

3062 IMPOSSIBILITY: SUPERVENING

If performance of a contract is possible only if a certain state of facts continues to exist, then a cessation or termination of the state of facts which makes performance impossible will excuse failure to perform. But if performance becomes impossible by reason of contingencies which should have been foreseen by a party, then such party is not excused from the duty to perform.

COMMENT

This instruction and comment were approved by the Committee in 1975. Editorial changes were made in 1993 to address gender references in the instruction. No substantive changes were made to the instruction.

Cook v. McCabe, 53 Wis. 250, 259, 10 N.W. 507 (1881); Jennings v. Lyons, 39 Wis. 553 (1876).

Financial inability of a party to perform does not amount to impossibility in a legal sense. Green v. Kaemph, 192 Wis. 635, 640, 212 N.W. 405 (1927).

See Comment to Wis JI-Civil 3061.