

Which of the following fact patterns most clearly suggests an implied-in-fact contract?

- A. A contractor, thinking that he was paving a customer's driveway, for which the contractor had an express contract, mistakenly paved the neighbor's driveway while the neighbor looked on without saying anything or raising any objection.
- B. A county tax assessor mistakenly bills a person for taxes on the neighbor's property, which the person, in good faith, pays.
- C. A physician treated a horseback rider without the rider's knowledge or consent while he was unconscious as the result of a fall from his horse.
- D. At her mother's request, an accountant filled out and filed her mother's "E-Z" income-tax form (a simple, short form).

## Explanation:

### Implied contracts

**Implied-in-fact** Formed when party manifests assent by conduct rather than spoken or written words

Eg, contractor mistakenly paves driveway & owner does not object

**Implied-in-law\*** Constructed by court to prevent unjust enrichment when party receives benefit from another who reasonably expects compensation

("quasi") Eg, physician treats unconscious person

\*Implied-in-law contracts are not true contracts since they lack mutual assent.

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 may cause the other party to understand that the party assents.

Here, the neighbor looked on without saying anything or raising any objection while the contractor mistakenly paved the neighbor's driveway. The neighbor's failure to object creates a reasonable inference that the neighbor assented to the work, so this fact pattern most clearly suggests an implied-in-fact contract.

**(Choice B)** Property owners have a **preexisting legal duty** to pay property taxes. Therefore, a tax bill is a demand to perform that preexisting duty—not an offer to form a contract.

**(Choice C)** In the absence of a contract between the parties, the court may construct an implied-in-law contract to prevent one party from being unjustly enriched by a benefit conferred upon it by another (eg, when an unconscious person receives treatment from a physician—as seen here).

**(Choice D)** A communication is not an offer unless it creates an objectively reasonable expectation that the offeror is willing to enter into a binding contract. A reasonable person would not interpret the mother's request that her daughter fill out a simple income-tax form as willingness to enter into a contract, so none was formed here.

### 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.

### References

Restatement (Second) of Contracts § 336 (Am. Law Inst. 1981) (conduct as manifestation of assent).

Restatement (Second) of Contracts § 69 (Am. Law Inst. 1981) (acceptance by silence).

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