

For several weeks, a wealthy, unemployed widow and a car salesman negotiated unsuccessfully over the purchase price of a new luxury sedan, which, as the car salesman knew, the widow wanted her son to have as a wedding gift. On April 27, the salesman sent the widow a signed, dated memo saying, "If we can arrive at the same price within the next week, do we have a deal?" The widow wrote "Yes" and her signature at the bottom of this memo and delivered it back to the car salesman on April 29.

On May 1, the widow wrote the car salesman a signed letter offering to buy "one new luxury sedan, with all available equipment, for \$180,000 cash on delivery not later than June 1." By coincidence, the salesman wrote the widow a signed letter on May 1 offering to sell her "one new luxury sedan, with all available equipment, for \$180,000 cash on delivery not later than June 1." These letters crossed in the mail and were respectively received and read by the widow and the salesman on May 2.

If the widow subsequently asserts and the car company denies that the parties had a binding contract on May 3, which of the following most persuasively supports the widow's position?

- A. A sale-of-goods contract does not require that an acceptance be a mirror image of the offer.
- B. A sale-of-goods contract may be made in any manner sufficient to show agreement, even though the moment of its making is undetermined.
- C. Since the car company was a merchant in the transaction and the widow was not, the car company is estopped to deny that the parties' correspondence created a binding contract.
- D. With respect both to the making of an agreement and the requirement of consideration, identical cross-offers are functionally the same as an offer followed by a responsive acceptance.

## Explanation:

### Common law v. UCC

	Common law	UCC
<b>Promise to hold offer open</b>	Must be supported by consideration (ie, option contract)	No consideration required when merchant gives written & signed assurance (ie, firm offer)
<b>Contract formation</b>	Must have offer & acceptance with knowledge of that offer	Any manner sufficient to show agreement
<b>Acceptance</b>	Must agree to exact terms of offer (ie, mirror-image rule)	Effective even with new/contradictory terms
<b>Required terms</b>	Description of property/service Quantity Price Time for performance	Description of goods Quantity
<b>Bilateral modification</b>	Must be supported by new consideration	New consideration not required if made in good faith
<b>Unilateral discharge</b>	Death Destruction of subject matter	Impracticability
<b>Suing for breach</b>	Must be in privity (ie, party to contract) or intended beneficiary	No privity/beneficiary requirement

UCC = Uniform Commercial Code.

At common law, contract formation requires (1) an offer with definite terms and (2) an acceptance with knowledge of that offer. But these formal requirements have been relaxed by the **Uniform Commercial Code** (UCC), which governs contracts for the sale of goods (eg, luxury sedans). Under the UCC, **contract formation** can occur through **any manner sufficient to show** the parties' **agreement**—even if the parties negotiate in an unusual way that makes the moment of acceptance uncertain.

Here, the widow and the car salesman agreed in writing that they would have a deal if they settled on a price for the luxury sedan within one week. Less than a week later, both parties sent identical offers that crossed in the mail, each proposing a price of \$180,000. Neither party knew of the other offer when they sent their own offer (no acceptance under common law). But these cross-offers are sufficient to show that the parties arrived at the same price

(agreement), which supports the widow's assertion that there was a binding contract under the UCC.

**(Choice A)** The UCC does not require that an acceptance be a mirror image of the offer. But this fact is irrelevant here since the two offers *did* mirror each other.

**(Choice C)** There is no rule estopping (ie, preventing) a merchant from denying that its correspondence created a binding contract.

**(Choice D)** An enforceable sale-of-goods contract requires **consideration**—ie, a bargained-for exchange of promises or performance. But the *method* of contract formation has nothing to do with the *substance* of the parties' exchange. And identical cross-offers can operate as an offer and acceptance only if the parties understood them to have the effect of forming a contract.

**Educational objective:**

Under the UCC, a sale-of-goods contract can be made in any manner sufficient to show the parties' agreement—even if they negotiate in an unusual way that makes the moment of acceptance uncertain.

**References**

U.C.C. § 2-204 (Am. Law Inst. & Unif. Law Comm'n 2020) (explaining that a contract can be made in any manner sufficient to show agreement, even though the moment of its making is undetermined).

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