

3048 TIME AS AN ELEMENT

The importance of time in connection with the performance of a contract depends upon the nature of the contract, the terms of the contract, and the circumstances appearing from the conduct of the parties. Time is not to be regarded as of the essence of the contract unless it is clear that the parties intended to make it so by their conduct or by the terms on which they have agreed.

Time is not to be regarded as of the essence of the contract merely because a definite time for performance is stated in the contract, in the absence of any further provision regarding the effect of nonperformance at the time stated.

If there is no provision in a contract as to the time for performance, the law will imply a reasonable time which means a somewhat more protracted time than directly, forthwith, or as soon as possible.

If you determine that performance at the exact time agreed upon was intended to be of vital importance to the parties, you may find that time was of the essence so that failure of the party to perform on time may constitute a breach of contract.

COMMENT

This instruction and comment were approved by the Committee in 1975. The language of the instruction was revised in 2016.

Zuelke v. Gergo, 258 Wis. 267, 45 N.W.2d 690 (1951); Wauwatosa Realty Co. v. Bishop, 6 Wis.2d 230, 94 N.W.2d 562 (1959).

Appleton State Bank v. Lee, 33 Wis.2d 690, 693, 148 N.W.2d 1 (1967); Rottman v. Endejan, 6 Wis.2d 221, 226, 94 N.W.2d 596 (1959).

Rottman v. Endejan, *supra* at 225; Restatement, Contracts § 276(a).

Reasonable time implied: Delap v. Institute of America, Inc., 31 Wis.2d 507, 512, 143 N.W.2d 476 (1966); 17 Am. Jur. 2d Contracts § 329.

This instruction does not apply to cases under the Commercial Code involving the sale of goods. See Wis. Stat. § 402.601 and following sections.