

Restatement of the Law Second
Contracts 2d
Chapter 3. Formation of Contracts--Mutual Assent
Topic 3. Making of Offers

Copyright (c) 1981 The American Law Institute

s 30. FORM OF ACCEPTANCE INVITED

(1) An offer may invite or require acceptance to be made by an affirmative answer in words, or by performing or refraining from performing a specified act, or may empower the offeree to make a selection of terms in his acceptance.

(2) Unless otherwise indicated by the language or the circumstances, an offer invites acceptance in any manner and by any medium reasonable in the circumstances.

Comment:

a. Required form. The offeror is the master of his offer. See Comment a to s 29. The form of acceptance is less likely to affect the substance of the bargain than the identity of the offeree, and is often quite immaterial. But the offeror is entitled to insist on a particular mode of manifestation of assent. The terms of the offer may limit acceptance to a particular mode; whether it does so is a matter of interpretation.

Illustration:

1. A sends a letter to B stating the terms of a proposed contract. At the end he writes, "You can accept this offer only by signing on the dotted line below my own signature." A replies by telegram, "I accept your offer." There is no contract.

b. Invited form. Insistence on a particular form of acceptance is unusual. Offers often make no express reference to the form of acceptance; sometimes ambiguous language is used. Language referring to a particular mode of acceptance is often intended and understood as suggestion rather than limitation; the suggested mode is then authorized, but other modes are not precluded. In other cases language which in terms refers to the mode of acceptance is intended and understood as referring to some more important aspect of the transaction, such as the time limit for acceptance. See ss 60, 63.

c. Term supplied in acceptance. An offer may contain a choice of terms, and may invite or require an acceptance making a selection among the terms stated. Or the offer may indicate a term such as quantity to be filled in by the offeree. An acceptance to be effective must comply with the terms of the offer, and those terms or the circumstances may make it plain that the acceptance must specify terms. Section 60. In such cases the offer does not fail for indefiniteness, but no contract is made by an attempted acceptance which does not supply the term as indicated. See s 33. The offer assents in advance to the term chosen or filled in by the offeree.

Illustration:

2. A offers to deliver to B at any time during the next 30 days any amount of coal, up to 100 tons, for which B will promise to pay \$15 a ton. In order to accept this offer B must specify the amount of coal he desires and must promise to pay \$15 a ton for it. An order for 50 tons by B concludes a definite agreement.

d. Form not specified. Interpretation of the offer is necessary in order to determine whether there is any limitation on the mode of acceptance. The meaning given the offer by the offeree controls if it is a meaning of which the offeror knew or had reason to know. See ss 19, 20. Since limitation is not customary, the offeror has reason to know that the offeree may understand that the offer can be accepted in any reasonable manner, and a contrary intention is not operative unless manifested. See Uniform Commercial Code s 2-206(1).

Illustrations:

3. A orally offers to sell and deliver to B 100 tons of coal at \$20 a ton payable 30 days after delivery. B replies, "I accept your offer." B has manifested assent in a sufficient form, even though A neither suggested nor required that form.

4. A makes a bid at an auction sale. By the usual custom at auctions, the auctioneer may accept by letting the hammer fall, by saying "Sold", or by any words manifesting acceptance.

e. Reasonable manner. As to acceptance by promise or non-promissory performance, see s 32. Cases where the contract leaves terms to be chosen in the course of performance are the subject of s 34. What manner and medium are reasonable is governed by the rules stated in ss 60 and 65. Sometimes, though not ordinarily, even silent inaction may be effective as a mode of acceptance. See s 69.

REPORTER'S NOTE

Subsection (1) is based on former s 29. Subsection (2) is new. See 1 Williston, Contracts ss 31A, 76 (3d ed.1957); 1 Corbin, Contracts ss 62, 70, 77 (1963 & Supp.1980).

Comment a. Illustration 1 is new; see [Kroeze v. Chloride Group Ltd., 572 F.2d 1099 \(5th Cir.1978\)](#); [Town of Lindsay v. Cooke County Elec. Coop. Ass'n, 502 S.W.2d 117 \(Tex.1973\)](#). See also [Golden Dipt Co. v. Systems Eng'r & Mfg. Co., 465 F.2d 215 \(7th Cir.1972\)](#) (while the dictum in the opinion is correct, the court appears incorrect in categorizing the proposal involved as an offer rather than an invitation to make an offer; see Comment d to s 26).

Comment c. Illustration 2 is based on Illustrations 1 and 2 to former s 29.

Comment d. Illustration 3 is new. Illustration 4 is based on Illustration 3 to former s 29.

REST 2d CONTR s 30

1981 WL 180686

REST 2d CONTR s 30

END OF DOCUMENT