

## CONTRACTS OUTLINE

1. APPLICABLE LAW (Common Law v. Article 2 of the UCC)
  - a. *Real estate* - Common law
  - b. *Services contract* - Common law
  - c. Sale of (*tangible*) goods - UCC
  - d. Mixed deal (*one payment*) - more important part of K rules (All or nothing law application)
  - e. Mixed deal (*divided payment*) - apply UCC to sale of goods and common law to rest
  
2. FORMATION OF CONTRACT
  - a. OFFER
    - i. For a valid offer there must be:
      1. *Manifestation of intention to contract*
      2. *Certainty and Definiteness of Terms*
      3. *Communication to an intended offeree*
    - ii. Manifestation of Intention to Contract - Words or conduct that show intent to commit
      1. Test - Would a **reasonable person** in the position of the offeree believe that his assent creates a contract. (The real intent of the parties is irrelevant)
        - a. May look to the *parties prior relationships* or the *custom in the industry*
      2. Advertisement - An *advertisement* is NOT an offer
        - a. *Exceptions*
          - i. Offer for reward
          - ii. Can be offer if *specific as to quantity* and expressly *indicates who can accept*
    - iii. Certainty and Definiteness of Terms - Offer is *not required* to contain all material terms however the terms must be certain and definite.
      1. Vague or ambiguous material terms NOT an offer under either common law or UCC [**Appropriate, fair, reasonable**]
      2. All contracts must identify the **Offeree** / UCC requires quantity
      3. Missing Price term in **contract**

- a. Sale of real estate - *Price* and *Description* required
  - b. Sale of goods (UCC) - NO *price* requirement (Court will set based on FMV)
    - i. UCC Note - time for performance may be supplied by the court.
4. *Output contracts* (*Requirements Contracts*) - Exists where the seller contracts to sell ALL the goods it produces to buyer [**All, only, exclusively, solely**]
- a. Valid without specific quantity. (Quantity must be set in good faith)
  - b. Can increase quantity if not *unreasonably disproportionate* (must be in line with prior demands)
  - c. Requirements Contracts - When buyer agrees to buy ALL good needed from seller.
5. *Employment Contracts* - The *duration* of employment must be stated.
- iv. Termination of the Offer (REVOCAION)
- 1. *Revocation* - Unambiguous *Words* or *Conduct* of Offeror revoking the offer.
    - a. Note - Multiple offers by one offeror is NOT revocation
    - b. When does *revocation* of an Offer become Effective
      - i. Upon *notice* to the offeree
      - ii. Revocation sent through "*the mail*" is not effective until *received*
      - iii. Offer cannot be *revoked* after is has been accepted
  - 2. *Lapse of Time* - Either time stated in offer or *reasonable time* after offer.
  - 3. *Publication* - If offer was made in a publication, revocation may be made in a compatible means of publication. (Revocation effective when published)
  - 4. *By Operation of LAW*
    - a. *Death or Incapacity* - of a Party Prior to Acceptance
    - b. *Destruction* - Destruction of the proposed contract's subject matter
- v. Offers that CANNOT be revoked
- 1. *Option Contract*
    - a. Promise *NOT to revoke* AND
    - b. Supported by *additional consideration* OR promissory estoppel

- i. *General Contractor* - Whenever a general contractor relies on bid from sub-contractors to submit a bid, an option K is formed.
- 2. UCC "Firm Offer Rule" - offer cannot be revoked for up to 3 months if:
  - a. *Signed, written promise*
  - b. by a *Merchant*
  - c. To keep the *offer open*
  - d. Is Valid *without consideration*.
    - i. Can be held open for longer than 3 months if *stated* in the contract.
    - ii. Merchant - deals in goods of the kind or has specialized knowledge of the business practices involved.
- 3. Detrimental Reliance - Reliance that is:
  - a. *Reasonably foreseeable* and
  - b. *Detrimental*
- 4. Start of performance pursuant to an offer to enter into a *unilateral contract* makes that offer irrevocable for a *reasonable time* to complete performance
  - a. Unilateral offer - Expressly requires performance as the only means of acceptance [offer, acceptance **only by act**]
  - b. Mere *preparation* is not sufficient. (i.e. Must start to perform)
- vi. REJECTION by the Offeree
  - 1. Effective when RECEIVED
    - a. Once an offer has been rejected, the original offer is NO longer valid unless the offeror *revives* the offer by later statements.
  - 2. Counteroffer
    - a. Always *Rejects* the original offer and creates a *New Offer*
    - b. Distinguish from bargaining (usually a *question?*)
  - 3. Conditional Acceptance (CL or UCC)
    - a. Always terminates the offer and creates a counteroffer
    - b. [if, only if, provided, so long as, but, on condition that]
  - 4. Mirror Image Rule (Common Law Additional Terms)

- a. Only applies to common law contracts, not sale of goods (UCC)
  - b. Additional terms are a *counteroffer*
5. *Additional Terms* (UCC)
- a. If the new terms are not a *condition of acceptance*, then it is a "*seasonable expression of acceptance*"
  - b. New term part of contract?
    - i. *Both* merchants - additional terms are *part of* K
      - 1. Unless *materially* changes the offer, OR
      - 2. the offeror *objects* to the change w/in a reasonable time
    - ii. *One not* a merchant - additional term is *proposal*
- b. ACCEPTANCE - *Manifestation of assent to the terms of an offer communicated to the offeror.*
- i. *Methods of Accepting an Offer*
    - 1. *Express communication*
    - 2. *Conduct - Later conduct* by the parties *implying* a contract *exists* notwithstanding an improper response to an offer by the *offeree*.
      - a. Ex. Lease fact pattern. Offeree signs K and returns to Offeror with an additional clause that he will accept only if disputes are mediated. Upon receiving the signed contract with the mediation clause, the offeror gives the keys to the apt.)
      - b. Common Law - *acceptance* of K with additional terms included.
      - c. Under UCC - forms new K based on conduct
  - 3. *Offeree FULLY performs* - Valid Acceptance
    - a. Only question is *whether notice* of performance is required
      - i. Look to what notice the offer required, or
      - ii. Whether the offeree has reason to believe that offeror will not learn of acceptance
  - 4. *Offeree STARTS to perform*
    - a. Start of performance is *acceptance* treated as an implied promise to perform a *bil teral* contract

- b. Start of performance is *NOT acceptance* to enter into a *unilateral contract*
    - i. Most contracts are Bilateral. Contracts are Unilateral in 2 situations, (1) *offers to the public* (rewards) or (2) offers that clearly indicate performance is the *ONLY manner of acceptance*.
    - ii. Unilateral contracts are only satisfied by FULL performance.
5. *Offeree PROMISES to perform*
- a. *Most* offers can be accepted by a *promise to perform*
  - b. Exception: if offer *requires performance* for acceptance, then completion of performance is required
6. *Mail Box Rule*
- a. Acceptance is generally *effective upon dispatch*
  - b. All other communications are *effective upon RECEIPT* (not knowledge, just physical possession)
  - c. Note - If offeree mails a *rejection* before also mailing an *acceptance*, then neither is *effective until received*
    - i. If offeree sends an *acceptance* before also mailing a *rejection*, the mailbox rule applies to the acceptance *unless* the offeror receives the rejection first and *detrimentally relies* on it.
  - d. Options - Mailbox rule CANNOT be used to meet an option deadline.
  - e. Waiver - Offer can stipulate that acceptance is not effective until received.
    - i. Note - Acceptance by unauthorized means is still effective if it is received by the offeror while the offer is still in existence.
7. *UCC - Seller of goods sends the wrong goods*
- a. *General rule* - *Acceptance* and *Breach* (NOT a counteroffer)
  - b. *Accommodation Exception* - *Counteroffer* and no Breach
    - i. Ex. “Out of red cars, hope blue cars will work”
8. *Who can Accept* - A person who *knows* about the offer and who is the *person to whom* the offer was *made*

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