

A plumber went to a home to inspect a broken water heater. After the plumber had finished the inspection, he told the homeowner, "I have my tools and the replacement part with me. I can repair your water heater now for \$600." The homeowner then asked, "Would you consider taking less?" The plumber replied, "No, \$600 is the lowest price I can offer." The homeowner was undecided, so the plumber left.

The next day, the homeowner called the plumber and said, "I accept your offer at \$600." The plumber replied, "I used the part on another job yesterday afternoon. And I just found out today that my parts supplier increased its prices, so I cannot do the job for less than \$700." The homeowner refused to pay \$700 and demanded that the plumber repair the water heater for \$600.

Is there an enforceable contract between the homeowner and the plumber?

- A. No, because the homeowner failed to accept the plumber's offer to repair the water heater for \$600 before their conversation ended.
- B. No, because the homeowner rejected the plumber's offer by asking if he would take less than \$600.
- C. Yes, because the homeowner accepted the plumber's offer to repair the water heater for \$600 before it lapsed.
- D. Yes, because the plumber was a merchant with respect to water heaters, so his quote for \$600 was a firm offer.

Explanation:

Contract formation begins with an **offer**, which must be accepted before it **terminates**. An offer will **terminate by lapse** if the offeree fails to timely respond to the offer. The time frame to accept the offer is either:

the **time stated** in the offer *or*

if no time is stated, a **reasonable time** after the offer is received.

In determining what is reasonable, the question is what a reasonable person in the offeree's position would think is acceptable to the offeror. For example, the offeror in **face-to-face or telephone negotiations** typically expects an immediate response, so the **time for acceptance** does not extend beyond the **end of the conversation**.

Here, the plumber offered to "repair [the homeowner's] water heater now for \$600." No time for acceptance was specified, so the homeowner had a reasonable amount of time to accept. Since this was a face-to-face negotiation, the reasonable time for acceptance passed—and the plumber's offer for \$600 lapsed—when the conversation ended (**Choice C**). Therefore, the homeowner's next-day attempt to accept was ineffective, and there is no contract.

(Choice B) An offer will terminate if the offeree rejects it by clearly stating that he/she does not intend to accept or by making a counteroffer. However, a mere suggestion or inquiry (eg, "Would you consider taking less?") is *not* a rejection or counteroffer.

(Choice D) Under the UCC's **firm-offer rule**, a merchant's written and signed offer to buy or sell *goods* is irrevocable for a stated or a reasonable time. But this rule does not apply to contracts for *services* such as repairing water heaters, so the plumber's merchant status is irrelevant.

Educational objective:

An offer will lapse if it is not accepted within the time stated in the offer or, if no time is stated, within a reasonable time—eg, before the conversation ends in a face-to-face negotiation.

UCC = Uniform Commercial Code.

References

Restatement (Second) of Contracts § 41 cmt. d (Am. Law Inst. 1981) (reasonable time for acceptance in face-to-face or telephone negotiations).

Examples of reasonable time for acceptance

Face-to-face / telephone offers
(lapses when conversation ends)



Mailed / faxed offers
(lapses after time required to transmit offer and acceptance)



Speculative offers
(lapses quickly so offeree cannot speculate at offeror's expense)



Reward-for-capture offers
(lapses when statute of limitations expires)

