

UNIT

2

UNIT OVERVIEW

You regularly take part in a wide variety of contracts. Whether it's cutting your neighbor's grass or buying a cell phone, contract law is intended to protect the interests of buyers and sellers, facilitate trade, and promote fairness and efficiency. In this unit, you will learn about:

- Contracts and their elements
- Genuine agreement, capacity to contract, and consideration
- Legality and the form of a contract
- The end of contracts, transfer of contracts, and remedies for breach of contract



Entering into Contracts



YOUR *Justice Journal*

Web Work Imagine you have your own Web site design company. You have several contracts with small businesses in your community. In addition to doing design work, you host Web sites, keep the information updated, and troubleshoot problems for these companies.

In your Justice Journal, write about the importance of having a contract, what type of information is included in your contract, and how to bring your contract to an end.

POWER READING STRATEGIES

To get the most out of your reading: **PREDICT** what the section will be about.

CONNECT what you read with your own life.

QUESTION as you read to make sure you understand the content.

RESPOND to what you've read.

How Contracts Arise

Understanding Business and Personal Law *Online*



Chapter Overview Visit the *Understanding Business and Personal Law* Web site at ubpl.glencoe.com and click on Chapter 5: How Contracts Arise—Chapter Overviews to preview the chapter information.

The Opening Scene

Starting in this chapter, we meet the Benes family. Mr. Benes is a widower with four teenage children: Alena, 18; Viktor, 16; Hana, 15; and Emil, 13. The children attend Euclid High School, a large public school in a major urban area in the Midwest. Mr. Benes owns a concession business and has just returned home from work.

Contractual Chaos

MR. BENES: Vik, you promised to have the garbage at the curb before I got home. I wish that I didn't have to get on your case about the same things over and over again.

VIKTOR: You're home early.

MR. BENES: I left work early to go to the newspaper and renew that ad about my lost laptop.

VIKTOR: Your ad's been running for three weeks, and you haven't received a single response. I don't think you're going to get your laptop back.

MR. BENES: Don't change the subject, Vik. Why do you always insist on waiting until the last minute to do your chores?

HANA: That's not true. Vik doesn't do his chores most of the time. He pays Emil to do them.

VIKTOR: Hana! Would you mind your own business for once? Nobody asked for your input on this!

MR. BENES: Since when has Viktor been paying Emil to do his chores?

HANA: Since he found a job. Vik's been working after school lately.

MR. BENES: You found a job?

VIKTOR: It's just for some extra spending money, Dad.

MR. BENES: What's the job?

HANA: He works for Mrs. Garcia.

VIKTOR: There you go again, Hana! Stay out of this!

MR. BENES: You're working at a gun shop?

VIKTOR: My job has nothing to do with the guns. I just sweep out the back room and stock the shelves and stuff.



MR. BENES: I don't care what you do there. You can just quit.

VIKTOR: I can't quit. I have a contract.
(Alena arrives at home.)

ALENA: Hey, Vik. Get your skateboard out of my car, will you?

VIKTOR: Shut up, Allie.

MR. BENES: You bought a skateboard?

VIKTOR: Not exactly.

MR. BENES: How am I supposed to interpret that statement?

(Emil enters the house.)

EMIL: It means that he offered Jake 50 bucks for it, but he didn't pay him yet. Vik still owes me for five weeks of chores.

VIKTOR: Shut up, Emil.

MR. BENES: Well, I guess that I need to come home early more often. It's the only way I can find out what's going on with my family!

What Are the Legal Issues?

1. Does the promise to do a favor create a binding contract?
2. What characteristics do contracts share?
3. When does a contract legally come into existence?
4. What constitutes a legal offer?
5. What constitutes a legal acceptance?

Contracts

What You'll Learn

- Explain the elements of legal contracts
- How to identify valid, void, voidable, and unenforceable contracts
- How to distinguish between express and implied contracts
- How to identify unilateral and bilateral contracts
- How to distinguish between oral and written contracts

Why It's Important

Identifying a contract's elements will help you manage your affairs in an intelligent and effective manner.

Legal Terms

- contract
- offer/acceptance
- genuine agreement
- capacity
- consideration
- legality
- void/voidable contract
- unenforceable contract
- express/implied contract
- bilateral/unilateral contract

Understanding Contract Law

When was the last time you made a contract? If you bought your first car last year or sold your old skis at a flea market, you probably know that these activities involve contracts. Many common daily activities may also involve contracts, from buying a fast food meal to filling your car with gas. Most people think a “contract” is a long, preprinted, formal document that they sign when buying a vehicle, selling their house, or purchasing insurance. Such formal documents represent only a small fraction of the contracts that you will make in your lifetime. The truth is that you create a contract any time you agree to exchange things of value.

Because contracts pervade your life, you need to know about their nature, purpose, and effect. Further, contract law forms the foundation for all other areas of the law that we will explore in this text. Understanding contract law is necessary to grasp the law of sales, consumer law, agency law, property law, employment law, partnership law, corporate law, and computer law. We will begin with the most basic concepts: what contracts are and how they come into existence.

The Nature of a Contract

A **contract** is any agreement enforceable by law. You should never enter into a contract without understanding the legal responsibilities involved. Not all agreements are contracts, however. In The Opening Scene, Vik's promise to take the garbage to the curb before his father returned home is probably not a contract. In contrast, Mr. Benes's agreement to run an ad in the newspaper is undoubtedly a contract. Similarly, if someone answers Mr. Benes's advertisement and returns his lost laptop, he will owe that person what he promised as a reward in the ad. Whether Vik's deal with Jake about the skateboard is a contract depends on the circumstances of the agreement.

The Three Theories of Contract Law

The legal responsibilities associated with contracts are based on what the involved parties do and say to one another. In the past, courts asked whether the parties to a contract exchanged things of equal value. This approach was called the equity theory of contract law. However, the advent of industrial capitalism and the need to support a



A Global Perspective: Laws Around the World

Antarctica

In 1959, officials of 12 nations (Argentina, Australia, Belgium, Chile, France, Great Britain, Japan, New Zealand, Norway, the Soviet Union, South Africa, and the United States) signed the Antarctica Treaty. This treaty is designed to protect one of earth's most pristine and cold environments, and it states that Antarctica can be used only for peaceful purposes, such as scientific exploration. It prohibits military troops, except those assisting research efforts, and outlaws using nuclear weapons or dumping nuclear waste on Antarctica. The treaty also asks scientists to freely share their research. Today more than 30 scientific stations have been set up to study the icy continent. Scientists describe Antarctica as a natural laboratory. It is ideal for examining weather data, collecting rock and mineral samples, and observing animal behavior. Antarctica is also ideal for studying something that affects the entire world—the "ozone hole" that lies directly overhead. Here's a snapshot of Antarctica.

- About 98 percent of Antarctica is covered year round in ice up to 15,000 feet thick.
- Winter temperatures can drop below -114° Fahrenheit.
- Geologists have found copper, gold, silver, and zinc on the Antarctic Peninsula.
- Traveling by dogsleds and skis, Roald Amundsen and four other Norwegians were the first people to reach the geographic South Pole on December 14, 1911. The 1,860-mile trip lasted 99 days.



Critical Thinking Question Some tourists pay huge sums to visit Antarctica. They come by ship, dinghy, or helicopter. Can you think of reasons why allowing sightseers to visit Antarctica might be both a good and bad idea? For more information on Antarctica, visit ubpl.glencoe.com or your local library.

profit-making system forced the courts to shift their focus. When asked to settle a contract dispute, the courts would ask whether the parties had agreed to the terms set forth in the agreement. This new

theory was called the will theory of contract law because it focused on the exercise of each party’s free will. The courts no longer asked if the contract was fair; instead they pondered, “Did the parties really agree to these terms?”

One problem with the will theory is that it was difficult to know what the parties were actually thinking when they entered into an agreement. Consequently, the courts studied actions and words to determine if the parties reached a “meeting of the minds.” Gradually, this approach led to a search for certain fixed elements to contracts. If these elements existed, the courts would hold that a contract existed. This approach became known as the formalist theory because it relied on the form of the agreement.

ELEMENTS OF A CONTRACT

An agreement is not a contract unless it contains the six elements of contracts: offer, acceptance, genuine agreement, capacity, consideration, and legality. *Of the six elements, which is the most crucial to setting up a valid contract?*

The Elements of a Contract

The six elements of a contract, as shown in Figure 5.1, are offer, acceptance, genuine agreement, consideration, capacity, and legality. To be legally complete, a contract must include all six elements. Notice that the list does not include anything written. Not all contracts have to be in writing to be enforceable.

An **offer** is a proposal by one party to another intended to create a legally binding agreement. An **acceptance** is the second party’s

Figure 5.1

Elements of a Contract

Element	Description
Offer	A proposal made by one party (the offeror) to another party (the offeree) indicating a willingness to enter a contract.
Acceptance	The agreement of the offeree to be bound by the terms of the offer.
Genuine Agreement	Offer and acceptance go together to create genuine agreement, or a meeting of the minds. Agreement can be destroyed by fraud, misrepresentation, mistake, duress, or undue influence.
Consideration	Consideration is the thing of value promised to one party in a contract in exchange for something else of value promised by the other party. The mutual exchange binds the parties together.
Capacity	The law presumes that anyone entering a contract has the legal capacity to do so. Minors are generally excused from contractual responsibility, as are mentally incompetent and drugged or drunk individuals.
Legality	Parties are not allowed to enforce contracts that involve illegal acts. Some illegal contracts involve agreements to commit a crime or a tort. Others involve activities made illegal by statutory law.



Take It or Leave It

Contracts come in many forms. One form is the contract printed on the back of tickets. On airline tickets, for instance, you'll find several important legal notices. These notices include "Conditions of Contract," "Notice of Incorporated Terms," "Notice of Baggage Liability Limitations," "Notice of Overbooking," or the specific terms and conditions related to nonair transportation or services.

On the back of a concert ticket, you're likely to find language stating that the ticket you bought is a "revocable license." Terms typical of such licenses include conditions stating that you may not resell the ticket at a price greater than its face value. Such language often includes a term stating that the ticket may be taken and admission refused upon refunding the ticket price.

Many courts have held that these so-called "take it or leave it" contracts are binding. In many states, the small print is just as binding as the large print, except where it is found to be grossly unfair or unreasonable.

Critical Thinking Next time you fly on an airplane or attend a concert, check the fine print on the back of your ticket. What are the terms of the contract you just entered? Would you agree with these terms if you had a choice?

unqualified willingness to go along with the first party's proposal. If a valid offer is met by a valid acceptance, a **genuine agreement** exists. Some circumstances, such as fraud, misrepresentation, mistake, undue influence, and economic duress, can destroy the genuineness of an agreement.

The fourth element, **capacity**, is the legal ability to enter a contract. The law generally assumes that anyone entering a contract has the capacity, but this assumption can be disputed.

The fifth element, **consideration**, is the exchange of things of value. In The Opening Scene, Mr. Benes gave nothing to Vik in exchange for his promise to deliver the garbage to the curb, so there was no consideration in that agreement.

People cannot enter into contracts to commit illegal acts. Consequently, **legality** is the final element of a contract.

Characteristics of a Contract

Contracts can be created in different ways and can assume diverse forms. A contract can be described by any of the following characteristics:

- Valid, void, voidable, or unenforceable
- Express or implied
- Bilateral or unilateral
- Oral or written

Any contract can have characteristics from one or more of these four groups. That is, a contract can be valid, express, bilateral, and written. Let's take a closer look at what these characteristics indicate about a contract.

Valid, Void, Voidable, or Unenforceable

The word *valid* means legally good, meaning that a valid contract is one that is legally binding. On the other hand, a contract that is **void** has no legal effect. An agreement that is missing one of the previously

Virtual Law

Online High School

One of the many advantages of the Internet is its potential to provide an immense amount of information to anyone anywhere with an online connection. This amazing capability has intrigued many educators, who are increasingly drawn to the Internet as a way of communicating ideas, exposing students to technology, and reaching students who may not otherwise have access to the information that the Internet can provide. Many states have even started experimenting with state-run online high schools. These schools can deliver courses to hundreds of students, including those who are taught at home by their parents. This trend has caught the attention of commercial companies that want to enter contracts with school districts to offer online programs.

Not everyone supports virtual high schools. Some teachers and parents have expressed concern about the quality of education received online. They are also worried that students might not be getting a well-rounded education without peer contact. (Source: *New York Times*, February 15, 2001, p. D1)

Connect Visit the Web sites of your state or local school board to see whether online classes are being offered, and explore how such courses are being handled.

discussed elements would be void, such as any agreement to do something illegal.

When a party to a contract is able to void or cancel a contract for some legal reason, it is a **voidable contract**. It is not void in itself but may be voided by one or more of the parties. A contract between two minors, for example, could be voidable by either of them.

An **unenforceable contract** is one the court will not uphold, generally because of some rule of law, such as the statute of limitations. If you wait too long to bring a lawsuit for breach of contract, the statute of limitations may have run its course, making the contract unenforceable.

Express or Implied

An **express contract** is stated in words and may be either oral or written. An **implied contract** comes about from the actions of the parties. People often enter into implied contracts without exchanging a single word.

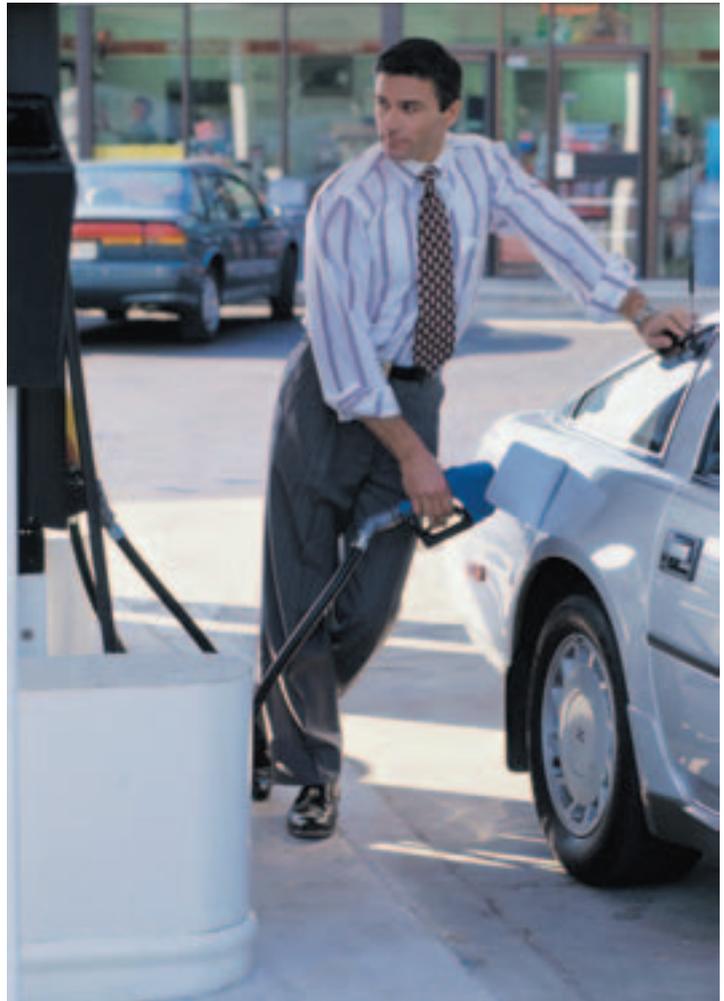
Example 1. Herb Schneider went to a self-service gas station that requires payment before the attendant will turn on the pumps. He handed the attendant \$10, returned to his car, pumped \$10 worth of gas into his tank, and drove off. Neither party spoke a single word, yet an implied contract arose from their actions.

Bilateral or Unilateral

The word *bilateral* means two-sided. Thus, a **bilateral contract** contains two promises. One party promises to do something in exchange

IMPLIED CONTRACTS

An implied contract can be created by the action of the parties. When you pump gas at a self-service gas station, your actions indicate a willingness to pay for the gas. *What actions are displayed by the gas company?*



for the other’s promise to do something else. If a friend says, “I’ll sell you my DVD player for \$150,” and you say, “I’ll buy it,” a bilateral contract comes into existence. Each of you has made a promise—you have promised to buy, and your friend has agreed to sell. Most contracts are created in this way.

In contrast, the word *unilateral* means one-sided. A **unilateral contract** contains a promise by only one person to do something, if and when the other party performs some act. If your friend says, “I’ll sell you my DVD player for \$150 if you give me the cash before noon tomorrow,” he or she will not be required to keep the promise unless you hand over the cash before noon on the following day. See Figure 5.2 for a visual representation of bilateral and unilateral contracts.

A reward offer is one of the most common instances of a unilateral contract. The acceptance of the reward offer must precisely comply with the offer.

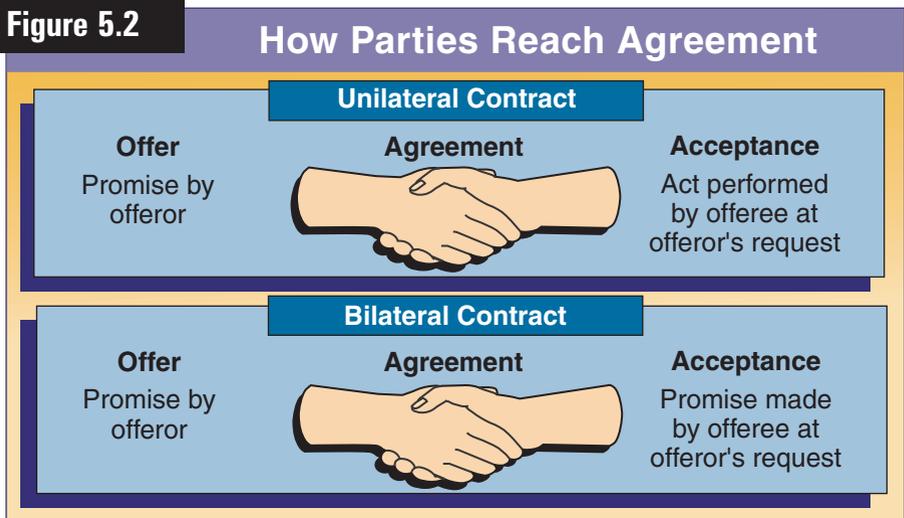
Example 2. In The Opening Scene, Mr. Benes placed an advertisement in the local newspaper offering a reward for the return of his lost laptop. However, Mr. Benes’s offer of a reward alone did not create a contract. The contract would come into existence only when someone returns the laptop. Mr. Benes would then owe the finder the reward.

Oral or Written

An oral contract is created by word of mouth and comes into existence when two or more people form a contract by speaking to each other. One person usually offers to do something, and the other party agrees to do something else in return. Most contracts are oral contracts of this nature.

HOW PARTIES REACH AGREEMENT

A contract may be unilateral or bilateral. *In which type of contract do both parties, the offeror and the offeree, make promises?*





UNILATERAL CONTRACTS

A classic example of the unilateral contract principle is a reward advertisement placed on a bulletin board or in a newspaper. When you read an advertisement offering a reward for a lost item, a contract does not yet exist. *When does the contract come into existence? What would happen if someone who had never read the ad found and returned the lost item?*

Sometimes, however, it is desirable to put contracts in writing. A written contract assures that both parties know the exact terms of the contract and also provides proof that the agreement was made. A law, the Statute of Frauds, requires that certain contracts must be in writing to be enforceable. We will learn more about this law in Chapter 10.

Section 5.1 Assessment

Reviewing What You Learned

1. Explain the elements of legal contracts.
2. What are the differences among valid, void, voidable, and unenforceable contracts?
3. What are the differences between express and implied contracts?
4. What are the differences between unilateral and bilateral contracts?
5. What are the differences between oral and written contracts?

Critical Thinking Activity

History How did the Industrial Revolution change the court's attitude toward interpreting contract law?

Legal Skills in Action

Elements of a Contract Your friend, Arkadi, has begun teaching contract law classes at a local senior citizens' center. Write a paragraph in which you explain the six elements of a contract in a way that will help Arkadi create his course outline. Remember to include information on the historical development of the will theory, which led to the need to develop the six elements included within the formalist theory of contract law.

Offer and Acceptance

What You'll Learn

- How to recognize the requirements of an offer
- How to distinguish between an offer and an invitation to negotiate
- How to recognize the requirements of an acceptance
- How to distinguish between an acceptance and a counteroffer
- How to recognize when an offer has terminated

Why It's Important

You need to know when an offer has been made and when an acceptance goes into effect to make sound contracts.

Legal Terms

- invitations to negotiate
- mirror image rule
- counteroffer
- revocation
- rejection

Requirements of an Offer

Because the six elements of a contract form the heart of contract law, we will build our study of contracts around them. Understanding the elements of offer and acceptance is necessary before moving on to other matters, such as which contracts must be in writing, how contract rights are transferred, how contracts end, and what happens when one party breaches a contract.

As noted earlier, an offer is a proposal by one party to another party to enter a contract. The person making the offer is the offeror, and the person who receives the offer is the offeree. An offer has three basic requirements. It must be:

- Made seriously.
- Definite and certain.
- Communicated to the offeree.

Serious Intent

An offer must be made with the intention of entering into a legal obligation. An offer made in the heat of anger or as a joke would not meet this requirement. For example, a friend complaining about her unreliable car might say, “Give me five bucks and it’s yours.” This statement may sound like an offer, but your friend cannot be forced to sell her car for five dollars.

Often an invitation to negotiate is confused with an offer. Sellers usually have limited merchandise to sell and cannot possibly sell an advertised product to everyone who sees an ad. For this reason, most advertisements in newspapers, magazines, and catalogs are treated as **invitations to negotiate** rather than as offers. They are also called invitations to deal, invitations to trade, and invitations to make an offer.

Example 3. An advertisement in the newspaper read, “Lava Lamps, \$49.98.” Carole Lauretig went to the store the next day and said, “I would like to buy a Lava Lamp.” A clerk apologized, saying the lamps had sold out within an hour after the store opened.



INVITATION TO NEGOTIATE

Very often invitations to negotiate are confused with genuine offers. *Is a price tag on a sale item an offer or an invitation to negotiate?*

The advertisement in Example 3 was merely an invitation to the public to come in, see the lamps, and make an offer. When Carole said, “I would like to buy a Lava Lamp,” she was actually making an offer to buy at the advertised price of \$49.98. The storeowner is free to accept or reject the offer.

There are exceptions to this rule. The courts consider some advertisements as offers when they contain specific promises, use phrases such as “first come, first served,” or limit the number of items that will be sold. In such cases, under the terms of the advertisement, the number of people who can buy the product becomes limited, making the advertisement an offer rather than an invitation to negotiate.

Price tags, signs in store windows and on counters, and prices marked on merchandise are treated as invitations to negotiate rather than as offers. This rule of law probably stems from days when people negotiated for products more than they do today.

Definiteness and Certainty

An offer must be definite and certain to be enforceable. A landlord of an apartment with faulty plumbing might agree to pay “a share” of the cost if the tenant fixes the plumbing, but the court would not enforce the contract because it was not possible to determine what the parties meant by “a share.”

Example 4. Joe Vasquez was offered a position as an account executive with the International Corporation at a salary of

Legal Briefs

Letting your office manager know that you are researching other job opportunities can sometimes work in your favor, causing your company to give you a raise, promotion, better training, or more interesting assignments. However, timing is the key when using this strategy. Be sure that you are in demand by objectively assessing your skills, performance, and overall marketability.

\$2,400 a month plus a “reasonable” commission on total sales. Is this a definite and certain offer? No, because it would be difficult to determine exactly what a “reasonable” commission is. The court, however, could fix a commission based upon general practices of the trade.

Communication to the Offeree

Offers may be made by telephone, letter, telegram, fax machine, e-mail, or by any other method that communicates the offer to the offeree.

Example 5. Jean Lefevre found a wallet. A driver’s license identified the owner, and Jean returned the wallet. The owner thanked her but did nothing more. Later in the evening, while reading the newspaper, Lefevre discovered that the owner had offered a reward for return of the wallet. However, she cannot claim the reward because the offer was not communicated to her. She did not know about the reward when she returned the wallet.

Requirements of an Acceptance

The second element of a legally binding contract is acceptance of the offer by the offeree. As in the case of an offer, certain basic

THE MIRROR IMAGE RULE

In real estate and service contracts, the acceptance must repeat the exact terms that are used in the offer. *What can a couple do if they want to purchase a house but cannot afford the price at which the house is listed?*



requirements must be met: the acceptance must be unconditional and must follow the rules regarding the method of acceptance.

Unconditional Acceptance

The acceptance must not change the terms of the original offer in any way. This principle is called **the mirror image rule**. Any change in the terms of the offer means the offeree has not really accepted the offer but has made a **counteroffer**. In that case, the original offeror is not obligated to go along, and no contract results. Instead, the offeror becomes an offeree and may accept or reject the counteroffer.

Example 6. Art Clifford sent a letter to Marge and Norm Grayson, offering to buy their home for \$80,000. The Graysons, who had advertised their house at \$85,000, wrote a reply stating, “We accept your offer. However, we would like the price set at \$83,000.”

The Graysons didn’t really accept Clifford’s offer, as their letter claimed. Instead, they made a counteroffer, which Art is free to accept or reject. He may choose to make a counteroffer of his own, agreeing to buy the home for an amount somewhere between \$80,000 and \$83,000. Then the initiative to accept or reject would shift back to the Graysons. This process could continue until the terms of the offer and the acceptance “mirror” each other. The parties could also decide they will never agree on a mutually satisfactory price.

Contracts for the sale of goods are exceptions to the mirror image rule. These exceptions include contracts for personal property such as clothing, furniture, food, motor vehicles, appliances, and other items. The primary exceptions are created by the Uniform Commercial Code (UCC), which is a set of statutes that covers the law of sales as well as other areas of commercial law. It was drafted to make trade among the states easier and has been adopted with minor variations by 49 states. Only Louisiana has not adopted all of its provisions.

One UCC exception involves nonmerchants. Nonmerchants are people who do not regularly buy or sell goods and do not claim to be experts on the goods. In nonmerchant situations, the offeree may make minor changes, and a contract will still be created. For example, if someone says to you, “I’ll sell you my camera for \$150,” and you answer, “I’ll buy it and pay you next week,” a contract is created. The added term, “I’ll pay you next week,” may be accepted or rejected by the offeror. Remember that this rule applies only to goods.

A second exception involves sale-of-goods contracts between merchants. When both parties are merchants, the additional or different



Social Studies

In 2001, pilots from Delta Airlines threatened to go on strike if they couldn’t reach an agreement on their contract for pay and benefits. Hollywood’s screenwriters made a similar threat. NBA players negotiate their contracts before they sign with a basketball team. Many business professionals do the same thing.

Evaluate

During the next two weeks, use newspapers, magazines, and the Internet to locate three current events that involve a contract. Analyze how the contracts came into existence, the issues surrounding the contracts, and predict what you think will happen in each situation.



Student Loans

There are many ways to pay for college. Taking out a government student loan that is repaid after you graduate is one way to pay for school. Currently, there are thousands of unpaid student loans. When a loan is not repaid, the government can take legal action to collect payment. The recovery of unpaid loans allows future students to borrow money for college.

Should the government be allowed to take your tax refund if you don't repay your student loan? Why or why not?

Get Involved

Research the U.S. Department of Education for more information about student loans. Get the facts, and borrow responsibly.

terms become a part of the contract. This exception applies only if the following conditions are met:

- The new or different terms do not make a material or crucial difference to the nature of the contract
- The offeror does not object to the new or different terms within a reasonable time
- The original offer did not expressly limit acceptance to the terms in that original offer

Methods of Acceptance

The time at which an acceptance takes place is important because that is when the contract comes into existence. When the parties are dealing face-to-face or on the telephone, no special problem exists. One party speaks, and the other listens and communicates the offer or the acceptance.

Special rules, however, govern acceptances that take place when the parties are separated by a distance and must communicate by letters, telegrams, or fax. According to common law, an acceptance that must be sent over long distances is effective when it is sent. Any method of communication that has been expressly or impliedly endorsed by the offeror would qualify. Common law also says that an acceptance is implied when the offeree accepts by the same or a faster means than that used by the offeror.

The authorization of an acceptance can also be implied by any reasonable means, including past practices between the parties, the usual method in the trade, or the customary means in comparable transactions. Naturally, the offeree must correctly address the acceptance so that it is delivered to the right place. If the address is faulty, the acceptance is not complete until delivery has been made to the offeror. It is also possible for the offeror to specify the time by which the acceptance must be received to be effective.

This rule applies to contracts for real estate and services. For sale-of-goods contracts under the UCC, the acceptance takes place when it is sent, as long as the method of communication is reasonable. Consequently, the acceptance of a mailed offer for goods would be effective when it is sent electronically, via fax, or through an overnight carrier. If the offeror states in the offer what method the offeree must use to accept, that method must be followed.

Sometimes an offer specifies that it must be accepted by an action. In these cases, the action must take place before there is an acceptance. For example, Larry McNulty promised to pay Floyd Little \$50 to don a gorilla suit and march with the band at a football game's halftime. Floyd would have to perform the action to accept the offer.

The offeror cannot impose silence on the offeree as the means of acceptance unless he or she has previously agreed to this condition or



LONG DISTANCE ACCEPTANCE

Problems arise when the acceptance of a contract must travel over long distances. *How can people make certain that an acceptance is valid and effective when it must travel to a distant location?*

has allowed silence to signal acceptance in the past. In contrast, if the offeror has established silence as the means of acceptance, then he or she will have to live by that condition if the offeree accepts by remaining silent.

Example 7. Bradley wrote a letter to Franz offering to sell his motorcycle. “If I do not hear from you, I shall assume that you have accepted my offer,” he said. However, Franz’s silence after receiving the offer would not bind him to pay. A person cannot be forced to respond to avoid a binding agreement. On the other hand, if Franz intended to accept the offer and complied with Bradley’s directions to remain silent, then Bradley must honor that silence as his acceptance.

Termination of an Offer

Even though an offer has been properly communicated to the offeree, it may be terminated. This termination may occur in any of the following five ways.

Revocation

Revocation is the taking back of an offer by the offeror. The offeror has a change of mind or circumstances and decides to withdraw the offer before it has been accepted. Two important rules govern revocation: an offer can be revoked any time before it is accepted, and a revocation becomes effective when it is received by or communicated to the offeree.

Example 8. Rob Garceau offered to sell his CD burner to Jodi Costa for \$250. Jodi examined the CD burner and found that it was in good condition. However, Jodi couldn't decide if she wanted to spend so much money for a used piece of equipment. She told Rob that she would consider his offer. In the meantime, Rob decided that he didn't want to sell his CD burner after all. He telephoned Jodi and informed her of his decision. Rob could revoke his offer because Jodi had not yet accepted it.

Rejection

Rejection, or refusal, of an offer by the offeree brings the offer to an end. For example, if someone says to you, "I'll sell you my camera for \$150," and you say, "I don't want it," then the offer has come to an end.

Example 9. Diane Amato decided that she wanted to make some extra money by selling some dried floral arrangements that she had made using flowers from her own garden. Diane spoke to her neighbor, Shawna Washington, about the flower arrangements and offered to sell them for \$40 each. Shawna liked the descriptions and decided to take a look at Diane's work. When Diane showed the arrangements to her, however, Shawna realized that they were not what she had expected. Shawna decided to reject Diane's offer.

Counteroffer

A counteroffer ends the first offer. If someone says to you, "I'll sell you my camera for \$50," and you say, "I'll give you \$35 for it," no contract comes into existence unless the original offeror accepts your new offer. If you later say, "Okay, I'll give you \$50 for the camera," you will be making a new offer, which the original offeror may accept or reject.

Expiration of Time

If the offeror sets a time limit for the acceptance of the offer, it must be honored. Assume that Bradley has offered to sell Franz his motorcycle for \$1,745. Bradley tells Franz the offer will remain open

until noon of the following day. To create the contract, Franz must accept within that time.

If no time for acceptance is stated in the offer, it must be accepted within a reasonable time. Otherwise, no contract exists. What is a reasonable time depends on the circumstances. For example, a reasonable time to accept an offer for purchasing a truckload of ripe tomatoes would be different from a reasonable time to accept an offer for purchase of a house.

When an offeree pays money or other consideration to an offeror to hold an offer open for an agreed period of time, an option contract comes into existence. An option is a binding promise to hold an offer open for a specified period of time. It offers to the holder of the option the exclusive right to accept the offer within the agreed time, subject to the terms of the option. For example, you might offer a seller \$50 to hold an offer open for two days. Such a contract is legally binding. For an entire contract to be completed, the option must be exercised by the person holding the option. This requires an absolute, unconditional, unqualified acceptance exactly according to the terms of the option.

Death or Insanity

If the offeror dies or becomes insane before the offer is accepted, the offer comes to an end. Although death ends an offer, it does not end a contract, except for contracts related to personal services.



Seller's Choice

You are selling your car. You offer to sell it to Martin for \$800 if he pays you by Saturday. On Friday Maria offers you \$1,000 for it. *Ethically, should you wait to see if Martin brings the \$800 on Saturday? Is it okay to sell the car to Maria on Friday? What is your ethical responsibility?*

Section 5.2 Assessment

Reviewing What You Learned

1. What are the requirements of an offer?
2. What is the difference between an offer and an invitation to negotiate?
3. What are the requirements of an acceptance?
4. What is the difference between an acceptance and a counteroffer?
5. When is an offer terminated?

Critical Thinking Activity

Identifying an Offer Why is it important to be able to distinguish between an offer and an invitation to negotiate?

Legal Skills in Action

Invitations to Negotiate Tina believes that she can compel a used car dealership to sell her a car that was advertised in the newspaper. She tells you that she believes the advertisement is an offer that she intends to accept tomorrow. Write a short letter to Tina that explains why advertisements in a newspaper are considered invitations to negotiate rather than offers.

Chapter Summary

Section 5.1 Contracts

- A contract is any agreement enforceable by law. There are six elements of a contract: offer, acceptance, genuine agreement, consideration, capacity, and legality. An offer is a proposal by one party to another intended to create a contract. An acceptance is the second party's unqualified willingness to go along with the first party's proposal. Genuine agreement occurs when a valid offer is met by a valid acceptance. Capacity is the legal ability to enter a contract. Consideration is the exchange of things of value. Legality refers to the fact that a legally binding contract must not require people to commit illegal acts.
- Valid contracts are legally binding. A void contract has no legal effect because one of the elements of a contract is missing. A voidable contract is not void, but it may be voided by one of the parties because of some defect. For instance, a contract between two minors could be voidable by either of the parties. An unenforceable contract cannot be enforced because there is some rule of law, such as the statute of limitations, that makes it unenforceable.
- An express contract is stated in words. It may be written or oral. An implied contract is implied from the actions of the parties.
- Bilateral contracts are formed by promises that each party makes to the other. A unilateral contract contains one party's promise that it will fulfill if and when the other party performs an act.
- Oral contracts are created when a party promises something by speaking that promise and the other party responds with a spoken promise. In contrast, a written contract is one in which the promises are in writing.

Section 5.2 Offer and Acceptance

- An offer is a proposal by one party to another party to enter a contract. An offer must be (1) seriously intended, (2) definite and certain, and (3) communicated to the offeree. An offer made in the heat of anger or as a joke would not be seriously intended. An offer must include clear, specific terms to be considered definite and certain. When communicating an offer, the offeror may use a telephone, letter, telegram, fax machine, e-mail message, or any other method of communication.
- An invitation to negotiate may look like an offer, but it is not. Moreover, any such invitation cannot be made into an offer by agreeing to the terms of the invitation. For example, an advertisement is not an offer, but rather an invitation to negotiate. It means that a merchant does not have to sell to a buyer who says, "I'll take it" in response to an ad in the paper. The customer's statement that he or she will buy acts as the offer in this case, and the merchant may then choose to accept or reject this offer to buy.
- An acceptance must meet two requirements: (1) it must be unconditional; and (2) it must follow the rules regarding the method of acceptance. Unconditional acceptances do not seek to change the terms of the original offer in any way. When parties are dealing face-to-face or on the telephone, no special problems exist with regard to method of acceptances. One party speaks, and the other listens and communicates the offer or acceptance. However, special rules govern acceptances that take place when parties are separated by a distance and must communicate by letters, telegrams, or fax.
- An offer must be accepted without changing its terms. As a result, when an offeree changes the terms of an offer, the offeree cannot be said to have accepted. Instead, he or she is deemed to have made a counteroffer, which the original offeree then may choose to accept or reject.
- An offer is terminated by revocation, rejection, counteroffer, expiration of time, death, or insanity.

Using Legal Language

Consider the key terms in the list below. Then use these terms to complete the following exercises.

contract

mirror image rule

counteroffer

consideration

capacity

legality

acceptance

invitation to negotiate

genuine agreement

revocation

rejection

offer

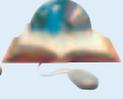
1. Write a poem or short play about two people who are planning to enter into a contract, using all of the terms listed above. Be creative and humorous.
2. Share your poem or play with the rest of the class, using various other forms of expression (music, silent modern dance, mime, etc.) to communicate important details.
3. As a class, vote to select the best performance.
4. Encourage the winner to present his or her poem or play to other classes that are studying business law.

The Law Review

Answer the following questions. Refer to the chapter for additional reinforcement.

5. Describe the formalist theory of contract law.
6. Explain the elements of legal contracts.
7. Why are most advertisements in the newspaper treated as invitations to negotiate? Are there exceptions? What are they?
8. What are the exceptions to the mirror image rule?
9. When an acceptance is sent over a long distance, when does it become effective?
10. How can genuine agreement be disrupted or destroyed?
11. Under what circumstances might contract be voidable?
12. Why is it desirable to put some contracts in writing?
13. What two rules govern the revocation of contracts?

Understanding Business and Personal Law

Online 

Self-Check Quiz Visit the *Understanding Business and Personal Law* Web site at ubpl.glencoe.com and click on Chapter 5: How Contracts Arise—Self-Check Quizzes to prepare for the chapter exam.

Linking School to Work

Interpret and Communicate Ideas

Interview the manager of a business or government agency located in your community. Find out when and why contracts are being used in the course of doing business. Share your findings with your class. Then as a class, determine:

14. How contracts are used across your community.
15. The similarities or differences among businesses/government agencies and how these similarities or differences are manifested in their business contracts.

Let's Debate

Is There a Contract?

Tara and Victor had a deal. Each week, Victor cleans Tara's house. In return, Tara pays Victor \$50. For the past few weeks, however, Victor missed a few things. One week he forgot to clean the oven; the next week he forgot to dust the living room. Tara wasn't happy and deducted \$10 from his fee. Victor argued that Tara should not have deducted \$10 because they had a contract and his forgetfulness concerned minor things, but Tara disagreed.

Debate

16. Do Tara and Victor have a valid contract?
17. Is it voidable?
18. What should happen if Victor "forgets" a few things while cleaning?
19. If you were Tara, what would you do?

Grasping Case Issues

For the following cases, give your decision and state a legal principle that applies.

20. The Galaxy Research Center e-mailed an offer to the owners of Twin Pines, a farm in rural Arkansas. The e-mail message stated: "Please consider this our offer to purchase between 9,000 and 11,000 acres of your 15,000-acre tract of farmland land near Twin Pines, Arkansas. Our offering price is between \$15,000 and \$19,000 per acre. Please respond soon." Is this e-mail message a legally effective offer? Why or why not?
21. Connie Adler agreed to go to the home-coming dance with Fred Wolfe. Later, Steve McNamara, the captain of the football team, asked Connie to be his date for home-coming. Connie broke her date with Fred to go to the dance with Steve. Does Fred have a legal claim against Connie? Explain your answer.
22. Bob Goodman made a verbal agreement to buy a pocket calculator from Howard Hermann for \$35. When Hermann delivered the calculator, Goodman refused to accept it, stating that he was not bound by his verbal agreement. Was he correct? Explain your answer.
23. Home Furniture Company advertised its waterbeds in a local newspaper. The newspaper mistakenly advertised the beds for \$49 instead of \$249. Must Home Furniture sell the beds at the advertised price? Explain your answer.
24. Victor Archer mailed an offer to Sally Miles. Sally mailed a properly addressed and stamped letter of acceptance 10 minutes before she received a revocation from Victor. Was the revocation effective? Explain your answer.

Analyzing Real Cases

In each case that follows, you be the judge.

25. Terms of Advertisement

The following advertisement was placed in a Minneapolis newspaper by the Great Minneapolis Surplus Store: “Saturday 9 A.M. 2 Brand-new Pastel Mink 3-Skin Scarves selling for \$89.50— Out they go Saturday. Each...\$1.00. 1 Black Lapin Stole. Beautiful, Worth \$139.50...\$1.00. First Come, First Served.” Lefkowitz was the first customer admitted to the store on Saturday, and he attempted to purchase the Lapin stole. The store said it would not sell him the stole because the offer was intended only for women. Lefkowitz sued. *Was the offer definite enough to allow Lefkowitz to tender a valid acceptance, or was it an invitation to negotiate?* *Lefkowitz v. Great Minneapolis Surplus Store*, 86 N.W.2d 689 (MN).

26. Terms of Acceptance

Tockstein wrote, signed, and delivered an offer to Rothenbeucher stating that he wished to purchase Rothenbeucher’s house. The offer included a statement that acceptance must be made within 24 hours. After 24 hours, the offer would be revoked unless Rothenbeucher had accepted. Rothenbeucher signed the agreement within 24 hours but did not deliver it to Tockstein personally, as Tockstein had done with the offer. Instead, Rothenbeucher gave it to his real estate agent, who delivered it to Tockstein after the 24-hour period had expired. Tockstein claimed the offer was revoked when Rothenbeucher did not deliver it within the specified time period. *Was he correct? Why or why not?* *Rothenbeucher v. Tockstein*, 411 N.E.2d 92 (IL).

Legal Link

Automobile Accidents

The greatest risk facing teens today is not drugs, alcohol, school violence, or suicide—it’s motor vehicle crashes.

Connect

Using a variety of search engines, research teen motor vehicle crashes.

27. Locate statistics, major causes, and ways to help teens become safer drivers.
28. Create a contract between you and your parent or guardian that will help you manage the use of your vehicle.



29. **Predict** Contracts seem to be a part of everything we do. Why are they so important?
30. **Connect** Have you ever faced a situation where you wished you had a contract in place?
31. **Question** Can you think of a situation where an oral contract would be better than a written contract? Explain your answer.
32. **Respond** Why do you think that although death ends an offer, it does not end a contract? Is that fair?