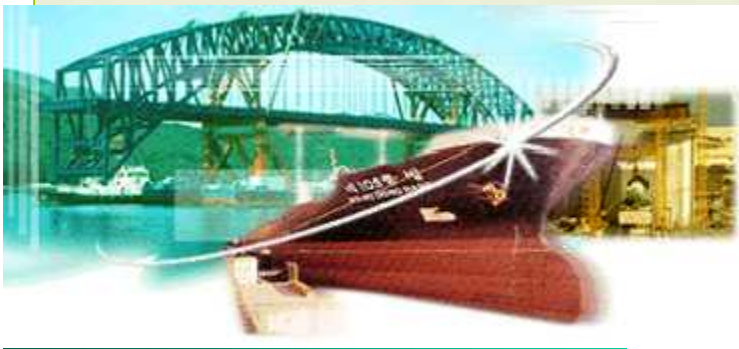


제4장 Offer and Order (제10주)



유 하상

3-1. Nature of Contract

■ Agreement on General Terms and Conditions of Business p.81

1.2 Acceptance

The acceptance is the indirect or apparent intent of the offeree to accept the rights and assume the obligations proposed in the offer.

It is upon acceptance, which is the exact counterpart of the offer, that a contract comes into existence.

To be effective, an acceptance must, as well be explained later, absolutely meet all the terms and conditions contained in the offer.

Accepting an offer, then, means doing exactly what the offeror calls for in his offer
The general rules in connection with the acceptance are as follows;

Apparent: 또렷한, 명백한, 외견의

Assume: 책임을 떠맡다. ~인체 하다. 추정, 가정하다.

comes into existence : 생기다. 태어나다. 성립하다

Then :그 때에는, 그 위에, 그 다음에, 그렇다면

calls for : 불러내다. 청하다. ~을 필요로 하다. 요구하다. 데리러 가다

3-1. Nature of Contract

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1.2.1 Acceptance by offeree

Only the person or persons to whom the offer is made can accept the offer.

An offer cannot even be assigned to a third party.

Quite often an order for goods is placed with a firm which has discontinued business, and the goods are shipped by its successor.

In such a case the offeror is under no duty to accept the goods.

If he accepts the goods knowing that they were shipped by the successor, he impliedly agrees to pay the new concern for them.

Offer to the public at large, i. e. general offers, may be accepted by anyone of the public who is aware of the offer.

Assigne: 할당, 배당하다. 부여하다. 양도하다.

Discontinue : 중지하다. 종결하다.

Concern: 사업, 영업, 상회

at large : 마음대로, 자유롭게, 상세히, 자세히, 전체로서, 널리, 일반적으로

is aware of: 알아차리다. 알다

i. e. id est(라틴어), that is (to say) : 좀 더 정확히 말하자면

3-1. Nature of Contract

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1.2.2 Acceptance must be absolute and unconditional

What is necessary to accept an offer?

The general rule is that, if the offeree wishes to accept an offer, he must comply strictly with the terms and conditions stated in the offer.

That is to say, acceptance must be absolute and unconditional.

It is the offeror who is making the offer and he is free to dictate the terms of the offer.

He is privileged to include any terms and conditions he wishes in the offer irrespective of how unreasonable they may be.

The offeree is under no obligation to give any attention to the offer, and, if he thinks the conditions in the offer are unreasonable, he is free to ignore the offer.

However, if he wishes to accept the offer, his acceptance must correspond with all the conditions specified in the offer.

Absolute : 절대의 완전무결한, 전체적
 Unconditional : 무조건적
 comply strictly : 동의하다. 따르다.
 That is to say, : 즉, 바꿔 말하자면, 적어도
 Dictate: 구술하다. 받아쓰게 하다, 명령, 지시하다.
 Irrespective : 고려하지 않는, 관계없는
 Unreasonable : 비합리적, 비현실적

Attention : 주목, 배려, 주의, 친절,
 ignore : 무시하다, 각하하다, 기각하다
 correspond with : 같다. 대응하다. 일치하다.

3-1. Nature of Contract

■ Agreement on General Terms and Conditions of Business p.81

1.2.2 Acceptance must be absolute and unconditional

As has already been discussed, if the acceptance contains any new terms or conditions, or if it varies in any manner the terms of the offer, it becomes a counter offer and therefore rejects the original offer.

A stipulation in the offer relating to time or mode of acceptance must be strictly complied with by the offeree.

This will be treated of later.

Absolute : 절대의 완전무결한, 전체적

Unconditional : 무조건적

comply strictly : 동의하다. 따르다.

That is to say, : 즉, 바꿔 말하자면, 적어도

Stipulation : 약속, 약정, 규정, 계약, 조건, 조항

3-1. Nature of Contract

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1.2.3 Effect of silence on acceptance

As a general rule, silence on the part of the offeree will not amount to an acceptance.

This rule is based on the well-established legal principle that one cannot impose a contractual obligation on another without the consent, either expressed or implied, of the person.

The application of this legal principle prevents an offeror from so wording his offer that silence on the part of an offeree is to be interpreted as an acceptance of the offer.

Silence can be an acceptance only when the parties so agree.

Thus, failure of the offeree to reply to an offer containing the statement, "If I do not receive an answer from you to the contrary, I shall consider my offer as accepted, does not result an enforceable contract.

Amount : 합계 ~이 되다, ~에 해당하다. 결국 ~이 되다.

Impose : 의무를 지우다. 부과하다.

Contractual : 계약상의

Consent : 동의

Implied : 함축하다. 암시하다. 의미하다.

Contrary : 반대의

3-1. Nature of Contract

■ Agreement on General Terms and Conditions of Business p.81

1.2.3 Effect of silence on acceptance

In general, a person cannot be compelled to speak or to write in order to avoid a binding agreement and is under no obligation to reply to an offer.

Owing to a prior agreement, a course of dealing, a usage of trade, or other circumstances, an offeree may be in such a position that he will owe a duty to the offeror to reply.

If this is true, the offeree's silence will amount to an acceptance and a contract will result.

usage: 관행

3-1. Nature of Contract

■ Agreement on General Terms and Conditions of Business p.81

1.2.4 Time of acceptance

Acceptance must be within the time limited by the offer, or , if no time is limited, then within a reasonable time.

For example, on the 2nd March an offer was made to buy goods, the offer bearing, "This for reply by Monday, the 6th March."

The offer was accepted by letter posted on the evening of the 6th March, Which reached the offeror on the following day.

It was held that the acceptance was in time.

As to the reasonableness of time, it depends upon the circumstances of each particular case, as has already been treated of.

It is obvious that in dealing with commodities, which fluctuate rapidly in value, the acceptance must be as prompt as possible and sometimes return of post will be the limit unless there be some reason which requires a longer time.

In any case the lapse of time allowed puts an end to the right to accept and this will not be extended by a mere continuation of negotiations without an express agreement to extend the time.

bearing, : 태도, 취향 의도, ~의 내용을 포함하다.

Hold : 효력이 있다. 수용되다

Fluctuate : 변동

Lapse : 시간의 경과 , 흐름, 착오

bearing, : 태도, 취향 의도, ~의 내용을 포함하다.

Hold : 효력이 있다. 수용되다

Fluctuate : qusehd

3-1. Nature of Contract

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1.2.5 Acceptance in formal shape

Where the agreement takes the form of a written instrument, the acceptance is effective only when the document has been signed and delivered, unless it was clearly the intention of the parties that the earlier verbal agreement be binding and that the writing act merely as a memorandum or better evidence of their oral contract.

1.2.6 Retraction of acceptance

Can the offeree retract his acceptance after he has posted it by a letter or telegram which reaches the offeror before or at the same time as the acceptance?

If the rule that the posting of the acceptance completes the contract is fully carried out, it would appear that he cannot retract, and opinions have been expressed in England to this effect.

verbal : 구두의

Retract : 취소하다. 혀 등을 입안으로 쑥 들이키다. 수축시키다.

3-1. Nature of Contract

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요구