Instructor Manual

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# Purpose and Perspective of the Chapter

The purpose of this chapter is for students to understand how four basic requirements must be met for a contract to be considered valid and enforceable, these requirements are: agreement, consideration, contractual capacity, and legality. This chapter explores the first of these requirements, agreement. The parties must agree on the terms of the contract and manifest to each other their mutual assentor voluntary consent to the same bargain. Students will learn how agreements are required to form a contract, whether it is formed in the traditional way (on paper) or online.

# Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Test Bank (contains assessment questions and problems)
* Solution and Answer Guide (offers textbook solutions and feedback)
* PowerPoint (provides text-based lectures and presentations)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
* MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

# Chapter Objectives

The following objectives are addressed in this chapter:

1. Identify what three elements are necessary for an effective offer.
2. Explain the elements necessary for an effective acceptance.
3. Describe how click-on and shrinkwrap agreements differ.
4. Identify the terms of a contract offer presented via the Internet.
5. Evaluate the primary purpose of the Uniform Electronic Transactions Act.

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# Key Terms

**Acceptance**: the act of voluntarily agreeing, through words or conduct, to the terms of an offer, thereby creating a contract.

**Agreement**: a mutual understanding or meeting of the minds between two or more individuals regarding the terms of a contract.

**Browse-wrap terms**: terms or conditions of use presented when an online buyer downloads a product, but to which the buyer does not have to agree before installing or using the product.

**Click-on agreement**: an agreement that arises when an online buyer clicks on “I agree,” or otherwise indicates assent to be bound by the terms of an offer.

**Counteroffer**: an offeree’s response to an offer in which the offeree rejects the original offer and at the same time makes a new offer.

**E-contract**: a contract that is formed electronically.

**E-signature**: an electronic sound, symbol, or process attached to or logically associated with a record, and adopted by a person with the intent to sign the record.

**Forum-selection clause:** a provision in a contract designating the court, jurisdiction, or tribunal that will decide any disputes arising under the contract.

**Mailbox rule**: a common law rule that acceptance takes effect, and thus completes formation of the contract, at the time the offeree sends or delivers the acceptance via the communication mode expressly or impliedly authorized by the offeror.

**Mirror image rule**: a common law rule that requires that the terms of the offeree’s acceptance adhere exactly to the terms of the offeror’s offer for a valid contract to be formed.

**Offer**: a promise or commitment to perform or refrain from performing some specified act in the future.

**Option contract**: a contract under which the offeror cannot revoke the offer for a stipulated time period (because the offeree has given consideration for the offer to remain open).

**Partnering agreement**: an agreement between a seller and a buyer who frequently do business with each other concerning the terms and conditions that will apply to all subsequently formed electronic contracts.

**Record**: information that is either inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in visual form.

**Revocation**: the withdrawal of a contract offer by the offeror; unless an offer is irrevocable, it can be revoked at any time prior to acceptance without liability.

**Shrink-wrap agreement**: an agreement whose terms are expressed in a document located inside a box in which goods (usually software) are packaged.

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# What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

* **1** New Numbered Examples:
  + on counteroffers (2019)
* 2 New Numbered Case Examples:
  + on the communication of acceptance (2019)
  + on forum-selection clause (2020)
* Updated ALOE: *Can E-Mails Create a Valid Contra*ct (new section titled “E-Mails and Employment Contracts” with 2018 and 2020 case details.

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# Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 11. (PPT Slide 3).*

1. **11-1 Offer (PPT Slide 5-13)**
   1. **Intention of the Offer**
      1. Intent is not determined by the *subjective* intentions, beliefs, or assumptions of the offeror. Rather, it is determined by what a reasonable person in the offeree’s position would conclude that the offeror’s words and actions meant.
      2. When Intent May Be Lacking
         1. Expressions of opinion
         2. Statements of future intent
         3. Preliminary negotiations
         4. Invitations to bid
         5. Advertisements and price lists
         6. Live and online auctions
      3. Agreements to Agree
         1. **Spotlight Case Example 11.2** Six Flags, Inc.
      4. Preliminary Agreements

* 1. **Definiteness of the Offer**
     1. The identification of the parties.
     2. The identification of the object or subject matter of the contract including the work to be performed, with specific identification of such items as goods, services, and land.
     3. The consideration to be paid.
     4. The time of payment, delivery, or performance.
     5. **Example 11.3** Nintendo of America, Inc.
  2. **Communication of the Offer**
     1. Offer must be communicated to the offeree.
     2. **Case Example 11.4** Adwoa Gyabaah
  3. **Termination of the Offer**
     1. Termination by Action of the Parties
        1. Revocation
        2. Irrevocable Offers
           1. **Example 11.5** Tyler
     2. Termination by Action of the Offeree
        1. Rejection
           1. **Example 11.6** Goldfinch Farms
           2. **Example 11.7** Ray
        2. Counteroffers
           1. **Example 11.8** Burke
           2. Mirror Image Rule

Offeree’s acceptance must match the offeror’s offer exactly.

* + 1. Termination by Operation of Law
       1. Lapse of time
       2. Destruction of the specific subject matter of the offer
       3. Death or incompetence of the offeror or the offeree
          1. **Example 11.9** Sybil
       4. Supervening illegality of the proposed contract
          1. **Example 11.10** Lee

1. **11-2 Acceptance (PPT Slide 14-19)**
2. **Unequivocal Acceptance**
   * 1. To exercise the power of acceptance effectively, the offeree must accept unequivocally.
        1. **Case Example 11.11** Sonja Brown
3. **Silence as Acceptance**
   * 1. Silence or inaction on the offeree’s part can operate as acceptance.
        1. **Example 11.12** Marabel
4. **Communication of Acceptance**
   * 1. In a unilateral contract, the full performance of some act is called for. Acceptance is usually evident, and notification is therefore unnecessary (unless the law requires it or the offeror asks for it). In a bilateral contract, in contrast, communication of acceptance is necessary, because acceptance is in the form of a promise.
5. **Mode and Timeliness of Acceptance**
   * 1. The Mailbox Rule (deposited acceptance rule)
        1. If the authorized mode of communication if the mail, then an acceptance becomes valid when it is dispatched
     2. Authorized Means of Communication
        1. **Example 11.14** Motorola Mobility, Inc.
        2. **Example 11.15** USPS Priority Mail
     3. Substitute Method of Acceptance
        1. **Example 11.16** Bennion
6. **11-3 E-Contracts (PPT Slide 20-25)**
7. **Online Offers**
   * 1. Displaying the Offer
        1. **Example 11.18** Netquip
     2. Provisions to Include
        1. Acceptance of terms
        2. Payment
        3. Return policy
        4. Disclaimer
        5. Limitation on remedies
        6. Privacy policy
        7. Dispute resolution
     3. Dispute-Settlement Provisions
        1. **Case Example 11.19** Scott Rosendahl
        2. Forum-Selection Clause
           1. Indicates the forum or location for the resolution of any dispute arising under the contract.
           2. **Case Example 11.20** Rebecca Bextel
        3. Choice-of-Law Clause
           1. Specifies that any dispute arising out of the contract will be settled in accordance with the law of a particular jurisdiction, such as a state or country.
           2. **Case Example 11.21** Xlibris Publishing
8. **Online Acceptances**
   * 1. Click-On Agreements
        1. **Case Example 11.22** Uber Technologies, Inc.
     2. Shrink-Wrap Agreements
        1. **Example 11.23** Arial
        2. Shrink-Wrap Agreements and Enforceable Contract Terms
        3. Shrink-Wrap Terms That May Not Be Enforced
           1. **Case Example 11.24** David Noble
     3. Browse-Wrap Terms
        1. **Case Example 11.25** James McCants
9. **Federal Law on E-Signatures and E-Documents**
   * 1. Under the Electronic Signatures in Global and National Commerce Act (E-SIGN Act), no contract, record, or signature may be “denied legal effect” solely because it is in electronic form. An electronic signature is as valid as a signature on paper, and an e-document can be as enforceable as a paper one.
10. **Partnering Agreements**
    * 1. A seller and a buyer who frequently do business with each other agree in advance on the terms and conditions that will apply to all transactions subsequently conducted electronically.
11. 11-4 **The Uniform Electronic Transactions Act (**PPT Slide 26-28)
12. **The Scope and Applicability of the UETA**
    * 1. Federal
    1. **The Federal E-SIGN Act and the UETA**
       1. If the state has enacted the UETA without modification, state law will govern.
    2. **Highlights of the UETA**
       1. Attribution
          1. If an electronic record or signature is the act of a particular person, the record or signature may be attributed to that person.
       2. The Effect of Errors
          1. If the parties have agreed to a security procedure and one party does not detect an error because of failure to follow the procedure, the conforming party can legally avoid the effect of the change or error.
       3. Timing
          1. Once the electronic record leaves the control of the sender or comes under the control of the recipient, the UETA deems it to have been sent. An electronic record is considered *received* when it enters the recipient’s processing system in a readable form—*even if no individual is aware of its receipt*.
    3. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of what events show evidence of agreement. After answer is provided, review with students the actions that can show evidence of an agreement in the online world and examples of each.*

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# Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. **Discussion – Offer (PPT Slide 5-13). Duration 15 Minutes.**
2. **In the context of an offer, how are intent and its seriousness determined?**
   1. Serious intent is de­termined by what a reasonable person in the offeree’s position would conclude the offeror’s words and actions meant, not by the subjective intentions, beliefs, and assumptions of the offeror. Offers made in obvious an­ger, jest, or undue ex­citement do not qual­ify.
3. **Why must a contract have “reasonably definite terms,” and how “definite” must the terms be?** 
   1. A contract must have reasonably definite terms so that a court can determine if a breach has oc­curred and can give an appropriate remedy. Courts may supply a missing term when the parties have clearly manifested an intent to form a contract, but they will not do so if the parties’ expression of intent is too vague or uncertain (e.g., an em­ployer’s promise that an employee will “share in the profits of the business”). An offer may in­vite an accep­tance to be worded in specific terms so that the con­tract is made definite. If the acceptance is not so specifi­cally worded, there may be no enforceable contract. The UCC requires less specificity in a contract for the sale of goods. Specificity is more important in an in­ternational sales contract.
4. **How do the parties terminate an offer?** 
   1. The parties can terminate an offer by: (1) revoca­tion, (2) rejection, or (3) a counteroffer. Revocation is withdrawal of the offer by the offeror. Generally, an offer may be revoked any time before acceptance, even if the offeror agreed to hold it open, but revocation is effective only on receipt (thus a letter of revocation is not effective until the offeree receives it). Revocation can be ex­press (“I withdraw my offer”) or implied by conduct inconsistent with the offer (property that would be the subject of the contract is sold to a third party). Revocation of an offer made to the general public must be communicated in the same manner in which the offer was communicated. An offeree may reject an offer ex­pressly (“I don’t need what you’re selling”), or impliedly (by conduct showing an intent not to accept). Rejec­tion is effective only on receipt. Asking about an offer (“Is that your best offer?”) is not rejection, but an am­biguous response may be construed as a rejection (“The price seems low. I’ll bet you can do better than that.”). A subsequent at­tempt to accept will be construed as a new offer. A counteroffer is a rejection and a simultaneous making of a new offer. The mirror image rule requires that the acceptance match the of­fer—any material change in the terms automat­ically terminates the offer and substitutes a counteroffer. An offeree may make an offer with­out rejecting the original offer, in which case two offers exist, each capable of acceptance (“I don’t have the price that you ask but will try to raise it. I will offer to buy your goods for the amount that I do have.”).
5. **Discussion – Acceptance (PPT Slide 14-19). Duration 10 Minutes.**
6. **Who may accept an offer?**
   1. Only the person to whom the offer is made can accept it unless: (1) the of­fer is an option contract (in which case the right to exercise the option is generally considered a contract right and is assignable or transferable, with exceptions), or (2) the offeree is an agent (in which case the prin­cipal may accept, and a contract will be formed between the principal and the offeror). If an offer is made to two or more persons, it must be accepted by all of them. (If individual offers are made to two or more per­sons indi­vidually, contracts are formed only with those persons who accept the offer.)
7. **What is unequivocal acceptance?** 
   1. Unequivocal acceptance is acceptance that adds no new terms or terms that materially change the offer (i.e., “I accept the offer, but only if I can pay on ninety days’ credit”).
   2. Under the mirror image rule, an acceptance is subject to new conditions or with terms that materially change the offer (which may be considered a counteroffer).
   3. An acceptance may be unequivocal even though the offeree ex­presses dis­sat­isfaction (i.e., “I accept the offer, but I wish I’d gotten a better deal”).
   4. An acceptance that is made conditional is a rejection (i.e., “I accept if you send a written contract”). Under the UCC, acceptance is valid even if terms are added.
8. **Discussion – E-Contracts (PPT Slide 20-25). Duration 15 Minutes.**
9. **Why is a court likely to enforce a shrink-wrap agreement?**
   1. A court is likely to enforce a shrink-wrap agreement partly because it is more practical, from a business’s perspective, to enclose the full terms of a sale in a box. The court may reason that the seller proposed an offer the buyer accepted after an opportunity to read the terms.
10. **On what reasoning might a court refuse to enforce a shrink-wrap agreement?** 
    1. A court may rea­son that a buyer learned of the shrink-wrap terms after the parties entered into their contract. On this basis, the court might conclude that the terms were proposals for an addition to the contract, which means that they were not part of the contract unless the buyer expressly agreed to them.
11. **Is a court likely to enforce a click-on agreement?** 
    1. Yes, unless the agreement is objectionable on grounds that apply to contracts generally. This is if the party who agrees to the terms has an opportunity to read them before the contract is made.
12. **Discussion – The Uniform Electronic Transactions Act (PPT Slide 26-28). Duration 10 Minutes.**
13. **When does the UETA apply, and what is its effect?**
    1. The UETA supports all electronic transac­tions, but it does not create rules for them. The UETA does not apply unless the contracting parties agree to use e-commerce in their transactions.
14. **Can parties to a contract that would otherwise be covered by the UETA choose to waive its pro­visions?** 
    1. Yes, contracting parties can waive or change for their contract any or all of the UETA provi­sions (ex­cept for the rules that concern good faith, diligence, public policy, and unconscionability, which cover all con­tracts). Parties whose contracts would not otherwise be subject to the UETA can also bring their contracts within its provisions. The UETA applies in the absence of an agreement to the contrary.

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# Additional Activities and Assignments

1. **MindTap** – Why Do Contracts Matter to Me?
   1. Online auto-graded activities connect the upcoming chapter to an authentic, real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.
2. **MindTap** – Learn It: Contract Definiteness; Offer; Alternatives to Acceptance
   1. Online auto-graded activities that review foundational concepts presented in this chapter and assesses students’ comprehension of the topics. Consists of 2 multiple choice questions in each.
3. **MindTap** – Check Your Understanding: Agreement
   1. Online auto-graded activity that assesses students’ foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.
4. **MindTap** – Case Problem Analysis: Offer
   1. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.
5. **MindTap** – Brief Hypotheticals: Agreement
   1. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.

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# Additional Resources

## Cengage Video Resource

* MindTap Quick Lesson Video:
  + Discharge of Contractual Obligations. Duration 2:28 minutes.

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