

A seller sent an email to a potential buyer, offering to sell his house to her for \$150,000. The buyer immediately responded via email, asking whether the offer included the house's front porch swing. The seller emailed back: "No, it doesn't." The buyer then ordered a front porch swing and emailed back to the seller: "I accept your offer." The seller refused to sell the house to the buyer, claiming that the offer was no longer open.

Is there a contract for the sale of the house?

- A. No, because the buyer's initial email was a counteroffer.
- B. No, because the offer lapsed before the buyer accepted.
- C. Yes, because the buyer relied on the offer by ordering the swing.
- D. Yes, because the buyer's initial email merely asked for information.

Explanation:

Termination of offer before acceptance

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| Offeror's revocation | <ul style="list-style-type: none">• 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revocation directly to offeree• Offeree learns information from reliable source that reasonably indicates offer was revoked (eg, house sold to another buyer) |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 | <ul style="list-style-type: none">• Offeree communicates rejection directly to offeror• Offeree's counteroffer serves as rejection & new offer* |
| Lapse | <ul style="list-style-type: none">• Time period specified in offer expires• After reasonable time if no time period specified in offer |
| By law | <ul style="list-style-type: none">• 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.

A binding contract is formed when an offeree accepts an offer *before* it terminates. An **offer will terminate** if the offeree rejects the offer or responds with a **counteroffer**—ie, a reply that presents different terms from those in the offer—prior to acceptance. However, merely **asking for information** (eg, whether the offer includes a porch swing) is **not a counteroffer** and will not terminate an offer (**Choice A**).

An offer can also terminate by **lapse** if the offeree fails to respond within (1) the **time period specified** in the offer or (2) a **reasonable time** if no time period is specified. Here, no lapse occurred because the seller's email did not specify a time for acceptance and there is no evidence that the buyer's acceptance was emailed after an unreasonable delay (**Choice B**). Instead, a contract for the sale of the house was formed.

(Choice C) An offeree's reliance on an offer can create an option contract—ie, a separate agreement not to revoke the offer—if the offeree incurred substantial expense and his/her reliance was foreseeable. But an option contract was unnecessary here since the seller did not try to revoke his offer before acceptance. And even if it was foreseeable that the buyer would order a porch swing, its cost is not substantial compared to a \$150,000 house.

Educational objective:

An offer will terminate if the offeree makes a counteroffer—ie, a reply that presents different terms than the offer, not merely a request for information. An offer will also terminate by lapse if the offeree fails to respond within the time period specified in the offer or within a reasonable time (if no time period is specified).

References

Restatement (Second) of Contracts § 39 (Am. Law Inst. 1981) (requirements for counteroffers).

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