In an auction sale, the auctioneer asking for bids makes an invitation to negotiate. A person making a bid is making an offer, and the acceptance of the highest bid by the auctioneer is an acceptance of that offer and gives rise to a contract. When the auction sale is without reserve, the auctioneer must accept the highest bid. If the auction is not expressly without reserve, the auctioneer may refuse to accept any of the bids.

## LEARNING OUTCOMES

*After studying this chapter, you should be able to clearly explain:*

### A. Requirements of an Offer

LO.1 Decide whether an offer contains definite and certain terms

See the *Plankenhorn* case for the meaning of a "damn good job" on p. 263.
See the legal impact of a party's statement that the contract "was going to be signed" in the *Hewitt* example on pp. 262–263.
See the *Wigod* case that discusses the test for a valid, binding offer, pp. 261–262.

### B. Termination of an Offer

LO.2 Explain the exceptions the law makes to the requirement of definiteness

See the *Delphi* case on requirements contracts, p. 267.

LO.3 Explain all the ways an offer can be terminated

See the discussion of revocation, counteroffer, rejection, lapse of time, death or disability of a party, or subsequent illegality, starting on p. 268.
See the *Davidoff* example of a revocation communicated to the offeree prior to acceptance, p. 268.
See the *Landry's Restaurants* example that illustrates the effect of an "acceptance" signed just a few days after the written offer had expired, p. 270.

### C. Acceptance of an Offer

LO.4 Explain what constitutes the acceptance of an offer

See the *Sadeghi* example where acceptance of an offer created a binding contract, p. 271.
See the *Keryakos Textiles* case on the impact of a counteroffer, p. 272.

LO.5 Explain the implications of failing to read a clickwrap agreement

See the *Feldman* case as an example of an enforceable clickwrap agreement containing notice and manifested assent, p. 274.

## KEY TERMS

acceptance
counteroffer
divisible contract
firm offer
offer
output contract
requirements contract

## QUESTIONS AND CASE PROBLEMS

1. Bernie and Phil's Great American Surplus store placed an ad in the *Sunday Times* stating, "Next Saturday at 8:00 A.M. sharp, 3 brand new mink coats worth $5,000 each will be sold for $500 each! First come, First served." Marsha Lufklin was first in line when the store opened and went directly to the coat department, but the coats identified in the ad were not available for sale. She identified herself to the manager and pointed out that she was first in line in conformity with the store's advertised offer and that she was ready to pay the $500 price set forth in the store's offer. The manager responded that a newspaper ad is just an invitation to negotiate and that the store decided to withdraw "the mink coat promotion." Review the text on unilateral contracts in Section 12(B) of Chapter 12. Decide.

2. Brown made an offer to purchase Overman's house on a standard printed form. Underneath Brown's signature was the statement: "ACCEPTANCE ON REVERSE SIDE." Overman did not sign the offer on the back but sent Brown a letter accepting the offer. Later, Brown refused to perform the contract, and Overman sued him for breach of contract. Brown claimed there was no contract because the offer had not been accepted in the manner specified by the offer. Decide. [*Overman v. Brown,* 372 N.W.2d 102 (Neb.)]

3. Katherine mailed Paul an offer with definite and certain terms and that was legal in all respects stating that it was good for 10 days. Two days later she sent Paul a letter by certified mail (time stamped by the Postal Service at 1:14 P.M.) stating that the original offer was revoked. That evening Paul e-mailed acceptance of the offer to Katherine. She immediately phoned him to tell him that she had revoked the offer that afternoon, and he would surely receive it in tomorrow's mail. Was the offer revoked by Katherine?

4. Nelson wanted to sell his home. Baker sent him a written offer to purchase the home. Nelson made some changes to Baker's offer and wrote him that he, Nelson, was accepting the offer as amended. Baker notified Nelson that he was dropping out of the transaction. Nelson sued Baker for breach of contract. Decide. What social forces and ethical values are involved? [*Nelson v. Baker,* 776 S.W.2d 52 (Mo. App.)]

5. Lessack Auctioneers advertised an auction sale that was open to the public and was to be conducted with reserve. Gordon attended the auction and bid $100 for a work of art that was worth much more. No higher bid, however, was made. Lessack refused to sell the item for $100 and withdrew the item from the sale. Gordon claimed that because he was the highest bidder, Lessack was required to sell the item to him. Was he correct?

6. Willis Music Co. advertised a television set at $22.50 in the Sunday newspaper. Ehrlich ordered a set, but the company refused to deliver it on the grounds that the price in the newspaper ad was a mistake. Ehrlich sued the company. Was it liable? Why or why not? [*Ehrlich v. Willis Music Co.,* 113 N.E.2d 252 (Ohio App.)]

7. When a movement was organized to build Charles City College, Hauser and others signed pledges to contribute to the college. At the time of signing, Hauser inquired what would happen if he should die or be unable to pay. The representative of the college stated that the pledge would then not be binding and that it was merely a statement of intent. The college failed financially, and Pappas was appointed receiver to collect and liquidate the assets of the college corporation. He sued Hauser for the amount due on his pledge. Hauser raised the defense that the pledge was not a binding contract. Decide. What ethical values are involved? [*Pappas v. Hauser,* 197 N.W.2d 607 (Iowa)]

8. *A* signed a contract agreeing to sell land he owned but reserved the right to take the hay from the land until the following October. He gave the contract form to *B*, a broker. *C*, a prospective buyer, agreed to buy the land and signed the contract but crossed out the provision regarding the hay crop. Was there a binding contract between *A* and *C*?

9. A. H. Zehmer discussed selling a farm to Lucy. After a 40-minute discussion of the first draft of a contract, Zehmer and his wife, Ida, signed a second draft stating: "We hereby agree to sell to W. O. Lucy the Ferguson farm complete for $50,000 title satisfactory to buyer." Lucy agreed to purchase the farm on these terms. Thereafter, the Zehmers refused to transfer title to Lucy and claimed they had made the contract for sale as a joke. Lucy brought an action to compel performance of the contract. The Zehmers claimed there was no contract. Were they correct? [*Lucy v. Zehmer,* 84 S.E.2d 516 (Va. App.)]

10. Wheeler operated an automobile service station, which he leased from W. C. Cornitius, Inc. The lease ran for three years. Although the lease did not contain any provision for renewal, it was in fact renewed six times for successive three-year terms. The landlord refused to renew the lease for a seventh time. Wheeler brought suit to compel the landlord to accept his offer to renew the lease. Decide. [*William C. Cornitius, Inc. v. Wheeler,* 556 P.2d 666 (Or.)]

11. Buster Cogdill, a real estate developer, made an offer to the Bank of Benton to have the bank

provide construction financing for the development of an outlet mall, with funds to be provided at prime rate plus two percentage points. The bank's president Julio Plunkett thanked Buster for the proposal and said, "I will start the paperwork." Did Cogdill have a contract with the Bank of Benton? [*Bank of Benton v. Cogdill,* 454 N.E.2d 1120 (Ill. App.)]

12. Ackerley Media Group, Inc., claimed to have a three-season advertising Team Sponsorship Agreement (TSA) with Sharp Electronics Corporation to promote Sharp products at all Seattle Supersonics NBA basketball home games. Sharp contended that a valid agreement did not exist for the third season (2000–2001) because a material price term was missing, thus resulting in an unenforceable "agreement to agree." The terms of the TSA for the 2000–2001 third season called for a base payment of $144,200 and an annual increase "not to exceed 6% [and] to be mutually agreed upon by the parties." No "mutually agreed" increase was negotiated by the parties. Ackerley seeks payment for the base price of $144,200 only. Sharp contends that since no price was agreed upon for the season, the entire TSA is unenforceable, and it is not obligated to pay for the 2000–2001 season. Is Sharp correct? [*Ackerley Media Group, Inc. v. Sharp Electronics Corp.,* 170 F. Supp. 2d 445 (S.D.N.Y.)]

3. L. B. Foster invited Tie and Track Systems Inc. to submit price quotes on items to be used in a railroad expansion project. Tie and Track responded by e-mail on August 11, 2006, with prices for 9 items of steel ties. The e-mail concluded, "The above prices are delivered/ Terms of Payment—to be agreed/Delivery—to be agreed/We hope you are successful with your bid. If you require any additional information please call." Just 3 of the 9 items listed in Tie and Track's price quote were "accepted" by the project. L. B. Foster demanded that Tie and Track provide the items at the price listed in the quote. Tie and Track refused. L. B. Foster sued for breach of contract. Did the August 11 e-mail constitute an offer, acceptance of which could bind the supplier to a contract? If so, was there a valid acceptance? [*L. B. Foster v. Tie and Track Systems, Inc.*, 2009 WL 900993 (N.D. Ill.)]

14. On August 15, 2003, Wilbert Heikkila signed an agreement with Kangas Realty to sell eight parcels of Heikkila's property. On September 8, 2003, David McLaughlin met with a Kangas agent who drafted McLaughlin's offer to purchase three of the parcels. McLaughlin signed the offer and gave the agent checks for each parcel. On September 9 and 10, 2003, the agent for Heikkila prepared three printed purchase agreements, one for each parcel. On September 14, 2003, David's wife, Joanne McLaughlin, met with the agent and signed the agreements. On September 16, 2003, Heikkila met with his real estate agent. Writing on the printed agreements, Heikkila changed the price of one parcel from $145,000 to $150,000, the price of another parcel from $32,000 to $45,000, and the price of the third parcel from $175,000 to $179,000. Neither of the McLaughlins signed an acceptance of Heikkila's changes to the printed agreements before Heikkila withdrew his offer to sell. The McLaughlins learned that Heikkila had withdrawn his offer on January 1, 2004, when the real estate agent returned the checks to them. Totally shocked at Heikkila's conduct, the McLaughlins brought action to compel specific performance of the purchase agreement signed by Joanne McLaughlin on their behalf. Decide. [*McLaughlin v. Heikkila,* 697 N.W.2d 231 (Minn. App.)]

## A QUESTIONS

Able Sofa, Inc., sent Noll a letter offering to sell Noll a custom-made sofa for $5,000. Noll immediately sent a telegram to Able purporting to accept the offer. However, the telegraph company erroneously delivered the telegram to Abel Soda, Inc. Three days later, Able mailed a

## KEY TERMS

confidential relationship
contractual capacity
duress
economic duress
fraud
necessaries
physical duress
reformation
status quo ante
undue influence

## QUESTIONS AND CASE PROBLEMS

1. Lester purchased a used automobile from MacKintosh Motors. He asked the seller if the car had ever been in a wreck. The MacKintosh salesperson had never seen the car before that morning and knew nothing of its history but quickly answered Lester's question by stating: "No. It has never been in a wreck." In fact, the auto had been seriously damaged in a wreck and, although repaired, was worth much less than the value it would have had if there had been no wreck. When Lester learned the truth, he sued MacKintosh Motors and the salesperson for damages for fraud. They raised the defense that the salesperson did not know the statement was false and had not intended to deceive Lester. Did the conduct of the salesperson constitute fraud?

2. Helen, age 17, wanted to buy a Harley-Davidson "Sportster" motorcycle. She did not have the funds to pay cash but persuaded the dealer to sell the cycle to her on credit. The dealer did so partly because Helen said that she was 22 and showed the dealer an identification card that falsely stated her age as 22. Helen drove the motorcycle away. A few days later, she damaged it and then returned it to the dealer and stated that she disaffirmed the contract because she was a minor. The dealer said that she could not because (1) she had misrepresented her age and (2) the motorcycle was damaged. Can she avoid the contract?

3. Paden signed an agreement dated May 28 to purchase the Murrays' home. The Murrays accepted Paden's offer the following day, and the sale closed on June 27. Paden and his family moved into the home on July 14, 1997. Paden had the home inspected prior to closing. The report listed four minor repairs needed by the home, the cost of which was less than $500. Although these repairs had not been completed at the time of closing, Paden decided to go through with the purchase. After moving into the home, Paden discovered a number of allegedly new defects, including a wooden foundation, electrical problems, and bat infestation. The sales agreement allowed extensive rights to inspect the property. The agreement provided:

> *Buyer... shall have the right to enter the property at Buyer's expense and at reasonable times... to thoroughly inspect, examine, test, and survey the Property.... Buyer shall have the right to request that Seller repair defects in the Property by providing Seller within 12 days from Binding Agreement Date with a copy of inspection report(s) and a written amendment to this agreement setting forth the defects in the report which Buyer requests to be repaired and/or replaced.... If Buyer does not timely present the written amendment and inspection report, Buyer shall be deemed to have accepted the Property "as is."*

Paden sued the Murrays for fraudulent concealment and breach of the sales agreement. If Mr. Murray told Paden on May 26 that the house had a concrete foundation, would this be fraud? Decide. [*Paden v. Murray*, 523 S.E.2d 75 (Ga. App.)]

4. High-Tech Collieries borrowed money from Holland. High-Tech later refused to be bound by the loan contract, claiming the contract was not binding because it had been obtained by duress. The evidence showed that the offer to make the loan was made on a take-it-or-leave-it basis. Was the defense of duress valid? [*Holland v. High-Tech Collieries, Inc.*, 911 F. Supp. 1021 (N.D. W.Va.)]

5. Thomas Bell, a minor, went to work in the Pittsburgh beauty parlor of Sam Pankas and

agreed that when he left the employment, he would not work in or run a beauty parlor business within a 10-mile radius of downtown Pittsburgh for a period of two years. Contrary to this provision, Bell and another employee of Pankas's opened a beauty shop three blocks from Pankas's shop and advertised themselves as Pankas's former employees. Pankas sued Bell to stop the breach of the noncompetition, or restrictive, covenant. Bell claimed that he was not bound because he was a minor when he had agreed to the covenant. Was he bound by the covenant? [*Pankas v. Bell*, 198 A.2d 312 (Pa.)]

6. Aldrich and Co. sold goods to Donovan on credit. The amount owed grew steadily, and finally Aldrich refused to sell any more to Donovan unless Donovan signed a promissory note for the amount due. Donovan did not want to but signed the note because he had no money and needed more goods. When Aldrich brought an action to enforce the note, Donovan claimed that the note was not binding because it had been obtained by economic duress. Was he correct? [*Aldrich & Co. v. Donovan*, 778 P.2d 397 (Mont.)]

7. James Fitl purchased a 1952 Mickey Mantle Topps baseball card from baseball card dealer Mark Strek for $17,750 and placed it in a safe deposit box. Two years later, he had the card appraised, and he was told that the card had been refinished and trimmed, which rendered it valueless. Fitl sued Strek and testified that he had relied on Strek's position as a sports card dealer and on his representations that the baseball card was authentic. Strek contends that Fitl waited too long to give him notice of the defects that would have enabled Strek to contact the person who sold him the card and obtain relief. Strek asserts that he therefore is not liable. Advise Fitl concerning possible legal theories that apply to his case. How would you decide the case? [See *Fitl v. Strek*, 690 N.W.2d 605 (Neb.)]

8. Willingham proposed to obtain an investment property for the Tschiras at a "fair market price," lease it back from them, and pay the Tschiras a guaranteed return through a management contract. Using a shell corporation, The Wellingham Group bought a commercial property in Nashville for $774,000 on December 14, and the very same day sold the building to the Tschiras for $1,985,000. The title insurance policy purchased for the Tschiras property by Willingham was for just $774,000. Willingham believes that the deal was legitimate in that they "guaranteed" a return on the investment. The Tschiras disagree. In a lawsuit against Willingham, what theory will the Tschiras rely on? Decide. [*Tschiras v. Willingham*, 133 F.3d 1077 (6th Cir.)]

9. Blubaugh was a district manager of Schlumberger Well Services. Turner was an executive employee of Schlumberger. Blubaugh was told that he would be fired unless he chose to resign. He was also told that if he would resign and release the company and its employees from all claims for wrongful discharge, he would receive about $5,000 in addition to his regular severance pay of approximately $25,000 and would be given job-relocation counseling. He resigned, signed the release, and received about $40,000 and job counseling. Some time thereafter, he brought an action claiming that he had been wrongfully discharged. He claimed that the release did not protect the defendants because the release had been obtained by economic duress. Were the defendants protected by the release? [*Blubaugh v. Turner*, 842 P.2d 1072 (Wyo.)]

10. Sippy was thinking of buying Christich's house. He noticed watermarks on the ceiling, but the agent showing the house stated that the roof had been repaired and was in good condition. Sippy was not told that the roof still leaked and that the repairs had not been able to stop the leaking. Sippy bought the house. Some time later, heavy rains caused water to leak into the house, and Sippy claimed that Christich was liable for damages. What theory would he rely on? Decide. [*Sippy v. Christich*, 609 P.2d 204 (Kan. App.)]

11. Pileggi owed Young money. Young threatened to bring suit against Pileggi for the amount due. Pileggi feared the embarrassment of being sued and the possibility that he might be thrown into bankruptcy. To avoid being sued, Pileggi executed a promissory note to pay Young the

amount due. He later asserted that the note was not binding because he had executed it under duress. Is this defense valid? [*Young v. Pileggi*, 455 A.2d 1228 (Pa. Super.)]

12. Office Supply Outlet, Inc., a single-store office equipment and supply retailer, ordered 100 model RVX-414 computers from Compuserve, Inc. A new staff member made a clerical error on the order form and ordered a quantity that was far in excess of what Office Supply could sell in a year. Office Supply realized the mistake when the delivery trucks arrived at its warehouse. Its manager called Compuserve and explained that it had intended to order just 10 computers. Compuserve declined to accept the return of the extra machines. Is the contract enforceable? What additional facts would allow the store to avoid the contract for the additional machines?

13. The Printers International Union reached agreement for a new three-year contract with a large regional printing company. As was their practice, the union negotiators then met with Sullivan Brothers Printers, Inc., a small specialty shop employing 10 union printers, and Sullivan Brothers and the union agreed to follow the contractual pattern set by the union and the large printing company. That is, Sullivan Brothers agreed to give its workers all of the benefits negotiated for the employees of the large printing company. When the contract was typed, a new benefit of 75 percent employer-paid coverage for a dental plan was inadvertently omitted from the final contract the parties signed. The mistake was not discovered until six months after the contract took effect. Sullivan Brothers Printers, Inc. is reluctant to assume the additional expense. It contends that the printed copy, which does not cover dental benefits, must control. The union believes that clear and convincing evidence shows an inadvertent typing error. Decide.

14. The city of Salinas entered into a contract with Souza & McCue Construction Co. to construct a sewer. City officials knew unusual subsoil conditions (including extensive quicksand) existed that would make performance of the contract unusually difficult. This information was not disclosed when city officials advertised for bids. The advertisement for bids directed bidders to examine carefully the site of the work and declared that the submission of a bid would constitute evidence that the bidder had made an examination. Souza & McCue was awarded the contract, but because of the subsoil conditions, it could not complete on time and was sued by Salinas for breach of contract. Souza & McCue counterclaimed on the basis that the city had not revealed its information on the subsoil conditions and was thus liable for the loss. Was the city liable? [*City of Salinas v. Souza & McCue Construction Co.*, 424 P.2d 921 (Cal. App. 3d)]

15. Vern Westby inherited a "ticket" from Anna Sjoblom, a survivor of the sinking of the *Titanic*, which had been pinned to the inside of her coat. He also inherited an album of postcards, some of which related to the *Titanic*. The ticket was a one-of-a-kind item in good condition. Westby needed cash and went to the biggest antique dealer in Tacoma, operated by Alan Gorsuch and his family, doing business as Sanford and Sons, and asked about the value of these items. Westby testified that after Alan Gorsuch examined the ticket, he said, "It's not worth nothing." Westby then inquired about the value of the postcard album, and Gorsuch advised him to come back later. On Westby's return, Gorsuch told Westby, "It ain't worth nothing." Gorsuch added that he "couldn't fetch $500 for the ticket." Since he needed money, Westby asked if Gorsuch would give him $1,000 for both the ticket and the album, and Gorsuch did so.

Six months later, Gorsuch sold the ticket at a nationally advertised auction for $110,000 and sold most of the postcards for $1,200. Westby sued Gorsuch for fraud. Testimony showed that Gorsuch was a major buyer in antiques and collectibles in the Puget Sound area and that he would have had an understanding of the value of the ticket. Gorsuch contends that all elements of fraud are not present since there was no evidence that Gorsuch intended that Westby rely on the alleged representations, nor did Westby rely on such. Rather, Gorsuch asserts, it was an arm's-length transaction and Westby had access to the same information as Gorsuch. Decide. [*Westby v. Gorsuch*, 50 P.3d 284 (Wash. App.)]