

## 12.4: Performance and Breach of Contract

**Performance** simply means undertaking the legal duties imposed by the terms of the contract.

But how do we know whether the contract terms have been performed? Sometimes it's easy to determine. For instance, if someone offers to sell his scooter for four hundred dollars, a purchaser agrees, and they exchange the scooter for the money, then the contract has been fully performed. A contract was formed, the parties performed their obligations under it (known as **complete performance**), and they are subsequently discharged from further duties arising under the contract. Complete performance results in an executed contract.

When a party fails to perform under the terms of the contract without a legally justifiable reason, the party is in **breach of contract**. Not all breach of contract situations give rise to litigation. Some breaches are minor and may be overlooked by parties, especially if there is a long-term business relationship between them. Others may be major and give rise to significant issues between the parties.

In a service contract, the standard used to judge performance is **substantial performance**. This means that the performing party acted in good faith and conveyed enough benefit to the other party under the contract that any breach may be remedied by money damages. A **material breach** in a service contract occurs when a party has not substantially performed under the terms of the contract. A **minor breach** occurs when the party has substantially performed but has not strictly performed.

Performance to the standard of **personal satisfaction** can be enforced if the contract expressly requires it. This means that contract performance is evaluated subjectively, either by one party to the contract or by a third-party beneficiary specified in the contract. If the subject of the contract is something for which approval is dependent on someone's subjective opinion, like personal taste, then assessment can be made on a subjective standard providing this standard is clearly specified in the contract. These contracts often occur in the entertainment industry, as well as the building of custom homes.

### Conditions

A **condition** is an act or event (other than the lapse of time) that must occur before performance under a contract becomes due. Conditions determine when a party must perform.

Type of Condition	Description
Condition precedent	A condition must occur before a party's performance is required
Concurrent condition	Each party's performance is dependent on the other party's performance
Subsequent condition	A condition follows the duty to perform that completely eliminates or discharges a duty to perform
Constructive condition	Equitable doctrine that serves as an implied-in-law condition to prevent injustice

A **condition precedent** is an act or event that must occur before a duty of immediate performance of a promise arises. For example, an inspection of property is a condition precedent to the sale of a home.

A **concurrent condition** occurs when mutually dependent conditions must be performed at the same time by the parties. For example, delivery of goods and payment in a cash sale are concurrent conditions.

A **subsequent condition** is an event that discharges a duty of performance that becomes absolute. They are rare and tend to occur in the insurance industry. For example, an insurance company may require notice within thirty days of a claim. The insurance company does not have a duty to pay until the insured gives notice. Notice is the subsequent condition that triggers the insurance company's performance.

A **constructive condition** is a condition contained in an essential contractual term that, though omitted by the parties from their agreement, a court has supplied as being reasonable in the circumstances. It is an equitable doctrine that serves to imply conditions to prevent injustice.

---

12.4: Performance and Breach of Contract is shared under a [not declared](#) license and was authored, remixed, and/or curated by LibreTexts.

- **10.4: Performance and Breach of Contract** by [Melissa Randall and Community College of Denver Students](#) is licensed [CC BY 4.0](#).  
Original source: <https://introductiontobusinesslaw.pressbooks.com>.