

3014 OFFER: ACCEPTANCE

To create a contract, an offer must be accepted by one having the right to accept, while the offer is still open. Acceptance of an offer is an assent by the offeree to its terms without qualification; acceptance may be made by a communication to the offeror, either in writing or orally; acceptance may also be implied from the conduct of the parties.

If the offer requires the acceptance to be communicated to the offeror in a specified manner, there is an effective acceptance if the acceptance is made in that manner. If the manner of communicating the acceptance has not been specified, any reasonable manner or means of communication may be used. In either case, if actual notice of the acceptance reaches the offeror while the offer is still open, it makes no difference how it reached the offeror.

An attempted acceptance coupled with any condition that varies or adds to the offer amounts to a rejection of the offer and is instead the submission of a counteroffer. However, a mere suggestion, inquiry, or request which is not made a condition of acceptance and which does not vary the terms of the offer will not defeat the acceptance.

[Where goods or merchandise are involved, a definite and seasonable expression of acceptance, or a written confirmation which is sent within a reasonable time, operates as an acceptance, even though it states terms additional to or different from those offered or agreed upon, unless such terms materially alter the contract or are seasonably objected to by the offeror.]

An offeree has a right to make no reply to an offer, and his or her silence or inaction cannot be construed as an acceptance unless the relationship between the parties has been such as to give the significance of an acceptance to silence or inaction.

If the offer asks the offeree for a promise, the making of the promise is an acceptance. If the offer asks the offeree for an act, the commencement of the act by the offeree is the acceptance.

[But where goods are involved, the commencement of performance by an offeree can be effective as an acceptance so as to bind the offeror only if commencement is followed within a reasonable time by notice to the offeror.]

COMMENT

This instruction and comment were approved by the Committee in 1975. Editorial changes were made in 1993 to address gender references in the instruction. No substantive changes were made to the instruction.

Acceptance: 17 Am. Jur. 2d Contracts § 41; Morris F. Fox & Co. v. Lisman, 208 Wis. 1, 237 N.W. 267, 240 N.W. 809, 242 N.W. 679 (1932); Curtis Land & Loan Co. v. Interior Land Co., 137 Wis. 341, 346, 118 N.W. 853 (1908).

Communication of acceptance: Wis. Stat. § 402.26(1)(a); Zimmerman Bros. & Co. v. First Nat'l Bank, 219 Wis. 427, 431, 263 N.W. 361 (1935); 17 Am. Jur. 2d Acceptance § 43, p. 381.

Counteroffer: Hess v. Holt Lumber Co., 175 Wis. 451, 185 N.W. 522 (1921); Todorovich v. Kinnickinnic Mut. Loan & Bldg Ass'n, 238 Wis. 39, 298 N.W. 226 (1941); Leuchtenberg v. Hoeschler, 271 Wis. 151, 155, 72 N.W.2d 758 (1955).

Counteroffer by merchants: Wis. Stat. § 402.207.

Effect of silence: Sell v. General Elec. Supply Corp., 227 Wis. 242, 253, 278 N.W. 442 (1938).

Acceptance by promise or act: Restatement Contracts § 52.

Acceptance by performance in sale of goods: Wis. Stat. § 402.206(2).