

## Contracts – Offer & Acceptance (Chapter 7)

**Contract** (“K”) – an agreement between two parties that courts will enforce (Ks are the basis for all economic activity in a market economy). There are 5 elements required to form a K:

1. **Offer & Acceptance** – a serious, definite offer to contract; accepted by person offered to
2. **Genuine Agreement** – not based on deceit, an important mistake or unfair pressure
3. **Consideration** – both sides must receive something of value
4. **Capacity** – must be able to contract legally (minors, insanity, intoxication)
5. **Legality** – must be legal (can’t pay someone to commit crime or tort)

**Offer** – a proposal by an offeror to do something, provided the offeree does something in return (if the offeree accepts the proposal, a contract arises). There are 3 elements of an offer:

1. **Expression of intent to create a legal obligation** (offeror must appear serious)
  - Test of the reasonable person (how a reasonable person would *interpret* conduct)
  - Facts & circumstances (words spoken as a joke, in anger, etc. – not an offer)
  - Social agreements (when people make arrangements or dates, these are not Ks)
2. **Offer must be complete & clear** (court must be able to determine what parties intend)
  - Complete (needs all essential info: usually price, subject matter and quantity)
  - Clear (each essential term must be identified clearly)
  - Advertisements (usually treated as invitations, not offers)
3. **Offer must be communicated to the offeree** (person who is not the intended offeree or who is unaware of the offer cannot accept the offer)

**Termination of Offers** – offers do not last forever. There are 6 ways to terminate an offer:

1. **Revocation by the offeror** (offeror may revoke an offer anytime before it is accepted)
2. **Time stated in the offer** (offeror may specify how and when the offer must be accepted)
3. **Reasonable length of time** (stays open for a reasonable amount of time)
4. **Rejection by the offeree** (when offeree rejects the offer, it is terminated)
5. **Counteroffer** (if offer is not accepted exactly, a counteroffer is made and original offer is rejected)
6. **Death or insanity of either party** (no longer able to enter into contract)

**Keeping an Offer Open** – an offeror has no obligation to keep an offer open for a specified time even if he has promised to do so. There are 2 ways to keep an offer open, however:

1. **Option** (offeree gives the offeror something of value in return for a promise to keep the offer open – options are not canceled due to death or insanity of one of the parties)
2. **Firm Offer** (special rule that applies to *merchants* must be in writing)

**Acceptance** – acceptance occurs when a party *to whom an offer has been made* agree to the proposal. To create an enforceable contract ... the acceptance must:

1. **Be made by the person to whom the offer was made.**
2. **Match the terms in the offer.** Mirror image rule (must be identical, with exception for merchants)
3. **Be communicated to the offeror.**
  - Silence as acceptance (you are never obligated to reply to offers made by others ... unless both parties have agreed that silence will be assumed to be acceptance)
  - Unilateral acceptance (Ks requiring the offeree to perform certain actions as their acceptance of the offer are considered unilateral contracts ... only one party must perform)
  - Bilateral acceptance (Ks requiring both parties to perform certain actions ... accepted with promises by both parties ... promise of payment for promise to paint the fence)

**Timing** – offers and terminations are effective when *received*; acceptances are effective when *sent*

## Contracts – Genuine Agreement (Chapter 8)

**Genuine Agreement** – without duress, undue influence, mistake, misrepresentation or fraud.

1. If there was not genuine agreement, the contract may be voidable. This means the injured party has the option of **rescission** (backing out of the transaction by returning what was given).
2. Rescissions must be *prompt* and must take place before **ratification** (acting like you want to live with the K, like by paying the first installment of your loan)

**Duress** – when one party to a contract uses an improper threat or act to obtain an expression of agreement. The important issue is the nature of the threat:

1. **Threats of illegal conduct.** threat to engage in illegal conduct (**crime or tort**) is always duress.
2. **Threats to report crimes.** Coercing someone by threatening to report their crimes (extortion)
3. **Threats to sue.** Using the threat of a lawsuit to coerce someone into an agreement.
4. **Economic threats.** Threat of economic (\$) consequences

**Undue Influence** – when one party to a K is in a position of trust & wrongfully dominates the other.

1. **The Relationship.** A relationship of *trust*, confidence, or authority must exist between parties. May be a formal relationship (teacher-student) or an informal relationship.
2. **Unfair Persuasion.** If dominant party to contract receives unfair terms, then undue influence may exist (and the dominated party may rescind)

**Mistake** – when one or both parties are mistaken about facts of K:

1. **Unilateral Mistakes** – when *one* party holds an incorrect belief about the facts related to a K
  - Innocent unilateral mistake (if someone fails to read K carefully before signing ... K is still valid)
  - Recognized unilateral mistake (major mistake that other party is *aware* of ... K is voidable)
  - Induced unilateral mistake (one party *encouraged* other to make the mistake ... K is voidable)
2. **Mutual (Bilateral) Mistakes** – when *both* parties have incorrect beliefs about an important fact; important facts that influence parties' decision making about a K are called material facts
  - Mistake about subject matter. (mutual mistakes of fact ...K is void)
  - Mistake of law (mutual mistake about applicable laws ... K is still valid)

**Misrepresentation** – statements that turn out to be untrue may be either *innocent* or *fraudulent* misrepresentation ... both of these defenses make the K voidable. 3 elements of misrep:

1. **Untrue Statement of Fact** (in misrep, the statement must be one of *fact* ... a *past* or *existing* fact ... otherwise it is just an *opinion*; opinions of experts are considered to be statements of fact)
  - Active Concealment: same as a false statement of fact.
  - Silence: in many situations the seller may remain silent about defects, *except*: (i) if you make a statement about a material fact that omits important info; (ii) if a true statement is made untrue by subsequent events; or (iii) if one party knows other has made a basic mistaken assumption.
2. **Materiality.** Untrue statements may be considered material if: (i) statement would cause a reasonable person to contract; (ii) they knew the other person would rely on the statement; or (iii) they knew the statement was false.
3. **Reasonable Reliance** (the victim *must* have reasonably relied on the untrue statement)

**Fraud** – fraud is *based* on misrepresentation ... all the elements of misrep must be proven or there is no fraud). In addition to misrep, 2 additional elements must be proven to show fraud:

4. **Intent** (misrep must be intentional or reckless: (i) deliberately lying or concealing a material fact; or (ii) recklessly making a false statement of fact w/o knowing whether it is true or false)
5. **Injury** (misrep or concealment must injure – proof of injury must exist to establish fraud)

**Remedies for Fraud** – as with misrep, rescission is a remedy ... but with fraud, compensatory and punitive damages are also possible remedies