

**3024 IMPLIED CONTRACT: GENERAL**

[Use paragraphs of Wis JI-Civil 3010 if appropriate.]

An agreement may be established by the conduct of the parties without any words being expressed in writing or orally, if from such conduct it can fairly be inferred that the parties mutually intended to agree on all the terms. This type of agreement is known as an implied contract. An implied contract may rest partially on words expressed in connection with conduct or solely upon conduct.

[If a party expressly declares that it is not his or her intention to make a contract, an implied promise may not be found and enforced against the party.]

**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.

17 Am. Jur. 2d Contracts § 3, p. 334; Williston, Contracts § 22(a); Restatement Contracts § 21; Gerovac v. Hribar Trucking, Inc., 43 Wis.2d 328, 168 N.W.2d 863 (1969).

"[T]he conduct and words of the parties can imply a contract." California Wine Ass'n v. Wisconsin Liquor Co. of Oshkosh, 20 Wis.2d 110, 122, 121 N.W.2d 308 (1963).

"[I]f a person performs valuable services for another at his request, the law implies the making of a promise by the latter and acceptance thereof by the former to pay the one performing service the reasonable value thereof." Estate of Ansell, 2 Wis.2d 1, 6, 85 N.W.2d 786 (1957); citing Estate of St. Germain, 246 Wis. 409, 17 N.W.2d 582 (1945).

"A contract implied in fact may arise from an agreement circumstantially proved, but even an implied contract must arise under circumstances which show a mutual intention to contract. The minds of the parties must meet on the same thing." Kramer v. Hayward, 57 Wis.2d 302, 306-07, 203 N.W.2d 871 (1973).