

Offer

1. Requirements of an offer

An offer must be sufficiently clear, detailed and definitive so that the counterpart may simply accept it to constitute a binding agreement.

A tentative, non-committal proposal may not be sufficient to bind the author of the proposal; it is not an offer.

A 'promise' to be bound if the counterpart accepts the offer.

Supreme Court 2001Da53059

An offer, which is a legal element of a contract, is an expression of detailed and definitive intention to create a contractual relationship upon an acceptance corresponding to it. The offer must include sufficient details so that the content of the contract can be determined.

2. Invitation to treat

Preparatory exchanges, proposals for the negotiation.

Advertisement is an invitation to treat, not an offer. But the content of the advertisement may form part of the terms of the contract. 2005Da5812

Often difficult to distinguish from an offer.

Seoul Appellate Court 94Na12526

On 14 August 1991, D issued a public notice announcing that it shall sell the land at the current market price to the party from whom the land had been requisitioned. On 27 September, P submitted all of the purchase application documents required by D. On 12 January 1993, D gave a formal notice of sale to P informing that the land shall be sold to

P at the price of KRW7,611,562,000, which is the current market price, and that P must enter into the sale contract paying the contract deposit not later than 10 February. [It was held that this was not an offer.]

Online shopping mall's presentation of product information (detailed specs and price with availability): usually not an offer

3. Irrevocability of an offer

'firm' offer v. 'simple' offer. Art 527 of the KCC.

What about a 'revised' offer? Is the offeror not allowed to revise his offer while the offer is not accepted?

If an offeror explicitly states that the offer may be revoked, Art 527 does not apply. Does it have to be stated when the offeror is made? The intent not to be bound by Art 527 can be expressed 'afterward' (after a 'firm' offer was made).

When an offer is revoked or revised, can the counterpart (offeree) 'accept' the earlier offer (which no longer exists) and seek contractual remedies?

An offer shall not be revocable "once it is accepted"? See Act on the Consumer Protection in E-Commerce Transactions, Art. 17; Act on the Consumer Protection in Financial Transactions, Art 46. These statutes use "□□□ □□" to describe a situation where the consumer withdraws his/her offer *after* it has been accepted.

However, an offer will expire if the acceptance does not arrive "within a reasonable period of time" (Art. 529) After the lapse of a reasonable period of time, the offeree may not accept. Offeror may deny the contract even if the offer was not explicitly revoked (because it expires automatically.)

Art 679: Offer of a reward may be revoked (in the same manner

as the reward was announced) if no deadline is specified. (If a deadline is specified, the offer may not be revoked; it can only expire upon reaching the deadline.)

Offer to terminate an employment contract: revocable until the acceptance reaches the employee (offeror).

Supreme Court 94Da14629 (also see 2000Da60890)

Where an employee makes an offer to terminate the employment contract, the offer may be withdrawn as long as the employer's acceptance to terminate has not reached the employee.

Termination of a contract by consent: a new contract.

- 2004Da11506 (terminating an employment contract by consent): "Termination of a contract by consent, or a termination contract means ... a new contract whereby the parties agree to extinguish the effect of the existing contract and to achieve a status quo ante as if no contract was concluded in the first place."
- 2000Da5336 ("Implicit" consent to terminate an existing contract): Lessee demanded return of the lease deposit, lessor did not demand rent for nearly two years; lease is deemed to have been terminated by an "implicit" consent. Art 548(2) (payment of interest on the monies received) does not apply in such a case.

4. 'Revocability' and good faith

The court's technique to allow revocation of an 'offer'.

In some cases, however, to revoke an 'offer' and to refuse to complete the negotiation may constitute a civil wrong, and thus provide a ground for an action in tort.

Supreme Court 2001Da53059

If, in the course of negotiation, a party provided the ground for the other party to hold a reasonable expectation or reliance that a contract will certainly be entered into, and if the other party acted on the basis of that reliance, the party's refusal to enter into a contract shall be wrongful, considering the principle of good faith. The party's refusal, which causes loss to the other party, is beyond the limits of freedom of contract and it constitutes a tort.

Compare...

Supreme Court 92Nu16942

A resignation handed in by a public servant can, in principle, be withdrawn as long as the government's decision to terminate the employment has not been made. However, the withdrawal shall not be permitted even before the government's decision has been made, if there are special circumstances which make it against good faith to withdraw the resignation.

5. Philosophical foundations of contractual remedies

- Consent
- Promise
- Detrimental reliance (loss)
- Trust

Reading:

曹大志, 曹大志 1 (第5卷)(2021), 第 3-60

曹大志, “曹大志 曹大志 曹大志” 曹大志 54 (2009)161-199

曹大志, “曹大志 曹大志 曹大志” 曹大志 12 (2005)