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Weekly Information Sheet 04

Generally -

- **Basis of all Law:** Contract Law is the basis for all law, and impacts all areas of human activity;
- **Freedom of Contract:** Freedom of Contract holds that individuals and corporations have an **inherent right** to make legally binding, mutual agreements without arbitrary or unreasonable legal restrictions.
- **The Common Law:** In most states, most aspects of contract law are governed by case law (i.e., “common law”), rather than by statutes. Common law further held that contracts work best when an agreement is performed.

Definition of Contract:

“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”

Elements of a Contract:

- Agreement,
- Between Competent Parties,
- Based on Genuine Assent,
- Supported by Consideration,
- for Lawful Purpose Subject Matter,
- in Legal Form.

Nature of Contracts:

- Parties – A Promisor (offeror) and Promisee (offeree),
- Reciprocal Duties and Benefits,
- A Contract Arises when an offer made by an offeror is accepted by an offeree,
- The Parties Intend to make a Binding Agreement.

Classes (types) of Contracts:

- Formal and Informal Contracts;
- Written and Oral Contracts;
- Express and Implied Contracts;
- Valid and Voidable Contracts;
- Void Agreements;
- Executed and Executory Contracts;
- Bilateral And Unilateral Contracts;
- Quasi Contracts; and
- Internet/Electronic Contracts.

Offers -

Definition of Offer:

“The act or instance of presenting something for acceptance; by means of a promise to do or refrain from doing some specified thing in the future, conditioned on an act, forbearance, or return promise.”

Offers Continued -

Requirements of an Offer:

- **Contractual Intention** - The Offeror, by their offer, must intend to create a binding agreement, as determined by reasonable person (objective standard).
- **Definiteness** - The Offeror, by their offer, must express definite and understandable terms of the offer, which are clear and spelled out, again as determined by reasonable person (objective standard).
- **Communication of Offer to Offeree** - "The offer, and its terms, must be clearly communicated by the Offeror to the Offeree."

Termination of an Offer:

- **Generally** - An offer can be terminated so as to not support a valid contract, and an Offeree cannot accept a terminated offer.
- **Revocation** - An offer that has been revoked by the Offeree cannot support a valid contract, and generally, an offer may be revoked at any time by the Offeror PRIOR TO the offeree's acceptance.
- **Counter Offer** - A Counteroffer by the Offeree constitutes a Rejection of the Offer, and such a counteroffer, constitutes a new offer, where the Offeree now becomes Offeror.
- **Rejection** - A communicated Rejection by the Offeree constitutes a Termination of the Offer, and as an offer must be accepted to create a contract, no contract is created.
- **Lapse of Time** - When an Offer is conditioned upon acceptance within a specific period, and the Offeree fails to accept such offer within such time period, constitutes a Rejection of the Offer, and when no time is specified in the offer, then an acceptance is required within a reasonable period of time
- **Death or Disability** - If either the Offeror or Offeree dies, or becomes mentally incompetent, before the offer is accepted, the offer is deemed by law to be automatically terminated.
- **Subsequent Illegality** - If the performance of the contract becomes illegal after the offer is made, but before the contract is able to be fulfilled, then the offer is also deemed terminated.

Acceptances –

Definition of Acceptance:

"An offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed."

Requirements of an Acceptance:

- **What Constitutes An Acceptance** - An Acceptance is the offeree's manifestation of assent to the terms of the offer, made in a manner invited or required by the offer, as determined by reasonable person (objective standard), and where there is no contractual intention, there is no valid acceptance.

Acceptances Continued –

Requirements of Acceptance Continued:

- **Privilege of Offeree** - An Acceptance must be in response to an offer, not in response to something other than an offer, such as a solicitation of offers, and as an offer is directed to the offeree, it is the offeree who has the privilege of the power of acceptance or rejection, and it is essential to for a valid contract that each party manifest assent.”
- **Effect of Acceptance** - An Acceptance creates a valid contract, and once a contract is created, neither party can subsequently withdraw from, or cancel, the contract without the consent of the other party.
- **Nature of Acceptance** - The Nature of an Acceptance includes the following:
 - A manifested intent to Accept;
 - An objective or outward appearance of Acceptance, not some subjective or unexpressed intent of the offeree;
 - An absolute and unconditional intent to Accept the offer; and
 - An Acceptance of just what is offered, without changes.
- **Who May Accept** - Only the person to whom an offer is directed may accept it, and an Acceptance is made by the offeree (the person to whom the offer is directed), and unless the offer says otherwise, only the offeree may accept the offer.
- **Manner and Time of Acceptance** - The offeror is always the master of the offer, and it is the offer that is controlling with respect to the manner and time of its acceptance, but overall, the manner and time of the Acceptance must be in the manner and time invited or required by the offer, and any such Acceptance takes effect when the offeree communicates an absolute and unconditional intent to Accept the offer.
- **Communication of Acceptance** - Acceptance by the offeree is the last step in the formation of a bilateral contract, and the offeror’s receipt of the acceptance is the point in time when the contract is formed and its terms apply, but in order to have an Acceptance, the offeree must be communicate such Acceptance to the offeror, and under the “mailbox rule”, Acceptance by mail takes effect at the time and place when and where the letter is mailed (or FedEx’d) or when the fax is transmitted by the offeree.

Auctions:

- **Invitation to Negotiate** - statements made by the auctioneer to draw forth bids are merely invitations to negotiate;
- **Each Bid is an Offer** - and the bidder may generally withdraw the bid at any time before it is accepted by the auctioneer.
- **Bid Acceptance** - Acceptance of the Bid (the offer) is usually done by the fall of the auctioneer’s hammer, and the auctioneer indicating that the highest bid made has been accepted.
- **Without Reserve Auctions** - When the auction sale is without reserve, the auctioneer must accept the highest bid.
- **Generally** - A person making a bid is making an offer, and the acceptance of the highest bid by the auctioneer is an acceptance of that offer and gives rise to a contract.