Chapter 12 – Acceptance and Electronic Agreements

Unequivocal Acceptance/the “Mirror Image Rule”

Silence as Acceptance – generally only when something has created a duty to affirmatively express non-acceptance (record clubs with monthly selection)

Communication of Acceptance –

Mode and Timelineness –

Express Authorized Means – no acceptance unless the express authorized means is used. Acceptance is effective when sent

Substitute Method – where express method authorized, a substituted method will still be effective, but is not effective until actually received by the offeror.

Implied authorized means -- any reasonable means – means used for making the offer or faster.

Agreeement in E-Contracts

Electronic Offers – terms to include –put all the terms in – including forum-selection/dispute resolution/Choice of Law

Acceptance On-line

Click-on Agreements -- enforceable

Shrink Wrap Agreements – maybe – was the term available before or after you open the box.

Browse-Wrap Agreements – often not enforceable

E-Signatures - -yes

Partnering Agreements – agreements in advance about how transactions on the internet will be conducted between parties

UETA v. E-Sign

State v. Federal – E-Sign scope of pre-emption of the UETA

Both do substantially the same thing – validate e-documents as satisfying any “writing” requirement for a contract and validate e-signatures.

Electronic Mail-box Rule – effective when received in a readable form – even if no one is aware of it.