

Contracts I
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Sample Exam Question #4 – Model Answers

For each subpart, separately answer the following question and explain your answer: Assuming that Buyer is a merchant, as that term is defined in § 2-104(1) of the Uniform Commercial Code, does UCC Article 2 give Seller a cause of action against Buyer?

- A. Buyer wrote Seller on March 1st offering to purchase 100 flats of petunias from Seller at a price of \$5 per flat, with Seller to deliver no later than June 15th. On June 15th, Seller's truck pulled up to Buyer's nursery in order to deliver the flowers. Seller's driver presented Buyer with an invoice for 100 flats of petunias, total amount due of \$500. Buyer refused delivery.**

At common law, Buyer could revoke his offer to purchase the flowers from Seller at any time prior to Seller's acceptance. Because this is, or at least appears to be, an offer for a unilateral contract, where Seller is expected to accept the offer by delivering the flowers at the stated price, Buyer could revoke at any time prior to Seller's delivery. Like the unfortunate offeree in *Petterson v. Pattberg*, whose attempt to accept was thwarted when the offeror met him at the door and revoked the offer before the offeree could speak the words "I accept," Seller here would be susceptible to Buyer revoking his offer at any time before Seller delivered the flowers. Now the question is: what's "delivery?" If arriving at Buyer's nursery with the flowers on the truck constitutes "delivery," then it was too late for the Buyer to revoke. If the flowers must be unloaded and/or paid for before "delivery" is complete, then Buyer could still revoke.

Section 45 of the *Restatement (Second) of Contracts* may or may not change the outcome of this case, although it does clearly change the "default" rule relating to revoking offers for unilateral contracts. On the one hand, unlike the "Brooklyn Bridge" hypo, which Restatement § 45 was meant to remedy, Seller did not begin to accept prior to Buyer's revocation – Seller either accepted or not, depending on how we define "delivery," so the provision in Section 45 entitling Seller to recover when the invited performance has begun would not appear to change the outcome of this case. On the other hand, a court might find that loading the flowers on the truck and driving them to the Buyer's lot began the delivery of the flowers; and, therefore, § 45 would entitle the Seller to some compensation for his partial performance of the invited acceptance.

UCC § 2-206 is essentially Article 2's counterpart to R2 §§ 45, 54 & 62. The facts don't fit within 2-206(1)(b), because Buyer wasn't seeking goods for prompt or current (*i.e.*, as soon as possible) shipment. 2-206(1)(a) says that we should construe the offer to invite acceptance by either promise or performance unless the language of the offer or the circumstance

unambiguously indicate otherwise. 2-206(2) says that, where commencement of performance is a reasonable means of acceptance per 2-206(1)(a), then an offeree who fails to notify an offeror within a reasonable time may treat the offer as having lapsed before acceptance. But what is a reasonable time? Surely Seller can argue (and may prevail) that delivery by the stated date was timely notification. Here's where the common law can help: Comment 3 to 2-206 reads, in part, "Nothing in this section however bars the possibility that under the common law performance begun may have an intermediate effect of temporarily barring revocation of the offer, or at the offeror's option, final effect in constituting acceptance." In other words, if the offer did not lapse under 2-206(2), which it probably did not, then Buyer could not revoke his offer once Seller began his performance. Moreover, once Seller completed performance, Buyer would be bound to pay according to the terms of his offer.

Because Buyer is a merchant, there may also be the question of whether his offer was a firm offer under UCC § 2-205, which tempers a merchant's ability to revoke an offer that is made in such a way that the offeree reasonably believes it to be irrevocable for some period of time. In this case, even if Buyer's offer was a firm offer, it would have been transformed into a mere offer on or about June 1st, two weeks prior to the Seller's attempted acceptance. So, whether Buyer's offer was a firm offer would not change the outcome of this case.

B. Buyer wrote Seller on March 1st offering to purchase 100 flats of petunias from Seller at a price of \$5 per flat, with Seller to deliver no later than June 15th. Buyer's March 1st letter also stated that its offer would expire unless the Seller accepted in writing no later than April 1st. On March 10th, Seller wrote a letter of acceptance, which Seller properly addressed and mailed to the Buyer, but which Buyer never received. On June 15th, Seller's truck pulled up to Buyer's nursery in order to deliver the flowers. Seller's driver presented Buyer with an invoice for 100 flats of petunias, total amount due of \$500. Buyer refused delivery.

This is not a firm offer, because there are no assurances of irrevocability. Nonetheless, it is an offer, which the Seller may accept at any time prior to June 10th or to receiving notice that the Buyer has revoked.

Unlike the writing requirement in Sample Exam Question #3, here Buyer does not demand *receipt* of the written acceptance by a certain date, only that Seller accept in writing. Thus, here the "mailbox rule" saves Seller and binds Buyer by Seller's timely acceptance even though Buyer did not receive that acceptance.

C. Buyer wrote Seller on March 1st offering to purchase 100 flats of petunias from Seller at a price of \$5 per flat, with Seller to deliver no later than June 15th. In addition, Buyer's March 1st letter stated that the offer would expire unless the Seller accepted in writing no later than June 10th. On June 10th, Seller wrote a letter of acceptance, which Seller properly addressed and mailed to the Buyer, but which Buyer never received. On June 15th, Seller's truck pulled up to Buyer's nursery in order to deliver the flowers. Seller's driver presented Buyer with an invoice for 100 flats of petunias, total amount due of \$500. Buyer refused delivery.

This is not a firm offer, because Buyer gave no assurances of irrevocability. Moreover, even if it were a firm offer when made, it wouldn't be one by June 10th. As in Part "A" above, the firm offer would have expired as a matter of law on or about June 1st, prior to the Seller's June 10th attempted acceptance.

Nonetheless, it's still an offer and it still permits Seller to accept in writing no later than June 10th. As in Part "B" above, the fact that Buyer did not receive the writing no later than June 10th – or, for that matter, before June 15th when Seller's truck arrived – doesn't matter, because the offer doesn't require that Buyer receive the writing, only that Seller send it (in a reasonable manner).

So, again, the "mailbox rule" saves Seller and binds Buyer by Seller's timely acceptance even though Buyer did not receive that acceptance and even though Buyer's "firm" offer had expired and become "merely" an offer.

D. Buyer wrote Seller on March 1st offering to purchase 100 flats of petunias from Seller at a price of \$5 per flat, with delivery to be made by Seller no later than June 15th. In addition, Buyer's March 1st letter stated "If you do not make delivery of the flowers by June 15th, this offer will expire." On June 15th, Seller's truck pulled up to Buyer's nursery in order to deliver the flats. Seller's driver presented Buyer with an invoice for 100 flats of petunias, total amount due of \$500. Buyer refused delivery.

This is not a firm offer, because there are no assurances of irrevocability. Moreover, even if it were a firm offer when made, it wasn't one by June 15th. As in Parts "A" and "C" above, the firm offer would have expired as a matter of law on or about June 1st, prior to the Seller's June 15th attempted acceptance.

Nonetheless, it's still an offer and it still permits Seller to accept by delivering the flowers no later than June 15th. With that as a starting point, the analysis here is the same as in the first two paragraphs of the answer to Part "A." In a nutshell: At common law, if arriving at Buyer's nursery with the flowers on the truck constitutes "delivery," then it was too late for the Buyer to revoke; if the flowers must be unloaded and/or paid for before "delivery" is complete, then Buyer could still revoke. Per R2 § 45, if loading the flowers on the truck and driving them to the Buyer's lot began the delivery of the flowers, then Seller would be entitled to some compensation; otherwise, the outcome is the same as at common law.