

On June 1, a woman telegraphed a vendor, "At what price will you sell 100 of your basic garbage-disposal units for delivery around June 10?" On June 2, the vendor telegraphed the woman, "You're in luck. We have only 100 basic garbage-disposal units, all on clearance at 50% off usual wholesale of \$120 per unit, for delivery at our shipping platform on June 12." On June 5, the vendor received a letter from the woman that stated, "I accept. Would prefer to pay in full 30 days after invoice."

On June 6, the woman received a telegram from the vendor that stated, "You must pick up at our platform and pay upon delivery." On June 9, the vendor received a letter from the woman that stated, "I don't deal with people who can't accommodate my simple requests." On June 10, the vendor received a telegram from the woman that stated, "Okay. I'm over a barrel and will pick up the goods on your terms on June 12." The vendor had sold all 100 of the units to another buyer earlier that day.

The woman sued the vendor for breach of contract.

Which of the following arguments will best serve the vendor's defense?

- A. The vendor's telegraph on June 2 was merely a price quotation, not an offer.
- B. The woman's letter on June 5 was not an acceptance because it varied from the terms of the vendor's initial telegraph.
- C. The woman's letter on June 9 was an unequivocal refusal to perform that excused the vendor even if the parties had previously formed a contract.
- D. The woman's use of the mail in response to the vendor's initial telegraph was an ineffective method of acceptance.

## Explanation:

### Anticipatory repudiation

**Standard** Party's clear & unequivocal words or actions indicate unwillingness to perform

**Retraction** Party may retract repudiation unless nonrepudiating party:

cancels contract

materially changes position in reliance thereon *or*

indicates repudiation is final

**Effect** Upon repudiation, nonrepudiating party may:\*

treat repudiation as breach *or*

ignore repudiation & demand performance

\*Nonrepudiating party may also suspend own performance

The doctrine of **anticipatory repudiation** applies when a party **clearly and unequivocally** indicates an **unwillingness to perform** a promise before the time for performance is due. The nonrepudiating party may treat the repudiation as a **breach or ignore it** and demand performance pursuant to the contract. Additionally, any **performance owed** by the nonrepudiating party **is excused**.

Here, the parties likely formed a contract for the sale of the garbage-disposal units, which the vendor then sold to another buyer on June 10. However, the vendor's performance may be excused by the woman's anticipatory repudiation on June 9. That is because her June 9 letter could be interpreted as an unequivocal refusal to perform since it stated, "I *don't* deal with people who can't accommodate my simple requests." Therefore, this argument will best serve the vendor's defense.\*

\*The woman will not be able to argue that she retracted her repudiation because her attempted retraction occurred after the vendor had materially changed position in reliance on the repudiation by selling the units to another buyer.

**(Choice A)** An offer must express definite terms and an intent to be bound, thereby justifying acceptance by the offeree. Here, the vendor's June 2 telegraph would probably be interpreted as an offer (not a price quotation) because its terms were definite (100 units at 50% off) and it gave the woman the power to accept.

**(Choice B)** Contracts for the sale of goods (eg, garbage-disposal units) are governed by the UCC, which follows the [battle-of-the-forms rule](#) for contract formation. Under this rule, an enforceable contract is created once there has been an offer and acceptance—even if the acceptance varies the terms of the offer (as seen here).

**(Choice D)** The woman's use of the mail was an effective **method of acceptance** since the vendor did not specify how acceptance was to be rendered.

**Educational objective:**

When a party anticipatorily repudiates a contract, the nonrepudiating party may treat the repudiation as a breach or ignore it and demand performance. Additionally, any performance owed by the nonrepudiating party is excused.

**UCC** = Uniform Commercial Code

**References**

U.C.C. § 2-610 (Am. Law Inst. & Unif. Law Comm'n 2020) (anticipatory repudiation).

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