

3034 NOVATION

The parties to a contract may mutually agree to create a new contract which discharges their legal obligations under the original contract by [the substitution of a new obligation between the same parties with intent to extinguish the old obligation] [the substitution of a consenting new debtor in place of the old debtor, with intent to release the old debtor] [the substitution of a consenting new creditor in place of the old creditor, with intent to transfer the rights of the old creditor to a new creditor].

If the parties intended only to modify the contract or to expand or diminish the obligations thereunder, then the contract is not discharged.

Consideration and a meeting of the minds of all parties to the new contract are required before discharge of the original contract can be found. However, it is not required that the agreement to discharge the original contract be shown by express words, for it may be implied from the circumstances of the relationship and the conduct of the parties.

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.

Navine v. Peltier, 48 Wis.2d 588, 180 N.W.2d 613 (1970); 58 Am. Jur. 2d §§ 1, 3; 58 Am. Jur. 2d § 23.

Consideration: Bohn Mfg. Co. v. Reif, 116 Wis. 471, 93 N.W. 466 (1903).

Novation implied: Bishop-Babcock Co. v. Keeley, 160 Wis. 546, 152 N.W. 189 (1915).