

CASEBRIEFS

The Understanding Video Lecture Series™

Acceptance

- “Acceptance”
 - a manifestation of assent to the offer
 - it concludes (or “seals”) the deal.
- How does one accept?
 - As a “reasonable” person would.
 - In a manner dictated by the offer.

Mailbox Rule

In the absence of specification in the offer, acceptance occurs *as soon as* it is put out of the offeree's possession...

provided that the means of acceptance is made in a manner expressly or impliedly authorized by the offer.

e.g., fax, mail, email

“I need a response by...”

Seller to Buyer:

“Have 20 blue widgets for sale at \$1.15. If you’re interested, I must receive a writing from you saying so by 2/10.”

On 2/9, Buyer posts a letter of acceptance.

On 2/12, it arrives.

Is there a contract?

Answer: Mailbox Rule

- No. Offeror (here, Seller) is “master of her offer.”
 - This includes right to specify method of acceptance.
 - Seller could and did alter the usually-applicable “mailbox rule”
 - Offer lapsed when no writing was received on 2/10
 - Posting on 2/9 was not enough
- If offer had been silent about date of receiving acceptance, effective when sent.

Hypo 2

Aunt to Niece by fax on 2/1:

“I’ll sell you my Toyota for \$10K.”

Niece to Aunt by properly-addressed letter mailed 2/5:

“I accept.”

Niece to Aunt by fax on 2/6:

“Ignore my 2/5 letter – I don’t want the car.”

Niece’s letter of 2/5 arrives on 2/7.

On evening of 2/7, is there a contract?

Answer

- Yes. Acceptance is effective upon dispatch (if properly addressed).
 - So there was a K on 2/5,
 - and Niece's purported revocation of acceptance on 2/6 was ineffective.

Hypo

Buyer faxes to Seller:

“I order 100 blue widgets @ \$1.46. Ship to the above address.”

Seller faxes back:

“We hereby confirm your order and will ship immediately.”

At that moment, is there a contract?

Answer

- Yes. Where offer doesn't make clear whether acceptance is to occur through shipment or promise, either method will suffice.

Common Law Mirror Image Rule

- Offer and acceptance must be mirror image of each other.
- Any change in acceptance becomes a counter-offer, kills original offer.

Battle of the Forms - UCC

- 2-207 dictates what happens when the buyer and seller use different forms, or language, for offer and acceptance.
- The UCC wants to encourage commerce, and thus encourage the forming of a contract, despite potential differences in the forms.

Battle of the Forms

- 1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.
- (2) The additional terms are to be construed as proposals for addition to the [contract](#). [Between merchants](#) such terms become part of the contract unless:
 - (a) the offer expressly limits acceptance to the terms of the offer;
 - (b) they materially alter it; or
 - (c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.
- (3) Conduct by both parties which recognizes the existence of a [contract](#) is sufficient to establish a [contract for sale](#) although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.

Hypo: Battle of the Forms – UCC

Buyer send form to Seller ordering 10 widgets @ \$2K each.

Seller sends back acknowledgement.

Both are merchants.

Both forms match except Seller includes a liability cap of “repair or replace.”

(a) Is there a contract?

(b) If so, is the liability cap part of it?

Answer

(a) Yes, there's a contract.

- “expression of acceptance” acts as an acceptance “even though it starts terms add'l to or different from those offered[.]” (2-207(1))

(b) Between merchants, add'l term becomes part of K unless it materially alters or is objected to.

- Here, liability cap is a material alteration, so it doesn't become part of the K.

Unilateral Contract

- Promise exchanged for performance
 - *Not* a promise for a promise (bilateral)
 - *E.g., \$20 if you cross the Brooklyn Bridge*
- Offer irrevocable for reasonable period once performance commences.

Hypo

On 2/1, Uncle write to Merchant:

“If you’ll sell Nephew on credit up to \$5K of goods he wants for his new store, I promise to pay if he doesn’t.”

Merchant doesn’t reply, but on 3/1, he sells \$5K of goods to Nephew.

Nephew doesn’t pay.

On 12/1, Merchant writes to Uncle:

“I sold \$5K to Nephew; he hasn’t paid, so you must pay.”

Must Uncle pay?

Answer

- No. Uncle's offer was for a unilateral K
 - Merchant accepted by performance, but...
- When offer for unilateral K is accepted by performance,
 - Offeree must give offeror notice of acceptance w/ in a reasonable time.
 - Since Merchant waited 8 months (and until default), he didn't meet the "reasonable notice" requirement, so Uncle's duty is discharged.

UCC Methods of Acceptance

- (a) Under UCC offer could be accepted by either promise to ship or shipment,
 - and if by shipment, could be “accepted” even by shipment of non-conforming goods, but...

- (a) Buyer can reject some or all, by holding them for a reasonable time for Seller to pick up.