

**3054 DEMAND FOR PERFORMANCE**

Before an action may be maintained for breach of a contract, a demand for performance in accordance with the contract must be made. [However, a demand is unnecessary if the party alleged to have breached the contract (denies the existence of the contract) (declares an intention not to perform).]

A request for performance which differs materially from the terms of the contract is not a sufficient demand.

It is for the jury to determine whether a demand for performance in accordance with the terms of the contract was made.

**COMMENT**

This instruction and comment were approved by the Committee in 1975. The comment was updated in 2011. A citation was corrected in 2014.

Corbitt v. Stonemetz, 15 Wis. 170 (1862); Scherg v. Puetz, 269 Wis. 561, 69 N.W.2d 490 (1955).

If the contract requires payment of a certain sum at specified intervals, no demand is necessary. Gall v. Gall, 120 Wis. 270, 97 N.W. 938 (1904).

**Uniform Commercial Code Cases.** The Uniform Commercial Code requires a notice of breach when a buyer has accepted delivery of goods and then discovers a nonconformity. Wis. Stat. § 402.607(3). When a seller under the U.C.C. fails to make a delivery or repudiates the contract, there is no requirement to provide notice of breach. Wis. Stat. § 402.711.