

CONTRACTS QUESTION

On June 15, a professional cook had a conversation with her neighbor, an amateur gardener with no business experience who grew tomatoes for home use and to give to relatives. During the conversation, the cook mentioned that she might be interested in “branching out into making salsa” and that, if she did branch out, she would need to buy large quantities of tomatoes. Although the gardener had never sold tomatoes before, he told the cook that, if she wanted to buy tomatoes for salsa, he would be willing to sell her all the tomatoes he grew in his half-acre home garden that summer for \$25 per bushel.

Later on June 15, shortly after this conversation, the cook said to the gardener, “I’m very interested in the possibility of buying tomatoes from you.” She then handed a document to the gardener and asked him to sign it. The document stated, “I offer to sell to [the cook] all the tomatoes I grow in my home garden this summer for \$25 per bushel. I will hold this offer open for 14 days.”

The gardener signed the document and handed it back to the cook.

On June 19, the proprietor of a farmers’ market offered to buy all the tomatoes that the gardener grew in his home garden that summer for \$35 per bushel. The gardener, happy about the chance to make more money, agreed, and the parties entered into a contract for the gardener to sell his tomatoes to the proprietor.

On June 24, the cook, who had not communicated with the gardener since the June 15 conversation, called the gardener. As soon as the cook identified herself, the gardener said, “I hope you are not calling to say that you want my tomatoes. I can’t sell them to you because I have sold them to someone else.” The cook replied, “You can’t do that. I called to accept your offer to sell me all your tomatoes for \$25 per bushel. You promised to hold that offer open for 14 days. I accept your offer!”

Is the gardener bound to sell the cook all the tomatoes he grows that summer for \$25 per bushel? Explain.

Question Presented

On June 15 a professional cook talked with her neighbor, an amateur gardener with no business experience who grew tomatoes for home use and for relatives. She mentioned branching into salsa and needing large quantities of tomatoes.

← is he a MERCHANT? key to the firm-offer rule

Though he had never sold tomatoes before, the gardener said he would sell her all the tomatoes he grew in his half-acre home garden that summer for \$25 per bushel.

← growing crops = GOODS → UCC Article 2 (common law supplements)

Shortly after, the cook said she was interested and handed the gardener a document to sign.

← the writing is on the OFFEREE's form (matters for § 2-205)

The document stated: I offer to sell all the tomatoes I grow this summer for \$25 per bushel. I will hold this offer open for 14 days. The gardener signed it and handed it back.

← promise to hold open, but was there any consideration for it?

On June 19, a farmers' market proprietor offered \$35 per bushel for all the gardener's tomatoes; the gardener agreed and they contracted.

← gardener sells to someone else (sets up revocation)

On June 24 the cook (no contact since June 15) called. The gardener said he could not sell to her because he had sold them to someone else.

← manifestation of intent not to contract = revocation

The cook replied: You promised to hold the offer open 14 days. I accept your offer!

← acceptance came AFTER the revocation → too late

Is the gardener bound to sell the cook all the tomatoes he grows that summer for \$25 per bushel? Explain.

← → *firm offer? revoked before acceptance?*

Governing Law: Is This a UCC Transaction?

Issue. Whether the tomato transaction is governed by UCC Article 2.

Goods or not? sets the rules.

Rule. UCC Article 2 governs transactions in goods. Goods are things movable at identification and include growing crops. Where the UCC applies, common-law contract principles still supplement it to the extent they are not displaced.

UCC governs goods; growing crops = goods; common law fills gaps.

Analysis. Here, the deal is for **tomatoes, which are growing crops and therefore goods**, so Article 2 governs, supplemented by common law. The document the gardener signed, which the cook was invited to accept, was an offer.

Tomatoes = goods → Article 2. Signed document = an offer.

Conclusion. Therefore, the transaction is governed by UCC Article 2, supplemented by common law, and the signed document was an offer.

UCC Article 2 applies.

Was the Promise to Hold the Offer Open Binding?

Issue. Whether the gardener's promise to hold the offer open for 14 days was binding, so that he could not revoke it.

Is "open 14 days" actually enforceable?

Rule. An offer is normally revocable any time before acceptance. A promise to hold an offer open is binding only if it is supported by consideration (an option contract) or the UCC firm-offer rule applies: a signed written assurance by a *merchant* to hold an offer open is binding without consideration (§ 2-205). A merchant is one who deals in goods of the kind or who by occupation holds himself out as having special knowledge or skill as to the goods. If the assurance term is on a form supplied by the offeree, the offeror must separately sign that term.

Need consideration (option) OR a merchant firm offer (§ 2-205). Offeree's form must be separately signed.

Analysis. Here, the cook gave *no consideration* for the 14-day promise, so no option contract arose. The firm-offer rule does not save it either, because the gardener is **an amateur with no business experience who had never sold tomatoes**, so he is not a merchant. And even if he were, the assurance was on a **form the cook (the offeree) supplied** that the gardener did not separately sign, so § 2-205 still would not bind him. Nothing shows reliance that would

No consideration; gardener is not a merchant. Even if he were, the offeree's form was not separately signed.

make the offer irrevocable.

Conclusion. Therefore, the promise to hold the offer open was not binding, and the offer remained revocable.

Promise not binding → offer stayed revocable.

Was the Offer Revoked Before Acceptance?

Issue. Whether the gardener effectively revoked the offer before the cook accepted it.

Who acted first: revocation or acceptance?

Rule. A revocable offer is terminated when the offeree receives the offeror's manifestation of an intention not to enter the proposed contract, and an offer can no longer be accepted once it has been revoked.

Revocation is effective on receipt of intent not to contract; no acceptance after that.

Analysis. Here, on June 24 the gardener told the cook he could not sell her the tomatoes because he **had already sold them to someone else**, a clear manifestation that he would not contract with her. That revocation reached the cook **before she said "I accept"**, so her power to accept was already terminated and no contract formed.

"Sold to someone else" = revocation, received before "I accept."

Conclusion. Therefore, the gardener revoked before acceptance, so no contract formed and the gardener is not bound to sell the cook the tomatoes for \$25 per bushel.

No contract. Bottom line: the gardener is NOT bound.

Step-by-Step: Firm Offers & Revocation

Classify the deal, test whether the offer was locked open, then check the timing of revocation versus acceptance.

1. Is the contract for goods?

- Yes (tomatoes are growing crops): **UCC Article 2** governs, supplemented by common law. **goods**



2. Was the promise to hold the offer open supported by consideration?

- Yes: option contract; the offer is irrevocable for its term.
- No: check the firm-offer rule. **no consideration here**



3. Firm offer under § 2-205: a merchant's signed written assurance to hold the offer open (and, if on the offeree's form, separately signed)?

- Yes: irrevocable for the stated time (up to 3 months).
- No: the offer is still **REVOCABLE**. **gardener is not a merchant; offeree's form not**

separately signed



4. Was the offer revoked before acceptance (offeree receives the offeror's intent not to contract)?

- Yes: the power to accept is terminated, so **NO CONTRACT**. **June 24 revocation before the cook's "I accept" → gardener not bound**
- No: the offer is still open and can be accepted.