

3022 DEFINITENESS AND CERTAINTY

A vague or indefinite agreement is not enforceable as a contract. The subject of the agreement, the object to be accomplished, and the requirements as to performance must be clear.

It is not enough that the parties think they have made a contract if they have not expressed their intentions in a manner that can be understood. It is not even enough that they have actually agreed on some matter or matters if their expression of agreement, when interpreted in the light of accompanying facts and circumstances, is not such that the essential terms of the contract can be determined. For example, an agreement which provides only that one party is to receive something but which does not supply, either expressly or by implication, any standard by which performance can be measured is unenforceable due to indefiniteness and uncertainty.

If it is apparent that the parties intended to enter into a contract, and if the conduct of the parties in the surrounding circumstances will reasonably permit omitted terms to be inferred, the contract is not indefinite. But where the parties have indicated an intention to leave some essential matter to be agreed upon in the future, no provision as to that matter omitted can be inferred, for the jury may neither write nor rewrite an agreement between the parties, nor supply any essential term.

Where the parties disagree in their recollection concerning the provisions of an oral contract, the jury must determine what the provisions were.

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.

Words which fix an ascertainable fact or event by which the term of contract duration can be determined make the contract definite and certain in that particular. Pallange v. Mueller, 206 Wis. 109, 238 N.W. 815 (1931).

See Wis. Stat. § 402.305 concerning open price term

See Wis. Stat. § 402.306 regarding the enforceability of output, requirements, and exclusive dealing contracts. (Contra Hoffman v. Pfingsten, 260 Wis. 160, 50 N.W.2d 369 (1951).) Also see Comment, 1964 Wis. L. Rev. 684.

Indefiniteness: Shetney v. Shetney, 49 Wis.2d 26,38,39, 181 N.W.2d 516 (1970); Taylor v. Bricker, 262 Wis. 377, 379,55 N.W.2d 404 (1952); 1 Corbin on Contracts § 95; 1 Williston on Contracts (3d ed.) § 37; Freeman v. Morris, 131 Wis. 621, 627, 42 N.W.2d 273 (1950).

Contract term inferred: Dreazy v. North Shore Publishing Co., 53 Wis.2d 38,44, 191 N.W.2d 720 (1971); Kelley v. Ellis, 272 Wis. 333, 337, 75 N.W.2d 569 (1956).

Jury function: Dreazy, supra.