IMPLIED COVENANTS

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1st Basic Principal:

- Attached to all leases
- Why?
  - To recognize the uneven relationship of the parties – LR/LE (implied in law)?
  - To complete an incomplete contract – to make it more fair?
  - To give effect to obvious intent of parties (implied in fact)?

Answer:

- Implied when:

  "So clearly within the contemplation of the parties as that they deemed it unnecessary to express, and therefore omitted to do so, or that it is necessary to imply such covenant in order to give effect to and effectuate the purposes of the contract as a whole."

  Freeport Sulphur Co. v. Am Sulphur Roy. Co.

But

- Must arise from written contract
- Must be complimentary, not contrary to express terms:
  - Not added simply to make contract "fair"
  - Must arise from "presumed intentions gathered from instrument as a whole."

    (Danciger)

So

"There can be no implied covenant as to a matter specifically covered by the written terms of the contract." ***Exxon v. Atlantic Richfield***

and

"A covenant will not be implied unless it appears from the express terms of the contract that 'it was so clearly within the contemplation of the parties that they deemed it unnecessary to express it." ***(HECI v. Neel)***

2nd Basic Principal: Conditions v. Covenants

- Conditions of lease – those things required to maintain lease
  - Operations
  - Production in paying quantities
  - Delay rentals
  - Shut-in payments
- Failure to meet = automatic termination

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