other party of his own free will, the contract cannot be enforced against the forced party.

The defendant[s] [claims][claim] and [has][have] the burden of proving [he][she][it][they] [was][were] compelled to enter into the contract by a wrongful act or threat that deprived [him][her][it][them] of the exercise of free will in entering into the contract.

Duress is intentional action by the plaintiff [or a third party] presenting such a serious threat of loss or injury to the defendant that the defendant[s] felt that [he][she][it][they] had no reasonable alternative or choice but to enter the contract.

The defendant[s] [claims][claim] and [has][have] the burden of proving that [he][she][it][they] entered into the contract only because the plaintiff[s] [third party] subjected [him][her][it][them] to duress as follows:

*[state the alleged incidents of duress]*

In order to prove a defense based upon duress, the defendant[s] must prove both of the following by clear and convincing evidence:

[1] [he][she][it][they] entered into the contract only because the plaintiff[s] [third party] subjected [him][her][it][them] to the circumstances listed above; and

[2] the circumstances left [him][her][it][them] with no reasonable choice but to enter the contract.

Plaintiff denies defendant's claim of duress.

You will address these issues in question \_\_\_\_ on your verdict.

### **700.14C [3] Misrepresentation**

[WITHDRAWN]

IPI 700.14C (formerly IPI 700.12C) is withdrawn. If fraudulent misrepresentation is an issue in the case, use IPI 700.14D [4] Fraud.

*Instruction withdrawn April 2016.*

## 700.14D [4] Fraud

### Alternative 1 - Clear and Convincing Evidence Only as to Certain Elements

Generally, the law provides if one party fraudulently by misrepresentation of a material fact convinced another to enter into a contract, then that party cannot enforce that contract against the other.

The defendant[s] [claims][claim] and [has][have] the burden of proving each of the following propositions of fraud by clear and convincing evidence:

First, the plaintiff made the following statement[s]:

*[Here insert or paraphrase the allegedly fraudulent statement or statements that the plaintiff is claimed to have made.]*

Second, the statement[s] [was a] [were] false statement[s] of material fact[s].

Third, [the plaintiff [knew [or] [believed] the statement[s] [was][were] false] [or] [the plaintiff made the statement[s] in reckless disregard of whether [it was] [they were] true or false].

The defendant has the burden of proving that each of the following propositions is more probably true than not true.

Fourth, the plaintiff made the statement[s] with the intent to induce the defendant to enter into the contract;

Fifth, the defendant reasonably believed the statement[s] and [acted] in justifiable reliance on the truth of the statement[s];

Sixth, the defendant entered into the contract based upon the defendant's reliance on the statements made by the plaintiff.

Plaintiff denies defendant's claim of fraud.

You will address these issues in question \_\_\_\_\_ on your verdict.

### Alternative 2 - Clear and Convincing Evidence on all Elements

Generally, the law provides if one party fraudulently by misrepresentation of material facts convinced another to enter into the contract, then that party cannot enforce the contract against the other.

The defendant[s] [claims][claim] and [has][have] the burden of proving each of the following propositions of fraud by clear and convincing evidence:

First, the plaintiff made the following statement[s]:

*[Here insert or paraphrase the allegedly fraudulent statement or statements that the plaintiff is claimed to have made.]*

Second, the statement[s] [was a] [were] false statement[s] of material fact[s].

Third, [the plaintiff [knew] [or] [believed] the statement[s] [was] [were] false [or] [the plaintiff made the statement[s] in reckless disregard of whether [it was] [they were] true or false].

Fourth, the plaintiff made the statement[s] with the intent to induce the defendant to enter into the contract;

Fifth, the defendant reasonably believed the statement[s] and [acted] in justifiable reliance on the truth of the statement[s];

Sixth, the defendant entered into the contract based upon the defendant's reliance on the statements made by the plaintiff.

Plaintiff denies defendant's claim of fraud.

You will address these issues in question \_\_\_\_\_ on your verdict.

*Instruction revised April 2016. Notes on Use and Comment created April 2016. Comment revised November 2025.*

### **Notes on Use**

Either Alternative 1 or Alternative 2 should be given when the defendant has raised fraud as an affirmative defense.

### **Comment**

See the Comment to IPI 800.02A and the cases cited there. Alternative 1 should be used in those cases where the trial court rules that only the first, second, and third proposition of IPI 700.14D must be proved by clear and convincing evidence and the remaining elements require only proof by a preponderance of the evidence.

Alternative 2 should be used in those cases where the trial court rules that each element of this affirmative defense of fraud must be proved by clear and convincing evidence.

## 700.14E [5] Frustration of Purpose; Impossibility of Performance

The law excuses the defendant's ability to keep [his][her][its][their] promise [if the purpose of the contract was frustrated] [if the promise was impossible to perform].

The defendant[s] [claims][claim] and [has][have] the burden of proving [his][her][its][their] failure to keep [his][her][its][their] promise was excused because [it was "impossible" to perform] [it was frustrated by a change in circumstances that destroyed the reason for the contract].

The defendant[s] [claims][claim] and [has][have] the burden to prove that [his][her][its][their] performance [became impossible as follows: (*state alleged circumstances of impossibility*)] [was frustrated as follows (*state how the value was frustrated*)]. The plaintiff denies this.

In order to prove a defense based upon [frustration of purpose] [impossibility of performance], the defendant[s] [has][have] the burden of proving all three of the following facts:

- [1] The circumstances described above occurred;
- [2] The parties reasonably did not foresee the circumstances when they made the contract;
- [3] [The circumstances made it impossible for the defendant[s] to keep [his][her][its][their] promise [or] [the circumstances totally or nearly totally destroyed the benefits that the defendant expected to receive from the contract].

The plaintiff denies the defendant's claim of [impossibility of performance] [or] [frustration of purpose].

You will address these issues in question \_\_\_\_ on your verdict.

## 700.14F [6] Undue Influence--Fiduciary Relationship Claimed

The law provides if the defendant entered into the contract only because a party subjected the defendant to undue influence, the plaintiff cannot enforce the contract against the defendant.

The defendant[s] [claims][claim] and [has][have] the burden of proving by clear and convincing evidence there was a fiduciary relationship between the parties and the agreement upon which the plaintiff relies is void because of undue influence by the plaintiff [and][or][a third party].

In order to show a fiduciary relationship, the defendant[s] [has][have] the burden of proving [he][she][it][they] placed such trust and confidence in the plaintiff that the plaintiff's opinion could overcome the defendant's own free will. To show a fiduciary relationship, the defendant[s] [has][have] the burden of proving by clear and convincing evidence all three of the of the following:

1. The defendant placed trust and confidence in the plaintiff [or third party].
2. The plaintiff [or third party] actually or impliedly agreed to exercise [his][her][its] judgment on behalf of the defendant.
3. The plaintiff [or third party] gained influence and superiority over the defendant.

If the defendant[s] proves [prove] a fiduciary relationship, the plaintiff has the burden of proving the following by clear and convincing evidence in order to enforce the contract:

- (1) the contract was fair; and
- (2) the contract did not result from any undue influence over the defendant; and
- (3) the defendant had independent advice.

Undue influence is more than just advice or persuasion or an appeal to the defendant's[s]' own reasoning. In deciding whether there was undue influence, you may consider whether, before the contract was made, there was full disclosure to the defendant of all the material circumstances surrounding the contract, whether the contract was fair, and whether the defendant had the opportunity to obtain independent advice.

The plaintiff denies [that there was a fiduciary relationship present][and][denies that there was any undue influence exerted upon the defendant].

You will address these issues in question \_\_\_\_ on your verdict.

## **700.14G [7] Undue Influence--Fiduciary Relationship Arising Under Law**

The law provides, if the defendant entered into the contract only because a party subjected the defendant to undue influence, the plaintiff cannot enforce the contract against the defendant. This court has decided the plaintiff is a fiduciary.

The plaintiff claims and has the burden of proving the following by clear and convincing evidence in order to enforce the contract:

- (1) the contract was fair;
- (2) the contract did not result from any undue influence over the defendant[s]; and
- (3) the defendant had independent advice.

The law is that undue influence exists where one person wrongfully exercises control over another so as to substitute that person's will for the will of the other.

Undue influence is more than just advice or persuasion or an appeal to the defendant's[s'] own reasoning. In deciding whether there was undue influence, you may consider whether, before the contract was made, there was full disclosure to the defendant of all the material circumstances surrounding the contract, whether the contract was fair and whether the defendant had the opportunity to obtain independent advice.

The plaintiff denies that there was any undue influence exerted upon the defendant.

You will address these issues in question \_\_\_\_ on your verdict.

*Instruction revised August 2016; Notes on Use revised November 2025.*

### **Notes on Use**

The claimed affirmative defenses from these instructions must be inserted into IPI 700.02. The instructions on Affirmative Defenses assume all of the itemized/numbered issues are contested, and, if an issue is not contested, it should be eliminated from this instruction and the corresponding questions on the Verdict forms. Contract cases often include multiple defendants who should all be added by name to this instruction.

*Notes on use specific to IPI 700.14F:* This instruction should be used where the fiduciary relationship does not arise as a matter of law and therefore must be proved by the plaintiff. If the relationship between the plaintiff and the defendant is such that the fiduciary relationship arises as a matter of law (e.g., attorney and client), use IPI 700.14G instead.

In the rare case in which the undue influence is claimed to have been exerted by a third person, use proper names in the instruction wherever appropriate.

*Notes on use specific to IPI 700.14G:* This instruction should be used in cases where the

fiduciary relationship arises as a matter of law (e.g., attorney and client). If the relationship between the plaintiff and the defendant is such that the fiduciary relationship must be proved by evidence, use IPI 700.14F instead.

### Comment

Undue influence exists where one person wrongfully exercises control over another so as to substitute that person's will for the will of the other. *Britton v. Esson*, 260 Ill. 273, 103 N.E. 218 (1913). Undue influence cases involve the existence of a fiduciary relationship (arising as a matter of law or fact) where a special confidence is reposed in one who in equity and conscience is bound to act in good faith and with due regard to the interest of the other party. A fiduciary relationship exists as a matter of law between attorney and client, guardian and ward, and principal and agent, and may exist in other cases where one party is heavily dependent upon the advice of another. *Carey Elec. Contracting, Inc. v. First Nat'l Bank*, 74 Ill. App. 3d 233, 392 N.E.2d 759, 30 Ill. Dec. 104 (2d Dist. 1979). The existence of a fiduciary relationship that does not exist as a matter of law must be proven by clear and convincing evidence in order to establish a constructive trust. *Ray v. Winter*, 67 Ill. 2d 296, 367 N.E.2d 678, 10 Ill. Dec. 225 (1977); *Cunningham v. Cunningham*, 20 Ill. 2d 500, 170 N.E.2d 547 (1960); *Kester v. Crilly*, 405 Ill. 425, 91 N.E.2d 419 (1950). There are no cases, however, discussing the burden of proof of establishing a fiduciary relationship in the context of these instructions. Once a fiduciary relationship has been established, there is a presumption that any transaction that benefits the dominant party at the expense of the other party is the result of undue influence. The burden is then on the fiduciary to prove by clear and convincing evidence that the transaction was not the result of undue influence. *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 448 N.E.2d 872, 69 Ill. Dec. 960 (1983); *Brown v. Com. Nat'l Bank*, 42 Ill. 2d 365, 247 N.E.2d 894 (1969); *Turner v. Black*, 19 Ill. 2d 296, 166 N.E.2d 588 (1960); *Works v. McNeil*, 1 Ill. 2d 47, 155 N.E.2d 320 (1953).

**700.14VA Questions For Verdict Form (Incompetence)**

[-] Did the defendant[s] prove [he][she][they][was][were] under the age of 18 when the contract was made?

YES \_\_ NO \_\_

OR

[-] Did the defendant[s] prove that [he][she][they] lacked the mental competence or capacity to understand the nature and consequences of the agreement at the time the contract was made?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_ is YES, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is NO, you should then answer question \_\_\_\_.

*Verdict Form revised September 2012.*

**700.14VB Question For Verdict Form (Duress)**

[-] Did the defendant prove the plaintiff [third party] \_\_\_\_\_ subjected the defendant to duress as stated in these instructions?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_\_ is YES, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_\_ is NO, you should then answer question \_\_\_\_\_.

*Verdict Form revised April 2016.*

## **700.14V C & D Fraud and Misrepresentation Questions**

[WITHDRAWN]

IPI 700.14V C&D (formerly numbered 700.12V C & D) is withdrawn.

*Instruction withdrawn April 2016.*

**700.14VD Question For Verdict Form (Fraud)**

[-] Did the defendant prove the plaintiff committed fraud as stated in these instructions?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to question \_\_\_\_\_ is YES, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If you answer to question \_\_\_\_\_ is NO, you should then answer question \_\_\_\_\_.

*Verdict Form created April 2016.*

**700.14VE Question For Verdict Form (Frustration of Purpose/Impossibility of Performance)**

[-] Did the defendant prove [impossibility of performance] [frustration of purpose] as stated in these instructions?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_ is YES, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is NO, you should then answer question \_\_\_\_.

*Verdict Form revised April 2016.*

**700.14VF Questions For Verdict Form (Undue Influence: Fiduciary Relationship Claimed)**

1. Did the defendant[s] prove that [he][she][it][they] \_\_\_\_\_ placed trust and confidence in the plaintiff [or third party]?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_\_ is YES, you should then answer question \_\_\_\_\_.

2. Did the defendant prove the plaintiff[s] [or third party] actually or impliedly agreed to exercise [his][her][its][their] judgment on behalf of the defendant?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_\_ is YES, you should then answer question \_\_\_\_\_.

3. Did the defendant prove the plaintiff [or third party] gained influence and superiority over the defendant?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_\_ is YES, you should then answer question \_\_\_\_\_.

4. Did the plaintiff prove by clear and convincing evidence the contract was fair?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_\_ is YES, you should then answer question \_\_\_\_\_.

5. Did the plaintiff prove by clear and convincing evidence the defendant obtained independent advice?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

6. Did the plaintiff prove by clear and convincing evidence the contract did not result from undue influence over the defendant?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

**700.14VG Questions For Verdict Form (Undue Influence: Fiduciary Relationship Arising Under Law)**

1. Did the plaintiff prove by clear and convincing evidence the contract was fair?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

2. Did the plaintiff prove by clear and convincing evidence the contract did not result from undue influence over the defendant?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

3. Did the plaintiff prove by clear and convincing evidence the defendant obtained independent advice?

YES \_\_ NO \_\_

If your answer to question \_\_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_\_ is YES, you should then answer question \_\_\_\_.

*Verdict Form revised August 2016. Notes on Use revised November 2025.*

**Notes on Use**

The affirmative defense verdict forms should be used in conjunction with the same numbered affirmative defense instructions. When necessary, court and counsel should use IPI 200.03.05 as a guide to prepare an instruction to inform the jury on the burden of proof by clear and convincing evidence.

## 700.15 Damages

If you find in favor of the plaintiff, you must then decide how much money, if any, would fairly compensate the plaintiff for the defendant's[s'] breach of contract. The plaintiff has the burden of proving each element of damages claimed and that they occurred as a direct and natural result of the defendant's[s'] breach. In calculating the plaintiff's damages, you should determine that sum of money that will put the plaintiff in as good a position as [he][she][it] would have been in if [both][the] the plaintiff and the defendant had performed all of their promises under the contract.

The plaintiff seeks an award of several different categories of contract damages.

[1] Direct damages for:

*(Here insert the element of direct damages that have a basis in the evidence.)*

“Direct damages” are the amount of gain the plaintiff would have received if [both][the] parties had fully performed the contract. You calculate the amount of this gain by determining the value of the contract benefits the plaintiff did not receive because of the defendant's breach and then subtracting from that value, the amount you calculate the value of whatever expenses the plaintiff saved because of the breach.

[2] Special damages for:

*(Here insert the element of special damages that have a basis in the evidence.)*

Special damages are different from direct damages.

The plaintiff must prove these damages were reasonably foreseeable by the parties when they entered into the contract.

[3] Incidental damages for:

*(Here insert the element of incidental damages that have a basis in the evidence.)*

Incidental damages are different from direct and special damages.

“Incidental damages” are costs that were reasonably spent either in responding to the defendant's[s'] breach of the contract or in securing the benefits the defendant was [were] to have provided.

You will address these issues in questions \_\_\_\_, \_\_\_\_, (etc.) on your verdict.

*Notes on Use revised November 2025.*

### **Notes on Use**

This general damages instruction should be given in all contract cases where none of the specific damages instructions are applicable. IPI 700.19 on mitigation of damages may be given with this instruction if appropriate.

The verdict form relating to this instruction provides the clear steps for the determination of a dollar amount to be awarded if applicable. This form may be modified for use by a counter-plaintiff.

**700.15V Questions for Verdict Form (For Damages--General)**

[-] Did the plaintiff prove [he][she][it] sustained damages?

YES \_\_ NO \_\_

If your answer to question \_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_ is YES, you should then answer question \_\_.

[-] Did the plaintiff prove these damages were caused by the defendant's breach of the contract?

YES \_\_ NO \_\_

If your answer to question \_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_ is YES, you should then answer question \_\_.

[-] Did the plaintiff present evidence from which you can determine the fair and reasonable value of the loss?

YES \_\_ NO \_\_

If your answer to question \_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_ is YES, you should then answer question \_\_.

[-] *To determine Direct Damages:*

[a] the value of the contract benefits the plaintiff proved [he][she][it] should have received:

[a] = \$ \_\_\_\_\_

[b] the expenses the plaintiff saved because of the breach:

OR

the amount of money the plaintiff has actually received from the defendant:

[b] = \$ \_\_\_\_\_

[5 or -] the plaintiff's Total Direct Damages (a minus b):

[-] = \$ \_\_\_\_\_

[6 or -] *Special Damages*: the amount of special damages the plaintiff proved were reasonably foreseeable when the contract was made:

[-] = \$ \_\_\_\_\_

[7 or -] *Incidental Damages*: the amount the plaintiff proved were reasonably spent [responding to the defendant's breach of the contract] [securing the benefits the defendant was to have provided].

[-] = \$ \_\_\_\_\_

[8 or -] TOTAL DAMAGES = [5] + [6] + [7]

[-] = \$ \_\_\_\_\_

WE, THE JURY, AWARD \_\_\_\_\_ \$ \_\_\_\_\_

*Verdict Form and Notes on Use revised November 2025.*

### **Notes on Use**

This general damages verdict form should be given whenever the related IPI 700.15 is read. It is expected that each question will have its own number and they will be arranged logically and numbered in sequence. Questions for the verdict form found at IPI 700.19V on mitigation of damages may be given with this instruction if appropriate.

**B700.15V Questions for Verdict Form (For Damages—General – Damages to Plaintiff and Counter-Plaintiff – Plaintiff’s Prior Material Breach)**

[-] Did one or more of the parties present evidence from which you can determine the fair and reasonable value of the loss?

YES \_\_ NO \_\_

If your answer to question \_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_ is YES, you should then answer question \_\_.

[-] *To determine Plaintiff’s Direct Damages:*

[a] the value of the contract benefits the plaintiff proved [he][she][it] should have received:

[a] = \$ \_\_\_\_\_

[b] the expenses the plaintiff saved because of the breach:

OR

the amount of money the plaintiff has actually received from the defendant:

[b] = \$ \_\_\_\_\_

[-] the plaintiff’s Total Direct Damages (a minus b):

[-] = \$ \_\_\_\_\_

[6 or -] *Special Damages:* the amount of special damages the plaintiff proved were reasonably foreseeable when the contract was made:

[-] = \$ \_\_\_\_\_

[7 or -] *Incidental Damages:* the amount the plaintiff proved were reasonably spent [responding to the defendant’s breach of the contract] [securing the benefits the defendant was to have provided].

[-] = \$ \_\_\_\_\_

[8 or -] TOTAL PLAINTIFF’S DAMAGES = [5] + [6] + [7]

[-] = \$ \_\_\_\_\_

[9] *To determine Counter-Plaintiff's Direct Damages:*

[a] the value of the contract benefits the defendant proved [he][she][it] should have received:

[a] = \$ \_\_\_\_\_

[b] the expenses the defendant saved because of the breach:

OR

the amount of money the defendant has actually received from the plaintiff:

[b] = \$ \_\_\_\_\_

[10 or -] the Counter-Plaintiff's Total Direct Damages (a minus b):

[-] = \$ \_\_\_\_\_

[11 or -] *Special Damages:* the amount of special damages the counter-plaintiff proved were reasonably foreseeable when the contract was made:

[-] = \$ \_\_\_\_\_

[12 or -] *Incidental Damages:* the amount the counter-plaintiff proved were reasonably spent [responding to the counter-defendant's breach of the contract] [securing the benefits the counter-plaintiff was to have provided].

[-] = \$ \_\_\_\_\_

[13 or -] TOTAL COUNTER-PLAINTIFF'S DAMAGES = [10] + [11] + [12]

[-] = \$ \_\_\_\_\_

If the plaintiff's damages [8] are more than the counter-plaintiff's damages [13], you will subtract the counter-plaintiff's damages from the plaintiff's damages and enter a verdict for the plaintiff for the difference.

If the counter-plaintiff's damages [13] are more than the plaintiff's damages [8], you will subtract the plaintiff's damages from the counter-plaintiff's damages and enter a verdict for the counter-plaintiff for the difference.

[14] WE, THE JURY, AWARD DAMAGES TO \_\_\_\_\_ in the amount of  
\$ \_\_\_\_\_.

*Verdict Form and Notes on Use approved November 2025.*

### **Notes on Use**

This verdict form should be used when there is a counterclaim and potential offsets are at issue.

This general damages verdict form should be given whenever the related IPI 700.15 is read. It is expected that each question will have its own number and they will be arranged logically and numbered in sequence. Questions for the verdict form found at IPI 700.19V on mitigation of damages may be given with this instruction if appropriate.

## 700.16 Damages: Measure for Buyer's Breach

If you find in favor of the plaintiff, you must decide how much money, if any, would fairly compensate the plaintiff for the defendant's[s'] breach of contract. The plaintiff has the burden of proving each element of damages claimed and that they occurred as a direct and natural result of the defendant's[s'] breach. In calculating the plaintiff's damages, you should determine that sum of money that will put the plaintiff in as good a position as [he][she][it] would have been in if the plaintiff and the defendant had performed all of their promises under the contract.

The plaintiff seeks an award of several different categories of contract damages [insert whichever appropriate]:

[1] Direct damages for:

*(Here insert the elements of direct damages that have a basis in the evidence.)*

“Direct damages” are the amount of gain the plaintiff would have received if [both][the] parties had fully performed the contract.

The measure of direct damages in this case is the contract price minus the fair market value of the property at the time of the breach, minus any payments the defendant already made.

The fair market value of the property is the amount a willing seller and buyer would agree upon for the property if both were fully informed about the property and neither of them was under any particular pressure to buy or sell.

[2] Special damages for:

*(Here insert the element of special damages that have a basis in the evidence.)*

Special damages are different from direct damages.

The plaintiff must prove these damages were reasonably foreseeable by the parties when they entered into the contract.

[3] Incidental damages for:

*(Here insert the element of incidental damages that have a basis in the evidence.)*

Incidental damages are different from direct and special damages.

“Incidental damages” are costs that were reasonably spent either in responding to the defendant's[s'] breach of the contract or in securing the benefits the defendant was [were] to have provided.

The measure of direct damages in this case is the contract price minus the fair market value of the property at the time of the breach, minus any payments the defendant already made.

The fair market value of the property is the amount a willing seller and buyer would agree upon for the property if both were fully informed about the property and neither of them was under any particular pressure to buy or sell.

You will address these issues in questions \_\_\_\_, \_\_\_\_, (etc.) on your verdict.

*Notes on Use revised November 2025.*

### **Notes on Use**

This instruction should only be used where the defendant is a buyer who has breached a contract to purchase property from plaintiff-seller. This instruction may be given in conjunction with IPI 700.19, mitigation of damages, but cannot be used in conjunction with any other damages instruction.

**700.16V Questions for Verdict Form (For Damages--Buyer's Breach)**

[-] Did the plaintiff prove [he][she][it] sustained damages?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[-] Did the plaintiff prove these damages were caused by the defendant's breach of the contract?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[-] Did the plaintiff present evidence from which you can determine the fair and reasonable value of the loss?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[-] *To determine Direct Damages:*

[a] the contract price the plaintiff proved:

[a] = \$ \_\_\_\_\_

[b] the fair market value of the property at the time of defendant's breach

PLUS

the amount of money the plaintiff has actually received from the defendant:

[b] = \$ \_\_\_\_\_

[5 or -] the plaintiff's Total Direct Damages (a minus b):

[-] = \$ \_\_\_\_\_ [6 or -] *Special Damages:* the amount of special damages the plaintiff proved were

---

reasonably  
foreseeable when the contract was made:

[ - ] = \$ \_\_\_\_\_

[7 or -] *Incidental Damages*: the amount the plaintiff proved were reasonably spent [responding to the defendant's breach of the contract] [securing the benefits the defendant was to have provided].

[ - ] = \$ \_\_\_\_\_

[8] TOTAL DAMAGES = [5] + [6] + [7] [ - ] = \$ \_\_\_\_\_

WE, THE JURY, AWARD \_\_\_\_\_ \$ \_\_\_\_\_

*Notes on Use revised November 2025.*

### **Notes on Use**

This general damages verdict form should be given whenever the related instruction IPI 700.16 is read. It is expected that each question will have its own number and they will be arranged logically and numbered in sequence. Questions for the verdict form found at IPI 700.19V on mitigation of damages may be given with this instruction if appropriate.

## 700.17 Damages: Measure for Seller's Breach

If you find in favor of the plaintiff, you must decide how much money, if any, would fairly compensate the plaintiff for the defendant's[s'] breach of contract. The plaintiff has the burden of proving each element of damages claimed and that they occurred as a direct and natural result of the defendant's[s'] breach. In calculating the plaintiff's damages, you should determine that sum of money that will put the plaintiff in as good a position as [he][she][it] would have been in if the plaintiff and the defendant had performed all of their promises under the contract.

The plaintiff seeks an award of several different categories of contract damages (*insert whichever are appropriate*):

[1] Direct damages for:

*(Here insert the element of direct damages that have a basis in the evidence.)*

“Direct Damages” are the amount of gain the plaintiff would have received if [both][the] parties had fully performed the contract.

The measure of direct damages in this case is the contract price minus the fair market value of the property at the time the plaintiff was supposed to get the property, minus the contract price minus the unpaid portion of the contract price.

The fair market value of the property is the amount a willing seller and buyer would agree upon for the property if both were fully informed about the property and neither of them was under any particular pressure to buy or sell.

[2] Special damages for:

*(Here insert the element of special damages that have a basis in the evidence.)*

Special damages are different from direct damages.

The plaintiff must prove these damages were reasonably foreseeable by the parties when they entered into the contract.

[3] Incidental damages for:

*(Here insert the element of incidental damages that have a basis in the evidence.)*

Incidental damages are different from direct and special damages.

“Incidental Damages” are costs that were reasonably spent either in responding to the defendant's[s'] breach of the contract or in securing the benefits the defendant[s] was [were] to have provided.

The measure of direct damages in this case is the contract price minus the fair market value of the property at the time the plaintiff was supposed to get the property, minus the contract price, minus the unpaid portion of the contract price.

The fair market value of the property is the amount a willing seller and buyer would agree upon for the property if both were fully informed about the property and neither of them was under any particular pressure to buy or sell.

You will address these issues in questions \_\_\_\_\_, \_\_\_\_\_, (etc.) on your verdict.

*Notes on Use revised November 2025.*

### **Notes on Use**

This instruction should only be used where the defendant is a buyer who has breached a contract to purchase property from plaintiff-seller. This instruction may be given in conjunction with IPI 700.19, mitigation of damages, but cannot be used in conjunction with any other damages instruction.

**700.17V Questions for Verdict Form (Seller's Breach)**

[-] Did the plaintiff prove [he][she][it] sustained damages?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[-] Did the plaintiff prove these damages were caused by the defendant's breach of the contract?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[-] Did the plaintiff show evidence from which you can determine the fair and reasonable value of the loss?

YES \_\_\_ NO \_\_\_

If your answer to question \_\_\_ is NO, then your deliberations are complete. You should disregard the remaining numbered questions and go to Verdict B at the end of this verdict and sign it. If your answer to question \_\_\_ is YES, you should then answer question \_\_\_.

[-] To determine *Direct Damages*:

[a] the fair market value of the property at the time of defendant's breach:

[a] = \$ \_\_\_\_\_

[b] the contract price:

PLUS

the amount of money the plaintiff has actually received from the defendant:

[b] = \$ \_\_\_\_\_

[5 or -] The plaintiff's Total Direct Damages (a minus b):

[-] = \$ \_\_\_\_\_

[6 or -] *Special Damages*: the amount of special damages the plaintiff proved were reasonably foreseeable when the contract was made:

[ - ] = \$ \_\_\_\_\_

[7 or -] *Incidental Damages*: the amount the plaintiff proved were reasonably spent [responding to the defendant's breach of the contract] [securing the benefits the defendant was to have provided].

[ - ] = \$ \_\_\_\_\_

[8] TOTAL DAMAGES = [5] + [6] + [7]

[ - ] = \$ \_\_\_\_\_

WE, THE JURY, AWARD \_\_\_\_\_ \$ \_\_\_\_\_

*Notes on Use revised November 2025.*

#### **Notes on Use**

It is expected that each question will have its own number and they will be arranged logically and numbered in sequence. This general damages verdict form should be given whenever the related IPI 700.17 is read. Questions for the verdict form found at IPI 700.19V on mitigation of damages may be given with this instruction if appropriate.

**700.18 Damages: Measure When Regulated by Contract**

In their contract, the parties agreed to the following:

*[State here the contract terms regulating damages.]*

This agreement is binding, and in the course of applying these instructions, you must abide by this agreement in determining the amount of damages, if any, in this case.

You will address these issues in question \_\_\_\_ on your verdict.

*Notes on Use revised November 2025.*

**Notes on Use**

This instruction should be given where the contract at issue contains a provision setting forth damages for breach of the contract. When this instruction is given, no other instruction on damages can be given.

**700.18V Question for Verdict Form (Measure When Regulated by Contract)**

[-] What amount of damages does the contract state the plaintiff is entitled to?

\$ \_\_\_\_\_

Continue on with your verdict, and [answer question [ ] ] or sign Verdict for A at the end of this Verdict.

*Notes on Use revised November 2025.*

**Notes on Use**

This should be used in connection with IPI 700.18 when the evidence supports it.

## 700.19 Determination of Damages--Mitigation of Damages

The law provides a party cannot recover damages [he][she][it][they] could have prevented by exercising ordinary care and diligence when [he][she][it][they] learned or should have learned of the breach.

The burden is on the defendant to prove the plaintiff failed to minimize [his][her][its] damages and that the damages should be reduced by a particular amount as a result.

In this case, the defendant[s] claim[s] and has the burden of proving that, with reasonable efforts and ordinary care, the plaintiff could have avoided some losses in whole or in part, even though [his][her][its] losses originally resulted from the defendant's[s'] failure to keep [his][her][its] promise.

If the defendant[s] proves [prove] that the plaintiff could have avoided some losses in whole or in part with reasonable efforts and ordinary care, you may not require the defendant to pay the amount the plaintiff could reasonably have avoided and you must subtract any such amount from the amount of damages you have found.

If you find the plaintiff incurred costs in making a reasonable effort to avoid such losses, you must make an award to the plaintiff for such costs.

You will address these issues in questions \_\_\_\_\_, \_\_\_\_\_ on your verdict.

*Notes on Use revised November 2025.*

### **Notes on Use**

This damage instruction, when the evidence supports its use, may be given in conjunction with IPI 700.15, 700.16, and 700.17.

**700.19V Questions for Verdict Form (Mitigation of Damages)**

[-] How much money did the plaintiff lose because of the defendant's breach of contract?

\$ \_\_\_\_\_

[-] Could the plaintiff have avoided losing some of his money with reasonable effort and ordinary care?

YES \_\_ NO \_\_

If the answer to question [-] above is NO, the amount named in the first question above is the amount of damages that you should award to the plaintiff. If the answer to question [-] above is YES, you should then answer question [-].

[-] How much money could the plaintiff have saved if [he][she][it] had exercised reasonable effort and ordinary care?

\$ \_\_\_\_\_

[-] (-) minus (-) = amount of damages to be awarded the plaintiff.

\$ \_\_\_\_\_

WE, THE JURY, AWARD the plaintiff \$ \_\_\_\_\_

*Notes on Use revised November 2025.*

**Notes on Use**

This should be used in connection with IPI 700.19 when the evidence supports it.

**700.20V Concluding Question for Verdict Form**

Continue on with your verdict and sign Verdict A at the end of this verdict.

Either Verdict A or Verdict B must be signed by each juror.

VERDICT A

WE, THE JURY, FIND FOR the plaintiff AND AGAINST the defendant.

---

---

---

---

---

---

---

---

---

---

---

---

---

---

VERDICT B

WE, THE JURY, FIND FOR the defendant AND AGAINST the plaintiff.

---

---

---

---

---

---

---

---

---

---

---

---

---

---

*Sample Contract Instructions omitted November 2025.*