Chapter 6
Offer and Acceptance

Business Law

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Contract

- Agreement that a court will enforce
6 Major Requirements of a Contract

1. **Offer and Acceptance**
2. **Genuine Assent** – cannot be based on deception, mistake, or unfair pressure
3. **Legality** – for a legal matter (not to commit a crime or tort)
4. **Consideration** – both sides must receive something of value
5. **Capacity** – must be able to contract for themselves
6. **Writing** – some contracts must be in writing to be fully enforceable
Parties to a Contract

- **Offeror** – person making the proposal
- **Offeree** – person to whom the proposal is made
Requirements of an Offer

To be a valid offer. . .

1. Offeror must appear to intend to create the offer

   * **Reasonable Person Test** – how a “reasonable person” would interpret the conduct (not what the offeror was thinking)
   
   * **Facts and Circumstances** – context; jest, anger, terror—contract not valid
   
   * **Preliminary Negotiations** – feeling someone out (“would you be interested”), not valid
   
   * **Social Agreements** – making plans with someone for a social arrangement is not a valid contract (ex. going to a movie, dinner, etc.)
Requirements of an Offer (continued)

2. Terms must be **definite and complete**
   - **Essential information** (P, Quantity, Item, etc.) – differs with item (land vs. candy bar)
   - **Absolutely clear** – no chance for misinterpretation
   - **Implied terms** – based on common business practices
   - **Advertisements are not offers** — they are invitations to buy
     - Ad can only be an offer if “only to the first person to accept” or if offeror does something to address limited quantities “given to the first person for $20”
Requirements of an Offer (continued)

3. Terms must be communicated to offeree
   - Only the offeree can accept the offer
   - Cannot accept the offer without knowing about it (reward)
Ending Offers

1. **Revoked by offeror** – right of revocation – must be communicated to offeree

2. **Time stated in offer** – acceptance must be received by offeror by date in offer

3. **Reasonable length of time** – circumstances and product determine “reasonable” (ex. tomatoes vs. truck)

4. **Rejection by offeree** – after offer is rejected, offer is terminated

5. **Counteroffer** – when offeree changes offeror’s terms; counteroffer becomes a new offer; original offer can no longer be accepted

6. **Death or insanity of offeror or offeree**
Keeping Offers Open

• **Option**
  - When offeree gives the offeror something of value in return for keeping the offer open

• **Firm Offer**
  - Special rule which applies to merchants – offer by merchant to buy or sell goods with time stated in a writing (up to 3 months); even if nothing is paid by offeree, death, or insanity
Requirements of an Acceptance

Acceptance must . . .

1. Be made by the person(s) to whom offer is made
   • Only person offer was made to can accept
Requirements of an Acceptance (cont.)

2. Match the terms in the offer

- **Mirror image rule** – terms in the acceptance must exactly match those in the offer, otherwise it is a counteroffer (realty and services)
- **Sale of Goods** – If contract doesn’t specifically say acceptance must exactly match terms in offer, changes can be made and still be valid. . .
  - If consumer, both parties must agree
  - If merchant, new terms are not part of contract if offeror objects, or if terms are material (important)
  - If merchant, new terms are part of the contract if offeror does not object or if immaterial
Requirements of an Acceptance (cont.)

3. Acceptance must be communicated to offeror
   
   - Silence can only be acceptance if agreed upon in advance (book club, standing orders)
   - **Unilateral acceptance** – the offeree’s performance is the acceptance; offeror cannot revoke offer until offeree had reasonable time to complete performance (lost dog)
   - **Bilateral acceptance** – most offers are bilateral; acceptance occurs when offeree promises to do contracted act; can be implied by conduct or words
• When acceptance is effective:
  – All communication relating to contracts become effective when received except acceptance – becomes effective when sent (by same method used for offer)
  – Under normal circumstances, acceptance is effective when:
    • **Oral** – when words are spoken to offeror
    • **Mail** – when properly posted, correctly addressed, in control of the Postal Service
    • **Telegram** – when handed to clerk or telephoned to office
    • **Fax** – instantaneous when sending and receiving equipment working (easier to prove in court than oral)
  – Offeror may specify that acceptance is not binding until received
End of Chapter 6 Notes