

ASPEN PARALEGAL SERIES

Jeffrey A. Helewitz

Basic Contract Law for Paralegals
Ninth Edition



Wolters Kluwer

Copyright © 2018 CCH Incorporated

Chapter 2

OFFER

Learning Objectives

After studying this chapter you will be able to:

- Define “offer”
- Identify the three conditions necessary to create a valid offer
- Explain the concept of “certainty and definiteness in the terms of an offer”
- List the four required terms in a valid offer
- Briefly discuss what is the UCC
- Discuss the impact of the UCC on traditional legal principles of a contractual offer
- Know what is meant by an “output contract”
- Apply basic concepts of an offer to contractual clauses
- Draft a basic offer that would meet legal standards
- Indicate the difference between contracting with a member of the general public and a merchant

Offer Defined

An **offer** is a proposal by one party, the offeror, to a second party, the offeree, manifesting an intention to enter into a valid contract.

Three Conditions for a Proposal to Qualify as a Contractual Offer

1. The offeror must manifest a present contractual intent.
2. The offer must be communicated to the offeree.
3. The offer must be certain and definite with respect to its terms

Present Contractual Intent

- The element of intent is a basic requirement of all contractual relationships.
- Unlike other aspects of life and law, a contract cannot be thrust upon an unsuspecting person.
- For the offer to have legal validity, it must appear to an objective, reasonable person that the offeror actually intended to make an offer.

Communication to the Offeree

- For an offer to be capable of acceptance, the offer must be communicated to the offeree.
- It is the offeree who has the power to create a valid contract by making the appropriate acceptance, but that acceptance can occur only if the offeree is aware of the offer.

Certainty and Definiteness in the Terms of the Offer

- Four essential elements for definite and certain terms:
 - The price of the contract
 - The subject matter of the contract
 - The parties to the contract
 - The time of performance for fulfilling the contract

Essential Terms of an Offer

- ▶ Under the common law, when drafting the provisions of an offer, the offeror must be as specific as possible with respect to **price, subject matter, parties, and timing of performance**.
- ▶ The law requires that these terms be certain, definite, and capable of being readily understood by a reasonable person.
- ▶ If the offeror indicates terms that are not objectively definite but are vague and ambiguous, the offer will not be considered valid.

Price

- ▶ The price stated in the contract is an example of contractual consideration.
- ▶ **Consideration** is the bargain of the contract; it is the benefit conferred or the detriment incurred.

Subject Matter

- The subject matter of a contract is another example of the consideration for the contract.
- If one side is providing the price, the other side is usually providing a good or service, such as a textbook or paralegal services, which is that party's consideration for the contract.

Parties

- The requirement that the parties be specifically described in the offer generally refers only to the offerees.
- Usually the identity of the offeror is readily ascertainable because he or she is making the proposal.

Time of Performance

- Offers are not expected to last indefinitely, nor are contracts intended to be performed forever.
- Some words of limitation must be expressed by the offeror.
- Only in this manner can the parties know when the contract is to be fulfilled and, conversely, know when the parties have not lived up to their obligations.

Uniform Commercial Code

The **Uniform Commercial Code (UCC)** is a model law adopted in whole or in part by each state as a statutory enactment that, among other things, has codified certain contractual concepts with respect to the sale of goods.