

On November 1, an accountant and a lawyer contracted for the sale of the law books the accountant had inherited from his father. The lawyer agreed to pay the purchase price of \$10,000 when the accountant delivered the books on December 1.

On November 10, the lawyer received a signed letter from the accountant that stated: "I have decided to dispose of the bookshelves containing the law books you have already purchased. If you want the shelves, I will deliver them to you along with the books on December 1 at no additional cost to you. Let me know before November 15 whether you want them. I will not sell them to anyone else before then." On November 14, the lawyer faxed and the accountant received the following message: "I accept your offer of the shelves." The accountant was not a merchant with respect to either law books or bookshelves.

On November 12, the accountant told the lawyer that he had decided not to part with the shelves.

Will this communication operate as a legally effective revocation of his offer to deliver the shelves?

- A. No, because by delaying his acceptance until November 14, the lawyer detrimentally relied on the accountant's promise not to sell the shelves to anyone else in the meantime.
- B. No, because the accountant had given a signed assurance that the offer would be held open until November 15.
- C. Yes, because the accountant was not a merchant with respect to bookshelves.
- D. Yes, because the lawyer had a preexisting obligation to pay \$10,000 for the law books.

## Explanation:

### Irrevocable offers

	Type	Description	Consideration	Duration
UCC	Firm offer	Merchant gives written & signed assurance that offer will remain open	Not required	Specified or reasonable time
Common law	Option contract	Offeror promises to keep offer open in exchange for consideration	Required	
	Partial performance (unilateral contracts)	Offeror invites acceptance only by performance & offeree begins to perform		Reasonable time for full performance
	Promissory estoppel*	Offeror could reasonably foresee reliance on offer & offeree reasonably relies to his/her detriment	Not required	Reasonable time

UCC = Uniform Commercial Code.

\*Also referred to as "detrimental reliance."

Under the **UCC**, an existing contract can be modified by agreement (ie, offer and acceptance) of the parties. An **offer to modify** a contract is generally revocable prior to acceptance. But such an offer is **irrevocable** if it is a **firm offer**—ie, a **merchant's written and signed assurance** that his/her offer will be **kept open** for a period of time.

Here, the accountant's letter offering to modify the sales contract was signed and assured the lawyer that the offer would be held open until November 15. Nevertheless, the accountant's offer was revocable since he is not a merchant with respect to bookshelves (**Choice B**). Therefore, the accountant effectively revoked the offer before it was accepted by telling the lawyer on November 12 that he had decided not to part with the shelves.

**(Choice A)** Under the doctrine of promissory estoppel, an otherwise revocable offer becomes irrevocable if (1) the offeror could reasonably foresee that the offeree would rely on the offer and (2) the offeree reasonably and detrimentally relied on that offer. But even

if the lawyer reasonably relied on the accountant's offer, he suffered no detriment—eg, expenses to prepare for the shelves' delivery.

**(Choice D)** The fact that the lawyer had a preexisting obligation to pay \$10,000 for the law books shows that there would have been no new **consideration** for the proposed modification. But consideration is not required to modify a sale-of-goods contract.

**Educational objective:**

Under the UCC, an offer to modify a contract is generally revocable unless it is a firm offer—ie, a merchant's written and signed assurance that his/her offer will remain open for a period of time.

**References**

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

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