

Business Law Today - Chapter 10  
Tuesday September 24th, 2013

### ★ Learning Objectives

- What elements are necessary for an effective offer? What are some examples of non-offers?
- In what circumstances will an offer be irrevocable?
- What are the elements necessary for an effective acceptance?
- How do shrink-wrap & click-on differ other contracts? How have traditional laws been applied to these agreements?
- What is the Uniform Electronic Transactions Act? What are some of the major provisions of this act?

### ★ Introduction

- Agreement = offer & Acceptance
- Parties must show mutual assent to terms of contract
- Once an agreement is reached, if the other elements of a contract are present, a valid contract is formed.

### ★ Agreement

- Requirements of the offer:
  - Offeror's serious intention
  - Definiteness of terms
  - Communication to offeree

### ★ Agreement: Intention

- Contract is judged by what a reasonable person in the offeree's position would conclude about the offer.
  - Expressions of opinions: not offers
  - Statements of future intent: not offers
  - Preliminary Negotiations, or Invitations to Negotiate: not offers
  - Advertisements: Not offer (invitation to negotiate)
- Agreements to Agree: modern view, can be enforceable if parties intended to be bound.
- Preliminary Agreements: can be a binding contract IF the parties have agreed upon all the essential terms

## ★ Agreement: Definiteness

-- Terms (Express & Implied)

- Identification of the parties
- Object or subject matter of the contract
- Consideration to be paid
- Time of payment, delivery, or performance

-- An offer can require specific terms to make the contract definite  
-- A Court can supply missing terms if the parties intend to form a contract.

## ★ Agreement: Communication

-- The offer must be communicated to the offeree

-- Offeree's knowledge of the offer can be:

- Directly by the offeror or,
- Use of agents.

## ★ Agreement

-- Termination of the offer

- Action of the parties
- Operation of Law

-- Termination by action of offeror:

- Revocation of the offer by the offeror:

1) Offer can be withdrawn anytime before offeree accepts the offer, unless offer is irrevocable.

2) Effective when the offeree or offeree's agent receives it.

-- Termination by action of the offeree:

- Rejection of the offer by the offeree:

1) Rejection by the offeree (expressed or implied) terminates the offer.

2) Effective only when it is received by the offeror or offeror's agent.

- Counteroffer by the offeree.

1) Rejection of original offer & the simultaneous making of a new offer.

2) Mirror Image Rule: At common law, any change in terms, automatically terminates the offer  $\neq$  substitutes the counteroffer.

— Termination by the Operation of Law

• Lapse of Time

1) Offer terminates by law when the period of time specified in the offer has passed

2) If no time period for acceptance is specified, the offer terminates at the end of a reasonable period of time.

• Destruction or Death: before acceptance of offer, terminate the offer.

• Death or incompetence of the offeror or offeree automatically terminates unless irrevocable offer.

• Supervening illegality of the proposed contract: legislation or court decision automatically terminates offer or renders contract unenforceable.

• Irrevocable offers: courts are unwilling to allow a revocation based on promissory estoppel. (chapter 11)

★ Agreement: Acceptance

— Acceptance is the:

• Voluntary act (expressed or implied),

• by the offeree that

• shows assent (agreement),

• to the terms of an offer

— Unequivocal: the "Mirror Image Rule":

— Silence as Acceptance

• General Rule: offeree should not be legally obligated to affirmatively reject an offer.

• When offeree has duty to speak:

1) takes benefit of service w/ opportunity to reject.

2) prior Dealings w/ offeror.