

CONTRACTS

FORMATION OF CONTRACTS

NOTES

OFFER

> Contract Formation:

- 1) Offer
- 2) Acceptance
- 3) Consideration

> Offer:

- “Outward manifestation of intent to enter into a contract”
- Intent AND Specific terms



HYPOTHESIS

- 1) Jon calls and says, “One of these days I want to sell you my car.” Is that an offer?
- 2) If Jon calls and says he wants to sell you his car and gives details about his car, is that an offer?

> Ads:

- Not an Offer
- “Invitation to an Offer”

> Termination of an Offer:

- Death
- Lapse of time
- Rejection
- Counteroffer
- Revocation

> Direct Revocation:

- Retraction of an Offer by the offeror

> Indirect Revocation:

- Person receiving Offer LEARNS another deal was made



HYPO

Jon calls you at 8 AM and asks if you would be interested in buying his car for \$20,000 and states the other valid terms. You tell Jon you will think about it. At 3 PM, you hear from a mutual friend at coffee that he just bought Jon's car. Is that proper? Can you now call Jon back and tell him you want to buy his car?

> Revocable:

- Offers are **REVOCABLE**
- Only three instances when an Offer is not revocable

> Option Contract:

- 1) Promise to keep Offer open
- 2) Additional Consideration



HYPO

- 1) If Jon says he will keep his offer open for two weeks, is that enough?
- 2) If Jon says he will keep his offer open for two weeks for \$50, is that valid?

> UCC Firm Offer:

- 1) Merchants
- 2) Signed writing by Merchant



HYPO

You and Jon are talking on the phone. He says he has a good deal on peaches. You tell him you will think about it, and he says he will keep the offer open for two weeks. Is that a valid firm offer?

> UCC Firm Offer – Time Limit:

- Can only stay open for a **MAXIMUM** of **3 months**



HYPO

Jon tells you he has a good deal on oranges. He promises to keep the offer open in writing. There is no time included. On day 92, Jon calls you and tells you he's changed his mind.

- 1)** Can he do that?
- 2)** What is the status of the offer?
- 3)** Can you call Jon on day 92 and accept?

> Unilateral K = Promise for an act
vs.

Bilateral K = Promise for a promise



HYPO

Jon promises to pay you \$500 to paint his house. You show up on Monday at 9 AM and do the first wax-on wax-off at the house. Jon comes out and says never mind. Can Jon do this?

ACCEPTANCE

> Common Law Mirror Image Rule:

- Acceptance must mirror the Offer

> How to Accept an Offer:

- Silence
- Performance
- Mail

> Common Law Mailbox Rule:

- Acceptance is effective when SENT

Example:

o If you mail Jon an acceptance on April 5,

the acceptance is effective on April 5

▶ Mailbox Rule Exception:

- If a Rejection is sent first, then an Acceptance is sent, whichever arrives first wins

> UCC Acceptance:

- Acceptance is construed liberally

▶ Exceptions:

- Material change the terms of contract
- Objection to the change of a term in a reasonable amount of time
- Offer limits the Acceptance

CONSIDERATION

> Consideration:

- Bargained-for Exchange



AdaptiTip

You will never have insufficient consideration because of the amount, even a peppercorn is enough

> **Illusory Promise:**

- Party making the Offer retains control

> **Gifts:**

- Promise to give a gift is **NOT** valid Consideration
- Already given gift **IS** valid Consideration



HYPO

Grandmother calls the grandson and says she will give him \$100 for his birthday. The grandmother changes her mind. What if the grandmother does not give her grandson a check? If she already gave the check, can she get it back?

> **Past or Moral Consideration:**

- Is **NOT** valid Consideration



HYPO

- 1) Jon and Mrs. Jon are at the beach. Mrs. Jon gets caught in the riptide, and she's floating out to sea. Jon can't swim. You jump in and save Mrs. Jon. Jon tells you he will give you \$10,000 tomorrow for saving Mrs. Jon. You show up at the house, and Jon gives you \$10. Is this valid?
- 2) What if Jon screams, "Whoever can go save my wife, I promise to give you \$10,000!" You save her, and then come to the house. Will Jon have to give you the \$10,000?

> Promise to pay debt barred by Statute of Limitations:

- Is valid Consideration

> Promise to pay debt discharged by bankruptcy:

- Is valid Consideration

> Forbearance to sue:

- Promise not to sue
- Is valid Consideration

> Promissory Estoppel:

- Detrimental Reliance

ACCORD & SATISFACTION



HYPO

- 1) Jon owes you \$100. You go out to the mail, and you get a check from Jon for \$50. The check is marked paid in full. You cash the check. The debt is not disputed. Can you get the remaining \$50?
- 2) Jon owes you \$100. He doesn't have \$100; he offers to pay \$50. You say you need \$90. You agree on \$75. Jon sends you a check for \$75 paid in full. Is that enforceable?
- 3) You call Jon and ask when you will get the \$100. Jon doesn't know what you are talking about. You tell him that you gave him \$100 last year. Jon says you are friends and doesn't want there to be hard feelings, so he offers \$50. He gives you \$50, and you take it. Will that be it?