



## The Duty to Cooperate in Service Contracts

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### Abstract

One of the significant developments in contracts in recent decades has been the expansion of and increased focus on "service contracts." These are agreements in which one party, as the service provider, undertakes to deliver a service to the other party in exchange for remuneration. Notably, the growing importance of such contracts has prompted legal scholars and national legislators to identify various types of service contracts, along with the specific and shared rules governing them, and to provide a precise framework for their recognition and regulation.

Unlike the Iranian legal system, which has not independently addressed service contracts and the parties' obligations, the European Union has developed and published various documents about these contracts. Among such documents are the « European Law on Services Contracts (PELSC) » and the « Draft Common Frame of Reference (DCFR) » which provide comprehensive insights into the rules and principles governing service agreements.

It is worth noting that, given the often lengthy process of executing service contracts and the inherent unpredictability associated with such agreements, special measures must be devised to ensure their smooth implementation. In this context, the "obligation to cooperate" emerges as a significant commitment that plays a critical role following the conclusion of a service contract and throughout its execution. This obligation, which can be explicitly or implicitly included in the contract, requires the parties to collaborate to achieve the goals and benefits of the agreement.

In light of the above, it is essential to address whether the obligation to cooperate, particularly on the part of the service recipient, holds a unique position in service contracts. In other words, while the obligation to cooperate can be proposed and enforced in various types of goods and service contracts, are there specific foundations that render this obligation more pronounced in the latter category? Consequently, do such foundations result in differences in the rules governing this obligation between these two contracts, including the remedies for its breach? Furthermore, if the obligation to cooperate is acknowledged in service contracts, what criteria can be established to identify the instances of cooperation required from the service recipient?

In response to the aforementioned questions, and as previously noted, the duty to



cooperate is among the contractual obligations that may be explicitly or implicitly incorporated into a contract. This duty requires each party, through their actions or omissions, to facilitate the performance of the other party's obligations and to ensure the successful execution of the contract. From this definition, it can be inferred that the duty to cooperate differs from other contractual obligations, such as the duty to warn and the duty to inform.

Under the duty to warn, the service recipient must notify the other party of matters that may increase the cost or time required for the performance of obligations before the conclusion of the contract. Unlike the duty to cooperate, the primary aim of the duty to warn is not to facilitate the performance of the other party's obligations. Furthermore, these two duties differ in timing: the duty to cooperate arises only after the contract is formed and throughout the performance process, whereas the duty to warn must be fulfilled before the contract is concluded.

Similarly, the duty to inform, while sharing certain similarities with the duty to cooperate, diverges in specific contexts. In cases where the obligation to provide information exists regardless of its impact on the successful performance of the other party's obligations, the duty to inform is distinct from the duty to cooperate. Consequently, instances of information sharing fall under the scope of the duty to cooperate only when such acts do not constitute the parties' primary obligations, and their absence would hinder the performance of the other party's obligations, thereby jeopardizing the execution of the contract itself.

The findings of this study also indicate that the duty to cooperate, while rooted in the principle of good faith, is applicable in both goods and service contracts but holds greater significance in the latter. This distinction arises from service contracts' nature and specific characteristics, which set them apart from goods contracts. The necessity of providing services tailored to the needs and preferences of the service recipient, coupled with the gradual nature of obligation performance in these contracts, are among the key factors that underscore this distinction.

These characteristics highlight the prominent role of the duty to cooperate in service contracts and emphasize the importance of the recipient's collaboration to ensure the obligor's fulfillment of their duties. Thus, the unique nature of service contracts serves as the foundation for the specific duty of cooperation owed by the service recipient. This unique foundation, in turn, results in notable differences in the rules governing the duty to cooperate in goods and service contracts. Among these differences is the enforcement of remedies for breaches of the duty to cooperate.

For example, in situations where the nature of cooperation renders enforcement ineffective or the service recipient refuses to accept the service—such as a patient who fails to attend a medical appointment or a surgical procedure—it may not be reasonable to compel the service recipient to cooperate. Particularly in the latter scenario, the nature of the service and the individual's right to bodily autonomy make enforcing cooperation exceedingly problematic. Therefore, as is evident in such cases, compelling the obligee to cooperate is not always feasible.



Finally, it is crucial to note that while the duty to cooperate occupies a significant position in service contracts, its scope is balanced by the need to protect the rights of the service recipient and maintain an equitable balance between the rights and obligations of the contracting parties. Accordingly, the service recipient is only required to cooperate when necessary. The notion of necessity, in this context, refers to instances where the provision of the service, and consequently the execution and successful performance of the contract, depend on the service recipient's cooperation.

**Keywords:** Implied Term, Contract Performance, Duty to Inform, Duty to Warn, Service Contract.

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