

3026 IMPLIED CONTRACT: PROMISE TO PAY REASONABLE VALUE

[Use paragraphs of Wis JI-Civil 3024 if appropriate.]

If a person performs services, furnishes property, or expends money for another at the other's request and there is no express agreement as to compensation, a promise to pay the reasonable value of the services or property or to reimburse for money expended may be properly implied; there must be some conduct of the person benefited from which his or her free election to promise to pay may be fairly inferred.

A promise to pay will not be implied where the service or other benefit was intended by the performer as a gratuity, or without expectation of payment.

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.

Wojahn v. National Union Bank of Oshkosh, 144 Wis. 646, 129 N.W. 1068 (1911); Klug v. Sheriffs, 129 Wis. 468, 109 N.W. 656 (1906).

Gratuity: Segnitz v. A. Grossenbach Co., 158 Wis. 511, 149 N.W. 159 (1914). See Wis. Stat. § 401.208 on commercial customs and usages.