

Business Law

Text & Exercises *6th Ed.*

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Chapter 9: Offer and Acceptance

Learning Outcomes

- LO1** • Identify the requirements of an offer.
- LO2** • Recognize a counteroffer.
- LO3** • Identify the requirements of a valid acceptance.
- LO3** • Describe how an offer can be accepted.

- **Three elements are necessary for the offer to be effective:**
 1. The offeror must have a serious intention to become bound by the offer, and this intention must be objectively ascertainable—that is, readily recognizable by others.

Requirements of the Offer

Three elements (cont'd):

2. The terms of the offer must be reasonably certain or definite so that the parties and the court can ascertain the terms of the contract.
3. The offer must be communicated to the offeree.

Intention

- **A serious intention on the part of the offeror must exist.**
- **This intention must be objectively clear to others.**
- **Expressions of opinion are not offers.**
- **Preliminary negotiations are not an offer.** →

Intention

- **Advertisements, catalogues, and circulars are not offers.**
- **Auctions are not an offer for the purposes of a contract, unless the auctioneer specifies that the auction is without reserve.**

Definiteness

- **An offer must have reasonably definite (determined or fixed) terms so that a court can determine if a breach has occurred and give an appropriate remedy.**

Communication

- **A third requirement for an effective offer is communication, resulting in the offeree's knowledge of the offer.**
- **Communication to offeree gives her power to transform the offer into a binding legal obligation (contract).**

Termination of the Offer

- **The communication of an effective offer to an offeree gives the offeree the power to transform the offer into a binding, legal obligation (a contract).**
- **This power of acceptance can be terminated by action of the parties or by operation of law.**

Termination by Action of the Parties

- **Revocation: the withdrawal of an offer by an offeror.**
 - Unless the offer is irrevocable, it can be revoked at any time prior to acceptance without liability.

Termination by Action of the Parties

- **Option Contract**: an option contract is created when an offeror promises to hold an offer open for a specified period of time in return for a payment (consideration) given by the offeree.

Termination by Action of the Parties

- **Rejection of the Offer by the Offeree:** rejection of an offer is effective only when it is actually received by the offeror or the offeror's agent.
- **Inquiring as to the firmness of the offer, or haggling, is not a rejection.**

- **Counteroffer by the Offeree: usually is a rejection of the original offer and the simultaneous making of a new offer, giving the original offeror (now the offeree) the power of acceptance.**
 - Mirror Image Rule: at common law, the offeree's acceptance must match the offeror's offer.

Termination by Operation of Law

- **Lapse of Time.**
- **Death or Incompetence of the Offeror or Offeree.**
- **Supervening Illegality of the proposed Contract.**

Acceptance

- **A voluntary act with 3 requirements:**
 1. An offer must be accepted by the offeree, not by a third person.
 2. The acceptance must be unequivocal.
 3. In most cases, the acceptance must be communicated to the offeror.

Acceptance

- **Who can Accept?**
 - No third party.
- **Unequivocal Acceptance.**
 - No change in terms.
- **Silence as Acceptance.**
 - Silence is not consent.
- **Communication of Acceptance.**
 - Depends upon the nature of the contract.

Mode and Timeliness of Acceptance

- **The Mailbox Rule: if offer was by mail, offer is accepted upon dispatch.**

LO4

- **Implied Means of Acceptance.**

1. The offeree is authorized to use faster means for acceptance than the offeror.
2. Mail is authorized when parties are at a distance.

Mode and Timeliness of Acceptance

- **Substitute Method of Acceptance:**
 - If an offer specifies a particular method of acceptance, and the offeree chooses another method, the acceptance will be effective upon receipt by offeror. (Example: offer specifies FedEx but offeree accepts by UPS → acceptance upon receipt.)