

On July 18, a printer manufacturer received an order for the purchase of 500 printers from a wholesaler. The wholesaler had mailed the purchase order on July 15. The order required shipment of the printers 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.

The wholesaler did not cancel the order, and the manufacturer shipped the printers to the wholesaler on September 15. When the printers, conforming to the order in all respects, arrived on October 10, the wholesaler refused to accept them.

Which of the following is an accurate statement as of October 10 after the wholesaler rejected the printers?

- A. In view of the wholesaler's right to cancel its order prior to September 1, the shipment of the printers on September 15 was only an offer by the manufacturer.
- B. The wholesaler's order for the printers, even if initially illusory, became a binding promise to accept and pay for them.
- C. The wholesaler's order was an offer that became an option after shipment by the manufacturer.
- D. The wholesaler's right to cancel was a condition subsequent, the failure of which resulted in an enforceable contract.

Explanation:

An **offer** is a communication that expresses a present intent to be legally bound to a contract and gives power to the recipient to conclude a contract by acceptance. However, there is no present intent to be legally bound if the offer is **illusory** because it **imposes no obligation** on or **causes no legal detriment** to the offeror. As a result, acceptance of an offer that is illusory does not form a contract. But such an offer will become **legally binding** if:

circumstances change such that the offer **imposes obligations** on both parties *and* the offer is **accepted after** the change in circumstances.

Once an offer is legally binding, it can be accepted to create an enforceable contract. Under the UCC, an offer to buy goods can be accepted by shipping or promising to ship conforming goods.

Here, the wholesaler's purchase order was initially illusory because the wholesaler reserved the right to cancel the order at any time before September 1. But the order became non-illusory *after* that date and was effectively accepted when the manufacturer shipped conforming printers on September 15. As a result, the wholesaler must accept and pay for those printers.

(Choice A) The manufacturer's shipment of the printers would have been an offer (specifically, a counteroffer) had it shipped *nonconforming* printers with a notice of accommodation. But since the manufacturer shipped *conforming* printers, that shipment was an acceptance (not an offer).

(Choice C) An option is a type of contract in which one party promises to hold a separate offer open for a specified period of time in exchange for consideration (not seen here).

(Choice D) The wholesaler's right to cancel the order was *not* a **condition subsequent**—ie, an uncertain future event that, if it occurs, excuses a party's existing duty to perform under a contract.

Educational objective:

An offer that is illusory will become legally binding if (1) circumstances change such that the offer imposes obligations on both parties and (2) the offer is accepted after the change in circumstances.

UCC = Uniform Commercial Code.

References

Restatement (Second) of Contracts § 77 (Am. Law Inst. 1981) (discussing illusory and alternative promises).

U.C.C. § 2-206 (explaining that an order to buy goods for shipment may be accepted by the shipment of conforming goods).

Nonbinding offer becomes binding offer

