

Most personal and business contracts are express contracts. A contract that is oral or written is an express contract.

**Examples** A written agreement to buy an automobile from a dealership is an express contract because it is in written words. An oral agreement to purchase a neighbor's bicycle is an express contract because it is in oral words.

An **implied-in-fact contract** is implied from the conduct of the parties. The following elements must be established to create an implied-in-fact contract: (1) The plaintiff provided property or services to the defendant, (2) the plaintiff expected to be paid by the defendant for the property or services and did not provide the property or services gratuitously, and (3) the defendant was given an opportunity to reject the property or services provided by the plaintiff but failed to do so.

In the following case, the court had to decide whether there was an implied-in-fact contract.

**implied-in-fact contract**  
A contract in which agreement between parties has been inferred from their conduct.



### CASE 9.1 *Implied-in-Fact Contract*

## Wrench LLC v. Taco Bell Corporation

256 F.3d 446, Web 2001 U.S. App. Lexis 15097 (2001)  
United States Court of Appeals for the Sixth Circuit

"The district court found that appellants produced sufficient evidence to create a genuine issue of material fact regarding whether an implied-in-fact contract existed between the parties."

—Graham, Circuit Judge

### Facts

Thomas Rinks and Joseph Shields created the Psycho Chihuahua cartoon character, which they promote, market, and license through their company, Wrench LLC. Psycho Chihuahua is a clever, feisty, cartoon character dog with an attitude, a self-confident, edgy, cool dog who knows what he wants and will not back down. Rinks and Shields attended a licensing trade show in New York City, where they were approached by two Taco Bell employees, Rudy Pollak, a vice president, and Ed Alfaro, a creative services manager. Taco Bell owns and operates a nationwide chain of fast-food Mexican restaurants. Pollak and Alfaro expressed interest in the Psycho Chihuahua character for Taco Bell advertisements because they thought his character would appeal to Taco Bell's core consumers, males aged 18 to 24. Pollak and Alfaro obtained some Psycho Chihuahua materials to take back with them to Taco Bell's headquarters.

Later, Alfaro contacted Rinks and asked him to create art boards combining Psycho Chihuahua with the Taco Bell name and image. Rinks and Shields prepared art boards and sent them to Alfaro, along with

Psycho Chihuahua t-shirts, hats, and stickers. Alfaro showed these materials to Taco Bell's vice president of brand management as well as to Taco Bell's outside advertising agency. Alfaro tested the Psycho Chihuahua marketing concept with focus groups. Rinks suggested to Alfaro that instead of using the cartoon version of Psycho Chihuahua in its advertisements, Taco Bell should use a live Chihuahua dog manipulated by computer graphic imaging that had the personality of Psycho Chihuahua and a love for Taco Bell food. Rinks and Shields gave a formal presentation of this concept to Taco Bell's marketing department. One idea presented by Rinks and Shields was a commercial in which a male Chihuahua dog passed by a female Chihuahua dog in order to get to Taco Bell food. Taco Bell did not enter into an express contract with Wrench LLC, Rinks, or Shields.

Just after Rinks and Shields's presentation, Taco Bell hired a new outside advertising agency, Chiat/Day. Taco Bell gave Chiat/Day materials received from Rinks and Shields regarding Psycho Chihuahua. Three months later, Chiat/Day proposed using a Chihuahua in Taco Bell commercials. One commercial had a male Chihuahua passing up a female Chihuahua to get to a person seated on a bench eating Taco Bell food. Chiat/Day says that it conceived these ideas by itself. Taco Bell aired its Chihuahua commercials in the United States, and they became an instant success and the basis of its advertising. Taco Bell paid nothing to Wrench LLC or to Rinks

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and Shields. Plaintiffs Wrench LLC, Rinks, and Shields sued defendant Taco Bell to recover damages for breach of an implied-in-fact contract. On this issue, the District Court agreed with the plaintiffs. The decision was appealed.

### Issue

Have the plaintiffs Wrench LLC, Rinks, and Shields stated a cause of action for the breach of an implied-in-fact contract?

### Language of the Court

*The district court found that appellants produced sufficient evidence to create a genuine issue of material fact regarding whether an implied-in-fact contract existed between the parties. On appeal, Taco Bell argues that this conclusion was erroneous, and asserts that the record contains no evidence of an enforceable contract. We agree with the district court's finding that appellants presented sufficient evidence to survive summary judgment on the question of whether an implied-in-fact contract existed under Michigan law.*

### Decision

The U.S. Court of Appeals held that the plaintiffs had stated a proper cause of action against defendant

Taco Bell for breach of an implied-in-fact contract. The Court of Appeals remanded the case for trial.

**Note** The U.S. Supreme Court denied review of the decision in this case. In 2003, a federal court jury ordered Taco Bell to pay \$30 million to plaintiffs Thomas Rinks and Joseph Shields for stealing their idea for the Psycho Chihuahua commercials. Later, the court awarded an additional \$11.8 million in prejudgment interest, bringing the total award to almost 42 million.

### Case Questions

#### Critical Legal Thinking

What does the doctrine of implied-in-fact contract provide? Explain.

#### Ethics

Did Taco Bell act ethically in this case? Did Chiat/Day act ethically in this case?

#### Contemporary Business

What is the purpose of recognizing implied-in-fact contracts? Do you think there was an implied-in-fact contract in this case? If so, what damages should have been awarded to the plaintiffs?

#### Web Exercise

Go to [www.youtube.com/watch?v=B0oEw0IMLXI](http://www.youtube.com/watch?v=B0oEw0IMLXI) for a video clip of Taco Bell's Chihuahua commercial.

#### quasi-contract

##### (implied-in-law contract)

An equitable doctrine whereby a court may award monetary damages to a plaintiff for providing work or services to a defendant even though no actual contract existed. The doctrine is intended to prevent unjust enrichment and unjust detriment.

### Quasi-Contract (Implied-in-Law Contract)

The equitable doctrine of quasi-contract, also called **implied-in-law contract**, allows a court to award monetary damages to a plaintiff for providing work or services to a defendant even though no actual contract existed between the parties. Recovery is generally based on the reasonable value of the services received by the defendant.

The doctrine of quasi-contract is intended to prevent *unjust enrichment* and *unjust detriment*. It does not apply where there is an enforceable contract between the parties. A quasi-contract is imposed where (1) one person confers a benefit on another, who retains the benefit, and (2) it would be unjust not to require that person to pay for the benefit received.

**Example** Heather is driving her automobile when she is involved in a serious automobile accident in which she is knocked unconscious. She is rushed to Metropolitan Hospital, where the doctors and other staff perform the necessary medical procedures to save her life. Heather comes out of her coma, and after recovering is released from the hospital. Subsequently, Metropolitan Hospital sends Heather a bill for its services. The charges are reasonable. Under the doctrine of quasi-contract, Heather is responsible for any charges that are not covered by her insurance coverage.