



Volume 36 | Issue 3

Article 11

April 1930

Contracts—Offer and Acceptance—Qualification and Request in Acceptance

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Recommended Citation

Jerome Katz, *Contracts—Offer and Acceptance—Qualification and Request in Acceptance*, 36 W. Va. L. Rev. (1930).

Available at: <https://researchrepository.wvu.edu/wvlr/vol36/iss3/11>

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CONTRACTS—OFFER AND ACCEPTANCE—QUALIFICATIONS AND REQUESTS IN ACCEPTANCE.—Every court recognizes the following fundamental principles of contract law. An acceptance of an offer must be unequivocal, must comply with the terms of the offer, and must not be so qualified or conditioned as to amount to a counter offer. Added terms requested as a favor do not invalidate an acceptance. Conditions in an acceptance which do not qualify in legal effect the offer do not impair the acceptance.²

As general principles of law the rules as laid down seem simple and accurate. When actual situations are presented to the courts, however, these rules may sometimes be merely convenient tools of discretionary construction.

When does the court recognize an acceptance as qualified? When does the court declare it to be a counter-offer? When is a statement construed as a mere request, hope or suggestion? It is not often easy to decide. It is not often an easy matter for a court to determine whether the acceptance is not rendered ambiguous or conditional by uniting with it an expression of hope or suggestion that some unimportant modification be made in its terms. Sometimes the fact situation presents features of a counter offer or qualification and also of a request or suggestion. That the courts, in construing, are influenced by surrounding circumstances is apparent. Often but little weight is given to the rules themselves. It is the purpose of this note to collect our West Virginia cases on this subject and to examine a few of them.

In *Iron Works v. Construction Company*,³ plaintiff offered to sell defendant certain materials for building purposes. In his letter of reply defendant stated his understanding to be that the offer included rivets and bucking irons. The court held that as he had manifested his acceptance this was only a hope or suggestion. This case seems arguable to say the least. To purport an acceptance and then say you understand rivets and bucking irons will be sent seems to amount to a condition that if not sent this will not amount to an acceptance of the offer. Williston has this to say, "It seems clear that if before a contract is finally concluded the parties become aware that they are insisting on different constructions of their duties thereunder, no contract will arise."⁴ Circumstances evidently had much to do in leading the court to

¹ WILLISTON, CONTRACTS, Vol. 1, §§ 72 to 77. Also the RESTATEMENT OF THE LAW OF CONTRACTS, American Law Institute, §§ 58 to 64.

² *Ibid.*, §§ 78, 79, WILLISTON.

³ 86 W. Va. 173, 102 S. E. 860 (1920); also cited in CORNELL L. QUAB. Supp. § 62.

⁴ WILLISTON, CONTRACTS, vol. 1, § 78.

hold a good contract here. There had been correspondence extending over a long period of time; plaintiff, a company furnishing building materials, had materially changed its position in reliance upon the defendant, even depriving itself of selling to others. To have held no binding contract would certainly have produced an inequitable result. This is a striking example of the influence of surrounding circumstances.

Some cases are quite clear. In *Bowers Company v. Kanawha Valley Products Company*⁵ there was an offer to let the lessor of a certain gas and oil lease have one-eighth of thirty-six per cent of the gasoline produced for the privilege of so producing said gasoline. A telegram was sent by the lessor which purported to suggest an agreement at one-eighth of the total amount of gasoline produced. This reply was held to be a counter offer.

In *Allen v. Simmons*⁶ the P accepted the order and added, "contingent upon strikes, car shortage, etc. Board of trade weight final." Held: Qualified acceptance, so therefore no binding contract.

In *Turner v. McCormick*⁷ the offeree wrote, "I hereby accept according to your terms and request you to make delivery of deed to me, with abstract of title, in Morgantown on June 28, 1902." The court held this to be a mere request, therefore a binding contract was created.

In *Wheeling, Ohio and Eastern Railroad Company v. Wheeling Coal Railroad Company*⁸ the agreement contained this provision, "Written notice of acceptance must be given the optioners." The court held that a verbal acceptance made no binding contract. However, this is not always true. Williston, in his treatise on Contracts,⁹ says that care must be taken, however, in construing offers, to make sure whether the offer imposes an absolute condition as to time, place and manner of acceptance, or merely suggests a method which will be satisfactory to the offeror. It is frequently necessary to look beyond the literal meaning of the language used.

Other West Virginia cases collected on the subject of request

⁵ 100 W. Va. 278, 130 S. E. 284 (1925).

⁶ 97 W. Va. 318, 125 S. E. 86 (1924).

⁷ 56 W. Va. 161, 49 S. E. 367 (1904).

⁸ 94 W. Va. 536, 119 S. E. 551 (1923).

⁹ WILLISTON, CONTRACTS, vol. 1, § 76.

and qualification in the acceptance of offers are noted below.¹⁰

Many questions often arise regarding the termination of offers. We must carefully note that there is a marked difference in the qualification of an acceptance and the terminating of an offer. In the cases considered thus far there has either been a contract or the rejection of the offer. It is important to note that a mere request does not terminate the offer.

In the case of *Bowers Company v. Kanawha Valley Products Company*¹¹ the court presented a point in the syllabus which could apply only to the case decided. The law as therein expressed cannot be accepted as a general rule of law regarding the termination of offers. The syllabus reads, "Request for change or modification of proposed contract, made before acceptance, amounts to a rejection thereof." If we follow this view we are lead to the conclusion that if an offeree merely requests a change in the terms of the offer his chances to accept later are gone. This is not the prevailing view. Section 36 of the Restatement of the Law of Contracts¹² has this provision, "An offer is rejected when the offeror is justified in inferring from the words or conduct of the offeree that the offeree intends not to accept the offer or to give it further consideration." So a mere request for a change in the contract may not justify the offeror in inferring a rejection of the offer. Under the heading "Comment" in Section 38 of the Restatement¹³ we find that "a counter-offer must be distinguished from a mere inquiry regarding the possibility of different terms, a request for a better offer, or a comment upon the terms of the offer." For example, A offers to sell Blackacre to B for \$5000. B replies, "Won't you take less?" To which A answers "No!"

¹⁰ *Electric Co. v. Coal Co.*, 91 W. Va. 347, 112 S. E. 587 (1922) where words "January 10" were inserted in place "as soon as possible"; *Whitaker, Glessner v. Clark*, 98 W. Va. 19, 126 S. E. 340 (1925) where acceptance sent to place other than residence of offeror; *Pollack v. Brookover*, 60 W. Va. 75, 53 S. E. 795 (1906), where a failure to comply in respect to payment; *Devine v. Silson*, 63 W. Va. 409, 60 S. E. 351 (1907), counter-offer of 2% in place of offer of 5% rate; *Weaver v. Burr*, 31 W. Va. 736, 8 S. E. 743 (1888); *Morris v. Risk*, 86 W. Va. 30, 102 S. E. 725 (1920) and cases cited therein.

¹¹ *Supra*, n. 5.

¹² RESTATEMENT OF THE LAW OF CONTRACTS, The American LAW INSTITUTE, § 36.

¹³ *Ibid*, § 38.

An acceptance thereafter by B, if within a reasonable time (or the time specified) creates a binding contract.¹⁴ Following the law as presented in the Restatement we can see that the statement by the West Virginia court is entirely too general. A mere request for a change in the terms of the offer will not prevent a later acceptance as the court broadly indicates it would.

—JEROME KATZ.

¹⁴ *Ibid.*, example cited therein.