

Contracts: Mutual Assent

What is an Offer

- Definite and certain proposal made by offeror to offeree

Offer

- Essentials
 - Communication
 - Intent
 - Invitations seeking offers, objective standard for intent
 - Definiteness (subject, price, quantity, time of performance)
 - Open Terms
 - Output and Requirement Contracts

Duration of an Offer

- Acceptance
- Terminated by:
 - Lapse of time (specified or reasonable), revocation (option, firm offers under UCC, statutory irrevocability, irrevocable offers of unilateral contracts), rejection, counteroffer, death or incapacity, destruction of subject matter, subsequent illegality

Revocation

- Revocation before acceptance
 - General Rule: Offer can be revoked at any time prior to acceptance
 - Exceptions: option contracts, merchant's firm offer- UCC, irrevocable under state statute
 - Revocation effective when received

Rejection

- Manifestation of unwillingness to accept
- Effective upon receipt by offeror

Counteroffer

- Manifestation of a willingness to contract, but on different terms from those proposed
- May add terms to those originally proposed
- Operates as a rejection
- Effective upon receipt

Acceptance

- Mailbox (dispatch) rule unless
 - Offer specifies otherwise
 - Acceptance deviates from means of communication specified in offer
 - Acceptance follows a rejection

Variant Acceptance Under Common Law

- Mirror Image Rule
 - Any attempt to modify the terms is a counteroffer
 - Applies to additional or different terms

Variant Acceptance under the UCC

- Battle of the Forms
 - Between merchants additional terms part of contract unless
 - Material alteration
 - objection to new terms
 - If one party is not a merchant, additional terms not part of contract
 - Different terms not part of contract unless accepted by offeror, but still contract under UCC

Silence as Acceptance

- Generally not effective
 - Past dealings of the parties may cause silence to be effective