

pactum, was not binding, and that at any moment before a complete acceptance by Dickinson of the offer, Dodds was as free as Dickinson himself.

Well, that being the state of things, it is said that the only mode in which Dodds could assert that freedom was by actually and distinctly saying to Dickinson, 'Now I withdraw my offer.' It appears to me that there is neither principle nor authority for the proposition that there must be an express and actual withdrawal of the offer, or what is called a retraction. It must, to constitute a contract, appear that the two minds were at one, at the same moment of time, that is, that there was an offer continuing up to the time of the acceptance. If there was not such a continuing offer, then the acceptance comes to nothing. Of course it may well be that the one man is bound in some way or other to let the other man know that his mind with regard to the offer has been changed; but in this case, beyond all question, the plaintiff knew that Dodds was no longer minded to sell the property to him as plainly and clearly as if Dodds had told him in so many words, 'I withdraw the offer.' This is evident from the plaintiff's own statements in the bill."

Restatement (Second) of Contracts

§ 25 OPTION CONTRACTS

An option contract is a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer.

§ 87 OPTION CONTRACT

- (1) An offer is binding as an option contract if it
 - (a) is in writing and signed by the offeror, recites a purported consideration for the making of the offer, and proposes an exchange on fair terms within a reasonable time; or
 - (b) is made irrevocable by statute.
- (2) An offer which the offeror should reasonably expect to induce action or forbearance of a substantial character on the part of the offeree before acceptance and which does induce such action or such forbearance is binding as an option contract to the extent necessary to prevent injustice.

Uniform Commercial Code

§ 2.205 FIRM OFFERS

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of revocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Note: As mentioned earlier, the Uniform Commercial Code has been enacted in virtually all American states. Article 2 governs the sale of goods.

German law

German Civil Code

§ 145 [BINDING FORCE OF AN OFFER]

One who has offered to conclude a contract with another is bound by that offer unless he states that he is not bound.

§ 146 [THE LAPSE OF THE OFFER]

The offer lapses if the offeror is refused or if he is not given an acceptance within due time according to §§ 147–49.

§ 147 [TIME TO ACCEPT]

An offer made to a person who is present can only be accepted immediately. That is so as well when an offer is made by one person to another by telephone.

An offer made to a person who is absent can be accepted only within the time that an answer would be expected under ordinary circumstances.

French law

Cour de cassation, ch. soc., 22 March 1972, D.S. 1972.468

"In response to an offer of employment published by the *Société salaissonnière du Centre* and at its request, Vandendriesche went from Brest to Saint-Mathieu in Haute-Vienne to the main office of the company to discuss the eventual conclusion of a contract of employment as factory manager." "[B]y a letter dated 3 March 1970, the company 'confirmed' its 'decision' to hire him on specified terms and requested him, if he found this proposal acceptable, to inform the company of the date on which he planned to assume his duties." He claimed to have written a letter of acceptance to the company on March 11. "[O]n March 14, it wrote to him to cancel its 'offer of employment' on the grounds that it had not received his acceptance as of that date and that its administrative council had just decided not to create such a position in the immediate future."

The court found for Vandendriesche. "[I]f Vandendriesche could not prove that he had, as he claimed, sent a simple letter to his future employer on March 11, 1970, informing him that he would assume his duties on the 23rd, nevertheless a delay of only nine days occurred between the receipt by the employee of his offer of employment and its revocation by the employer." The lower court was correct "in finding, on the one hand, that this delay did not exceed the time for reflection and response which—in the absence of a fixed time period—the company was required to give Vandendriesche, and, on the other hand, that the decision taken during this period of time by its administrative council not to create a position for economic reasons and to retract its offer cannot be invoked against an employee who had been induced to resign his previous job and incur traveling expenses. . . ."