**Business Law Student Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Ch. 7 - How Contracts Arise**

I. Elements of Legal Liability (Duty)

A. Elements of Criminal Liability

1. Criminal Act

2. Required Mental State

B. Elements of Tort Liability (Negligence)

1. Duty of Care

2. Breach of Duty

3. Proximate Cause

4. Actual Harm

**C. Elements of Contract Law**

**1. Offer**

**2. Acceptance**

**3. Genuine Agreement**

**4. Consideration**

**5. Capacity**

**6. Legality**

1. Offer - A *proposal* made by one party (the Offeror) to another

party (the Offeree) indicating a willingness to enter a Contract.

2. Acceptance - The *agreement* of the Offeree to be bound by the

terms of the offer.

3. Genuine Agreement

a. *Offer* & *Acceptance* Together

b. Meeting of the Minds

c. Agreement can be destroyed by:

1) fraud

2) misrepresentation

3) mistake

4) duress

5) undue influence

4. Consideration

a. The thing of value promised to the other party in a Contract,

in exchange for something else of value promised by the

other party.

b. This mutual exchange binds the parties together.

5. Capacity

a. Law says that anyone entering into a Contract has the legal

capacity to do so.

b. Minors are generally excused from Contractual responsibility, as are mentally incompetent and drugged or drunk individuals.

6. Legality

a. Parties are not allowed to enforce Contracts that involve

doing something that is illegal.

b. Some illegal Contracts involve agreements to commit a crime

or a tort.

II. Characteristics of a Contract

A. Valid, Void, Voidable, Unenforceable

1. Valid Contract - A Valid Contract is one that is legally binding.

2. Void Contract - A Void Contract amounts to nothing and has no

legal effect.

3. Voidable Contract - When one party is able to void (cancel) the

Contract for some legal reason.

4. Unenforceable Contract - Some rule of law that cannot be enforced in court. (ie. A **statute of limitations** is a rule of law that states that, after a certain time lapse, a person can no longer bring a

given legal action.)

B. Express, Implied

1. Express Contract (expressed)

a. Stated in words, either oral or written.

b. pg. 94, Example 1

2. Implied Contract

a. Comes about from the actions of the parties.

b. People often enter into an implied Contract without

exchanging a single word.

c. pg. 94, Example 2

C. Bilateral, Unilateral

1. Bilateral Contract (2-sided)

a. Contains two promises, one by each person.

b. One person promises to do something in exchange for the

other person's promise to do something.

c. Example:

Your neighbor says: "*I will sell you my IPhone SE for $150"*

You say: "*I'll buy it."*

2. Unilateral Contract (1-sided)

a. Contains one promise only.

b. One person promises to do something if and

when the other person performs some act.

c. Example:

Your friend says: *"I'll sell you my IPhone SE for $150 if you*

*give me the cash before noon tomorrow."*

\*If you deliver the money within the time limit, a

Unilateral Contract will take effect.

d. Reward Offer

1) Most common Unilateral Contract.

2) Acceptance of the reward offer must precisely comply with the offer.

3) pg. 95, Example 3

D. Oral, Written

1. Oral Contract

a. Created by word of mouth.

b. It comes into existence when two or more people speak to

each other.

c. One person offers something and the other accepts and agrees

to something in return.

d. Most common Contract type we make.

2. Written Contract

a. A Contract is put in writing to allow the parties to know the

**exact terms** of the Contract & **provide proof** that the

agreement was made.

b. *Statute of Frauds* requires that certain Contracts must be

evidenced by a writing to be enforceable.

III. Requirements of an Offer

A. Offer

1. First of the six elements that create a Contract.

2. A *proposal* by one party to another party to enter into a Contract.

3. Offeror - The person making the offer.

4. Offeree - The person to whom the offer is made. 5. 3 Basic Requirements of an Offer

a. It must be Seriously Intended.

b. It must be Definite & Certain.

c. It must be Clearly Communicated to the Offeree.

B. Serious Intent

1. An offer must be made with the intention of entering into a legal

obligation.

2. An offer made in the heat of anger or as a joke would not meet this

requirement.

3. Very often, an **Invitation to Negotiate** is confused with an Offer.

a. Most Advertisements are treated as Invitations to Negotiate

rather than Offers.

1) Also known as:

a) Invitations to Deal

b) Invitations to Trade

c) Invitations to Make an Offer

2) Pg. 96, Example 4

3) Price Tags & Signs in Store Windows are also treated

as Invitations to Negotiate. (The price marked on the

item is the starting point for the bargaining that may

occur between the buyer and seller before the final

price is decided.)

b. Advertisements are sometimes held to be offers when they

contain very particular promises.

1) Exception to the rule.

2) In an advertisement, when you limit the number of

items to be sold or the number of people that can

purchase them it makes the advertisement an offer, not

an invitation to negotiate!

3) "First come, first served."

C. Definiteness & Certainty

1. An offer must be *definite* & *certain* to be enforceable.

2. All specifics must be stated.

3. pg. 97, Example 5

D. Communication to the Offeree

1. Ways to make offers

a. telephone

b. letter

c. fax machine

2. To be effective, however, it must be communicated to the Offeree.

3. pg. 97, Example 6

IV. Requirements of an Acceptance

A. Acceptance

1. The unqualified *willingness* to go along with the offer.

2. Second element of a legally binding Contract.

B. Unconditional Acceptance

1. Mirror Image Rule - The acceptance must not change the terms of

the original offer in any way.

a. The acceptance must mirror the offer.

b. Counter-offer - Any change in terms.

1) Original Offeror is not obligated to go along with the

counteroffer.

2) No Contract results.

3) It is up to the original Offeror (who is now an Offeree) under the counter-offer to accept or reject the counter-offer.

4) pg. 97, Example 7

2. Exceptions to the Mirror Image Rule

a. Primary Exceptions were created by the Uniform

Commercial Code (UCC)

1) UCC is a unified set of statutes that covers the law of

sales as well as other areas of commercial law.

2) Drafted in 1952 to make trade among the states easier.

**b. Exception involving Non-Merchants**

1) Non-merchants don't regularly buy or sell goods or

claim to be experts on the goods.

2) The Offeror may make minor changes and a Contract

will still be created.

**c. Exception involving the Sale-of-Goods Contracts between**

**merchants.**

1) Both parties are merchants, the additional or different

terms become a part of the contract.

2) The following conditions must be met:

a) The new or different terms do not make a material

or crucial difference to the nature of the Contract.

b) The Offeror does not object to the new or

different terms within a reasonable time.

C. Methods of Acceptance

1. The time when acceptance takes effect is very important!

2. When the Offeree uses the same method of communication that the

Offeror used, the Contract comes into existence when the

acceptance is sent.

*Example: Sending a contract by mail, as soon as the letter is able*

*to slide beyond his control, the contract is made.*

3. If the Offeree uses a method of communication that is different

from that used by the Offeror, the Contract comes into existence then the acceptance is received.

4. Sale-of-Goods Contracts under the UCC, the acceptance takes

place when it is sent, as long as the method of communication is

reasonable under the circumstances.

5. If the Offeror states in the offer the method that the Offeree must

use to accept, the method of acceptance must be followed.

(specified time & place)

6. If an offer specifies that it must be accepted by an action, the

action must take place before there is acceptance.

7. The Offeror cannot impose silence on the Offeree as means for

acceptance, unless:

a. the Offeree has previously agreed to such a condition;

b. or unless the Offeree has allowed his or her silence to be construed as acceptance in past dealings with that particular Offeror.

c. If the Offeror has set up silence as the means of acceptance,

then he or she will have to live by that condition if the

Offeree accepts by remaining silent.

8. Pg. 100, Example 8

V. Termination of an Offer

A. Revocation

1. The taking back of an offer by the Offeror.

2. The Offeror has a change of mind or circumstances & withdraws

offer before it has been accepted.

3. **2 Rules that Govern Revocation**

a. An offer can be revoked any time before it is accepted.

b. A revocation becomes effective when it is received by or

communicated to the Offeree.

B. Rejection - Refusal of an offer by the Offeree brings the offer to an end.

C. Counteroffer - A new offer that ends the first offer.

D. Expiration of Time

1. If a time limit is set for the acceptance of an offer, it must be

complied with.

2. If no time acceptable is stated in the offer, it must be accepted

within a reasonable time.

1. Reasonable time depends on circumstances.

2. If not met, no Contract exists.

3. 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.

a. option - a binding promise to hold an offer open for a

specified period of time.

b. Exclusive right to accept the offer within the agreed

time, subject to the terms of the option.

E. Death or Insanity

1. If the Offeror dies, or becomes insane, before the offer is accepted,

the offer comes to an end.

2. It should be noted that, although death ends an offer, it **does** **not**

**end a Contract** (except for person services).