1968

Contracts (1959-1967)

Dudley Warner Woodbridge

William & Mary Law School

Repository Citation

https://scholarship.law.wm.edu/vabarnotes/4
2. In 1957, Myra Haskins became estranged from her husband, Boaz Haskins. She was the owner of a tract of land, and on March 7, 1958, she entered into a written contract with Johnston Beckett, whereby she agreed to sell the tract to Beckett for an agreed consideration. The contract provided that on or before August 31, 1958, Myra Haskins would execute and deliver to Beckett a deed with general warranty, signed by her "and all other necessary parties" and conveying the property in fee simple, and concluded with this paragraph:

"The vendor hereby conveys and agrees that if her husband cannot be found, or if found, refuses to sign the necessary deed, she will institute and conduct at her own expense, such suit or suits as may be necessary to deliver a clear and unencumbered title to the above described property to the purchaser."

Boaz Haskins's whereabouts were unknown at the time the contract was executed and he did not execute it.

In July, 1958, Myra Haskins and Boaz Haskins became reconciled and resumed matrimonial relations, and on August 17, 1958, Myra Haskins wrote to Beckett to the effect that they would not execute the deed.

Beckett consults you as to his right to recover damages against Myra Haskins for breach of contract. How would you advise him?

(CONTRACTS) He has no right to recover damages for the contract was against public policy, since, (reading between the lines), it seems obvious that Myra has agreed to get a divorce from her husband in order to pass a merchantable title. See 193 Va. 162 on p.720(Contracts) of these Notes.

2. Smith was engaged in a suit to set aside as fraudulent a deed made by Brown to White. He received information that White had written a letter to Green admitting that the deed was a mere sham, and in reliance thereon, Smith offered to pay Green $100 for the letter. Green, not knowing the purpose for which the letter was desired, accepted the offer and mailed the letter to Smith. Instead of admitting the fraud, the letter stated that the transaction was legitimate. Smith consults you as to whether he is liable to Green for the $100. What would you advise him?

(CONTRACTS) I would advise Smith that he was liable to Green. Smith got the letter he bargained for. There was a detriment to the promisee, Green, in that he gave up a letter he was legally entitled to keep. It is immaterial that Smith did not get the benefit he expected. See Illustration 2 of #81 Restatement of Contracts.

3. Merchant said to Clerk: "I would like for you work in my store, and if you will do so I will pay you $100 a week starting Monday." Clerk said: "I will take you up and be there Monday." Clerk gave up his existing job and began work for Merchant on Monday, but at the end of a month, Merchant told him he would no longer be needed. May Clerk recover damages from Merchant, assuming Clerk can't secure other employment?

(CONTRACTS) No. This was an employment at will at the rate of $100 a week, or, at most a contract by the week. If it was the latter the employer was not privileged to discharge Clerk without cause in the middle of the week but could do so at the end of any week with or without notice, and Clerk would be equally free to quit at the end of any week. See Illustration 2 of #32, Restatement of Contracts.
Constructors, Inc., is a general contracting firm and on June 8, 1958, it contracted to build a warehouse for Virginia Food Co. Masoneers, Inc., was engaged in stone masonry work, and had submitted its bid to Constructors, Inc., for performing the stone work on the building in the following letter:

"May 17, 1958

Waynesboro, Va.

Constructors, Inc.

Gentlemen:

We will furnish ready cut to set all Indiana limestone required in the erection of the proposed new Virginia Food Co. building at Greenville, Va., as per plans and specifications prepared and submitted by the supervising architect, for the sum of $23,000 F.O.B. shipping point, freight allowed to Staunton, Va.

We will also do all hauling, setting, cleaning and pointing of same for the sum of $10,000.

Yours very truly,

Masoneers, Inc."

Upon receipt of this letter, Constructors, Inc., replied as follows by letter:

"May 23, 1958

Harrisonburg, Va.

Gentlemen:

Regarding your letter of May 17, 1958, we hereby accept your estimate, amounting to $10,000 to perform the following work according to the plans and specifications in connection with the Virginia Food Co. building.

All necessary limestone as per plans and specifications will be furnished by us F.O.B. cars Staunton, Va. and all granite stone to be delivered at the building site, you are to do all the hauling of limestone, and the setting, cleaning, pointing and finishing complete all lime and granite stone work.

As soon as the contract is awarded to us we will enter into contract with you, in a more detailed form, for the prosecution of the work.

Yours truly,

Constructors, Inc."

Masoneers returned a copy of the letter to Constructors, Inc., at the bottom of which was written by Masoneers, Inc.:

"We hereby agree fully to the terms and conditions as set forth above, and accordingly affix our signature.

Masoneers, Inc."

On June 19, 1958, after Constructors, Inc., had been awarded the general contract, Constructors advised Masoneers, Inc., that the job was going to be more costly than Constructors had anticipated, that some costs could be saved by Constructors if the stone work and foundation work were performed by the same sub-contractor, and that unless Masoneers could perform both stone and foundation work, Constructors would be compelled to find another sub-contractor who could.

Did the correspondence between these parties constitute a binding contract between them? (CONTRACTS) The question involved is whether or not the parties have agreed on all the essential terms and meant the writings to be only a memorandum of that agreement. It is a matter of intention. In this case they have agreed. The formal contract mentioned could not change the matters already agreed upon. So held in 154 Va. 203. (Or, start off as above and then argue that both parties intended a more detailed contract, that up to the time of signing such a contract everything is inoperative preliminary negotiation, and that no mention is made of such facts as (a) are only union men to be employed? (b) when is the work to be started and completed? (c) Is there to be a provision about liquidated damages? (d) When is plaintiff to be paid? (e) What type of bond, if any, is to be required?)
4. Miller contracted to sell Wholesaler 1000 bags of Number One Patent Flour to be delivered July 1, 1959, at $3.00 per bag. Due to a mechanical breakdown, Miller was unable to deliver the flour and Wholesaler bought it on the open market for $2.90 per bag. Wholesaler asks you the extent of his rights, if any, against Miller.

What should you advise him?

(CONTRACTS) Since the contract has been broken Wholesaler does have a cause of action but since Wholesaler has not suffered actual damage he can only recover nominal damages. He had best forget it. See Section 328, Restatement of Contracts.

Q.4 on p.481(Sales). Since Wholesaler elected to “cover”, i.e. secure similar good in good faith within a reasonable time, any expenses saved as a result of seller’s breach must be deducted from the damages. Hence he can recover nothing. See U.C.C. #2-712(2). Note: The U.C.C. does not contain any provisions with reference to the recovery of nominal damages only. Perhaps such damages can still be recovered in a proper case under general principles of contract law.

Lilly White Mills, Inc., entered into a contract with the Norfolk Super Market to deliver 1,000 bags of Lillywhite Flour on October 1, 1959. Due to a mechanical breakdown, Lilly White Mills was unable to deliver the flour and the Norfolk Super Market bought it on the open market for $2.90 per bag. Lilly White Mills consults you as to its liability to the Norfolk Super Market.

What would you advise?

(CONTRACTS) I would advise that there was no liability. By hypothesis there is no other method of transportation. The contract was subject to an implied condition to the effect that if the only method of transportation failed to function, then Lilly White Mills would be excused from doing the impossible. See Restatement of Contracts #461.

Clover Drugs, Inc., sent the usual monthly order to the Johnnyup Co. for 250 bottles of vitamin pills. Johnnyup Co. received the order, but being sold up to capacity and unable to fill the order, requested Easter Drug Co., a manufacturer of similar vitamin pills, to fill the order to Clover Drugs. Clover Drugs was not notified of the assignment of the order to Easter. Easter promptly shipped to Clover Drugs the pills of the same quality and at the same price as those usually sent by Johnnyup Co. Clover Drugs refused to accept the pills shipped by Easter Drug Co.

Easter Drug Co. consults you as to its rights against Clover Drugs.

What would you advise?

(CONTRACTS) I would advise that it had no rights. An offer (order) given to Johnnyup is not an offer to Easter. The offeror is entitled to determine with whom he will deal. An offer is personal and, if it is an offer only, cannot be assigned. See Restatement of Contracts #54.
Dec. 29, 1959, Sturm wrote the following letter to the Copus Company:

"Gentlemen:

I have been doing well selling your excellent line of Copus products in my territory. As you know, my present employment ends on Dec. 31st. I hope you will employ me again to handle this area for the year 1960.

With best Christmas wishes, I am

Cordially,

Oscar Sturm"

On Dec. 30th, Irving Copus, the President and Sales Manager of the Copus Co., telephoned Sturm and informed him that he could consider himself employed for the year 1960. However, on Jan. 2, 1960, the Copus Co. notified Sturm that his services no longer would be needed and dismissed him as its salesman. Sturm has brought an action against the Copus Co. for breach of contract. May he recover?

(CONTRACTS) No. The contract made on December 30, 1959 cannot be performed within one year as Dec. 31, 1960 is a year and a day after Dec. 30, 1959. Since there is no writing signed by the party to be charged he has the defense of the statute of frauds. See 87 Va. 491.

Landowner and Developer entered into a written contract bearing date March 1, 1961, by the terms of which Landowner agreed to sell and Developer agreed to purchase a tract of land. The contract provided that the purchase price would be paid and the deed delivered on May 1, 1961. The contract contained the following provision:

"If the tract of land described herein cannot be rezoned for use as a motel, this contract is to be null and void and there shall be no obligation upon the parties hereunder."

Three days prior to May 1, 1961, Developer advised Landowner that he could not procure the rezoning of the area in which the property was located before the closing date, and requested that he be given until May 15, 1961, to enable him to procure a rezoning of the area. Landowner assented to this request and both parties signed an endorsement on the written contract in the following language:

"Developer is given until May 15, 1961, to procure the rezoning of the area in which the property is located."

Notwithstanding the endorsement on the contract, Landowner, having changed his mind, advised Developer on May 2, 1961, that as the purchase price had not been tendered and the deed delivered by May 1, 1961, the contract was no longer binding upon him and that he intended to develop the property for his own purposes. On May 14, 1961, the area was rezoned to permit the construction of motels and, on May 15, 1961, Developer tendered the purchase price and demanded a deed for the property. Landowner refused, whereupon Developer filed suit for specific performance. Landowner defended upon the ground that the extension of the time for the performance of the contract was not supported by consideration and that he was not thereby bound. Is this a valid defense?

(CONTRACTS) No. The consideration that supported the original contract equally supports the contract as modified with the assent of each party. It is the same as if the original contract had provided for May 15th. Or, it can be argued that Owner waived an in substance portion of his rights, and in such a case no consideration is needed for the waiver. See 196 Va. 526 in the Equity Cases of these Notes.
Oliver Orbit entered into an oral contract with Easybuck, Inc., a realty company. By the terms of the agreement, Easybuck, Inc., was to develop, subdivide and sell Orbit's tract of land at its own expense; Easybuck, Inc., was given three years to complete the sale of the land; Easybuck, Inc., was to be reimbursed for its expenses out of the first proceeds received from the sale of lots; after the expenses had been repaid, Orbit was to receive from the sale of the lots $100,000; and all sums received from the sale of the lots in excess of $100,000, plus expenses, was to be divided equally between Orbit and Easybuck, Inc. Within eighteen months from the date of the agreement, Easybuck, Inc., had subdivided the land and sold one-half of the lots, which produced sufficient funds to repay Easybuck, Inc.'s expenses and $100,000 to Orbit. Shortly after receiving payment of $100,000, Orbit advised Easybuck, Inc., that he was terminating the contract. Easybuck, Inc., thereafter sued Orbit to recover damages for breach of contract. Orbit filed a plea of the statute of frauds, setting up (a) that the contract was for the sale of an interest in real estate, and (b) that the contract was not to be performed within one year. How should the Court rule on each ground?

(CONTRACTS) The Court should rule against Orbit in each case. There is no contract for the sale of land between these two parties but only an agency agreement. No title to any realty passed as a result of this agreement. It is only when Easybuck sells or contracts to sell the land as per power given by the agency agreement that the title to realty is affected. Since all the land might be sold within one year and the agency contract fully performed within that one year, the agreement is not within that section of the statute of frauds relating to contracts that cannot be performed within a year.

The management of Clothing Store in Abingdon read in an October, 1961, trade journal that Suiters, Inc., a manufacturer of men's clothing in Bristol, was bringing out on December 1, 1961, a new fabric in men's suits, and by letter Clothing Store ordered from Suiters, Inc., 100 suits to be specially made up in the new fabric, at $50 per suit. Suiters replied promptly, accepting the order and promising shipment on December 1. Early in November, 1961, Clothing Store found out about another new fabric manufactured by a competitor of Suiters and purchased 100 suits from the competitor, advising Suiters by letter to cancel its order. Suiters, by return mail, urged Clothing Store to reconsider its order and insisted that Suiters' fabric was of better quality. Clothing Store made no reply to this letter.

One week later, having heard nothing from Clothing Store, Suiters sold to Dime-store the suits it had made up for Clothing Store, for $40 each, the best price then obtainable.

Clothing Store, finding that the suits it had purchased from the competitor were in fact inferior, tendered to Suiters on December 1, its check for $5,000 and demanded immediate shipment of the suits it had originally ordered. Suiters refused the tender and, instead, instituted an action against Clothing Store for damages. Clothing Store filed its counterclaim against Suiters, also seeking damages.

Which of the parties is entitled to recover against the other? (CONTRACTS) Suiters is entitled to collect. Clothing Store was guilty of an anticipatory repudiation justifying Suiters in changing his position. By the better view Suiters lost no right when he urged Clothing Store to abide by its agreement. At best this was merely a restatement of the original offer which could be withdrawn before acceptance and which was open only for a reasonable time which under the circumstances would have been a very short time. See Restatement Contracts §§ 319 and 320 and illustration 1 after § 320.

Q. 2 on P.5h3 (Contracts) The answer given is consistent with U.C.C. §§ 2-610 and 2-611 on the effects of anticipatory repudiation and retraction of the repudiation.
3. Andrews was a stockholder in ABC Corp., a general contracting firm, which sought a contract with Gunpowder Co. for the construction of Gunpowder's new plant in Covington. Gunpowder, after examining the financial statements of ABC Corp., was concerned about that firm's financial ability to carry out a construction job of the magnitude contemplated. Andrews then entered into a written agreement with Gunpowder Co., to the effect that if the construction contract were awarded to ABC Corp., Andrews would lend ABC Corp. $25,000 for two years. The construction contract was promptly awarded to ABC Corp.

After Andrews loaned ABC Corp. $5,000, it commenced construction, but soon became insolvent. ABC Corp. now informs you that Andrews has refused to lend it the remaining $20,000, and inquires whether, in an action brought by ABC Corp., Andrews may be found obligated to make such loan. How should you advise ABC Corp.?

(CONTRACTS) The primary purpose of Andrews' promise was to protect Gunpowder as the latter had doubts about the ability of ABC Corp. to perform unless it had Andrews' backing. Hence the ABC Corp. is only an incidental beneficiary and cannot recover under the Code § 55-22 since the contract was not made in whole or in part for the purpose of benefiting the ABC Corporation. See 273 F.2d 284.

4. Pargoe owned and operated a hardware store for many years in Radford, Virginia. He was approached in 1956 by a representative of Hoedown Co., a manufacturer of garden rakes, and was requested to become the exclusive sales outlet for Hoedown's rakes in western Virginia. It was orally agreed that Pargoe would sell the rakes according to Hoedown's price list, that title to the rakes remained in Hoedown until it had received payment for them, that Pargoe's orders would be promptly shipped, but that Hoedown reserved the right to ship less than the amount ordered. With this sole understanding, Pargoe ordered 200 rakes, which he promptly sold. Thereafter, he continued for several years to re-order the rakes and to sell them, and they were so popular that they became his principal item of sale. In 1961, Hoedown wrote to Pargoe on his 5th anniversary as distributor of the rakes, thanking Pargoe for his excellent record as distributor of the rakes and expressing the hope that the distributorship would be equally as successful during the next five years.

On the strength of this, Pargoe, without Hoedown's knowledge, purchased for $3,000 a large neon sign which proclaimed that he was the exclusive distributor of the Hoedown rakes in western Virginia.

One week after the sign was mounted on top of Pargoe's store, Hoedown notified Pargoe that it would no longer ship rakes to Pargoe, that it had decided to open its own store in Radford. Pargoe anticipates that the loss of the sales of rakes will cause him a severe financial reversal, and that the special neon sign will be a total loss to him. He seeks your advice as to what claim for damages he may have against Hoedown for its termination of the distributorship. How would you advise him?

(CONTRACTS) He had none. Pargoe was under no duty to buy any rakes nor was Hoedown obliged to sell him any. The alleged contract is void for indefiniteness and for being illusory. The hope that Pargoe would continue to do well in this matter is not an offer and acceptance. There is merely a continuing offer revocable at any time. Hoedown could not reasonably suppose that as a result of its letter, Pargoe would purchase the sign so that the doctrine of promissory estoppel is not applicable.
Winslow Peale, a noted artist, contracted to paint a portrait of Social Climber which "would be satisfactory in every respect to you (Climber) and a work of art of which you will be proud." The agreed price was $3,000. Peale completed the portrait but Climber did not like it and so told Peale, and refused to accept the portrait. Peale sued for the contract price. A number of outstanding portrait painters testified that the portrait was a valuable artistic production and well worth the contract price as an example of portraiture. Climber, in good faith, testified that he had never liked the expression nor the coloring and that he was not satisfied with the portrait and did not want it. There was no evidence contradicting this testimony.

How ought the case to be decided?

(CONTRACTS) The case should be decided for Climber. A condition of personal satisfaction where matters of personal taste are involved is valid provided Climber is acting in good faith. He is the one to be satisfied, and it is immaterial that others think the portrait an excellent one.

3. Jobber on Monday wrote Merchant, "I offer you for prompt acceptance one hundred gross canned beans at eight cents per can. I also offer you ten gross canned pears at twelve cents per can." Merchant knew he wanted the beans, but wished to check his inventory before deciding about the pears; hence, he immediately telegraphed Jobber:

"Accept offer on beans letter follows on pears." Merchant checked his inventory and found that he did want the pears, so wrote Jobber accepting that offer. This letter was posted at 4:00 p.m. the same Tuesday. At 5:00 p.m. that day and before the receipt of Merchant's telegram, Jobber posted a letter to Merchant reading: "Offer to sell beans and pears withdrawn." The price of each commodity having advanced substantially, Merchant consulted you as to his right, if any, to recover damages against Jobber because of his refusal to deliver (a) the beans, and (b) the pears.

How ought you to advise him?

(CONTRACTS) I would advise that there was clearly a contract for the pears as of the moment of the posting of the letter of acceptance. Since this letter was posted before the letter of revocation was received, Jobber's offer was still open.

As to the beans I suggest one of the following answers:

(a) Assuming that the telegram of acceptance reached Jobber before the letter of revocation reached Merchant, there would be a valid contract, because, if one uses an unauthorized method of communication it is not effective until received, and the letter of revocation was also not effective until it was received.

(b) Assuming that the telegram of acceptance reached Jobber after the letter of revocation was received, there is no contract because the offer was withdrawn before acceptance.

(c) Assuming there was a custom or course of dealing for offerees to accept offers by mail either by letter or telegram, there would be a contract for the beans when the telegram was sent.

Q. 3 on p. 558 (Contracts--Sales) Alternative answer (c) finds support in the language of U.C.G. $2-206 (1) (a) which is as follows: "Unless otherwise unambiguously indicated by the language or circumstances an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances."

Robert Witherspoon conveyed Blackacre to his son, William, and required in the deed of conveyance the payment by William of $10,000 in monthly installments of $200 each to Robert's sister Mary, with the provision that should Mary die without living issue, before all of the installments had been paid, then such further installments were not to be paid. A lien in Mary's favor was reserved to secure the payment of this $10,000. After paying Mary $5,000 by regular monthly installments, William desired to sell the land and agreed with Mary to give her his executed bond, reading as follows: D 6 2

"Thirty (30) days after date, I promise to pay Mary Witherspoon $5,000."

Mary accepted the bond and in return executed a release of the lien on the land. Mary died without issue a month after accepting this bond and her Administrator commenced an action against William Witherspoon for the full amount of the bond.

How much, if anything, ought the Administrator to recover?

(CONTRACTS) The Administrator should recover the whole $5,000. There has been a mutually agreed to modification of rights. Each did or promised to do something he or she was not legally bound to do. The new contract took the place of the prior arrangements and constitutes a novation. See 111 Va. 240.
In payment for a boat, Dexter executed two non-negotiable promissory notes due in 60 and 90 days, respectively, payable "to Ezra Stuart," each in the amount of $1,000 at no interest. Upon receiving delivery of the boat from Stuart, Dexter gave these notes to Stuart.

(1) By a separate writing, containing an adequate description of the first note, Stuart assigned it to Baker, retained the note and handed the assignment to Baker. For this assignment Baker paid Stuart $900.

(2) On the second note Stuart wrote "pay to Carter," signed the note and handed it to Carter. For this assignment Carter paid Stuart $750. No one advised Dexter of this assignment. Before the note was due, Dexter paid Stuart $500 to be applied on this note. Stuart retained this money and did not tell Carter.

Only Baker notified Dexter of the assignment which he received. As the notes became due, Baker and Carter each brought an action against Dexter on the note he held. Each claimed $1,000.

To what extent, if any, should each recover?

(CONTRACTS) Baker can recover $1,000. He was an assignee for value of the first note. It was not necessary for Stuart to actually turn over the assigned non-negotiable note to Baker at least as between the parties. It is immaterial that Baker only paid $900 for the note as the sales price is a matter for Baker and Stuart to determine. There was no intention on their part to make a gift of $100 to Dexter. As to Carter, he can recover only $500 from Dexter. Unless notified to the contrary (in the case of non-negotiable instruments) Dexter can assume that Stuart is still the obligee and a payment to Stuart is valid. Of course Stuart is accountable to Carter for the sum wrongfully kept by him. See 94 Va.370 and Vc.11-6.

On June 16, 1958, Charles Edison employed James Morse to demonstrate and sell in the City of Petersburg a nationally advertised "Brightlite" line of electrical equipment of which he was the distributor. Morse soon developed an unusual talent for this work and he and Edison entered into a written contract of employment for five years, with the provision that if the employment was terminated for any cause, Morse would not, for a period of two years thereafter, engage in the electrical equipment business within a radius of five miles of Edison's store. Faraday, another employee of Edison's, in May, 1962, persuaded Morse, with full knowledge of the provisions of Morse's contract, to quit work for Edison and go in partnership with him in establishing their own electrical equipment business for the purpose of selling another nationally advertised line known as "Sunshine." The new business, which was also conducted in the City of Petersburg, has proven highly successful and, due to the solicitation of Faraday, has taken away many of Edison's old customers because of their liking for Morse.

Edison consults you as to whether he has a good cause of action for damages against either Morse or Faraday, telling you that he can't show exactly how much business he has lost, but that he can prove that he has lost at least six profitable customers. How ought you to advise him?

(CONTRACTS) Yes, Edison has a good cause of action against both—against Morse for breach of contract—against Faraday for wrongfully inducing Morse to break his contract—and against them both for civil conspiracy. The restrictions were reasonable ones reasonably necessary for the protection of Edison. It is enough for Edison to prove that he has suffered some actual damages. He should not be deprived of his rights because he cannot prove to the dollar the exact amount of his damage. See 198 Va.533 on p.10 of the June 1957 Tort Supplement Cases of these Notes.
2. Susie Adams and Tommy Ball were engaged to be married. Both Mr. Call, an old friend of the Adams family, and Mr. Dent, an old friend of the Ball family, were delighted with the engagement, but felt that as Tommy Ball would be required to continue his schooling for the next few years some funds should be paid to assist in their support. Accordingly, on the day of the marriage, and to the delight of Susie and Tommy, Mr. Call and Mr. Dent entered into a written contract by the terms of which Mr. Dent agreed to pay Tommy the sum of $1500 during each of the succeeding four years, and Mr. Call agreed to make similar payments to Susie. On the next day, and before any payment had been made, Mr. Call and Mr. Dent altered their views and decided they should not contribute to the support of Susie and Tommy for fear it might prevent their acquiring a feeling of self-reliance. Thereupon Mr. Call and Mr. Dent wrote at the foot of the contract:

(s) Charles C. Call
(s) Dan D. Dent"

Susie and Tommy have just learned of this endorsement to rescind, and Tommy asks you whether he may sue Mr. Dent for breach of contract, and whether Susie may sue Mr. Call for breach of contract.

How should you answer each of these questions?

(CONTRACTS) These actions will lie. Susie and Tommy were donee beneficiaries of a contract made for their benefit and are regarded as the owners of vested rights since Call and Dent did not reserve a right to revoke. Under Va. 155-22 the beneficiaries may sue in their own names. See also Restatement of Contracts #142 and Illustration 2.

3. On May 1, 1963 Irvin Dodd of the City of Petersburg wrote and mailed the following letter to Paul Pate, a bachelor of the same city:

"Dear Paul:

"You will recall our conversation of last Tuesday evening in which we discussed my buying your residence at 1001 E. Sycamore Street. I have decided to make the purchase and so I offer you $25,000 for the house and lot, conveyance and settlement to be made within thirty days.

"Unless I hear otherwise from you on or before May 15th, I shall definitely consider the deal closed and the house and lot mine.

Sincerely,

(s) Irvin Dodd"

On May 20th Pate telephoned Dodd and stated he accepted Dodd's offer. Dodd replied he had on May 17th decided to withdraw the offer and had agreed to buy property adjoining that of Pate. On June 15th Pate brought a suit for specific performance against Dodd in the Circuit Court of the City of Petersburg.

Dodd now consults you, recites the foregoing facts, and inquires whether he may effectively plead the Statute of Frauds in defense to the suit. What should you advise him?

(CONTRACTS) Confining the answer to the question asked Dodd cannot effectively plead the Statute of Frauds for he has signed a memorandum of the contract. The Statute of Frauds is for the protection of those who have not signed and not for those who have. See 187 Va. 101.
Jack Rousseau was a misanthropic old man who lived alone and liked it. Advancing age made it increasingly difficult for him to care for himself and his small farm on which he lived. He decided that it was necessary for him to obtain someone to live in his home and care for him so he journeyed to the big city and visited a Salvation Army kitchen. There he induced one of the workers Christine Pale, to leave her home in the city and her job with the Salvation Army and go to Rousseau's farm to live. He told her that, if she would live in his home and take care of him for the remainder of his life, he would leave a will devising his farm to her. Christine accepted Rousseau's proposal and went to live in his home. For several years she cooked for him, nursed him, and did the general housework. Upon Rousseau's death Christine was startled to learn that, while Rousseau left a will and bequeathed to her only $10, he devised his farm to a nephew whom he had not seen for fifteen years. Christine consults you and asks your advice respecting her rights, if any, against the nephew and against the estate of Rousseau.

What remedies, if any, are available to Christine?

(CONTRACTS) (EQUITY) Christine has two possible remedies. She may sue at law on a quantum meruit theory to prevent Rousseau's estate from being unjustly enriched at her expense; or in this case she may successfully proceed in equity to have Nephew declared a constructive trustee of the land. That portion of the statute of frauds with respect to contracts not performable within a year had no application as Rousseau might have died within a year. And an oral contract to devise or convey land is taken out of the statute of frauds in equity where the terms of the contract are certain, complainant's acts were the result of the contract, and complainant has made such a change of position that failure to enforce the contract would work a fraud on him. 168 Va.668.

3. On October 1, 1963, William Trapper called Simon Hidebound on the telephone and offered to sell him 20 bundles of hides for the sum of $8,000. Hidebound stated that he would inspect the hides the next day. While Hidebound was inspecting the hides on the next day, Trapper told him he would give him 5 days from that day within which to advise him whether he would accept his offer to sell the hides for the sum stated. Upon completing his inspection Hidebound stated that he would be in touch with Trapper within the 5 day period and let him know whether he would take the hides. Four days later Hidebound went to the place of business of John Leatherstrap, saw the same 20 bundles of hides that were earlier exhibited to him by Trapper, and upon inquiring he was advised that Trapper had sold the hides to Leatherstrap the day previous. Upon leaving Leatherstrap's place of business, and on the same day, Hidebound tendered a certified check, payable to the order of Trapper, in the amount of $8,000, and told Trapper that he was accepting his offer to sell him the hides for that sum. Trapper refused to accept the check, advising that he had the day before sold the hides to Leatherstrap. If the hides had been sold and delivered to Hidebound he would have made a substantial profit on a resale. Hidebound sued Trapper to recover damages for breach of contract. May he recover?

(CONTRACTS) No. An offer without consideration may be withdrawn before acceptance even if it was agreed that the offeree was to have a stated time in which to accept it, if he so desired. After Hidebound learned from any reliable source that Trapper no longer owned these hides, he knew that Trapper no longer wishes to sell to him and hence that the offer had been revoked. He cannot accept an offer after it has, to his knowledge, been revoked. Restatement Contracts §42.
2. Gormand was the owner of a thriving restaurant business located on premises for which he had a three-year assignable lease, but because of his age, he had decided he should sell the business. He entered into a listing agreement dated June 1, 1963, with Russell, a real estate agent, whereby Russell had an exclusive listing for forty-five days for the sale of the business which included the name, goodwill, equipment, lease interest, etc., for $20,000 cash with the commission to Russell of 7% of the sale price. Russell contacted a number of people and finally obtained a written offer from Vintner, dated July 1, 1963, to buy the business for $5,000 cash and balance in monthly payments secured by chattel mortgage, the offer to be binding on Vintner only if he could obtain an A. B. C. license and a five-year lease on the premises, both of which had been applied for. This offer was rejected by Gormand as "not being for $20,000, all cash." Thereafter on July 7, 1963, another written offer of Vintner's was submitted for $18,000, all cash, and subject to obtaining A. B. C. license and five-year lease. This was also rejected by Gormand as "not being for $20,000, all cash." On July 12, 1963, a third written offer of Vintner's was submitted stating that he would buy the business for $20,000 cash subject only to obtaining A. B. C. license and five-year lease, and that he hoped to have the license and lease within a very short while. Gormand made no answer to this, and when contacted, declined to sign a contract of sale but would not give any reason for doing so.

On July 30, 1963, Russell learned much to his distress that Gormand had sold the business on July 29 to Boyardee, a stranger to Russell, for $25,000. Russell sued Gormand for his commission, claiming that he had produced a buyer pursuant to the listing agreement, that Gormand had never raised any objection to the provision as to obtaining an A. B. C. license or lease when rejecting the two offers prior to the last one, that he would give no reason for not accepting the final $20,000 cash offer, but that the implication was clear that the reason for refusal was that he had a prospective buyer at a higher price. Gormand testified at the trial that in his mind he did not want to tie up his business awaiting Vintner's obtaining the license or lease, but admitted he had not stated this in regard to the first two offers and did not give this or any other reason for rejecting the final offer.

Is Russell entitled to recover in his action for a commission against Gormand? (CONTRACTS) No. Russell did not find a purchaser on the terms Gormand specified. Nor was Gormand under any duty to give a reason for refusing to do what he was under no duty to do. The conditions of an A B C license and a five year lease (which the would be purchaser added)amounted to a counter-offer which Gormand was free to reject. See 202 Va.575.

3. Sam Suburban wanted to leave the teeming city and buy a home in the suburbs. He found a wooded area that was being developed into homesites and was shown various sites by Stu Sellem, the agent of the owner-developer Tanglewood, Inc. Sellem advised that an existing lake owned by Tangle Lake, Inc., an entirely separate corporation, on which some of the sites fronted, was to be cleaned out and lowered and sand beaches installed and that obviously these sites would be more desirable than the non-waterfront sites and therefore would cost more. Sam Suburban had always wanted to live on the water so he executed a written contract with Tanglewood, Inc., for the purchase of water front lot number 52, and for the construction thereon of the dream house model home. The contract and deed pursuant thereto also provided that the "... lot 52 is to be completely sodded and with a forty foot sand
beach installed by Tanglewood, Inc., it being further understood that the lake is to be cleared out by Tangle Lake, Inc., up to lot 52 and the forty foot sand beach is not to be installed until the lake is cleaned out and lowered by Tangle Lake, Inc."

Suburban moved in upon completion of the house but before the lake and beach work had been done. After a year's time and after many protests, this work was still not done. Tanglewood, Inc., then advised Suburban that Tangle Lake, Inc., had given Tanglewood, Inc., every reason to believe that it would clean out and lower the lake, but to the surprise of Tanglewood, Inc., there was not an enforceable contract for this and Tangle Lake, Inc., had now refused to do this work. Therefore, Tanglewood, Inc., advised that it could not and was not obligated to install the beach because the lake had not been lowered as contemplated by all parties to the contract and deed.

Suburban brought an action against Tanglewood, Inc., for damages as represented by the difference in value of his homesite with and without the clean lake and beach, but Tanglewood, Inc., contended that Suburban was not entitled to any recovery because he did in fact have a water front lot and by his contract knew that the lake and beach work depended upon Tangle Lake, Inc., doing certain work first.

Is Tanglewood, Inc., liable to Sam Suburban?
(CONTRACTS) Yes. Defendant promised that Tangle Lake, Inc. would do certain things. Defendant ran the risk of non-performance. Suburban paid defendant more for the lot in reliance upon the promise and is entitled to recover damages from defendant because of the resulting partial failure of consideration. See 201 Va. 405.

3. Retailer, of Roanoke, Virginia, owed Wholesaler, of Richmond, Virginia, $5,000 that was past due. When Wholesaler demanded payment, Retailer wrote him: "I can't pay this now and I doubt that I can ever pay it because I am practically broke, but if you will take $2,500 and cancel the debt, I will try to get it for you." Wholesaler, upon inquiry, found that Retailer's finances were in such bad condition that he might lose the whole debt so he wrote Retailer: "I accept your proposition, send me $2,500 and I will call the account square." Retailer paid the $2,500 but received no receipt or acknowledgment of it. About a year later, Retailer's affairs took quite a turn for the better and Wholesaler asks your advice as to whether he can now collect the balance of the debt. How ought you to advise him?
(CONTRACTS) He cannot collect the debt. Will-12 changes the common law rule that part performance of a past due liquidated claim can not be consideration for its discharge. This section reads, "Part performance of an obligation, promise or undertaking, either before or after a breach thereof, when expressly accepted by the creditor in satisfaction and rendered in pursuance of an agreement for that purpose, though without any new consideration shall extinguish such obligation, promise or undertaking." The transaction was complete when the creditor accepted the part payment as full payment pursuant to agreement, and no receipt or additional notice was needed.

Note: The same result can be reached by resort to U.C.C.2-209(1) which reads, "An agreement modifying a contract within this Article needs no consideration to be binding."

7. Wholesaler wrote Dealer: "I offer you a carload of #1 potatoes at $3.00 per cwt., f.o.b. Richmond." Dealer wrote: "Accept offer only if price is for potatoes f.o.b. Roanoke."

Wholesaler made no reply and Dealer several days later wrote: "I accept your offer of potatoes at $3.00 per cwt., f.o.b. Richmond."

Potatoes having advanced in price Dealer seeks your advice as to his rights, if any, against Wholesaler. How ought you to advise?
(CONTRACTS) Dealers conditional acceptance amounted to a counter offer which terminated Dealer's prior power to accept the original offer. Hence I would advise Dealer he had no rights against Wholesaler.

Note: U.C.C.2-207 does not change the result in this case since Dealer's acceptance was expressly made conditional on assent to different terms.
2. Blanton recovered and docketed a judgment against Carmen for $2,000. At that time Carmen owned a lot worth $1,000 and no other property. A few months later Carmen sold this lot to Delman for $900 cash. Blanton wrote Delman that he intended to subject the lot to the payment of his judgment; Delman wrote in reply: "If you will wait twelve months to do this, I will pay the judgment." Blanton agreed to delay proceedings for this period and at its expiration demanded payment from Delman, who refused to pay. Blanton has now brought an action against Delman on his promise to pay the amount of the judgment. May he recover? (CONTRACTS) Yes. Note 15 in 4 M.J., Contracts #36 reads in part, "Refraiming from instituting proceedings to subject land to the payment of a judgment which is a lien thereon on a written promise by the owner of the land to pay the judgment constitutes a valuable consideration for the promise to pay the judgment, although the land owner was not previously liable for the judgment. Bradshaw v. Bratton 96 Va. 577, 32 S.E. 56." Since letters are ordinarily signed I would assume that Delman had signed the letter and hence that the Statute of Frauds has been satisfied. But even if he had not signed the letter his main purpose in making the promise was not to help the principal debtor but to secure a property right for himself and hence Delman's promise was not within the Statute.

8. On January 1, 1963, Weaver contracted with Bennett to sell to Bennett 800 bolts of canvas of a specified quality and grade for a price of $1,000 with delivery by January 20. On January 5, Weaver furnished a sample of the material to Bennett and advised that he could ship the 800 bolts within five days. On January 7, Weaver received a letter from Bennett advising that the sample did not conform to the specifications and was unacceptable and Weaver should consider the order cancelled. On January 12, Weaver received a letter from Bennett advising that he, Bennett, was mistaken and that the sample was acceptable, so Weaver should ship the canvas immediately.

After receipt of this letter, Weaver was persuaded by Badran to sell to Badran his entire stock of this canvas, and this was done on January 14. Weaver then advised Bennett that the canvas could not be delivered since Bennett had cancelled the order. Bennett obtained canvas from another source at an additional cost of $1,000 and, thereafter, brought an action against Weaver for $1,000 damages.

Is Weaver liable to Bennett? (CONTRACTS) Yes, Weaver is liable to Bennett. Bennett's conduct amounted to an anticipatory repudiation. But he retracted this repudiation before Weaver had changed his position. The law allows such a retraction which retraction under the circumstances of this case reinstated the Contract.

Note: Same result under U.C.C.2-611(1) which reads, "Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final."

2. Under an oral contract Plaintiff agreed to furnish Defendant cuttings and grafts from Plaintiff's prized camellia bush to enable Defendant to grow and market plants therefrom. In return Defendant agreed to pay Plaintiff a specified commission on each of such plants sold by Defendant. Defendant obtained from the Plaintiff cuttings and grafts during the year in which the contract was made and additional ones during the next two years. During the third year Defendant, who had paid nothing, although he had sold plants from those cuttings and grafts, was requested to pay Plaintiff the commission agreed upon and refused to do so.

In Plaintiff's action against him, Defendant denied liability on the ground that as the contract sued on was not to be performed within one year, it was not enforceable. How should the court rule on this defense? (CONTRACTS) The defense is invalid for two reasons: (a) The contract, when made, might possibly have been fully performed in one year, and hence is not within the Statute of Frauds; (b) Since plaintiff has already performed, defendants promise to pay for what has already been performed is not within the Statute. See 193 Va. 891.
3. Defendant, without any consideration therefor, gave Plaintiff a 30-day written option, not under seal, to purchase Blackacre, the former ancestral home of Plaintiff's grandfather, for $75,000. Twenty-five days later Plaintiff wrote Defendant that he was exercising the option to take Blackacre, tendered him the $75,000 and requested Defendant to execute and deliver a deed to him. Defendant has refused to convey the property, although he still owns it. Is Defendant obligated to convey the property?

(CONTRACTS) Yes. While defendant could have withdrawn his offer at any time before acceptance (because of lack of consideration or seal) the offer created a power in Plaintiff to accept at any time before its termination. Of course the offer cannot be withdrawn after a binding contract has been consummated by an acceptance. See Restatement of Contracts #34.

3. Herbert W. Buck and John S. Cox signed a contract by the terms of which Buck agreed to sell to Cox for $55,000 Buck's farm situated in Halifax County. Shortly after the contract was made, Buck learned that Cox was not the person to whom he had intended to sell his farm, but that he had meant to sell to another having the same name. Buck promptly brought a suit for rescission in the Circuit Court of Halifax County. Buck's bill, which was duly sworn to, alleged that the defendant John S. Cox with whom the agreement was made was a resident of Martinsville, was of poor credit, and was reputed to be of doubtful integrity, that he (Buck) had been led to believe on the advice of his uncle, Robert Buck, that the John S. Cox with whom he was dealing was a wealthy resident of Danville and of excellent reputation; that he had learned his uncle's statement describing the John S. Cox of Danville to be true; that he would never have contracted to sell his farm to the defendant had he known of his poor credit and bad reputation; and that performance of the agreement with the defendant would subject him to a financial risk neither contemplated nor intended at the time the agreement was signed. The defendant demurred to the bill. How should the court rule on the demurrer?

(CONTRACTS—EQUITY) The demurrer should be sustained. Defendant Cox has done nothing to mislead Buck. The mistake is on the part of Buck only and Cox is not responsible for the unilateral mistake. Cox's reasonable expectations should not be disappointed because of a mistake of a third party. Besides Buck dealt face to face with Cox and intended to deal with the Cox he so dealt with.

4. On Nov. 30, 1965, Jacob Barr was a guest in the home of Stuart Cole. Toward the end of an enjoyable evening, Cole showed Barr his collection of old firearms, and Barr became much impressed with a musket which was in excellent condition, and which had been used by a member of the Continental Army during the Battle of Yorktown. Barr asked Cole if he was willing to sell him the musket, and Cole replied, "I am, but my offering price is $450." Barr then asked Cole whether he could be given some time to decide whether to make the purchase, and Cole replied that Barr could have until Dec. 7th to accept the proposal. On Dec. 6th, Barr telephoned Cole and said, "After thinking it over, I accept your offer and will pay the price and pick up the musket this evening." To Barr's surprise, Cole replied, "I am sorry, but I sold the musket to Herb Smith last Saturday." Barr, having found Cole's statement to be correct, now inquires of you whether he has a cause of action against Cole for breach of contract. What should your advice be?

(CONTRACTS) I would advise that Barr had a cause of action for breach of contract. While Cole could have withdrawn his offer at any time before acceptance since he received no consideration for his promise to keep the offer open, the withdrawal is not effective until Barr is notified either by Cole, or Barr learns from an apparently reliable source that Cole no longer intends to keep the offer open. Until that time Barr has a power to accept. In our case Barr accepted before he learned that Cole no longer wished to sell to him.
1. By a written contract bearing date January 3, 1966, and signed by both parties, William Burke agreed to sell to John Hamilton ten acres of land, strategically located for development purposes. This contract included, upon the insistence of Hamilton, this provision:

"If this land cannot be rezoned by March 1, 1966, for us as a motel, this contract is null and void."

On February 27th, it became apparent to both parties that rezoning could not be effected by March 1st, and each party signed an addendum to the contract containing the following language:

"It is agreed that the period of time for effecting rezoning of the property is extended to May 1, 1966."

On April 29th, the property had not been rezoned and it then became apparent that a rezoning as contemplated by the parties could not be accomplished. On April 30th, Burke received a letter from Hamilton stating:

"If the property cannot be rezoned, I have nevertheless decided to purchase the property and I herewith send you my certified check for the purchase price and request that a deed be delivered."

Burke promptly returned the check to Hamilton and advised that he would not convey the property to him. Hamilton commenced a suit against Burke seeking specific performance of the contract. Burke filed an answer by which he raised the following defenses:

1. The extension of time for the performance of the contract was invalid in that it was not supported by a consideration; and
2. The contract lacked mutuality of remedy and could not be enforced specifically.

How should the Court rule with respect to these defenses?

(CONTRACTS--Specific Performance) Part 1. There was actual consideration on the part of both parties for the extension of time and in any event the original consideration would carry over and be sufficient.

Part 2. The provision as to rezoning was included "upon the insistence of Hamilton"--was solely for the benefit of the vendee and could be waived by him. Specific performance should be granted. Major, 196 Va. 526 at p. 530.

2. Beau Stirrup, an emancipated infant of twenty years, had been earning his living at various race tracks as an exercise boy. He was anxious to own his own race horse and, believing that two-year old "Fast Pace" would prove to be a great money winner, he offered to buy the horse from his owner, Jock Bookmaker, for the sum of $3,000. Before Bookmaker would sell the horse he inquired of Stirrup his true age. Stirrup assured him that he was twenty-two years of age, stating that he had been making his living by exercising horses since he became twenty-one. Believing that Stirrup had correctly represented his age, Bookmaker sold and delivered the horse to Stirrup and received in payment $3,000 in cash. Ten days after purchasing the horse Stirrup concluded that he had made a bad purchase and insisted that Bookmaker take the horse back and pay him the $3,000. Bookmaker refused the demand made by Stirrup. Stirrup consults you and inquires whether he may compel Bookmaker to take the horse back and pay him the amount of the purchase price. What would you advise?

(PERSONS) The infant cannot rescind because the contract was executed and the infant would therefore have to go into a court of equity in which the court would not lend its aid for an inequitable purpose. The infant is estopped by his misrepresentation. Stallard, 131 Va. 316.
2. Shultz, a salaried employee of Gadget Company, invented on his own time a secret process for manufacturing widgets at a considerably reduced cost. Shultz and Gadget Company entered into a written agreement by which Shultz agreed to give Gadget Company exclusive use of his invention for twenty-five years and not to make the same public during this period of time and Gadget Company agreed to pay Shultz royalties semi-annually on all net profits from sales. The agreement also provided that if there should be a breach by either party, then the other party should give notice of the breach and the party in error should have thirty days in which to comply, and, if there was failure of compliance, the contract could be cancelled by written notice by the aggrieved party. Shultz continued to work for Gadget Company at his salaried job which had nothing to do with the production of widgets.

For three years, widgets were manufactured and sold, but no accounting was given or royalties paid to Shultz, though he repeatedly requested payment. At the end of three years, Shultz, without advising Gadget Company, published an article in a trade journal disclosing the secret process for manufacturing widgets, and Gadget Company thereafter gave notice that the agreement was terminated.

Shultz brought an action seeking damages in the amount of all profits for the three-year period. Gadget Company filed a counterclaim seeking damages because the disclosure of the secret process allowed its competitors to encroach on its sales market of widgets.

Assuming that Shultz could prove there were no profits realized from the sale of widgets and that Gadget Company could prove that it sustained damages as a result of the disclosure, what are the rights, if any, of each party?

Both parties may recover. The rule that a party has no right of action for a breach of contract where he himself has first broken it does not apply where the breach goes only to a minor portion of the contract. Shultz has a cause of action for his royalties and Gadget Company will have a cause of action for breach of contract and damages, each of which can be liquidated and separated from the other. (177 Va 362)
3. Quigg purchased a lot in the City of Lynchburg, Virginia, from Peters and contracted with Roston to construct a house thereon. Stevens supplied certain materials for the house to Roston before completion of the house, and Roston abandoned the job and left the State. Immediately after Roston left, Stevens approached Quigg and demanded that he pay or execute a note for $540, the amount remaining due on the material furnished, or he, Stevens, would file a mechanic's lien on the property. Although Quigg showed that he had made full payment to Roston, Stevens was adamant in his demand, and Quigg agreed to make payment to Stevens if he would not file a mechanic's lien and he executed a non-negotiable note to Stevens for $540. On the same day, Owens confronted Quigg with the fact that he, Owens, had obtained and docketed a judgment for $450, against Peters shortly before Quigg purchased the property from Peters and demanded that Quigg pay or execute a note for this amount or Owens would subject the property to enforcement of the lien. Quigg agreed to make payment if Owens would not attempt to enforce the judgment lien and executed a non-negotiable note for the $450.

Thereafter, Quigg had a change of heart and refused to pay the note; whereupon, he was sued separately by Stevens and Owens.

What defense, if any, does Quigg have to each of the two actions?

Quigg has a defense of lack of consideration. A materialman can hold owner only to the extent of the amount still owed to the general contractor at the time he receives notice of a mechanic's lien. (132 Va. 831). Stevens abstaining from filing a mechanic's lien which he had no legal right to assert, and which he could not reasonably believe gave him a right would not serve a consideration. Quigg has no defense against Owens. The law is well settled that forbearance, or the promise of same, to prosecute a well-founded or doubtful claim is a sufficient consideration for a contract. Owens' forbearance to enforce the judgment lien would be sufficient consideration to support Quigg's promise to pay the $450. (199 Va. 234)

2nd June 1967.

1. Jason had just completed a storebuilding in Roanoke when he was approached by Klein to lease it to him. The parties discussed possible terms of the lease such as the rental and how it should be paid, the duration of the lease, liability for repairs and utilities, and finally Klein said: "We can agree on all those matters later on and have our lawyers put them in the written lease." Jason said: "All right," and thereupon wrote the following, which was signed by both parties: "We agree that Jason will lease to Klein his new storebuilding upon terms to be agreed upon and set out in a written lease. Witness our hands and seals."

Before anything further was done, Klein was offered a more desirable building at a lower rental and wrote Jason that he would not proceed with the proposed rental of his building. Has Jason any cause of action against Klein?

(CONTRACTS) No. To be enforceable, a contract to enter into a future contract must specify all its material and essential terms and leave none to be agreed upon as the result of future negotiations. Where such a contract omits essential terms, there can be no implication of the terms to which the parties will finally agree. If any essential term is left open for future consideration, there is no binding contract, and an agreement to reach an agreement imposes no obligation on the parties thereto.

2. A, B, C, and D, owning a majority of the common stock of the Venue Corporation and desiring to control its activities, executed the following document: "In consideration that each of us shall constitute Z as Trustee to vote our stock in the Venus Corporation, we do hereby irrevocably constitute the said Z as our trustee for four years to vote our said stock."

A became dissatisfied and sought by appropriate proceedings to envoke Z's authority to vote his stock. Over the objection of B, C and D, should he be successful?

(CONTRACTS) He should not be successful. The promise of each of the parties was consideration for the promise of the other. There was thus an enforcable contract among the parties.
2. John Smith deposited with Richard Jones $1,000 as security for Smith's performance of a contract. Finding himself in desperate need for funds because of certain personal obligations, Smith assigned to Arthur Able for cash his right to the refund of the deposit. Still needing funds, Smith thereafter also assigned the right to a refund to Bob Baker. Bob Baker took the assignment for value in good faith without any knowledge of the prior assignment, and immediately gave notice of the assignment to Richard Jones. Subsequently, Arthur Able also gave notice to Richard Jones of the assignment to him. Upon John Smith's performance of the contract, Richard Jones is uncertain as to whom he should pay the deposit and comes to you for advice.

How should you advise him?

(CONTRACTS: Assignment) The deposit should be paid to Able. He who is first in point of time is first in right, and hence mere priority of notice to the obligor of the assignment does not give priority of right to a later assignee over an earlier assignee of the same chose in action. 195 Va. 85. or (alternative answer equally acceptable) Jones could absolve himself of any liability simply by filing a plea of interpleader.

In the summer of 1966, Buyer and Seller signed a paper not under seal by which Seller agreed to manufacture and to sell to Buyer 400 tons of flour at a specified price, and Buyer agreed to purchase the 400 tons and such other flour as he might require during the spring of 1967, but Seller was given the right to cancel the arrangement at any time. Buyer did not communicate further with Seller. Seller manufactured and bagged 400 tons of flour in April, 1967, and notified Buyer that the flour was ready for shipment. Since, however, Buyer had not submitted an order to Seller, the former refused to accept delivery. Seller brought an action in the summer of 1967 in the Circuit Court of Frederick County, Va., against Buyer for damages, and in his motion for judgment alleged the foregoing facts. Buyer demurred to the motion for judgment on the ground that the parties had never entered into a valid contract. How should the Court rule on the demurrer?

(CONTRACTS) The demurrer should be sustained. An unsealed contract for the sale of goods to be delivered in the future, signed by the proposed seller and buyer, but which contain a reservation on the part of the seller of the right to cancel at any time, is void for want of mutuality. Both parties must be bound or neither is. The subsequent offer of the vendor to deliver the goods which he had never bound himself to sell cannot impose a liability on the vendee. 105 Va. 881; 103 Va. 171.

Henry Jones owned Blackacre. He and his wife, Mary Jones, conveyed it in fee simple to Hiram Smith for $50,000 cash. By the deed the Grantors covenanted that the Grantee (1) should have quiet possession of the land (2) free from all encumbrances. Two months after he had recorded his deed, Smith discovered that William Black had secured a judgment the year before against Henry Jones and Mary Jones for $10,000, that the judgment had been duly docketed in the Clerk's Office of the Circuit Court of Buchanan County, Virginia (the county in which Blackacre was located) two months before his purchase of Blackacre, and that the lien thereof had not been released. Although Black has taken no action to enforce the judgment, Smith consults you as to his rights against (a) Henry Jones and (b) Mary Jones for breach of each of the foregoing covenants, telling you that he fears if he waits too long, the Joneses may become insolvent. How ought you to advise him?

(PROPERTY, CONTRACTS, COVENANTS) (a) Smith has no present right of action on the covenant that he should have quiet possession of the land. There is, however, a present right of action on the covenant that Blackacre is free from all encumbrances. (b) Smith has no rights whatsoever against the wife. If a writing jointly signed by a husband and his wife is a deed conveying the husband's land, no covenant or warranty therein on behalf of the wife operates to bind her any further than to convey her interests in the land, unless it is expressly stated that she enter into such covenant or warranty for the purpose of binding herself personally.

(55-41; 55-52; Manual for Title Examiners p. 102)