

On July 18, a shovel manufacturer received an order for the purchase of 500 snow shovels from a wholesaler. The wholesaler had mailed the purchase order on July 15. The order required shipment of the shovels no earlier than September 15 and no later than October 15. Typed conspicuously across the front of the order form was the following: "Wholesaler reserves the right to cancel this order at any time before September 1." The manufacturer's mailed response, "We accept your order," was received by the wholesaler on July 21.

As of July 22, which of the following is an accurate statement as to whether a contract was formed?

- A. A contract was formed, but prior to September 1 it was an option contract terminable only at the will of the wholesaler.
- B. A contract was formed, but prior to September 1 it was terminable at the will of either party.
- C. No contract was formed, because of the wholesaler's reservation of the right to cancel.
- D. No contract was formed, because the wholesaler's order was only a revocable offer.

Explanation:

Consideration problems that prevent contract formation

Gift	No bargained-for exchange
Token consideration	No inducement to bargain if performance entirely devoid of value
Sham consideration	No legal detriment & no inducement to bargain if recited performance not intended to be completed
Preexisting duty / past consideration	No legal detriment if performance already owed or completed
Illusory promise	No legal detriment if apparent promise imposes no obligation

Under the **UCC**, which governs contracts for the sale of goods, **contract formation** requires: mutual assent – an offer and acceptance *and*

valuable consideration – a bargained-for exchange of promises or performance.

Once a contract is formed, it cannot be terminated unilaterally **(Choice B)**. But if either party's **promise is illusory** because it **imposes no obligation** on that party, then there is **no consideration** and **no contract**.

Here, the wholesaler sent a purchase order to the shovel manufacturer and received a mailed acceptance on July 21. But the purchase order imposed no obligation on the wholesaler because it reserved the right to cancel at *any time* before September 1. As a result, the wholesaler's promise to purchase shovels was illusory. Due to this lack of consideration, no contract was formed as of July 22.

(Choice A) An option is a type of contract in which one party promises to hold a separate offer open for a specified time in return for consideration. Here, however, there was no promise to hold the offer open for any amount of time. And if an option contract had formed, it would not be terminable at the will of either party.

(Choice D) Offers are revocable prior to acceptance (with a few **exceptions**), so the revocability of an offer does not prevent contract formation. But since the wholesaler reserved the right to cancel (ie, revoke) at *any time* before September 1, its illusory promise to purchase shovels prevented contract formation.

Educational objective:

An illusory promise is one that imposes no obligation on the promising party and therefore fails to provide the consideration needed for contract formation.

UCC = Uniform Commercial Code

References

Restatement (Second) of Contracts § 77 (Am. Law Inst. 1981) (explaining that an apparent promise is not consideration if it makes performance entirely optional).

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