

Chapter 12

Agreement in Traditional and E-Contracts

Week 3- Team Presentation

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Acceptance by Silence

Discussed by: Raphael A

The Basics – silence does not constitute acceptance, even when the offeror indicates that silence or inaction will be taken as acceptance; however there are a few exceptions, which are:

- **Acceptance with Consistent Acts** – if the offeree takes the benefit of the offered goods or services, he or she is then implied to have accepted the goods and or services. Also, the offeree has agreed to have compensated the offer the amount agreed on the initial offer
- **Previous Dealings** - If the offeree and offeror have had previous dealings, and the offeree then has the duty to reject or risk being bound by silence

Acceptance by Silence

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- **Unilateral Contract** – in the unilateral contract an offeree's *actions* can lead to an acceptance, which simply means an acceptance, is usually noticed by the action (In some cases, notification is unnecessary, however sometimes the offeror has specifically requested notification)
- **Mode and Timeliness of Acceptance** – In bilateral contracts, acceptance must be timely and made before the offer is terminated. In these situations, the offeree must use an accepted mode of communication

Termination of the Offer

Termination of the offer can either be done by action of both contracting parties or by the operation of the law...

Termination by Action of the Parties -There are three (3) ways an offer can be terminated by action of the parties and it's by: revocation, rejection or by a counteroffer.

- **Revocation** – is the offeror's act of withdrawing the offer (unless it's irrevocable)
- **Rejections** – is when the offeree rejects the offer by expressed words or by conduct (*Like revocation, a rejection is only effective when it is actually received by the offeror or agent*)
- **Counteroffer** – is a rejection of the original offer while simultaneously making an new offer

Termination of the Offer

Termination by Operation of the Law can happen by four (4) ways...

- 1. Lapse of time**- where an offer terminates automatically when a period of time indicated in the offer has expired or passed
- 2. Destruction of the specific matter of the offer**- is where the subject (such as a vehicle, home etc.) is destroyed before the offer is accepted
- 3. Death or incompetence of the offeror or the offeree** – is where the power of acceptance is terminated based on the offeror or offeree dying or becoming legally incapacitated
- 4. Supervening illegality of the proposed contract** -A statute that makes an offer illegal automatically terminates the offer. Like discussed in Ch. 11 (previously) an illegal act will make the contract void and terminated

State and Federal Law on E-Signatures, E-Documents and Transactions

Discussed by: Elaine M.

Background

In 1999, the **National Conference of Commissioners on Uniform State Law** or UCCUSL proposed the **Uniform Electronic Transaction Act** or better known as UETA that has since been adopted by 48 states and US provinces. It allows for electronic signatures and electronic records between two (2) or more people relating to business, commercial or governmental activities, be valid and enforceable in a state court of law.

A year later on June 30, 2000, **Congress** enacted the Federal E-SIGN Act, which stands for **Electronic Signatures in Global and National Commerce Act** which provides that no forms such as contracts, documents or signatures be denied legal effect or enforceability solely on the basis that it/they are in electronic form.

Preemption: The E-SIGN Act (Federal Law) only preempts the UETA (State Law) if the state in which the case is presented adopted a modified version of the UETA, otherwise the UETA without modification (State Law) will govern.

State and Federal Law on E-Signatures, E-Documents and Transactions

Discussed by: Elaine M.

What's governed: Agreements governed by the U.C.C that fall under these laws can be found in Article 2, 2-A (Sales and Lease Contracts), 1-107 (Section Captions) and 1-206 (Presumptions).

<http://uniformcommercialcode.uslegal.com/articles-of-the-ucc/>

The E-SIGN Act under Section 103 titled 'Specific Exceptions' upholds that this law does not apply to the following documents:

- Official Court Documents, Court Orders or Notices (including briefs, pleadings or other writings)
- Adoption, Prenuptial Agreements, Divorce Decrees or any other matters of Family Law
- Evictions or Foreclosures
- Terminations of Health Insurance, Utilities (Water, Power and Heat)
- Wills, Codicils or Testamentary Trusts

For an e-signature to be valid and enforceable, the contracting parties must agree to use electronic signatures and or forms of electronic transactions in advance called a **Partnering Agreement**. In order for an e-document to be valid, it must be in a form that can be retained and accurately reproduced.