

An appliance store owner received a flyer advertising a cleaning service that dealt exclusively with commercial properties. The owner sent an email to the cleaning service that described the relevant features of the store and asked for a price quote. The owner received a reply email from the cleaning service offering to clean the store for \$200 per week for a period of 52 weeks. The store owner responded, "Fine. I'll pay once a month in advance."

Has a contract been formed?

- A. No, because the cleaning service is not a merchant.
- B. No, because the owner's response contained an additional term.
- C. Yes, because the owner did not expressly condition his acceptance on the cleaning service agreeing to the time-of-payment term.
- D. Yes, because the owner is a merchant.

Explanation:

Effect of new terms in reply to offer

Common law		Offer rejected
(mirror-image)		Reply treated as counteroffer
UCC (battle of the forms)	≥1 party is nonmerchant	Offer accepted unless reply expressly required assent to new/revised terms New/revised terms treated as proposed additions to contract
	All parties are merchants	Offer accepted unless reply expressly required assent to new/revised terms New terms become part of contract unless: offer expressly required assent to new terms new terms materially alter contract <i>or</i> offeror objects within reasonable time Revised terms follow split authority & are either: treated as new terms <i>or</i> cancelled out under knockout rule

UCC = Uniform Commercial Code.

Contracts for services (eg, cleaning services) are governed by the common law, which follows the **mirror-image rule** for contract formation. Under this aptly named rule, an **acceptance** must mirror the terms of the offer. A purported acceptance that contains **different or additional terms** is treated as a **rejection** of the original offer and as a **counteroffer**.*

Here, the cleaning service offered to clean the store for \$200 per week for a period of 52 weeks. Because the store owner's response contained an additional term regarding when payment would be made ("once a month in advance"), his response was *not* an acceptance that created a contract. Instead, it constituted both a rejection of the cleaning service's offer and a counteroffer.

**Mere suggestions and inquiries, including requests for clarification and statements of intent, do not amount to rejections or counteroffers under the mirror-image rule.*

(Choices A, C & D) Under the UCC battle-of-the-forms rule for contract formation, an acceptance that contains different or additional terms is effective unless it is expressly conditioned on the offeror's assent to those terms. Whether those terms are treated as part of the contract depends on whether the parties are merchants. But this contract is

governed by the common law—not the UCC, which governs only contracts for the sale of goods.

Educational objective:

Under the common law mirror-image rule for contract formation, an acceptance must mirror the terms of the offer. A purported acceptance that contains different or additional terms acts as both a rejection and a counteroffer.

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References

17A Am. Jur. 2d Contracts § 80 (2020) (mirror-image rule).

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