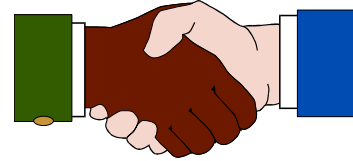


CHAPTER 7: OFFER AND ACCEPTANCE

WHAT IS A CONTRACT?

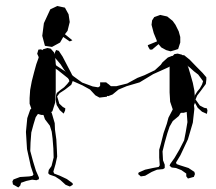
- **contract** → a legally binding agreement that courts will enforce.
→ are the basis for all economic activity between two parties.



- Six major requirements that must be satisfied before the courts will treat transactions as contracts:

1. **Offer and Acceptance**

- There must be a serious, definite offer to contract.
- Terms of the offer must be accepted by the party to whom it was communicated to.



2. **Genuine Assent**

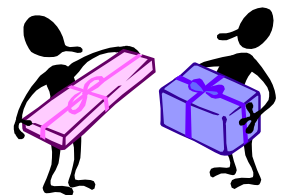
- Offer and acceptance must not be based on one party's deceiving another, on an important mistake, or on the use of unfair pressure exerted to obtain the offer or acceptance.

3. **Legality**

- The agreement between the parties must be legal.
- Example: agreeing to pay someone to commit a crime cannot be a contract

4. **Consideration**

- The agreement must involve both sides receiving something of legal value as a result of the transaction.



5. **Capacity**

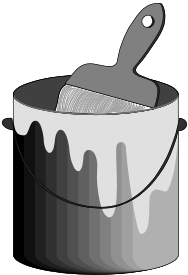
- The parties must be able to contract for themselves instead of having to use a parent or legal representative.

6. **Writing**

- Some agreements have to be in writing to be fully enforceable in court.



- ❑ **offeror**→one who makes a definite offer.
- ❑ **offeree**→one to whom a definite offer is made.
- ❑ Example: A couple want their house painted. A painter offers to do the job for \$1,500 during the month of July. The owners accept the offer and promise to pay the price.



offeror→the painter

offeree→the couple

offer→to paint the house during the month of July for \$1,500

- ❑ the homeowners in the above example could reject the offer by demanding a lower price or to have the job done earlier. The painter could accept or reject the counteroffer.
- ❑ you need to have both an **offer** and **acceptance** to have an **agreement**.

REQUIREMENTS OF AN OFFER

- ❑ **offer**→a proposal by an offeror to do something, provided the offeree does something in return.

→it can be a proposal to do or not to do some specified thing in the future.

- ❑ To create a VALID OFFER:

1. the offeror must appear to intend to create a legal obligation
2. the terms must be definite and complete
3. the offer must be communicated to the offeree



A. EXPRESSION OF INTENT TO CREATE A LEGAL OBLIGATION

1. Test of the Reasonable Person

- ❑ The law is concerned with the **appearance** of a person making a so-called offer.



- If you are joking, but a reasonable person interpreted your conduct as that you intended to contract, then you have made an offer.
- If you are serious, and a reasonable person interpreted your conduct as a joke, then no offer is made.
- “Test of the reasonable person” is an objective legal test used by jurors or judges.

2. Facts and Circumstances

Help!

- The test of the “reasonable person” examines the offeror’s words and conduct in light of all the relevant facts and circumstances.
- Statements made in obvious jest or in frenzied terror that sound like an offer cannot be changed into a contract by acceptance.
- Example: a mother screaming for someone to help her drowning child and she will give them \$20,000 for them to save the child

\$20,000

3. Preliminary Negotiations

- Sometimes one party may state tentative terms, **inviting** other parties to make offers.
- Example: Tom says to Matt “I’ll give you \$400 today for your laptop computer. Do you agree to my deal?”
- Example: Pete says to the class, “I think I’m interested in selling my car for around \$3,000. Is anyone interested?” **This is not an offer to sell.**



4. Social Agreements

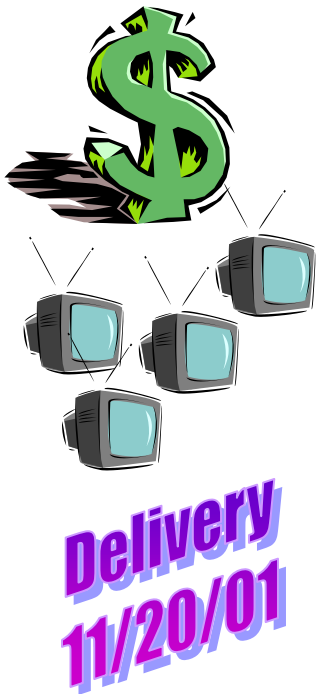
- Social invitations **are not** intended to create legal obligations.
- Example: Two friends make a date to go out to Carmella’s for dinner. No contract is intended or formed. If either breaks the date, the other may be offended but cannot sue.



B. OFFER MUST BE COMPLETE AND CLEAR

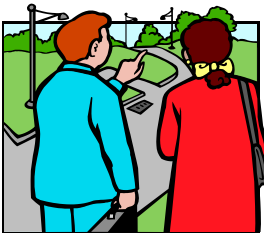
- The terms have to be complete and clear in order to allow a court to determine what the parties intended and identify the parties legal rights and duties.

1. Complete



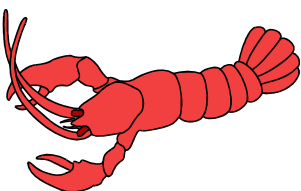
- If the offer is missing essential information, then it is incomplete and legally ineffective.
- All offers must identify the price, the subject matter, and the quantity.
- The amount of essential information depends on how complex the transaction is.
- Example: In most states the essential terms for the sale of real estate lots would include: *identity of the specific lot, price, full terms for payment, date for delivery of possession, and date for delivery of the deed.* **If any of the terms were missing then it is not a valid offer.**
- Example: The Great American offers candy bars for sale. The price is identified, the subject matter is identified, and so is the quantity. **This is a VALID offer.**

2. Clear

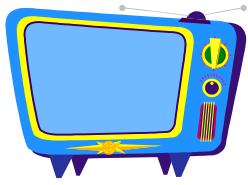


- Each essential term of the offer must be identified clearly.
- Example of NOT clear: There is a new housing development being constructed in town. Mr. and Mrs. Drake agreed on “one lot” but they didn’t specify which lot.

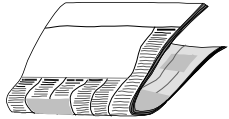
3. Implied Terms



- In some contracts, a term might be implied by law or common business practice.
- Example: contracts between merchants for the sale of goods, when the price is not specified, the current market price is the basis for the contract.



4. Advertisements



- ❑ Advertisements in newspapers and magazines, on radio or TV, or in catalogs or direct mailings are generally not offers.
- ❑ Courts treat them as **invitations** to customers to make offers.
- ❑ A person who advertises something for sale has a limited stock and cannot be expected to sell to the many thousands of people who might reply to the ad.
- ❑ Advertisements may occasionally be offers when:
 1. The ad must be clearly worded in ways that address the problem of numerous people receiving the ad for a limited amount of product. Example: subject to the stock on hand
 2. An ad may become an offer if it asks the offeree to perform an act as a way of accepting. Example: Free 13" televisions available to the first 10 people to walk through the door on Saturday at 7:00 am

C. OFFER MUST BE COMMUNICATED TO THE OFFEREE

- ❑ A person who is not the intended offeree cannot accept the offer.
- ❑ A person cannot accept an offer without knowing about it.
- ❑ Example: an offer of a reward that is made to certain people or to the general public cannot be accepted by someone who has never seen or heard of the offer.

HOW CAN OFFERS BE ENDED?

- ❑ Once an offer is made, it does not last forever.

A. REVOCATION BY THE OFFEROR

- ❑ An offer can be revoked or modified by the **offeror** at any time before it has been accepted.
- ❑ It is true even if the **offeror** said the offer would remain open for a definite longer time.

- ❑ **revocation** → removal of an offer before acceptance
- ❑ Modification or revocation is not effective until it is communicated to the **offeree** or received at the **offeree's** mailing address.

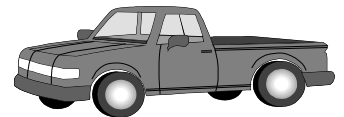
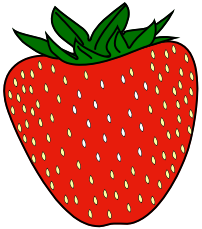
B. TIME STATED IN THE OFFER

- ❑ When making the offer, the **offeror** may state how and when the offer must be accepted.

Only Until Dec. 20th

C. REASONABLE LENGTH OF TIME

- ❑ When nothing is said in the offer about the length of its life, it is alive for a reasonable length of time.
- ❑ Reasonable length of time depends upon all the surrounding circumstances.
- ❑ Examples: perishable produce like strawberries must be sold quickly, but selling a truck would take a longer time period
- ❑ To avoid misunderstandings, it is best to specify when the offer should be accepted by.



D. REJECTION BY THE OFFEREE

- ❑ When the **offeree** clearly rejects the offer, then the offer ends.
- ❑ This happens even if a time limit set by the **offeror** has not expired.

E. COUNTEROFFER

- ❑ A counteroffer happens when the offeree changes the offeror's terms in important ways.
- ❑ It can also be a reply to an offer, with new terms.
- ❑ It ends the original offer and becomes a new offer.

F. DEATH OR INSANITY OF EITHER THE OFFEROR OR OFFEREE

- ❑ When death or insanity happens, the law acts for these parties when they can no longer act and terminate their offers.



HOW CAN AN OFFER BE KEPT OPEN?

- ❑ An offeror is not obligated to keep an offer open for a specified time even if the offeror has promised to do so because nothing has been given in exchange for the promise.

A. OPTIONS

- ❑ An underlying binding contract to keep an offer open.
- ❑ If the **offeree** gives the **offeror** something of value in return for a promise to keep the offer open.
- ❑ The offer may not be withdrawn during the period of the option.
- ❑ If the offer is accepted, the money paid for the option can be applied to the purchase price if this was agreed upon ahead of time.
- ❑ Neither death nor insanity of either party terminates an option.

B. FIRM OFFERS

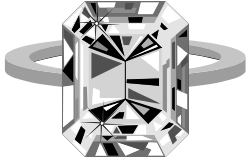
- ❑ A binding offer by a merchant for the sale or purchase of goods stating in writing how long it is to be held open.
- ❑ The Uniform Commercial Code (UCC) makes firm offers binding for the time stated, but not more than three months.
- ❑ This is true even when nothing is paid by the offeree.
- ❑ Neither death nor insanity of either party terminates a firm offer.

HOW ARE ACCEPTANCES CREATED?

- ❑ **acceptance**→ when a party to whom an offer has been made agrees to the proposal.
- ❑ To create an enforceable contract, the acceptance must:
 1. be made by the person or persons to whom the offer was made
 2. match the terms in the offer
 3. be communicated to the offeror

A. WHO CAN ACCEPT AN OFFER?

- ❑ An offer made to one person cannot be accepted by another person.
- ❑ When an offer is made to a particular group or to the public, any member of the group or public who knows of the offer may accept it by doing whatever is required.
- ❑ Example: a newspaper ad for a lost diamond ring offering a reward if found

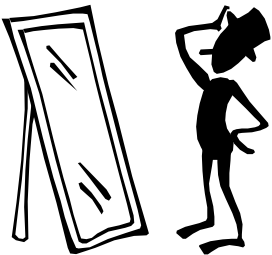


B. ACCEPTANCE MUST MATCH THE OFFER

- ❑ The **offeror** may specify precisely when and how the acceptance is to be made and the **offeree** must comply with the terms.
- ❑ To complete the agreement, the offeree must then comply with such terms.
- ❑ Any change by the **offeree** results in a counteroffer.
- ❑ A counteroffer ends the original offer. This is true even if the change is to the advantage of the offeror.

1. Mirror Image Rule

- ❑ The terms in the acceptance must exactly match the terms contained in the offer.
- ❑ Any variation in the terms results in a counteroffer.
- ❑ It applies to contracts for services → tax preparation
- ❑ It applies to contracts for realty → sale of a house



2. Goods

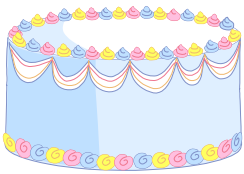
- ❑ A definite acceptance of an offer for a contract for a sale of goods CAN be valid even if it includes new or conflicting terms.

- The new terms or modified terms are treated as follows:
 1. If a party is a consumer, not a merchant, then the new or changed terms are MERE PROPOSALS and not a part of the contract unless agreed to by the original offeror.
 2. If the parties are merchants, the new or changed terms are NOT a part of the contract if the original offeror objects, or in the absence of an objection, if the terms are material.
 3. If the parties are merchants, the new or changed terms ARE part of the contract if the original offeror is silent and the terms are minor (not material).

C. ACCEPTANCE MUST BE COMMUNICATED TO THE OFFEROR

1. Silence As Acceptance

- the **offeror** may not express an offer so that silence would appear to be acceptance.
- in a continuing relationship, the parties may agree that silence is to be regarded as acceptance.
- Examples: dessert of the month club, book of the month club, CD club, magazine subscription
- If a supermarket has a standing order to have a wholesaler ship a certain amount of fresh produce every day unless the retailer breaks the silence with some notice, then silence can be acceptance.

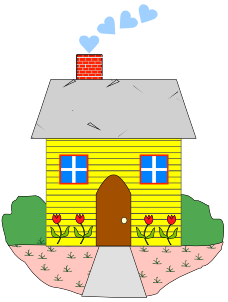


2. Unilateral Acceptance

- **unilateral contract** → offeror promises something in return for the offeree's performance and indicates that this performance is the way acceptance must be made.
- Example: Jake publicly promises to pay a \$100 reward to anyone who returns his lost dog. Many will look, but only one person may find and return the dog and receive the reward.

- When the offeree has begun performance of the act requested, the offer cannot be revoked until the offeree has had a reasonable amount of time to complete performance.

3. Bilateral Acceptance



- **bilateral contract** → an agreement where both parties make a promise.
- Example: a seller promises to deliver a load of stone in exchange for a homeowner's promise to pay \$125
- There is no agreement created in a bilateral contract until the **offeree** makes and communicates the requested promise to the **offeror**.
- The **offeror** may state which method the **offeree** is to use.
- If a different method is used, then it is treated as a modification of the offer.
- The promise can be implied from the offeree's conduct.
- If the words used are vague about unilateral and bilateral, courts will presume that the offer is for a bilateral contract.

4. When Acceptance Is Effective



- Offers, acceptance, rejections, revocations, and counteroffers may be communicated orally, in person, or by telephone.
- Acceptance may be communicated orally, in person or by phone.
- Acceptance may be communicated in writing and sent by mail, delivery service, e-mail, or fax machine.
- The offeror may require the offeree to use a certain communication method.
- If a different method is used, then it is treated as a modification of the offer.

- ❑ When there is no specified or customary method for communication, most courts then say the acceptance is effective when sent by the same means used for the offer, or by faster means.
- ❑ Oral acceptances are effective at the moment the words are spoken to the **offeror**.
- ❑ Written acceptances by mail take effect when properly posted and placed under the care of the US Postal Service.
- ❑ An **offeror** may state that acceptance doesn't take place until it is actually received.
- ❑ The UCC provides that an acceptance of an offer to buy or sell goods may be made "in any manner and by any medium reasonable in the circumstances" unless otherwise clearly "indicated by the language or circumstances."

