A borrower owed a lender $50,000 due on March 1. On January 10, the lender telephoned the borrower and said that he would discharge the debt if the borrower would promise to pay the lender $45,000 by January 15. The borrower responded, "I will attempt to get the money together." On January 11, the lender again telephoned the borrower and said that he had changed his mind and would expect the borrower to make full payment on March 1.

On January 15, the borrower tendered $45,000 as full payment, which the lender refused to accept. On March 1, the borrower refused the lender's demand for $50,000, and the lender sued for that amount.

Which of the following statements best supports the lender's position?

A. The borrower's January 10 statement was not a return promise, and therefore the lender effectively revoked his offer on January 11.

B. The January 10 telephone conversation between the lender and the borrower created an executory accord and therefore did not operate as a discharge of the $50,000 debt.

C. The lender's offer to discharge the debt was a gift promise and therefore was not binding on the lender.

D. The lender's promise to discharge the $50,000 debt was not enforceable because it was not in writing.

Explanation:

Termination of offer before acceptance

Offeror's revocation	Offeror communicates revocation directly to offeree Offeree learns information from reliable source that reasonably indicates offer was revoked (eg, house sold to another buyer)
Offeree's rejection	Offeree communicates rejection directly to offeror Offeree's counteroffer serves as rejection & new offer*
Lapse	Time period specified in offer expires After reasonable time if no time period specified in offer
By law	Either party dies or is adjudicated insane Subject matter of offer is destroyed or becomes illegal

*Counteroffer does not terminate offer if offeree manifests intent to take offer under advisement.

To form a **new contract or modify** an existing one, there must be an offer that is accepted and supported by valuable consideration. **Acceptance** occurs when the offeree makes an **objective manifestation to be bound** by the terms of the offer. The offeror is entitled to know in clear terms whether the offeree accepts the offer, so the offeree's acceptance **must be unequivocal** (ie, certain) or it will not bind either party. And **until the offeree accepts** the offer, the **offeror can revoke** it.

Here, the lender's offer to discharge the borrower's $50,000 debt due on March 1 asked that the borrower accept by making a return promise to pay $45,000 by January 15. But the borrower's January 10 statement that he would "attempt to get the money together" was *not* a clear and unequivocal promise to make the earlier payment (no acceptance). Therefore, the lender effectively revoked his offer on January 11 by telling the borrower that he had changed his mind—which supports his position that the borrower still owes the original $50,000 debt.

(Choice B) An executory accord is a contract that is created when parties to an existing contract agree to give and accept something different in satisfaction of their existing contractual obligations. Once the accord is performed, the parties' obligations under the old contract are discharged. Here, an accord could not be created since there was no mutual assent (ie, offer and acceptance).

(Choice C) A gift promise is a promise made without consideration. But since the lender offered to discharge the borrower's debt in exchange for an earlier payment, that offer was *not* a gift promise.

(Choice D) A contract need only be in a writing signed by the party to be charged if the statute of frauds applies—not seen here. Therefore, the lack of a writing would not affect the enforceability of the lender's promise.

Educational objective:

Acceptance requires the offeree to make an objective manifestation of assent that is clear and unequivocal. Until the offeree does so, the offer can be revoked.

References

Restatement (Second) of Contracts § 57 (Am. Law Inst. 1981) (explaining that an offeror is not bound by an equivocal acceptance).