**24.05A EXISTENCE OF CONDITION PRECEDENT**

[Defendant] claims that [plaintiff] and [defendant] agreed that [defendant] did not have to perform [his her its] obligations under their contract unless [insert description of event alleged to constitute a condition precedent]. [Plaintiff] claims that the parties to the contract did not agree that [defendant’s] obligation to perform was conditioned upon the occurrence of this event, and as a result, [defendant] was required to perform [his her its] obligation under the contract without regard to whether the event occurred.

The law requires that any agreement to make a party’s performance of its contractual obligations dependent upon the occurrence of an event must be expressed in plain, unambiguous language, or the agreement must arise by clear implication from the other contract terms and the circumstances of the contract. Otherwise, parties are required to perform their obligations under the contract without regard to whether the event occurred.

If you decide that it is more likely true than not true that [plaintiff] and [defendant] agreed, through clear and unambiguous language or by clear implication, that [defendant] was not required to perform [his her its] obligations under the contract unless [describe the claimed condition precedent], your verdict must be in favor of [defendant].

Otherwise,

[you must return a verdict for [plaintiff] and decide the amount of [his her its] damages]

[OR]

[[defendant] was required to perform [his her its] obligations under the contract, unless [he she it] is excused for a reason that I will explain in a moment].

**Use Note**

This instruction should be used when the defendant claims there was a condition precedent to the defendant's performance *and the nonoccurrence of the condition is uncontested*. When the occurrence of the condition is contested, Instruction 24.05C should be used instead of this instruction.

If the plaintiff does not dispute that the term is a condition precedent, but claims it was gratuitously given after the original contract was made, i.e., a modification without consideration, then Instruction 24.02, on modification of a contract, should be used instead of this instruction.

In the final paragraph of the instruction, following the word “Otherwise,” use the first bracketed phrase if there are no affirmative defenses. Use the second bracketed phrase if the jury must consider affirmative defenses.

# **Comment**

“A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due.” *Laybourn v. City of Wasilla*, 362 P.3d 447, 453 (Alaska 2015); *Jarvis v. Ensminger*, 134 P.3d 353, 358 (Alaska 2006).

The party pleading the existence of any term in a contract, including a condition precedent, bears the burden of proving its existence. A dispute as to whether the parties agreed to a condition may take one of two forms. First, the parties may disagree as to whether they reached any agreement concerning the alleged condition. When the contract is oral, the existence of such a disputed term would normally constitute a jury question. *See, e.g., Curran v. Hastreiter*, 579 P.2d 524, 526 (Alaska 1978); *B.B. & S. Constr. Co. v. Stone*, 535 P.2d 271, 273 (Alaska 1975).

Second, although the parties may agree as to the existence of a term, they may disagree over whether it constitutes a condition precedent or merely a promise. In some instances, the court can resolve this issue as matter of law. *See, e.g., Prichard v. Clay*, 780 P.2d 359, 362‑63 (Alaska 1989); *Gordon v. Foster, Garner & Williams*, 785 P.2d 1196, 1199 (Alaska 1990).

Conditions precedent are disfavored. *Laybourn*, 362 P.3d at 453; *Jarvis*, 134 P.3d at 358. As a result, to be enforceable, a condition must be expressed in plain, unambiguous language or arise by clear implication. *Laybourn*, 362 P.3d at 453; *Jarvis*, 134 P.3d at 358.