

On December 15, a lawyer received from a retailer of office supplies an offer consisting of its catalog and a signed letter stating, "We will supply you with as many of the items in the enclosed catalog as you order during the next calendar year. We assure you that this offer and the prices in the catalog will remain firm throughout the coming year."

No other correspondence passed between the retailer and the lawyer until the following April 15 (four months later), when the retailer received from the lawyer a faxed order for "100 reams of your paper, catalog item #101."

Did the lawyer's April 15 fax constitute an effective acceptance of the retailer's offer at the prices specified in the catalog?

- A. No, because the lawyer did not accept the retailer's offer within a reasonable time.
- B. No, because under applicable law the irrevocability of the retailer's offer was limited to a period of three months.
- C. Yes, because a one-year option contract had been created by the retailer's offer.
- D. Yes, because the retailer had not revoked its offer before April 15.

Explanation:

Contracts for the **sale of goods** are governed by the UCC. Under the **UCC firm offer rule**, a **merchant's signed,* written offer** to buy or sell goods may contain assurances that it will remain open. If so, the offer is irrevocable for the time stated in the offer or, if no time is stated, for a reasonable time. But in either case, the **period of irrevocability cannot exceed three months**. Therefore, the retailer's firm offer to sell office supplies to the lawyer at the prices listed in the catalog became revocable after three months (March 15).

However, the retailer never expressly revoked its offer **(Choice B)**. And though a **revocable offer** with no deadline for acceptance will **lapse** after a **reasonable amount of time** given the circumstances surrounding the negotiation, the retailer's offer letter referenced orders placed "during the next calendar year." This indicates that the reasonable time for acceptance was any time during that year **(Choice A)**. Therefore, the lawyer's April 15 faxed order was an effective acceptance of the retailer's offer at the prices listed in the catalog.

*A full handwritten signature is not always required, such as when (1) initialing the relevant clause is appropriate under the circumstances or (2) the merchant handwrites on his/her letterhead to confirm that a firm offer was already made.

(Choice C) Although the UCC is silent as to option contracts, they can be created for the sale of goods (under the common law rule) if they are supported by **consideration**. But here, the retailer's promise to hold the offer open was not supported by consideration because the promise was not exchanged for an act or return promise.

Educational objective:

A merchant's firm offer to buy or sell goods is irrevocable for the time stated in the offer or, if no time is stated, for a reasonable time (not to exceed three months in either case). Once the offer becomes revocable, it may lapse (just like any other revocable offer) if it is not accepted within a reasonable amount of time.

UCC = Uniform Commercial Code.

References

U.C.C. § 2-205 (Am. Law Inst. & Unif. Law Comm'n 2020) (firm offers).

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Irrevocability of firm offers

