Ames, seeking business for his lawn maintenance firm, posted the following notice in the meeting room of the Antlers, a local lodge: "To the members of the Antlers—Special this month. I will resod your lawn for two dollars per square foot using Fairway brand sod. This offer expires July 15." The notice also included Ames's name, address, and signature and specified that the acceptance was to be in writing.

Bates, a member of the Antlers, and Cramer, the janitor, read the notice and became interested. Bates wrote a letter to Ames saying he would accept the offer if Ames would use Puttering Green brand sod. Ames received this letter July 14 and wrote to Bates saying he would not use Puttering Green sod. Bates received Ames's letter on July 16 and promptly wrote Ames that he would accept Fairway sod. Cramer wrote to Ames on July 10, saying he accepted Ames's offer.

By July 15, Ames had found more profitable ventures and refused to resod either lawn at the specified price. Bates and Cramer brought an appropriate action against Ames for breach of contract. Decisions as to the respective claims of Bates and Cramer?

Answer: Counteroffer. Ames wins both cases. The first letter from Bates was not an acceptance because it did not correspond with the terms of the offer. It was a counteroffer, as it called for Ames to use a different brand sod, and therefore constituted a rejection of the original offer which terminated the original offer. After Ames had rejected the counteroffer, Bates wrote on July 16 an acceptance of the original offer. This failed to form a contract as the original offer had been terminated by (a) the rejection, Restatement, Second, Contracts, Section 38 and (b) expiration of the time for acceptance as by its terms it expired July 15, Restatement, Second Contracts, Sect. 41.

Cramer cannot recover because he was not an offeree. The offer was addressed to members of the Antlers. The party making an offer has the right to determine with whom he will contract. It is immaterial whether the offeror had special reasons for contracting with the offeree rather than with someone else.

Cramer made an offer to Ames through his letter, which Ames could have accepted, but chose not to.

Garvey owned four speedboats named Porpoise, Priscilla, Providence, and Prudence. On April 2, Garvey made written offers to sell the four boats in the order named for $4,200 each to Caldwell, Meens, Smith, and Braxton, respectively, allowing ten days for acceptance. In which, if any, of the following four situations described was a contract formed?

(a) Five days later, Caldwell received notice from Garvey that he had contracted to sell Porpoise to Montgomery. The next day, April 8, Caldwell notified Garvey that he accepted Garvey's offer.

(b) On the third day, April 3, Meens mailed a rejection to Garvey which reached Garvey on the morning of the fifth day. But at 10:00 A.M. on the fourth day, Meens sent an acceptance by telegram to Garvey, who received it at noon on the same day.

(c) Smith, on April 3, replied that she was interested in buying Providence but declared the price asked appeared slightly excessive and wondered if, perhaps, Garvey would be willing to sell the boat for $3,900. Five days later, having received no reply from Garvey, Smith, by letter, accepted Garvey's offer and enclosed a certified check for $4,200.

(d) Braxton was accidentally killed in an automobile accident on April 9. The following day, the executor of Braxton's estate mailed an acceptance of Garvey's offer to Garvey.

Answer: Revocation, Rejection.

(a) Where the offeror, after making an offer for sale, sells or contracts to sell the property to another person and the offeree acquires reliable information of this fact, before he has exercised his power of creating a contract by acceptance of the offer, the offer is revoked. Restatement, Second, Contracts, Section 43.

(b) A contract was formed on April 6. Rejection by mail or telegram does not destroy the power of acceptance until received by the offeror, but limits the power so that an authorized or unauthorized means of acceptance (this was an authorized means since the contracts fall under the U.C.C.) started after the sending of a prior rejection is only effective if the acceptance is received, as here, by the offeror before he receives the rejection.

(c) A contract. A counteroffer by the offeree, relating to the same matter as the original offer, is a rejection of the original offer, unless the offeror in his offer or the offeree in his counteroffer manifest a different intention. Restatement, Second, Contracts, Section 39. Here, Edward made a mere inquiry regarding the possibility of different terms or, stated somewhat differently, a request for a better offer. Edward's inquiry was not a counteroffer since it did not contain a promise. Edward's subsequent acceptance was therefore effective.

(d) No contract. The death of the offeree terminates a revocable offer because it thereby becomes impossible to accept it. Restatement, Second, Contracts, Section 48. A revocable offer can be accepted only by or for the benefit of the person to whom it is made.

Alpha Rolling Mill Corporation, by letter dated June 8, offered to sell Brooklyn Railroad Company 2,000 to 5,000 tons of fifty-pound iron rails upon certain specified terms, adding that, if the offer was accepted, Alpha Corporation would expect to be notified prior to June 20. Brooklyn Company, on June 16, by telegram, referring to Alpha Corporation's offer of June 8, directed Alpha Corporation to enter an order for 1,200 tons of fifty-pound iron rails on the terms specified. The same day, June 16, Brooklyn Company, by letter to Alpha Corporation, confirmed the telegram. On June 18, Alpha Corporation, by telegram, declined to fill the order. Brooklyn Company, on June 19, telegraphed Alpha Corporation: "Please enter an order for 2,000 tons rails as per your letter of the eighth. Please forward written
contract. Reply. "In reply to Brooklyn Company's repeated inquiries regarding whether the order for 2,000 tons of rails had been entered, Alpha denied the existence of any contract between Brooklyn Company and itself. Thereafter, Brooklyn Company sued Alpha Corporation for breach of contract. Decision?"

Answer: Counter-offer. Decision for Alpha Rolling Mill Corporation and against Brooklyn Railroad Company.

The offer was for a quantity of between 2,000 to 5,000 tons of iron rails. When the railroad company ordered 1,200 tons it was not accepting the offer but making a counter-offer. This counter-offer is a rejection of the original offer. After Alpha's refusal to accept the counter-offer, the railroad company attempted to accept 2,000 tons under the original offer. However, the original offer at this time was no longer in existence, having been terminated by the rejection. There was no offer open to the railroad company for acceptance after the rejection, and no contract was formed.

On April 8, Burchette received a telephone call from Bleluck, a truck dealer, who told Burchette that a new model truck in which Burchette was interested would arrive in one week. Although Bleluck initially wanted $10,500, the conversation ended after Bleluck agreed to sell and Burchette agreed to purchase the truck for $10,000, with a $1,000 down payment and the balance upon delivery. The next day, Burchette sent Bleluck a check for $1,000, which Bleluck promptly cashed. One week later, when Burchette called Bleluck and inquired about the truck, Bleluck informed Burchette that he had several prospects looking at the truck and would not sell for less than $10,500. The following day, Bleluck sent Burchette a properly executed check for $1,000 with the following notation thereon: "Return of down payment on sale of truck." After notifying Bleluck that she will not cash the check, Burchette sues Bleluck for damages. Decision?

Answer: Definiteness. Decision for Burchette. The agreement made in the course of a telephone conversation between Burchette and truck dealer Bleluck was for the sale by Bleluck to Burchette at an agreed price of $10,000 for a new model truck. The trade description of the truck was known to both parties, as Burchette was interested in it, and dealer Bleluck had apparently ordered the new truck from the manufacturer as he told Burchette that he expected to receive delivery of it in one week. The price was payable $1,000 down, and the balance upon delivery. This is a valid oral contract for the sale of goods by description. Each party manifested to the other over the telephone assent to these terms, and Burchette promptly sent to Bleluck her check for $1,000 which Bleluck cashed. The mutual promises exchanged were definite and certain.

On November 15, 1, Sellit, a manufacturer of crystalware, mailed to Benny Buyer a letter stating that Sellit would sell to Buyer 100 crystal "A" goblets at $100 per goblet and that "the offer would remain open for fifteen (15) days." On November 18, Sellit, noticing the sudden rise in the price of crystal "A" goblets, decided to withdraw her offer to Buyer and so notified Buyer. Buyer chose to ignore Sellit's letter of revocation and gleefully watched as the price of crystal "A" goblets continued to skyrocket. On November 30, Buyer mailed to Sellit a letter accepting Sellit's offer to sell the goblets. The letter was received by Sellit on December 4. Buyer demands delivery of the goblets; what result?

Answer: Firm Offers Under the Code. Buyer prevails. Sellit's offer of Nov. 15, constituted a firm offer—it is a signed writing by a merchant promising to hold open an offer for 3 months or less (15 days in this case) and therefore cannot be revoked prior to Nov. 30. Thus, Sellit's revocation of Nov. 18, is ineffective and of no legal effect.

Buyer accepted Sellit's offer within the prescribed time period by dispatching his acceptance on November 30. Buyer's use of the mail for sending his acceptance is a reasonable means of acceptance (this is a UCC sale) and thus is effective upon dispatch.

On May 1, Melforth Realty Company offered to sell Greenacre to Dallas, Inc., for $1,000,000. The offer was made by telegraph and stated that the offer would expire on May 15. Dallas decided to purchase the property and sent a registered letter to Melforth on May 10, accepting the offer. Due to unexplained delays in the postal service, Melforth did not receive the letter until May 22. Melforth wishes to sell Greenacre to another buyer, who is offering $1,200,000 for the tract of land. Has a contract resulted between Melforth and Dallas?

Answer: Effective Moment: Acceptance By Dispatch. Under the Restatement, Second, Dallas' acceptance, via mail, is a reasonable means of acceptance and is effective upon dispatch. Thus, Dallas' acceptance, mailed on May 10, would have been effective prior to the offer's termination on May 15.

Under the traditional rule the acceptance would have been unauthorized, since it was not the means utilized by the offeror in making the offer, and therefore effective only when received by the offeror, provided it is received within the time period the authorized means would have arrived. Here the offer was not received (May 22) until the offer had already expired (May 15) and it was not received within the time frame that the authorized means (telegraph) would have been received within (probably no later than May 16).

Had Melforth stipulated that the acceptance be received by May 15, then the effective moment of acceptance would be upon receipt by Melforth, and there would no contract.

Rowe advertised in newspapers of wide circulation and otherwise made known that she would pay $5,000 for a complete set consisting of ten volumes of certain rare books. Ford, not knowing of the offer, gave Rowe all but one of the set of rare books as a Christmas present. Ford later learned of the offer, obtained the one remaining book, tendered it to Rowe, and demanded the $5,000. Rowe refused to pay. Is Ford entitled to the $5,000?

Answer: Intent. Ford is not entitled to the $5,000, as he did not accept Rowe's offer and therefore no contract was formed. The gift of the nine books by Ford to Rowe was not an acceptance because acceptance requires an intention on the part of the offeree to accept the offer, and since at the time of making the gift Ford had no knowledge of the offer, he did not have and could not have had such intention. Moreover, even if Ford had then known of the offer, his intention at that time was to give the nine books to Rowe as a Christmas present, and not to accept any offer.
Walker leased a small lot to Keith for ten years at one hundred dollars a month, with a right for Keith to extend the lease for another ten-year term under the same terms except as to rent. The renewal option provided:

"Rental will be fixed in such amount as shall actually be agreed upon by the lessors and the lessee with the monthly rental fixed on the comparative basis of rental values as of the date of the renewal with rental values at this time reflected by the comparative business conditions of the two periods."

Keith sought to exercise the renewal right and, when the parties were unable to agree on the rent, brought suit against Walker. Who prevails? Why?

Answer: Option Contract. Decision for Walker. The renewal option provision did not constitute an option contract or any agreement giving Keith a unilateral right to accept the new contract for a second 10-year period of time. The renewal option was merely an agreement to attempt to negotiate in good faith a new lease agreement for the second 10-year period. If Walker acted reasonably and attempted to negotiate an extension of the lease in good faith, yet despite that effort the parties were unable to agree on the new rent, Walker has no liability.

14 The Brewers contracted to purchase Dower House from McAfee. Then, several weeks before the May 7 settlement date for the purchase of the house, the two parties began to negotiate for the sale of certain items of furniture in the house. On April 30, McAfee sent the Brewers a letter containing a list of the furnishings to be purchased at specified prices; a payment schedule, including a request for a $3,000 payment, due on acceptance; and a clause reading: "If the above is satisfactory, please sign and return one copy with the first payment."

On June 3, the Brewers sent a letter to McAfee stating that enclosed was a $3,000 check; that the original contract had been mislaid and could another be furnished; that they planned to move into Dower House on June 12; and that they wished the red desk to be included in the contract. McAfee then sent a letter dated June 8 to the Brewers, listing the items of furniture purchased.

The Brewers moved into Dower House in the middle of June. Soon after they moved in, they tried to contact McAfee at his office to tell him that there had been a misunderstanding relating to their purchase of the listed items. They then refused to pay him any more money, and he brought this action to recover the balance outstanding. Decision?

Answer: Mirror Image Rule. Here, McAfee did not indicate in his April 30 letter to the Brewers that a particular manner of acceptance was required. Therefore, the Brewer's letter of June 3, together with the enclosed $3,000 check, the amount due upon acceptance of the contract, manifested their assent to the items listed in the April 30 letter from McAfee. The June 3 letter was both definite and reasonable, and the reference to the red writing desk was not expressed in language making acceptance conditional upon inclusion of the desk. This item, then, was merely a proposal for an addition to the contract as McAfee requested, they did send a letter of their own. This was reasonable under the circumstances since they had mislaid the contract and, therefore, the letter constituted an effective acceptance of McAfee's offer. **McAfee v. Brewer, 214 Va. 579, 203 S.E.2d 129 (1974).**

17 On July 31, Lee Calan Imports advertised a used Volvo station wagon for sale in the Chicago Sun-Times. As part of the information for the advertisement, Lee Calan Imports instructed the newspaper to print the price of the car as $1,795. However, due to a mistake made by the newspaper, without any fault on the part of Lee Calan Imports, the printed ad listed the price of the car as $1,095. After reading the ad and then examining the car, O'Brien told a Lee Calan Imports salesman that he wanted to purchase the car for the advertised price of $1,095. Calan Imports refused to sell the car to O'Brien for $1,095. Is there a contract? If so, for what price?


Problems - Chapter 11

8 Anita and Barry were negotiating, and Anita's attorney prepared a long and carefully drawn contract, which was given to Barry for examination. Five days later and prior to its execution, Barry's eyes became so infected that it was impossible for him to read. Ten days thereafter and during the continuance of the illness, Anita called upon Barry and urged him to sign the contract, telling him that time was running out. Barry signed the contract despite the fact he was unable to read it. In a subsequent action by Anita, Barry claimed that the contract was not binding upon him because it was impossible for him to read and he did not know what it contained prior to his signing it. Decision?

Answer: Fraud. Decision in favor of Anita and against Barry. Barry's defense that the contract was not binding upon him because he had not and could not have read it prior to signing it is not valid. Here, there was no misrepresentation of the contents of the contract Barry was requested to sign. There is nothing approaching fraud upon the part of Anita. Upon the facts stated, Barry's inability to read the contract because of impaired vision does not afford him a defense where his signature to the contract was voluntary, and was not induced by fraud or misrepresentation. Moreover, Barry could not prove a defense based upon duress since Anita did not physically compel nor force Barry by threats to manifest assent to the proposal. Barry could easily have had someone read the contract to him, or have it reviewed by his attorney.