

CONTRACT LAW

CHAPTERS

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IN PRACTICE PROFILE

Jenny Bent Literary Agent

enny Bent shows up for work every day on the 36th floor of a Madison Avenue high rise in New York City. It's there that she found her dream job. Since attending college at Cambridge University in the United Kingdom, Jenny knew she wanted to be a literary agent. That's exactly what she became after earning a bachelor's and master's degree in English Literature.

"I always wanted to be in publishing, and after doing some research, determined that agenting allowed me the most freedom, the chance to make the most money, and the chance to be the most entrepreneurial," she says. Prior to becoming a literary agent, Jenny worked at Rolling Stone and Ladies Home Journal magazines.

As a literary agent, Jenny, age 35, represents writers much in the way sports agents represent athletes. "I help writers get their work ready for the marketplace." Once the preparation is complete, Jenny submits a writer's work

to the publishing houses and editors she thinks are best suited for the particular piece. Once a work is accepted for publication, Jenny negotiates terms of the contract on behalf of the author, and she troubleshoots throughout the process.

Even before beginning her career, Jenny knew she'd be dealing with legal issues, specifically during the negotiating process.

"I need to know my way around a contract very thoroughly to make sure my client is protected and not taken advantage of by a publisher. I also work hard to get the best possible contractual terms for my client." Jenny must be knowledgeable about warranties and indemnity language, "and I need to know the best possible terms I can get for my client in the event he or she is sued." Although none of Jenny's authors has been sued, an author potentially could be sued for plagiarism, libel, or other wrongdoing.

Because she researched her career prior to entering the field, Jenny was sure she'd enjoy the work. "But what I didn't realize was how much I'd enjoy negotiating my clients' contracts." Doing so requires extensive preparation. "I think of every possible thing that might go wrong, and then try to make the language of the contract fit these possibilities in order to protect my client." It's an intellectual challenge that keeps Jenny stimulated. "I didn't realize it

> would be so interesting!"

It's no surprise that Jenny finds her job rewarding. "I work with authors to help them publish their work, and for most of them, getting published is a lifelong dream. So

helping them do that is an amazing thing. Plus I get to read and talk on the phone all day with interesting people. What could be better than that?"



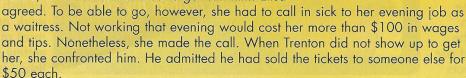
"I think of every possible thing that might go wrong, and then try to make the language of the contract fit these possibilities in order to protect my client."

Offer and Acceptance

- 6-1 Creation of Offers
- 6-2 Termination of Offers
- 6-3 Acceptances

Mor Desante

Trenton and Elisa were students in a class on movie production. Knowing that the final movie in the *Alien Cheerleader* trilogy was about to come out, Trenton camped out overnight at the theater. He bought two tickets, and then asked Elisa to go with him. Elisa



Where Do You Stand?

- 1. Should Elisa be allowed to sue Trenton for not taking her to the movie?
- 2. Would your answer change depending upon whether or not Trenton knew Elisa would lose income by going?

Creation of Offers

- List the elements required to form a contract
- Describe the requirements of an offer

WHAT MUST BE IN A CONTRACT?

WHAT'S YOUR VERDICT?

Juan and Susan were talking one day after school. Juan would turn 16 on the upcoming July 13 and wanted to buy Susan's car. Susan, 17, had been working and saving her money to buy a new car. Selling her old car for \$2,800 would give her enough to do so. She offered it to Juan for that amount, and he accepted.

Did the two friends create a legally enforceable contract?

Because of its limited resources, the court system is very selective in what it will enforce. Criminal laws and laws allowing recovery for certain private injuries (torts) are highest on the list as they are necessary for keeping peace in society. When it comes to contracts, generally defined as agreements between two or more parties that create obligations, the courts are far more selective.

In particular, there are six major requirements that must be satisfied before courts will treat a transaction as a legally enforceable contract. These are offer and acceptance, genuine assent, legality, consideration, capacity, and writing.

- 1. **OFFER AND ACCEPTANCE** There must be an apparently serious offer to contract. The person who makes the offer is termed the **offeror**. The person to whom it is made is the **offeree**. The terms of the offer must be definite and accepted without change by the party to whom it was intended to be offered.
- 2. **GENUINE ASSENT** The agreement (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** What the parties agree to must be legal. An agreement to pay someone to commit a crime or tort 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** To have a completely enforceable agreement, the parties must be able to contract for themselves rather than being forced to use parents or legal representatives. In *What's Your Verdict?* if the minimum age to contract is 18 as it is in almost every state, the courts would not enforce Juan and Susan's contract if either one later did not want to be bound by it.
- 6. **WRITING** Some agreements must be placed in writing to be fully enforceable in court.

CHECKPOINT

What elements are required to form a legally enforceable contract?

IN THIS CASE

When you told Sheila how nice the paint job was on her car, she responded that she painted cars in her garage for a second income. She took a close look at your vehicle. Then she said that, if you agreed, she would do a similar job on it with the color of your choice in the next week for \$1,800. In this transaction, Sheila is the offeror and you are the offeree.

REQUIREMENTS OF AN OFFER

WHAT'S YOUR VERDICT?

Anchors Aweigh, a boat retailer, placed an ad in a local newspaper announcing a one-day sale of cabin cruisers for the "bargain price" of \$35,500 each. The dealer had five cruisers in stock, and they all were sold within one hour. During the rest of the day, seven other would-be buyers came in to purchase a bargain cruiser.

Did the Anchors Aweigh advertisement make offers to the would-be buyers?

An offer is a proposal by an offeror to do something, provided the offeree does something in return. The offer is the basis of the bargain. If it is not valid, there can be no contract for the courts to enforce. As a consequence, the law examines would-be offers carefully. There are three tests that a valid offer must pass:

- 1. Contractual intent must be present in the offer.
- 2. The offer must be communicated to the offeree.
- 3. The essential terms of the offer must be complete and definite.



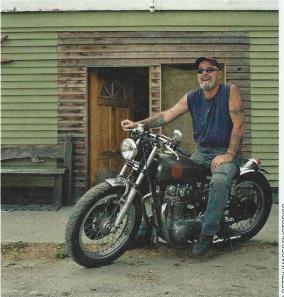
LEGAL RESEARCH

Take a legal resource inventory of your community. Call the municipal libraries, the bar associations, libraries of colleges or universities, and the county courthouses near you. Determine what reference materials they have available to the public, such as case reporters, digests, codes, legal encyclopedias, online legal subscription services, and so on. Keep your list for future reference.

CONTRACTUAL INTENT MUST BE PRESENT

Often, although the words themselves may indicate an offer, a reasonable person would disregard them because of the facts and circumstances under which they were spoken. When a teacher says to a business law class, "I offer to sell you my new car for \$3,000," this probably isn't an offer but an example. Words that take the form of offers but which are spoken in jest (as a joke), in extreme terror or anger, or as a preliminary negotiation or social agreement would not be enforced.

JESTS The law is not concerned with what is actually in the mind of a person making a purported offer. Rather, it is concerned with the appearance of this action. If you think you are joking, but a reasonable person would interpret your conduct as indicating that you intend to contract, you have made an offer. On the other hand if you are serious, but a reasonable person would interpret your conduct as a joke, then no legally enforceable offer is made.



Imagine that this man just told his two friends that he would gladly sell his motorcycle to the first one of them who could scrape together \$1,000 in cash to pay for it. Judging from the expression on his face, has he made a legally enforceable offer? Why or why not?

GETTY IMAGI

STATEMENTS MADE IN ANGER OR TERROR Yelling after someone who has just stolen your watch, "Stop thief—I'll pay anyone who stops her \$100," is not looked upon as being a valid offer by the law. It does not have the reasoned basis necessary for enforceable offers. So if someone ran after the person, captured her, and returned your watch, you would not, in a legal sense at least, owe the \$100.

PRELIMINARY NEGOTIATIONS Information often is communicated merely to induce someone to initiate bargaining. Such statements are not seen by the law as indicating an intent to contract. You might casually say, "Would you pay \$800 for my laptop computer?" without intending to be bound if he says yes. This contrasts with an offer which might take the form, "Look Jeff, I'll sell you my laptop computer today for \$800." Statements of this nature, including putting signs on merchandise with a certain price or ads in newspapers to the same effect, are invitations to negotiate. They are not offers. The offer in such circumstances would typically come from the party responding to the ad.

In What's Your Verdict? Anchors Aweigh advertised boats. When would-be buyers tendered (presented for acceptance) the purchase price of the cabin cruiser, the wouldbe buyers were the ones making an offer. Thus, Anchors Aweigh was not bound by contract to the seven would-be buyers who came to purchase the boats after they were out of stock. To promote good customer relations, businesses try to deliver advertised merchandise to all who want to buy. Statutes prohibit false or misleading advertising. However, prosecuting an advertiserwho might be fined or imprisoned as a consequence under such a statute—does not get someone the bargain in the ad.

Advertisements may occasionally be offers. This can occur in one of two ways. First, the ad must be clearly worded in ways that address the problem of numerous people receiving the ad for a limited amount of product. Someone selling a car could create an offer by writing a complete and clear ad, and in addition, writing that the car will be sold only to the first person to accept the terms contained in the offer. Or an ad may state "subject to stock on hand."

Bookmark

Access lawxtra.swlearning.com and click on the link for Chapter 6. Click on any of the links to the merchants' web sites. Find examples of advertising that are not just invitations to negotiate but instead are offers. Print out the page, and circle the wording that would make the advertisement an offer. For example, on one web site, if you click on the Clearance tab, you get a page that shows many products and their markdowns. Above the pictures of the products, the words "Quantities are limited" appear in large letters. This statement would make the advertisement an offer.

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The salesperson in this photo is about to mark the sale prices on these tags. Are these invitations to negotiate or offers?

Second, an ad may become an offer if it asks the offeree to perform an act as a way of accepting. An ad which states that a clearly described new power lawnmower will be sold for \$20 "to the first person to appear at the main door of a shopping mall on Saturday morning after 6:00 A.M." will be a valid offer.

SOCIAL AGREEMENTS If two friends agree to go to the movies, no contract is intended. The friends don't think of this agreement as creating legal obligations. If either breaks the date, the other may be offended but cannot file suit for breach of contract. Social arrangements do not create legal obligations.

OFFER MUST BE COMMUNICATED TO THE OFFEREE

A person who is not the intended offeree cannot accept the offer. Nor can a person accept an offer without knowing it has been made. That is because any action taken would not have been a response to the offer. Thus, an offer of a reward that is made to certain persons or even to the general public cannot be accepted by someone who has never seen or heard of the offer. In such cases, the offeror may get what was sought. However, most courts require that anyone who claims the reward must have known of the offer and acted in response to it when performing the requested act.

ESSENTIAL TERMS MUST BE COMPLETE AND DEFINITE

The terms of an offer must be sufficiently complete and definite to allow a court to determine what the parties intended and identify the parties' legal rights and duties.

COMPLETE Nearly all offers must, at a minimum, identify the price, subject matter, and quantity, either directly or indirectly, to be legally effective.

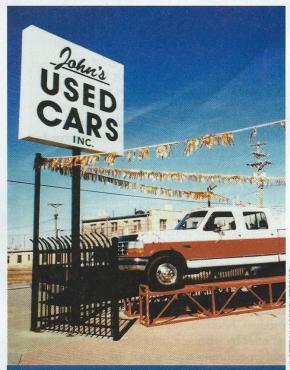
Some offers require even more information to be valid. For example, in most states the essential terms for the sale of real estate lots would include

- 1. identity of the specific lot
- 2. price
- 3. full terms for payment
- 4. date for delivery of possession, and
- 5. date for delivery of the deed.

A QUESTION OF ETHICS

Sarah was talking with four friends at the entrance to their community college. When a bell called them to class, she absentmindedly left her backpack behind. It contained a pocket calculator, her driver's license, and other items of value only to her. After class, she posted an ad on a student bulletin board, offering \$25 to whoever returned her pack. Major, another student, had not seen the advertisement but he found the bag and returned it to Sarah. Is Major legally entitled to the reward? Is Sarah ethically obliged to give him the reward?

If one of those terms were missing there would not be a valid offer. In contrast, an offer for the sale of a candy bar by a friend who identifies price, subject matter, and quantity (as many as are on the shelf). This is a valid offer.



What do you think would be the essential terms in a contract for a used car?

DEFINITE Each essential term must be identified clearly. If a seller owned several cars but only stated that she would sell "my car" the courts would not enforce the offer. In some contracts, however, a term might be implied by law or common business practice. For example, some contracts are between individuals who regularly deal in the goods, or tangible personal property such as televisions and cars, being bought or

sold. In these contracts, when the price is not specified, current market price is used as the basis for the contract.

CHECKPOINT

What are the requirements of an offer?

6-1

Assessment



THINK ABOUT LEGAL CONCEPTS

- If the offer that was accepted to form a contract is invalid, the courts will not enforce the contract. True or False?
- Which of the following is not an essential element of a contract? (a) offer and acceptance
 (b) genuine dissent (c) legality (d) all of the above are essential elements.
- In some cases a person may be held to an offer that she only intended as a joke. True or False?
- 4. All agreements must be in writing to be enforceable in court. True or False?
- 5. If an offer is made, it can be accepted by anyone who learns of it. **True or False?**

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

- 6. The owner of a small color television set offers to sell it to a neighbor for \$75. As the neighbor stands there thinking about the offer, a bystander says, "That's a bargain. I'll take it!" Is there a contract between the bystander and the owner?
- 7. Bill spent most of his month's allowance for expensive tickets to a rock concert after Lorene said she would go with him. On the morning of the event, Lorene phoned and said she was terribly sorry, but Tony, the high school's star fullback, had also asked her to go and she "just couldn't say no." Did she breach a contract? Could Tony be held legally liable if he knew Lorene had already promised to go with Bill? Was Lorene's conduct ethical? If Tony knew Lorene had already promised Bill she'd go with him, was Tony's conduct ethical?
- 8. The Nationwide Credit Union agreed to allow Heidi to borrow up to \$10,000. Nothing was specified as to the length of the agreement, the rate of interest the credit union would charge, or the terms of repaying any loan. The credit union did not make a loan of \$8,000 to Heidi when she requested it four months later. Is the credit union liable for breach of contract?
- 9. G. Whiz Sports Shop published this advertisement in the local newspaper: "Congratulations to the winners of the Tour de France! Now YOU TOO can be a champ! Get an 18-speed Blue Lightning bicycle for only \$2,295—marked down from \$2,795, the manufacturer's suggested retail price. What a bargain! Come and get it!" Baxter visited the discount store the following day and said, "I'll take one of the Blue Lightning bikes." The clerk replied, "Sorry, we had only ten bikes in stock and they've all been sold." Was the advertisement an offer?

Termination of Offers

- Describe the various ways to end offers
- Explain how an offeree can ensure an offer will remain open

HOW CAN OFFERS BE ENDED?

WHAT'S YOUR VERDICT?

On May 15th, Melissa offered to sell her collection of baseball cards for \$3,000 at anytime before the first of the next month to her friend and fellow collector, Raoul. While Raoul was trying to raise the money, Melissa had second thoughts. So she called Raoul and said, "I've changed my mind, I'm not interested in selling the cards." Raoul responded, "It's too late, you said the offer would be open for this whole month. This is just the 20th, and I've got the money so I accept."

Was Melissa's offer terminated before Raoul's attempted acceptance?

Once made, an offer does not last forever. It may be terminated in a variety of ways.

REVOCATION BY THE OFFEROR

After an offer has been made, the offeror can generally revoke it anytime before it is accepted by the offeree. This is true even if the offeror promised that the offer would remain open for a particular period. In *What's Your Verdict?* because Melissa revoked first, there was no offer for Raoul to accept. The fact that she had promised to keep it open until the end of the month was not legally binding on her. Therefore there was no contract. The right to withdraw an offer before it is accepted is known as the right of revocation. A revocation is not effective until communicated to the offeree.

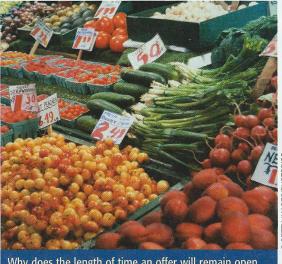
TIME STATED IN THE OFFER

In making an offer, the offeror may state how and when the offer must be accepted. For example, on October 10, the Mercantile Bank sent a letter to Boggs, who had applied for a loan. In the letter, Mercantile offered to lend \$50,000 on specified terms and stated that the acceptance had to be in writing and received no later than October 18. Boggs mailed an acceptance on October 17, but the letter did not arrive until October 20. As Mercantile did not receive Boggs's reply by the time specified, the offer expired. There was no contract.

REASONABLE LENGTH OF TIME

When nothing is said in the offer about how long it will remain open, it will end after a reasonable length of time. What is a reasonable length of time depends on all the surrounding circumstances. For example, a produce broker in New Jersey telephones a customer in Florida offering to sell a truckload of tomatoes. If the offer to sell the tomatoes is not accepted within an hour, it probably will terminate automatically. That is because tomatoes are perishable produce which rot and therefore must be marketed and shipped quickly. The seller may be in touch with many prospective buyers and they understand they must accept quickly.

In contrast, an offer to sell expensive durable equipment, such as a bulldozer, would not terminate until a longer time had elapsed. At least



Why does the length of time an offer will remain open vary with the type of goods to be sold?



Economic impact

NO CHILD LEFT BEHIND BUT SOME TEACHERS MAY BE

here is concern that under the Federal No Child Left Behind Act (NCLBA) signed into law in January of 2002, otherwise valid teacher contracts could be terminated by the government. Wyoming teachers, for example, have their contracts automatically renewed after the first three years of teaching in accordance with state law. Under the NCLBA, however, school districts will be allowed to replace staff members at schools that, after six years, still are not up to standards. Title I schools and schools with a high percentage of students who qualify for free or reduced lunches can

replace staff members at the end of only four years. The power to replace teachers given under the NCLBA could, therefore, be utilized to invalidate contracts legitimately made by the teacher and the school district.

THINK CRITICALLY

If you were considering entering teaching as a profession, how would this affect your plans? How would it affect the choice of school district in which to work? If you were bargaining with a school district concerning the terms of your employment as a teacher, how would the terms of the NCLBA affect your contractual demands?

several days would be reasonable. If the parties had bargained about the sale over a period of months, a week or longer might be appropriate. To avoid misunderstandings, the time available for acceptance should be specified at the outset.

REJECTION BY THE OFFEREE

When an offeree clearly rejects the offer, the offer is terminated. Unless renewed by the original offeror, the offeror can no longer accept the original offer. For example, in *What's Your Verdict?*, if Raoul had immediately declined the offer after Melissa made it, he could not have shown up with the \$3000 later in May and bought the cards. His rejection ended the offer. An offer is terminated by an offeree's rejection even if a time limit set by the offeror has not expired.

COUNTEROFFER

Generally an offeree accepting an offer must accept it exactly as made. If the offeree changes the offeror's terms in important ways and sends it back to the offeror, a **counteroffer** results. In making a counteroffer, the offeree says in legal effect, "I refuse your offer; here is my proposal." The counteroffer terminates the original offer. The counteroffer then becomes a new offer.

DEATH OR INSANITY OF EITHER THE OFFEROR OR OFFEREE

Contracts are agreements voluntarily entered into by the parties and subject to their control. Death or insanity eliminates such control. Therefore the law acts for these parties when they can no longer act and terminates their offers.

DESTRUCTION OF THE SPECIFIC SUBJECT MATTER

If the offer refers to unique subject matter, such as Melissa's card collection, and it is subsequently destroyed, for example in a fire, the offer is automatically terminated.

IN THIS CASE

f, in What's Your Verdict? Raoul had said, "I will pay you \$2,000 for them and not a penny more." His counteroffer would have terminated Melissa's original offer at that moment, even though she had promised to keep it open for the month. If, seeing that Melissa was not going to take the \$2,000, Raoul immediately said he'd pay the \$3,000, he would be making another offer not accepting Melissa's original.

CHECKPOINT

Explain two ways in which offers can be terminated.

HOW CAN AN OFFER BE KEPT OPEN?

WHAT'S YOUR VERDICT?

The Downings had placed their idle factory building on the market for \$950,000. Robinson, a developer, was interested in buying it, but she needed time to persuade a group of investors to join her in a syndicate to purchase the building. Robinson offered \$10,000 to the Downings to keep the offer open to her alone for 60 days. The Downings accepted the money.

Are they now legally bound to keep the offer open to Robinson?

As mentioned, an offeror is not legally obligated to keep an offer open for a specified time even if the offeror has promised to do so. This may cause the offeree not to pursue the offer or to act without proper consideration to close the

INTERNATIONAL VIEWPOINT

Contract Law in China

There are two systems of contract law in the People's Republic of China—one for domestic transactions and the other for foreign contracts. The Economic Contract Law code was enacted in 1981 and is applicable to domestic transactions. The Foreign Economic Contract Law code was enacted in 1985 in order to attract foreign buyers for Chinese goods. The Chinese legal environment is not based on case law. Therefore, the role of the judges in Chinese courts is to apply the codes as written. The judges' opinions are not publicly recorded.

deal. Such uncertainty may be eliminated in the following ways.

OPTIONS

If the offeree gives the offeror something of value in return for a promise to keep the offer open, this agreement is itself a binding contract. It is called an option. The offer may not be withdrawn during the period of the option. In What's Your Verdict? with the \$10,000 Robinson bought an option to buy the factory building. Thus, the Downings could not legally withdraw the offer or sell to another party during the 60 days.

FIRM OFFERS

A special rule that works the same result as an option applies to merchants (individuals who regularly deal in the goods being bought or sold) who make offers in writing. If such a written offer contains a term stating how long it is to stay open, it is called a firm offer. 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.

CHECKPOINT

How could an offeree insure that an offer will stay open for a set period of time?



Do you think China's foreign trade has increased since the passage of the two law codes mentioned in the International Viewpoint? Why or why not?

Assessment



THINK ABOUT LEGAL CONCEPTS

- If a time for the offer to expire is not stated, it will expire in a reasonable time under the circumstances. True or False?
- 2. If an offeree clearly rejects the offer, the offer is termed (a) counteroffered (b) revoked (c) expired (d) terminated.
- 3. When an offeree changes the offeror's terms in important ways, the offeree makes a(n) _ ?_.
- 4. Which of the following does not describe an event that will terminate an offer? (a) revocation by the offeror (b) offeror is admitted to the hospital for tests (c) counteroffer (d) death of the offeree
- 5. An offeree who rejects an offer can later accept it if the acceptance occurs within a reasonable time after the original offer. **True or False?**

- 6. If an offeree gives the offeror something of value to keep an offer open, the contract thereby created is called a(n)?
- 7. If either the offeror or offeree is deemed insane, the law will (a) uphold any offers made (b) terminate any offers made.
- 8. If a hardware store salesclerk said, "This price on the lawnmowers is good for 30 days," would this be a firm offer? Yes or No?
- Offers between merchants that contain a term stating how long it is to stay open is called a _?_ offer.
- 10. If a beauty salon hair designer said to a customer, "This price on the cut and dry is good for 30 days," and then wrote it down on a piece of paper and signed it, would this be a firm offer? Yes or No?

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

- 11. While her car was in Prescott's garage for repairs, Wood noticed a large, seemingly unused, metal tool chest in the corner, complete with about 400 standard and metric tools. Wood offered to buy it for \$3,000 and said, "You can take a week to think about it before you decide whether to accept." Four days later, before Prescott had responded, Wood told Prescott that she was withdrawing her offer as she had found a better set for less money. Can Prescott still accept Wood's original offer? If Wood had put the offer in writing, could she have withdrawn it before the week was over?
- 12. Frank saw a wheelchair advertised in the paper for sale for \$900. When he called the seller, who had bought it to use while he was recovering from a skiing accident, the seller said it had not yet been sold. Frank drove out to see it but found it needed work. So Frank offered \$700. The seller seemed insulted, and said he wasn't interested at that price. Frank left. About an hour later, he went back and found the wheelchair had not been sold. He then offered the \$900 specified in the ad.

- However, the seller refused to sell it to him. Frank became upset and sued to get the court to force the owner to sell it to him for \$900. Will the seller have to do so? Why or why not?
- 13. Gus walked into his local hardware store to buy exterior paint for his house. It was on sale for \$35 a gallon. Gus wanted to check around but didn't want to lose the chance to buy at the sale price. In response to Gus's request, the manager of the paint department wrote Gus a note stating, "Gus Almondson may buy up to 15 gallons of Old Dutch Exterior Grade paint for \$35 per gallon anytime within the next two weeks." The manager signed and dated the note. Is this offer binding?
- 14. Phil was talking with Sharon about Opie, his Springer Spaniel dog. Phil explained that Opie has a strong personality, loves to snuggle up to people, likes to eat "people food," and is a good watchdog. Sharon liked Opie a lot and needed a dog. She asked Phil how much he paid for Opie. Phil said, "I paid \$75, but I wouldn't sell Opie for ten times that amount. Sara said, "Well okay, it's a deal then. I'll give you \$800, more than ten times the \$75." Has Opie been sold?

- Discuss the requirements of an effective acceptance
- Determine at what point in time an acceptance is effective

WHAT IS REQUIRED OF AN ACCEPTANCE?

WHAT'S YOUR VERDICT?

When Blithely found Entitee on Blithely's used car lot looking at an SUV, she introduced herself and then showed him the features of the vehicle. After a period of time they discussed the price, and then she opened the driver's door for him. As he slid behind the wheel, she said, "Tell you what, I believe that once a customer gets behind the wheel of one of these beauties, he's sold. So, if you don't say no within the next ten seconds, we've got a deal at \$15,750." Entitee said nothing within the ten seconds.

Did Entitee legally agree to Blithely's offer by his silence?

Acceptance occurs when a party to whom an offer has been made agrees to the proposal. To create an enforceable contract, the acceptance must

- 1. come from the person or persons to whom the offer was made
- 2. match the terms in the offer
- 3. be communicated to the offeror

ONLY OFFEREES MAY ACCEPT

An offer made to one person cannot be accepted by another. Sometimes, however, an offer is made to a particular group or to the public and not to an individual. For example, a reward offer may be made to the general public. Any member of the general public who knows of the offer may accept it.

THE ACCEPTANCE MUST MATCH THE OFFER

The mirror image rule requires that the acceptance must exactly match the terms contained in the offer. This is true even as to when and how the acceptance must be made and even if the change is advantageous to the original offeror. If the attempted acceptance is not identical to the offer, it is a counteroffer.

Currently, courts in most states apply the mirror image rule only when the term altered in the attempted acceptance is material (important) and related to the providing of services or the sale of real property. Even in these states, however, if the offeror requires that acceptance must exactly match the terms contained in the offer, then any variation is legally a counteroffer.

Under the UCC, absent such a requirement for identity in the offer, an attempted acceptance of an offer for a contract for a sale of goods can be valid even if it does include new or conflicting terms. In these cases, there is a contract on the terms where the offer and acceptance agree.



What three characteristics of acceptances must be present in order for the contract to be enforceable?

Then the new or modified terms are treated as

- 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 both 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).

ACCEPTANCE MUST BE COMMUNICATED TO THE OFFEROR

An acceptance must be more than a mental decision. It must be communicated to the offeror.

SILENCE AS ACCEPTANCE One is not obligated to reply to offers made by others. An offeror's attempt to word the offer so that silence would appear to be an acceptance will not work. In What's Your Verdict? no contract would result from Entitee's silence.

BILATERAL ACCEPTANCE Most offers are bilateral. This means the offer implies that it can be accepted by giving a promise instead of performing the contracted-for act. For example, a seller promises to deliver a load of topsoil in exchange for a homeowner's promise to pay \$65. Offers for bilateral contracts require that the offeree accept by communicating the requested promise to the offeror. Until this is done, there is no contract. The promise can be implied from the offeree's conduct as well as from words.

UNILATERAL ACCEPTANCE In some offers, the offeror requires that the offeree indicate acceptance by performing his or her obligations under the contract. Contracts offered under these conditions are unilateral contracts. The offeror in a unilateral contract promises something in return for the offeree's performance and indicates that this performance is the way acceptance is to be made. For example, the offeror may publicly promise to pay a \$100 reward to anyone who returns a lost camera. Many people learn of the offer. All may join the search. A promise to look for the camera does not create a contract. Only

one person may find and return the camera, thus performing the act required to accept the offer and earn the reward.

Note that if the person performing the act does not know of the reward, that person is not legally entitled to it. Also, if the words used are not clear as to whether an offer is unilateral or bilateral, courts will presume that the offer is for a bilateral contract.

IN THIS CASE

stirrup found Buster, Fenton's lost dog and returned the animal to Fenton. After doing so, Stirrup noticed several reward posters by which Fenton offered \$500 for the return of the dog. As he did not know of the reward prior to returning Buster, Stirrup was not entitled to it.

MODES OF CONTRACTUAL COMMUNICATION

Contractual communications such as offers, acceptances, rejections, revocations, and counteroffers may generally be communicated in person or by other effective means. These means include by telephone, mail, delivery service, e-mail, facsimile (fax) machine or other methods.



Imagine that you tell your brother that you will pay him \$100 if and when he paints your fence. If he agrees, have you formed a bilateral contract or a unilateral contract with him? Explain your answer.

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."

WHEN ACCEPTANCES ARE EFFECTIVE

When the communication takes time, for example when sent through the surface mail, the question of when the communication is effective can become very important. All forms of contractual communications but one take effect only when received. The exception to this is the acceptance, which often is effective when sent.

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. Business custom often implies a method to be used in an acceptance. On some stock and commodity exchanges, hand signals are used to communicate offers and acceptances. In many industries, next-day delivery service is the custom. When the required or the customary method is used, the acceptance is effective when sent unless the offeror specified the acceptance would be effective when received.

Often there is no specified or customary method for communicating acceptances. Most courts then say the acceptance is effective when sent by the same means used for the offer, or by faster means.

Under the UCC, if the acceptance of an offer for the sale or purchase of goods is by a reasonable means, it is effective when sent. A "reasonable" method incorporates all of the above rules but opens the door for a slower means to be reasonable in some situations.

It often becomes important to determine even more precisely when acceptance is effective. Oral acceptances are effective at the moment the words are spoken directly to the offeror. Acceptances sent by mail generally take effect when properly posted. That is, they are placed, with correct address and sufficient postage, under the control of the U.S. Postal Service. A telegram takes effect as an acceptance when it is handed to the clerk at the telegraph office or telephoned to the telegraph office. A fax transmission is instan-



How are these stock exchange floor traders communicating offers and acceptances? Do you think this is an efficient communication method in this market? Why or why not?

taneous when the transmission lines are open and both sending and receiving equipment work properly. Therefore the effect is similar to instantaneous oral communication, but in a more durable form that is easier to prove in court.

The offeror may specify that an acceptance will not be binding until it is actually received. This avoids the confusion that arises when an acceptance is mailed yet never reaches the offeror because it is lost in the mail. It also avoids the requirement for using the rules above.

CHECKPOINT

What are the requirements of an effective acceptance?



To facilitate proof of your acceptance of a contract by mail, use certified mail with return receipt requested. Also, keep a copy of your acceptance letter and other documents, including the offer. These items will be useful as evidence in court to establish a particular contractual communication.

Assessment



THINK ABOUT LEGAL CONCEPTS

- A(n) _ ?_ is an offeree's agreement to an offeror's proposal.
- If an offeror specifies in the offer that the acceptance must be made by fax, an e-mailed acceptance will not be effective. True or False?
- 3. All forms of contractual communication take effect only when received. **True or False?**
- An offer that can be accepted only by an offeree's performance creates a(n) _ ?_ contract.
- 5. When there is no specified or customary means for communicating acceptances, a faster means than that employed by the offeror to make the offer would be considered effective by the courts. **True or False?**

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

- 6. To help pay for housing renovations, Jeanne placed an ad on the bulletin board at the public golf course showing a picture of her prized set of golf clubs, her phone number, and the figure \$2,000. Eve, after seeing the ad, called Jeanne and then drove to her house with \$2,000 in hand. When she presented the \$2,000 to Jeanne, the latter refused it, stating that she had received several calls wanting the clubs for that price, so she was raising it to \$2,500. Can Eve sue and force Jeanne to accept her \$2,000 for the clubs. Why or why not?
- 7. Jonas wrote to Smith offering to sell 42 acres of farmland at \$5,000 per acre with the purchase price to be paid at the closing. Smith replied, "I accept for the 42 acres, for the \$5,000 per acre, but will pay the purchase price two days after closing." Is this an acceptance?
- 8. Office Suppliers, Inc., ordered 2,000 reams of 20-lb. paper from Dimension Paper for \$1.75 per ream to be delivered at the Office Suppliers warehouse on April 24. Dimension responded that 2,000 reams would be delivered on April 25 at the price of \$1.75 per ream. Office Suppliers made no further response. Has a valid contract been formed? If so, what are the terms? If not, why not?



When you seek to enter into a contract . . .

- 1. When negotiating, assume the worst and include terms in the contract addressing potential problems.
- For important contracts, put offers and acceptances in writing. If either an offer or an acceptance is made orally, promptly confirm it in writing.
- 3. Obtain and keep a copy of every important document you sign.
- 4. Express your intentions in offers and acceptances with clear, complete, and understandable language.
- Remember that the offeror may specify how and when the offer must be accepted. Otherwise the offeree may use the same means used by the offeror, a faster means, or other reasonable means.
- 6. When appropriate, buy an option, if one is available, to keep the offer open for as long as you need.
- 7. Remember that for an offeror to withdraw or revoke an offer, the offeree must receive notice. For speed, use the telephone, e-mail, or fax machine to withdraw or revoke an offer.

Chapter 6 Assessment

CONCEPTS IN BRIEF

6-1 Creation of Offers

- 1. Contracts are agreements between two or more parties that create obligations.
- 2. To be legally enforceable contracts require a valid offer and acceptance, genuine agreement, legality, consideration, and capacity. Some contracts must be placed in writing.
- 3. The party making the offer is the offeror. The party accepting the offer is the offeree.
- 4. An offer must (a) be made with the offeror's apparent intention to be bound by it, (b) be complete and definite, and (c) be communicated to the offeree.

6-2 Termination of Offers

5. If not accepted, an offer is ended (a) by revocation of the offeror, (b) at the time stated in the offer, (c) at the end of a reasonable time if no time is stated, (d) by rejection of the offeree, (e) by counteroffer, (f) by death or insanity of either of the parties, or (g) by destruction of the specific subject matter.

- 6. In general, an offeror is not obliged to keep an offer open for a specified time even if the offeror has promised to do so.
- 7. The offeree may give the offeror something of value in return for a promise to keep the offer open. This is called an option.
- 8. A firm offer, made between two merchants, is an offer that contains a term stating how long the offer is to stay open.

6-3 Acceptances

- 9. In contracts for the sale of services or realty, the offeree must accept the offer unconditionally and in the exact form and manner indicated by the offeror. In contracts for the sale of goods, acceptances can vary the terms of offer.
- Contractual communication is effected by a constantly increasing variety of means to include phone, fax, e-mail, face-to-face negotiations, ground mail, and hand signals.
- 11. Although most contractual communications are effective when received, acceptances are generally effective when sent.

YOUR LEGAL VOCABULARY

Match each statement with the term that it best defines.

- 1. Binding agreement created by an offer that is accepted by a promise of performance
- 2. Offeror's withdrawal of an offer before it is accepted
- 3. Party to whom an offer is made
- 4. Signed writing by a merchant stating how long it is to stay open
- 5. Response by offeree, with new terms, which ends the original offer
- 6. Requirement that the terms in an acceptance exactly match the terms in the offer
- 7. Affirmative response necessary to transform an offer into a contract
- 8. Contract to leave an offer open for a period of time in exchange for other consideration
- 9. Agreement that is legally effective and enforceable in court
- 10. The person who makes the offer

- a. acceptance
- b. bilateral contract
- c. contract
- d. counteroffer
- e. firm offer
- f. mirror image rule
- g. offer
- h. offeree
- i. offeror
- j. option
- k. revocation
- I. unilateral contract



REVIEW LEGAL CONCEPTS

- 11. It is vital for a businessperson to be able to review a contract quickly to see if it is likely to be legally enforceable. This means being certain that the six essential elements of a valid contract are present. Without consulting the material in the book, list these elements, and give a short description of each.
- 12. Imagine you have made an offer to buy your friend's mountain bike. Make a list of the different ways your offer could be terminated.

WRITE ABOUT LEGAL CONCEPTS

- 13. Imagine that you are a portrait painter. Create an ad for your services to be placed in a local paper.
- 14. Write a reward offer for the return of your missing pet skunk. It has not been deodorized.
- 15. HOT DEBATE Assume that Elisa were allowed to bring a lawsuit against Trenton and was successful. Write a paragraph examining possible remedies that might be appropriate, such as damages or court orders.

MAKE ACADEMIC CONNECTIONS

- 16. HISTORY The feudal period in Europe did not have the level of trade and commerce that is such a part of our lives. Read about the quality of life during this period. Make a list of businesses and transactions that were not allowed or severely limited during that time.
- 17. ENVIRONMENTAL SCIENCE Could you pass a law requiring that every contract have a term in it requiring all parties to it to not hurt the environment in any way? What would be the economic consequences of such a requirement? Write a paragraph explaining your answer.

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

- 18. Caryn offered to tutor Dottie in business law for six hours on the day before the final exam in return for \$100. Dottie responded, "Let me think about it for a day, okay?" Two hours later Jim offered Caryn \$150 to tutor him on the day before the final and she accepted. Dottie called Caryn an hour later and said, "I accept." Caryn said, "I'm sorry but I've already agreed to tutor Jim that day so I can't tutor you." Was there a contract between Caryn and Dottie?
- 19. Sam advertised his ski boat for sale, priced at \$4,500, complete with outboard engine and trailer. Barbara paid Sam \$100 for a ten-day option, the money to be applied to the purchase price if she exercised her right to buy. Two days later, Sam was killed. Is Barbara's option still valid?
- 20. On Monday, Abner offers to sell his trained golden retriever, Track, to Bob for \$300 cash. "My offer is open until we go hunting next Saturday." On Tuesday, Carl offers Abner \$400 for Track, in eight equal monthly payments of \$50. Abner says "Sorry, my price is \$300 cash." On Wednesday, Dan learns that Abner has offered to sell Track. Dan tells Abner, "I'll pay \$300 cash when you deliver the dog at the end of this year's duck hunting season. But you can keep Track until then." Abner says, "Sounds like a good deal. Okay, you now own Track." He phones Bob and tells him of the sale. On Thursday, Carl phones Abner and says, "I accept your offer. I'll pay \$300 cash. When can I pick up Track?" Abner replies, "Sorry, but Track's been sold." Has Abner breached a contract with Bob or Carl? Has he been ethical in his conduct?

ANALYZE REAL CASES

- 21. Lee Calan Imports, Inc., advertised a 1964
 Volvo station wagon for sale in a Chicago newspaper. Because of an error by the newspaper, the price was listed at \$1,095 instead of \$1,795. Plaintiff O'Brien came in and said he wished to buy the station wagon. One of the defendant's sales representatives at first agreed but, upon discovering the erroneous price, refused to sell. Was there a binding contract? (O'Keefe-Administrator of Estate of O'Brien v. Lee Calan Imports, Inc., 128 III. App. 2d 410, 262 N.E.2d 758)
- 22. Scheck wanted to sell a parcel of his real property. He made an offer to pay a commission to Marchiondo, a real estate broker, if Marchiondo caused the sale of the property to a particular buyer within six days. However, Scheck revoked his offer to Marchiondo on the morning of the sixth day. Later that day, Marchiondo obtained the prospect's acceptance of Scheck's offer, but Scheck refused to pay the commission. Marchionado sued, claiming the offer could not be revoked because he had begun performance. The trial court dismissed the complaint, stating that Scheck could revoke his offer at any time before completion of the requested act. Marchiondo appealed. Who should win the case? (Marchiondo v. Scheck, 78 N.M. 440, 432 P.2d 4051
- 23. On December 23, the First National Bank had its sales agent, Wyman, mail a written offer to Zeller to sell a parcel of real property for \$240,000. On January 10, Zeller had his purchasing agent mail a written offer to buy the property for \$230,000. The same counteroffer was made in a telephone conversation on that day to Wyman, but Wyman told Zeller's agent that the offer to sell the land was no longer in effect. When Zeller's agent reported this news to Zeller, he promptly told his agent to wire an acceptance of the original offer at \$240,000. Zeller's agent did as ordered and the telegram of acceptance arrived before the letter containing Zeller's counteroffer. The bank refused to sell, reminding Zeller that the offer to sell had been

- revoked and that its agent Wyman had so informed Zeller's agent in the telephone conversation on January 10. Nevertheless, Zeller sued the bank for specific performance and for damages. Who should win? (*Zeller v. First National Bank*, 79 Ill. App. 3d 170, 398 N.E.2d 148)
- 24. Epton orally bargained for an option to buy a 54 percent share of the ownership of the Chicago White Sox baseball club for \$4.8 million from the defendant, CBC Corporation. The option, which was to have been reduced to writing, was to last one week in exchange for the payment of \$1,000 by Epton. To exercise the option within the week, Epton was supposed to give CBC a certified or cashier's check for \$99,000 as a down payment. Epton was also to notify the corporation in writing that he was exercising his option. Twice during the week, Epton orally assured CBC of his intent to exercise the option and he also offered to pay the \$99,000 as soon as the option was signed by CBC. After the week had passed, CBC refused to sell, and Epton sued. He claimed that his oral notice of intent to exercise the option was sufficient. He said that failure of CBC to sign a written option agreement excused both the requirement of a written exercise of the option by him and the necessity of the \$99,000 deposit. Who should win? (Epson v. CBC Corporation, 48 III. App. 2d 274, 197 N.E.2d 727)
- 25. A brokerage sued its customers to recover for the purchase price of certain uranium stock. The brokerage contends it was directed to buy the stock "as close to two cents as possible," while the customers contend the price was to be two cents per share. Pursuant to the order, the brokerage purchased the stock and several days thereafter sent a confirmation listing purchase of the stock at two and one-eighth cents per share. The trial court found the order to buy was given at two cents per share which plaintiff executed by purchasing the stock at two and one-eighth cents per share. Is there an enforceable contract? (Baldwin v. Peters, Writer & Christensen, 41 Colo. 529)