

Chapter 6

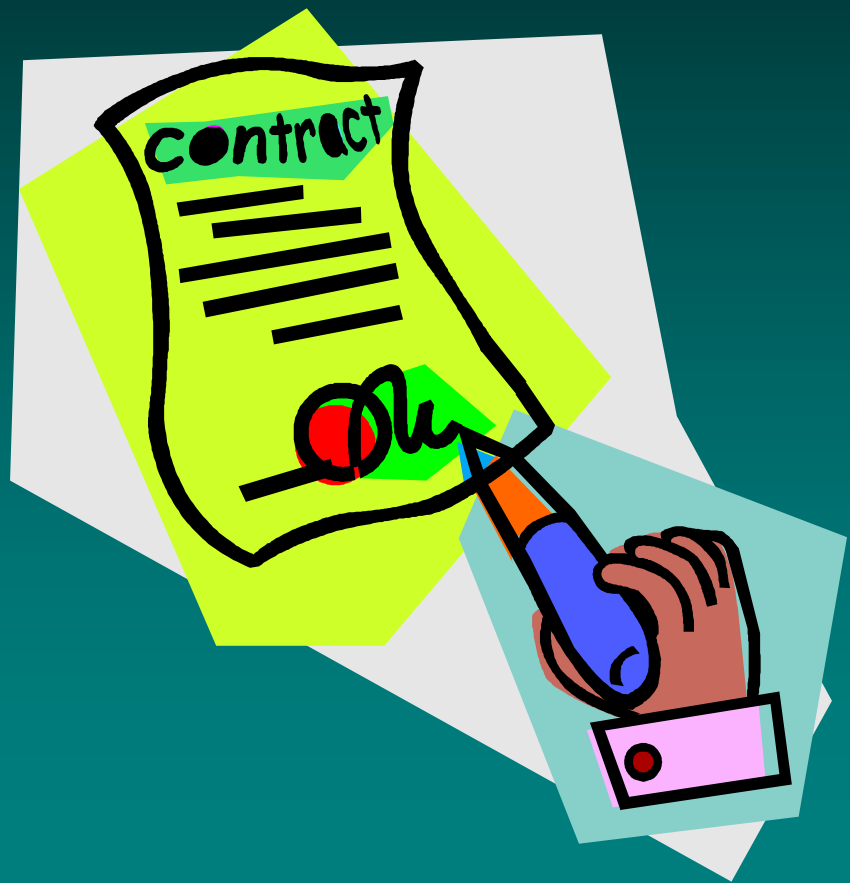
Offer and Acceptance

Business Law

Ms. Turner

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

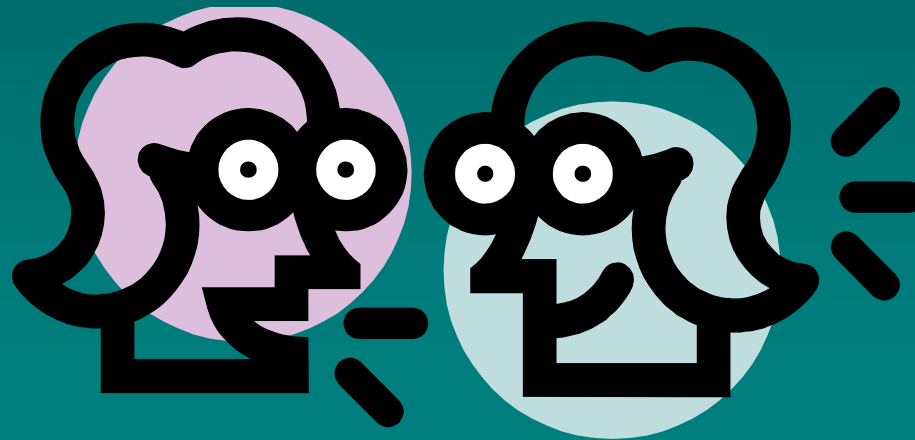
- **Essential information** (P, Quantity, Item, etc.) – differs with item (land vs. candy bar)
- **Absolutely clear** – no chance for misinterpretation
- **Implied terms** – based on common business practices
- **Advertisements are not offers** – they are invitations to buy
 - Ad can only be an offer 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



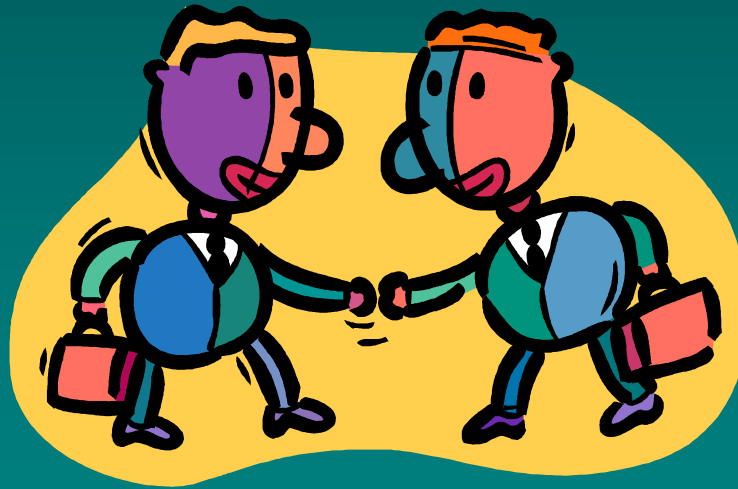
- **Firm Offer**

- 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

