

A plaintiff sued a defendant for breach of an implied-in-fact contract. The case went to trial, and after all the evidence was presented, the court issued the following instruction to the jury: "Conduct will create an implied-in-fact contract if the conduct of both parties is intentional, and if each knows, or has reason to know, that the other party will interpret the conduct as an agreement to enter into a contract."

Was the instruction correct?

- A. No, because an implied-in-fact contract requires some type of writing signed by the party to be charged. (0%)
- B. No, because an implied-in-fact contract requires that the party to be charged have actual, not merely constructive, knowledge of an agreement between the parties. (2%)
- C. Yes, because an implied-in-fact contract can be established by conduct alone. (83%)
- D. Yes, because an implied-in-fact contract does not require proof of an agreement between the parties. (13%)

Incorrect

Correct answer C

83% Answered correctly

01 min, 04 secs Time Spent

2023 Version

Explanation:

An **implied-in-fact contract** arises when a party's assent to enter a contract is **inferred from the party's conduct or failure to act**. This inference arises when a party (1) **intentionally engages** or fails to engage in conduct and (2) knows or has **reason to know** that the conduct or inaction **may cause the other party to understand that** the party **assents**. And since an implied-in-fact contract can be established by conduct alone and does not require a writing (**Choice A**), the court's instruction to the jury was correct.

(Choice B) All contracts, including implied-in-fact contracts, require that the parties have actual or constructive knowledge of an agreement between the parties. A party has constructive knowledge when a reasonable person in the party's situation would know that an agreement exists.

(Choice D) All valid contracts, including implied-in-fact contracts, require proof of mutual assent—ie, an agreement between the parties.

Educational objective:

An implied-in-fact contract can be created by a party's conduct or failure to act if the party (1) intentionally engages or fails to engage in conduct and (2) knows or has reason to know that assent can be inferred from that conduct or inaction.

References

Restatement (Second) of Contracts §§ 4, 19 (Am. Law Inst. 1981) (explaining that conduct alone can amount to manifestation of assent).

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Examples of implied-in-fact contracts



