

**3076 CONTRACTS: RESCISSION FOR NONPERFORMANCE**

Not every breach of a contract or failure exactly to perform entitles the other party to rescind. Rescission is not permitted for a slight, casual, trivial, or technical failure to perform the obligations of the contract.

A contract may be rescinded by a party only if the other party has breached the contract in a substantial manner so serious as to destroy the essential objects or purposes of the contract.

Where a party unjustifiably or persistently refuses to perform a material contract obligation or is so neglectful in the performance of the contract as to indicate an intention not to comply substantially with the contract, the other party to the contract is entitled to regard the attitude of the first party as a repudiation of the contract, and may rescind the contract by indicating this rescission to the first party.

**COMMENT**

This instruction and comment were approved by the Committee in 1975. An editorial correction was made in 2001.

17 Am. Jur. 2d §§ 503, 504; Restatement, Contracts, § 293; Appleton State Bank v. Lee, 33 Wis.2d 690, 148 N.W.2d 1 (1967); Hoffman v. Danielson, 251 Wis. 34, 27 N.W.2d 739 (1947).

Repudiations as basis for rescissions: Gedanke v. Wisconsin Evaporated Milk Co., 215 Wis. 370, 254 N.W. 660 (1934); Shy v. Industrial Salvage Material Co., 264 Wis. 118, 58 N.W.2d 452 (1953).