

# ACCEPTANCE

An express act or implication by conduct that manifests assent to the terms of an offer in a manner invited or required by the offer so that a binding contract is formed. The exercise of power conferred by an offer by performance of some act. The act of a person to whom something is offered or tendered by another, whereby the offeree demonstrates through an act invited by the offer an intention of retaining the subject of the offer.

In the law of contracts, acceptance is one person's compliance with the terms of an offer made by another. Acceptance occurs in the law of insurance when an insurer agrees to receive a person's application for insurance and to issue a policy protecting the person against certain risks, such as fire or theft. When a person who is offered a gift by someone keeps the gift, this indicates his or her acceptance of it.

Acceptance also occurs when a bank pays a check written by a customer who has a checking account with that bank.

In business dealings between merchants, which is governed by the law of sales, a buyer demonstrates his or her acceptance of goods that are not exactly what he or she had ordered from the seller by telling the seller that he or she will keep the goods even though they are not what was ordered; by failing to reject the goods; or by doing something to the goods inconsistent with the seller's ownership of them, such as selling the goods to consumers of the buyer's store.

## Types of Acceptance

An acceptance may be conditional, express, or implied.

**Conditional Acceptance** - A conditional acceptance, sometimes called a qualified acceptance, occurs when a person to whom an offer has been made tells the offeror that he or she is willing to agree to the offer provided that some changes are made in its terms or that some condition or event occurs. This type of acceptance operates as a counteroffer. A counteroffer must be accepted by the original offeror before a contract can be established between the parties.

Another type of conditional acceptance occurs when a drawee promises to pay a draft upon the fulfillment of a condition, such as a shipment of goods reaching its destination on the date specified in the contract.

**Express Acceptance** - An express acceptance occurs when a person clearly and explicitly agrees to an offer or agrees to pay a draft that is presented for payment.

**Implied Acceptance** - An implied acceptance is one that is not directly stated but is demonstrated by any acts indicating a person's assent to the proposed bargain. An implied acceptance occurs when a shopper selects an item in a supermarket and pays the cashier for it. The shopper's conduct indicates that he or she has agreed to the supermarket owner's offer to sell the item for the price stated on it.

**acceptance**, n. 1) receiving something from another with the intent to keep it, and showing that this was based on a previous agreement. 2) agreeing verbally or in writing to the terms of a contract, which is one of the requirements to show there was a contract (an offer and an acceptance of that offer). A written offer can be accepted only in writing. 3) receiving goods with the intention of paying for them if a sale has been agreed to. 4) agreement to pay a bill of exchange, which can be an "absolute acceptance" (to pay as the bill is written) or "conditional acceptance" (to pay only when some condition actually occurs such as the shipment or delivery of certain goods.) "Acceptance" is most often used in the factual determination of whether a contract was entered into. (See: contract, offer)

## ACCEPTANCE, contracts.

1. An agreement to receive something which has been offered.
2. To complete the contract, the acceptance must be absolute and past recall, 10 Pick. 826; 1 Pick. 278; and communicated to the party making the offer at the time and place appointed. 4. Wheat. R. 225; 6 Wend. 103.
3. In many cases acceptance of a thing waives the right which the party receiving before had; as, for example, the acceptance of rent after notice to quit, in general waives the notice. See Co. Litt. 211, b; Id. 215, a.; and Notice to quit.
4. The acceptance may be express, as when it is openly declared by the party to be bound by it; or implied, as where the party acts as if he had accepted. The offer, and acceptance must be in some medium understood by, both parties; it may be language, symbolical, oral or written. For example, persons deaf and dumb may contract by symbolical or written language. At auction sales, the contract, generally symbolical; a nod, a wink, or some other sign by one party, imports that he makes an offer, and knocking down a hammer by the other, that he agrees to it. 3 D. & E. 148. This subject is further considered under the articles Assent and Offer, (q v.)
5. Acceptance of a bill of exchange the act by which the drawee or other person evinces his assent or intention to comply with and be bound by, the request contained in a bill of exchange to pay the same; or in other words, it is an engagement to pay the bill when due. 4 East, 72. It will be proper to consider, 1, by whom the acceptance ought to be made; 2, the time when it is to be made; 3, the form of the acceptance; 4, its extent or effect.
6. The acceptance must be made by the drawee himself, or by one authorized by him. On the presentment of a bill, the holder has a right to insist upon such an acceptance by the drawee as will subject him at all events to the payment of the bill, according to its tenor; consequently such drawee must have capacity to contract, and to bind himself to pay the amount of the bill, or it, may be treated as dishonored. Marius, 22. See 2 Ad. & EH. N. S. 16, 17.
7. As to the time when, a bill ought to be accepted, it may be before the bill is drawn; in this case it must be in writing; 3 Mass. 1; or it may be after it is drawn; when the bill is presented, the drawee must accept the bill within twenty-four hours after presentment, or it should be treated as dishonored. Chit. Bills, 212. 217. On the refusal to accept, even within the twenty-four hours, it should be protested. Chit. Bills, 217. The acceptance may be made after the bill is drawn, and before it becomes due or after the time appointed for payment 1 H. Bl. 313; 2 Green, R. 339 ; and even after refusal to accept so as to bind the acceptor.
8. The acceptance may also be made supra protest, which is the acceptance of the bill, after protest for non-acceptance by the drawee, for the honor of the drawer, or a particular endorser. When a bill has been accepted supra protest for the honor of one party to the bill, it may be accepted supra protest, by another individual, for the honor of another. Beawes, tit. Bills of Exchange, pl. 52; 5 Campb. R. 447.
9. As to the form of the acceptance, it is clearly established it may be in writing on the bill itself, or on another paper, 4 East, 91; or it may be verbal, 4 East, 67; 10 John. 207; 3 Mass. 1; or it may be expressed or implied.
10. An express acceptance is an agreement in direct and express terms to pay a bill of exchange, either by the party on whom it is drawn, or by some other person, for the honor of some of the parties. It is Usually in the words accepted or accepts, but other express words showing an engagement to pay the bill will be equally binding.
11. An implied acceptance is an agreement to pay a bill, not by direct and express terms, but by any acts of the party from which an express agreement may be fairly inferred. For example, if the drawee writes "seen," "presented," or any, other thing upon it, (as the day on which it becomes due,) this, unless explained by other circumstances, will constitute an acceptance.
12. An acceptance in regard to its extent and effect, may be either absolute, conditional, or partial.
13. An absolute acceptance is a positive engagement to pay the bill according to its tenor, and is usually made by writing on the bill "accepted," and subscribing the drawee's name; or by merely writing his name either at the bottom or across the bill. Comb. 401; Vin. Ab. Bills of Exchange, L 4; Bayl. 77; Chit. Bills, 226 to 228. But in order to bind another than the drawee, it is requisite his name should appear. Bayl. 78.
14. A conditional acceptance is one which will subject the drawee or acceptor to the payment of the money on a contingency, Bayl. 83, 4, 5; Chit. Bills, 234; Holt's C. N. P. 182; 5 Taunt, 344; 1 Marsh. 186. The holder is not bound to receive such an acceptance, but if he do receive it he must observe its terms. 4 M.& S. 466; 2 W. C. C. R. 485; 1 Campb. 425.
15. A partial acceptance varies from the tenor of the bill, as where it is made to pay part of the sum for which the bill is drawn, 1 Stra. 214; 2 Wash. C. C. R. 485; or to pay at a different time, Molloy, b. 2, c. 10, s. 20; or place, 4. M.& S. 462.