

### **CV2142. Contract Implied in Fact**

[Name of plaintiff] claims that [name of plaintiff] and [name of defendant] entered into a contract implied in fact.

A contract implied in fact is an actual contract. It may be shown by the parties' conduct and the surrounding circumstances, even if the parties did not express all of their agreement in words.

To succeed on this claim, [name of plaintiff] must prove:

(1) [name of defendant] requested [name of plaintiff] to perform [work/services];

(2) [name of plaintiff] expected [name of defendant] to compensate [him/her/it] for the [work/services]; and

(3) [name of defendant] knew or should have known that [name of plaintiff] expected compensation.

The parties' conduct and the circumstances must show they agreed to the same terms and those terms were definite enough to determine what each party was expected to do.

### **References**

*Jones v. Mackey Price Thompson & Ostler*, 2015 UT 60, ¶ 44, 355 P.3d 1000.

*S6, LLC v. Wing Enters., Inc.*, 2024 UT App 105, ¶ 30, 556 P.3d 100.

*Davies v. Olson*, 746 P.2d 264 (Utah App. 1987).

### **Committee Notes**

For construction-contract claims involving extra work and additional time/compensation, see CV2221.

### **CV2143. Damages under Contract Implied in Fact**

The parties do not have to agree in advance on an exact price. If you find that the parties formed a contract implied in fact but did not agree on the amount of compensation, then the compensation is the reasonable value of the [work/services] proved by the evidence.

### **References**

*S6, LLC v. Wing Enters., Inc.*, 2024 UT App 105, ¶¶ 29-32, 556 P.3d 100.

*Sachs v. Lesser*, 2007 UT App 169, ¶¶ 23 & 25 n.8, 163 P.3d 662, rev'd on other grounds, 2008 UT 87, 207 P.3d 1215.

*Davies v. Olson*, 746 P.2d 264, 269 (Utah Ct. App. 1987).

### **CV2144. Unjust Enrichment/Contract Implied in Law**

[Name of plaintiff] claims that [name of defendant] was unjustly enriched.

This claim does not require proof that the parties made a contract. The law requires [name of defendant] to pay the reasonable value of the benefit received if [name of plaintiff] proves:

- (1) [name of defendant] received a benefit from [name of plaintiff];
- (2) [name of defendant] appreciated or knew of the benefit; and
- (3) under the circumstances, it would be unjust for [name of defendant] to retain the benefit without paying [name of plaintiff] the reasonable value of the benefit.

A benefit may include services, money, property, satisfaction of a debt, or another advantage. However, [name of plaintiff] must prove more than the fact that [name of defendant] was helped in some indirect or incidental way.

### **References**

*Jones v. Mackey Price Thompson & Ostler*, 2015 UT 60, ¶¶ 45, 68, 355 P.3d 1000.

*TruGreen Companies, L.L.C. v. Mower Bros., Inc.*, 2008 UT 81, ¶ 18, 199 P.3d 929.

*Emergency Physicians Integrated Care v. Salt Lake County*, 2007 UT 72, ¶ 26, 167 P.3d 1080.

*S6, LLC v. Wing Enters., Inc.*, 2024 UT App 105, ¶ 34, 556 P.3d 100.

*Richards v. Brown*, 2009 UT App 315, ¶¶ 28-29, 222 P.3d 69.

### **Committee Notes**

To satisfy the third element, the defendant must have “received a true windfall or ‘something for nothing’” arising from “some misleading act, request for services, or the like.” *Jones v. Mackey Price Thompson & Ostler*, 2015 UT 60, ¶ 69, 355 P.3d 1000 (citations omitted). Unjust enrichment is used “only when no express contract is present that governs the remedies available to an injured party. However, where an express contract covering

the subject matter of the litigation exists, recovery for unjust enrichment is not available.”  
*U.S. Fid. v. U.S. Sports Specialty*, 2012 UT 3, ¶ 13, 270 P.3d 464 (citations omitted).

### **CV2145. Damages for Unjust Enrichment**

If you find that [name of plaintiff] has proved unjust enrichment, you may award the reasonable value of the benefit that [name of plaintiff] conferred on [name of defendant] and that [name of defendant] unjustly retained. Although the actual amount of damages need not be proven with precision, it must be based on evidence and may not be based on speculation.

### **References**

*Jones v. Mackey Price Thompson & Ostler*, 2015 UT 60, ¶¶ 57-58, 355 P.3d 1000.

*Emergency Physicians Integrated Care v. Salt Lake County*, 2007 UT 72, ¶ 29, 167 P.3d 1080.

*S6, LLC v. Wing Enters., Inc.*, 2024 UT App 105, ¶ 34, 556 P.3d 100.

*Richards v. Brown*, 2009 UT App 315, ¶¶ 40-41, 222 P.3d 69.