

9-19-2026 | Lecture 4 - Mutual Assent, Offers, and Contract Formation

How are general commercial advertisements classified under contract law?

Advertisements are generally treated as invitations to deal (or solicitations for offers), not legal offers.

Which prominent judicial figure is historically associated with advocating the strict objective theory of contract interpretation?

Judge Learned Hand

Under common law, can courts supply missing essential terms if the parties intended to form a binding agreement?

Courts may supply reasonable terms for missing non-critical details, but standard common law requires essential terms (such as subject matter and price) to be reasonably definite.

What unconscionability standard must be proven to grant bid rescission due to mistake?

Enforcement of the contract as bid would be unconscionable.

What constitutes an outward manifestation of assent in contract formation?

External, observable words, writings, or conduct signaling agreement to the deal.

What primary legal principle was established in *Lucy v. Zehmer* regarding secret intention?

Unexpressed, secret intentions are irrelevant; a party is bound by the objective manifestation of their outward words and actions.

How is a party's subjective knowledge evaluated when determining whether their words or conduct manifested assent?

Subjective knowledge is admissible, but only to assess how it would influence a reasonable person in the listener's position.

In an auction "with reserve", what rights does the seller retain regarding bids?

The seller or auctioneer may withdraw the item at any time before announcing completion of the sale if the bids are unsatisfactory.

What objective test threshold transforms a preliminary negotiation into an enforceable contract offer?

When a reasonable person in the offeree's position would understand that immediate assent concludes the bargain without further approval.

When evaluating an alleged offer, what four factors help ascertain whether there is a present intent to contract?

- 1) Language used
- 2) Surrounding circumstances
- 3) Prior practices and relationship of the parties
- 4) Method of communication

What is the definition of an "Acceptance" under Restatement (Second) of Contracts § 50?

A manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.

What standard determines whether an advertisement containing specific limiting terms (such as "first come, first served") becomes a binding offer?

If the ad contains explicit, clear, and definitive terms leaving nothing open to negotiation, it manifests an intent to be bound upon performance.

Why are Output and Requirements contracts deemed sufficiently definite despite omitting a specific numerical quantity?

Because the quantity is objectively verifiable by reference to extrinsic facts (the buyer's actual requirements or seller's actual output).

What is the core principle of the "four corners" doctrine in contract interpretation?

A contract is interpreted based on the plain meaning of the words within the document itself, without considering extrinsic evidence of a different intent.

In an auction setting, what legal act constitutes the offer?

The bid submitted by a bidder constitutes the offer.

What is the first of six requirements a bidding contractor must establish to obtain equitable rescission for a bid mistake?

The soliciting entity knew or had reason to know that a mistake was made in the bid.

What is the legal effect of a manifested intention that a promise shall not affect legal relations?

It prevents the formation of a contract.

Does negotiating an intention to execute a formal written agreement later prevent the present formation of a contract?

Not automatically; present contract formation occurs unless at least one party manifests an unwillingness to be bound without a formal written instrument.

In contract law, who is the "Offeree"?

The party who receives the offer and holds the power to form a contract by accepting it.

Under the strict objective theory, when does a mistake render a contract void?

Only when both parties make a mistake (mutual mistake).

What is a "Requirements Contract"?

A contract in which a seller agrees to supply all the goods or services that a buyer actually requires over a specified period.

Does the Restatement (Second) of Contracts lean toward the objective test or the subjective test?

The Objective test

What is a "Mistake of Law"?

An erroneous belief regarding the legal consequences or legal effect of a known fact or situation.

What is a "Mistake of Fact"?

An erroneous belief concerning a fact material to the transaction, encompassing any mistake other than a mistake of law.

Why do courts generally strike down a contract when both parties make a mutual mistake?

Because there is a total failure of mutual assent.

What are the two foundational elements required to establish Mutual Assent?

An Offer and an Acceptance

What degree of negligence prevents a contractor from seeking rescission for a bid mistake?

Rescission is barred if the mistake resulted from the neglect of a legal duty.

What is the common law "Mirror Image Rule" for acceptance?

An acceptance must be unqualified and assent to the exact terms of the offer without adding, modifying, or varying any terms.

What are the two principal legal requirements for an enforceable agreement?

- 1) Mutual Assent
- 2) Definiteness of essential terms

Under the Uniform Deceptive Practices Act, when does an advertisement become a prohibited deceptive practice?

When goods or services are advertised with the intent not to sell them as advertised, or without intent to supply reasonably expected public demand, unless quantity limits are disclosed.

In contract law, who is the "Offeror"?

The party who makes the offer and proposes the bargain.

Does an erroneous prediction about future events constitute a legal "mistake" under Restatement (Second) of Contracts § 151?

No, a mistake must relate to facts as they exist at the time the contract is executed.

Which standard do modern courts generally apply to determine whether parties have manifested mutual assent?

The Objective Test

What is the legal consequence when a party fails to perform their contractual duties under an enforceable contract?

The party is in breach, and the non-breaching party may sue to enforce terms or recover remedies.

How does UCC § 2-204(1) define the creation of a contract for the sale of goods?

A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties recognizing the existence of a contract.

What principle is encapsulated by describing the offeror as the "master of the offer"?

The offeror has absolute power to dictate the terms, mode, and manner of acceptance (e.g., performance or promise).

How is a legal "Mistake" defined in contract law?

An erroneous belief held by one or both parties at the time of contract execution that does not correspond to existing facts or law.

What is the definition of an "Offer" under Restatement (Second) of Contracts § 24?

The manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his or her assent to that bargain is invited and will conclude it.

In an auction "without reserve", under what condition can an item be withdrawn after bidding opens?

The item cannot be withdrawn once bidding has commenced; it must be sold to the highest bidder.

Under Restatement (Second) Section 21, is an intent that a promise be legally binding necessary to form a contract?

No, neither real nor apparent intention that a promise be legally binding is essential to form a contract.

In an auction setting, what legal act constitutes the acceptance?

The auctioneer's fall of the hammer (or other customary signal).

What are the two primary rationale behind treating commercial advertisements as invitations to deal?

- 1) Advertisements are typically indefinite regarding quantity and terms.
- 2) Sellers must retain freedom of contract to choose with whom they deal.

Under UCC rules, what gap-filler supplies a missing price term if the parties intended to conclude a contract without agreeing on price?

A reasonable price at the time of delivery.

Which prominent judicial figure is historically associated with emphasizing the subjective view of contract formation?

Judge Jerome Frank

What restitution requirement applies to a contractor seeking rescission of a bid due to mistake?

The contractor must restore or offer to restore everything of value received from the soliciting entity.

What is required to complete acceptance by promise?

Acceptance by promise requires that the offeree complete every act essential to the making of the promise.

What standard restricts the quantity tendered or demanded in Output and Requirements contracts?

The duty of good faith; quantities tendered or demanded cannot be unreasonably disproportionate to estimates or prior output/requirements.

What three core factors determine whether a communication constitutes a valid legal offer?

- 1) Expression of a present promise, undertaking, or commitment
- 2) Certainty and definiteness in essential terms
- 3) Communication of the terms to the offeree

What is the legal distinction between a formal offer and an invitation to negotiate?

An offer confers immediate power of acceptance upon the offeree, whereas an invitation to negotiate explicitly or implicitly requires further assent from the initiator.

In a bid rescission action based on mistake, what condition must be met regarding the position of the soliciting entity?

The soliciting entity can be restored to the position it occupied prior to contracting.

What notice obligation rests upon a contractor seeking rescission for a clerical bid error?

The contractor must give prompt notification of the mistake to the soliciting entity.

Under Restatement (Second) of Contracts § 22(2), can mutual assent occur without an identifiable offer or acceptance?

Yes, mutual assent may be found even if neither offer nor acceptance can be identified and the moment of formation cannot be determined.

What four essential terms are generally required for an offer to be sufficiently definite at common law?

- 1) Identification of parties
- 2) Subject matter
- 3) Price
- 4) Quantity

What is the modern view regarding the legal requirement of an actual subjective "meeting of the minds"?

Courts reject the requirement of an actual subjective meeting of the minds, holding that parties may rely on objective intent expressed through words or conduct.

What is required to complete acceptance by performance?

Performance requires that at least part of what the offer requests be actually performed.

What are the four essential elements of a valid contract at common law?

- 1) Offer
- 2) Acceptance
- 3) Intention to create legal obligations
- 4) Consideration

What is a "Gentlemen's Agreement" in contract law?

An agreement where parties reach an understanding but expressly agree that it will not create legally enforceable obligations.

How does Restatement (Second) § 151 distinguish between a legal "mistake" and a "misunderstanding"?

A mistake is an erroneous belief held by a party regarding existing facts; a misunderstanding occurs when two parties attach different meanings to their language.

How does contract law evaluate a price quotation provided in response to an inquiry?

A price quote is generally treated as an invitation to deal or a solicitation of an offer, unless it expresses explicit promissory intent.

What is an "Output Contract"?

A contract in which a buyer agrees to purchase the entire actual production or output of a seller over a specified period.