Promissory Estoppel As discussed in the previous chapter, a noncontractual promise may be enforced when it is made under circumstances that should lead the promisor reasonably to expect that the promise will induce the promisee to take action in reliance on it. This doctrine has been used in some cases to prevent an offeror from revoking an offer prior to its acceptance.

Thus, Ramanan Plumbing Co. submits a written offer for plumbing work to be used by Resolute Building Co. as part of Resolute's bid as a general contractor. Ramanan knows that Resolute is relying on Ramanan's bid, and in fact Resolute submits Ramanan's name as the plumbing subcontractor in the bid. Ramanan's offer is irrevocable until Resolute has a reasonable opportunity to notify Ramanan that Resolute's bid has been accepted.

Rejection

An offeree is at liberty to accept or reject the offer as he sees fit. If he decides not to accept it, he is not required to reject it formally but may simply wait until the offer terminates by lapse of time. A **rejection** of an offer is a manifestation by the offeree of his unwillingness to accept. A communicated rejection terminates the power of acceptance. From the effective moment of rejection, which is the receipt of the rejection by the offeror, the offeree may no longer accept the offer. Rejection by the offeree may consist of express language or may be implied from language or conduct.

Counteroffer

A **counteroffer** is a counterproposal from the offeree to the offeror that indicates a willingness to contract but on terms or conditions different from those contained in the original offer. It is not an unequivocal acceptance of the original offer, and by indicating an unwillingness to agree to the terms of the offer, it generally operates as a rejection. It also operates as a new offer. To illustrate further, assume that Worthy writes Joanne a letter stating that he will sell to Joanne a secondhand color television set for $300. Joanne replies that she will pay Worthy $250 for the set. This is a counteroffer that, on *receipt* by Worthy, terminates the original offer. Worthy may, if he wishes, accept the counteroffer and thereby create a contract for $250. If, on the other hand, Joanne in her reply states that she wishes to consider the $300 offer but is willing to pay $250 at once for the set, she is making a counteroffer that does *not* terminate Worthy's original offer. In the first instance, after making the $250 counteroffer, Joanne may not accept the $300 offer. In the second instance, she may do so, because the counteroffer was stated in such a manner as not to indicate an unwillingness to accept the original offer; Joanne therefore did not terminate it. In addition, a mere inquiry about the possibility of obtaining different or new terms is not a counteroffer and does not terminate the original offer.

Another common type of counteroffer is the **conditional acceptance**, which claims to accept the offer but expressly makes the acceptance contingent on the offeror's assent to additional or different terms. Nonetheless, it is a counteroffer and generally terminates the original offer. The Code's treatment of acceptances containing terms that vary from the offer is discussed later in this chapter.

> **Practical Advice**
> Consider whether you want to make a counterproposal that terminates the original offer or whether you merely wish to discuss alternative possibilities.

Giannetti v. Cornillie

COURT OF APPEALS OF MICHIGAN, 1994

204 MICH. APP. 234, 514 N.W.2D 221

FACTS Defendants listed with a real estate agent a home for sale. Plaintiffs, Patrick and Anne Giannetti, offered $155,000 for the home and submitted a deposit in the amount of $2,500. The defendants countered the offer with an offer to sell the house for $160,000. The plaintiffs then inquired whether certain equipment and items of furniture could be included with the sale of the house. The defendants refused to include the questioned items in the sale. The plaintiffs then accepted the $160,000 offer, but changed the mortgage amount from $124,000 to $128,000. The agent failed to show this change to the defendants but instead told the defendants that the plaintiffs had accepted their counteroffer. Defendants then signed all papers, but before the closing sought to invalidate the agreement. The plaintiffs brought this action for specific performance to enforce the sale. The trial court granted plaintiffs' motion and the defendants appealed.

DECISION Judgment for the defendants.

OPINION Hood, J. Defendants' main argument is that the trial court clearly erred in finding that there was a contract where defendants never agreed to plaintiffs' change in the mortgage amount. We reluctantly agree.

As argued by defendants, "[a]n offer is a unilateral declaration of intention, and is not a contract. A contract is made when both parties have executed or accepted it, and not before. A counterproposition is not an acceptance." [Citations.] An acceptance must be "unambiguous and in strict conformance with an offer." [Citation.]

"[A] proposal to accept, or an acceptance, upon terms varying from those offered, is a rejection of the offer, and puts an end to the negotiation, unless the party who made the original offer renews it, or assents to the modification suggested." [Citation.] Thus, "[a]ny material departure from the terms of an offer invalidates the offer as made and results in a counter proposition, which, unless accepted, cannot be enforced." [Citation.]

Plaintiffs argue that the modification of the mortgage amount did not vitiate their purported acceptance because the mortgage amount, unlike the purchase price, was not a material term of the contract. We disagree.

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In other words, before the change, plaintiffs were obligated to buy the property if they obtained a mortgage for $124,000; after the change, no obligation to buy arose unless they obtained a $128,000 mortgage. Thus, the modification had the legal effect of widening the door through which plaintiffs could escape the contract and it was therefore material. [Citation.]

INTERPRETATION A counteroffer generally operates as a rejection and thus terminates the power of acceptance.

ETHICAL QUESTION Was the defendant morally obligated to sell the property? Explain.

CRITICAL THINKING QUESTION What could the plaintiffs have done to protect themselves while at the same time seeking different terms?

Death or Incompetency

The death or incompetency of either the offeror or the offeree ordinarily terminates an offer. On his death or incompetency, the offeror no longer has the legal capacity to enter into a contract; thus, all outstanding offers are terminated. Death or incompetency of the offeree also terminates the offer, because an ordinary offer is not assignable (transferable) and may be accepted only by the person to whom it was made. When the offeree dies or ceases to have legal capability to enter into a contract, no one else has the power to accept the offer. Therefore, the offer necessarily terminates.

The death or incompetency of the offeror or offeree, however, does *not* terminate an offer contained in an option.

Destruction of Subject Matter

Destruction of the specific subject matter of an offer terminates the offer. Suppose that Sarah, owning a Buick, offers to sell the car to Barbara and allows Barbara five days in which to accept. Three days later the car is destroyed by fire. On the following day, Barbara, without knowledge of the destruction of the car, notifies Sarah that she accepts Sarah's offer. There is no contract. The destruction of the car terminated Sarah's offer.

Subsequent Illegality

One of the essential requirements of a contract, as we previously mentioned, is legality of purpose or subject matter. If performance of a valid contract is subsequently made illegal, the obligations of both parties under the contract are discharged. Illegality taking effect after the making of an offer but prior to acceptance has the same effect: the offer is legally terminated.

For an illustration of the duration of revocable offers, see Figure 10-1.

Acceptance of Offer

The acceptance of an offer is essential to the formation of a contract. Once an effective acceptance has been given, the contract is formed. **Acceptance** of an offer for a bilateral contract is some overt act by the offeree that manifests his assent to the terms of the offer, such as speaking or sending a letter, a telegram, or other explicit or implicit communication to the offeror. If the offer is for a unilateral contract, acceptance is the performance of the requested act with the intention of accepting. For example, if Joy publishes an offer of a reward to anyone who returns the diamond ring that she has lost (an offer to enter into a unilateral contract) and Bob, with knowledge of the offer, finds and returns the ring to Joy, Bob has accepted the offer.

Communication of Acceptance

General Rule

Because acceptance is the manifestation of the offeree's assent to the offer, it must necessarily be communicated to the offeror. This is the rule as to all offers to enter into