

Contract Law - A General Introduction

This is the first article in a series examining general principles of contract law. We will begin by offering some answers to the question: What is a contract?

New Jersey's Model Jury Charges ("NJ MJC") defines a contract as "an exchange of promises oral or written constituting an agreement to do or not to do a particular thing which is enforceable by law. MJC 4.10(A) (approved 8/89). Here is another widely cited definition from Restatement (Second) of Contracts, Section 1: "A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some was recognizes as a duty."



Elements of Enforceable Contracts

The Cases and Commentary to Section 4.10(A) of the NJ MJC states that "to attempt a definition of "contract" by analysis of its elements would require a treatise on contract law." Short of a lengthy treatise, it is generally true to state that the law requires that a contract meet certain elements to be enforce-



out of order

"What you think of yourself is much more important than what others think of you."

- Seneca

"It is better to enter the mouth of a tiger than a court of law."

- Chinese Proverb



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able. These elements include: (1) offer and acceptance; (2) mutual assent; (3) consideration; (4) capacity; (5) legality of subject matter; and (6) legality of form. We will consider each of these six elements briefly in turn.

Regarding the element of offer and acceptance, Section 4.10(C) of the NJ MJC (approved 5/98) states that to establish a contract existed, a plaintiff must prove offer and acceptance: "one party communicated a willingness to enter into the agreement and the other party gave some outward indication that the agreement was accepted."

Offer and Acceptance

Thus, a written contract is formed when there is a meeting of the minds between the parties evidenced by a written offer and an unconditional, written acceptance. Morton v. 4 Orchard Land Trust, 180 N.J. 118 (2004). In another case the New Jersey Supreme Court explained that a contract arises from offer and acceptance, and must be sufficiently definite that the performance to be rendered by each party can be ascertained with reasonable certainty. Weichert Co. Realtors v. Ryan, 128 N.J. 427 (1992).

To support an enforceable contract, the offer must not be a mere solicitation of general interest or a preliminary negotiation. The defining characteristic of a valid offer is that it expresses an intent to be bound to a firm promise. "A manifestation of willing-

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Contract Basics

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ness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain." Restatement (Second) of Contracts, Section 26.

Thus, mere advertisement is not a valid offer. As the New Jersey Appellate Division stated in Kingston Bituminous Products Co. v. New Jersey Turnpike Authority, 80 N.J.Super. 25 (App.Div. 1963), ordinary advertisement for bids is not in itself an offer; the subsequent bid itself is an offer, and creates no right until accepted.

To be valid the terms of the offer must be sufficiently definite. As noted above the case of Weichert Co. Realtors v. Ryan, 128 N.J. 427 (1992), explained that a contract must be sufficiently definite that the performance to be rendered by each party can be ascertained with reasonable certainty. Likewise, the acceptance must also be sufficiently clear. If acceptance of a contract is communicated by conduct rather than words, the court looks to the objective circumstances and not the subjective intent of a party to determine whether acceptance is clear and unequivocal. Ponzone v. Kraft General Foods, Inc., 774 F.Supp. 299, affirmed 968 F.2d 14 (D.N.J. 1991).

In addition, acceptance must be unconditional. The NJ Supreme Court has held that a written contract is formed when there is a meeting of the minds between the parties evidenced by a written offer and an unconditional, written acceptance. Morton v. 4 Orchard Land Trust, 180 N.J. 118 (2004).

Remember that the general common law rule requires, in order to be valid and binding, the acceptance must match the offer exactly. If the acceptance is not a "mirror image" of the offer in all respects, then it is not acceptance, but rather, a counter offer. This is known as the mirror image rule.

To constitute a valid binding contract, the proposal of one party must be met by an unqualified acceptance, corresponding entirely with essential terms of the proposal, and a qualified or conditional acceptance containing terms and conditions not found in the original proposal may operate as a counter-offer but does not constitute an acceptance or result in the formation of a contract. Carlin v. City of Newark, 36 N.J.Super. 74 (Law Div. 1955).



Thus, a counter offer is a statement by the offeree which has the legal effect of rejecting the offer and of proposing a new offer back to the offeror. Restatement of Contracts, Section 60. (Note, however, that in the case of contracts governed by the Uniform Commercial Code, the mirror image rule has been modified by UCC Section 2-207(1)(2) as regards sales of goods by providing that the "additional terms are to be construed as proposals for addition to the contract.")

A counteroffer operates as a rejection because it implies that the offeree will not consent to the terms of the original offer and will only enter into the transaction on the terms stated in the counteroffer. Berberian v. Lynn, 355 N.J.Super. 210 (App.Div. 2002), certification granted in part 175 N.J. 549, affirmed as modified 179 N.J. 290.

Please look for upcoming issues in which this review of the general principals of contract law will be continued.