**Duration of Offers**

Welcome to this podcast on Duration of Offers brought to you by CALI. I am Professor Jennifer S. Martin. An offer creates a power of acceptance in the offeree. The topic of this podcast is how to determine the duration of that power of acceptance and whether that power of acceptance has been terminated.

Recall that a contract is a promise or set of promises which the law enforces. Ordinarily, the manifestation of mutual assent takes place by virtue of an offer by the offeror, which is then followed by an acceptance by the offeree. However, an offer can be terminated in four ways prior to acceptance: (i) by rejection or counteroffer by the offeree, (ii) by lapse of the offer, (iii) by revocation by the offeror; or (iv) by death or incapacity of the offeror or the offeree. Once an offer is terminated, the power of acceptance is no longer present unless the offeror revives the offer at a later time. Remember that in contracts we use an objective test to evaluate the facts of the situation to determine whether the power of acceptance is still present. That is, what a reasonable person would believe in the circumstances. Let’s look at each of the methods of termination in turn.

Let’s begin with rejection and counteroffer. A rejection results in a termination of the offer. For example, presume Martin needs a dog sitter for when she goes out of town and offers to pay Julian $75 per day for the dog walking. If Julian responds by text message, “thanks for the offer, but I don’t have time to walk those lovely dogs,” this language would be a rejection of the offer, resulting in a termination of the offer. If two days later, Julian reconsiders and tells Martin, “I accept your offer,” there is no contract because Julian’s earlier rejection terminated the power of acceptance. Julian’s purported acceptance might itself be a new offer, though.

We might imagine that an offeree might respond to the offer not with an acceptance or an outright rejection, but rather with a new offer to the offeror. Where the new offer relates to the same subject matter as the original offer, we call this a counteroffer. Like rejection, a counteroffer by the offeree terminates the power of acceptance with respect to the original offer. In the dog walking hypothetical, if Julian responds that he will walk the dogs but only for $100 per day, this would be a counteroffer and terminate the power of acceptance with respect to Martin’s original offer. There’s no contract here unless Martin accepts the $100 offer by Julian.

Where an offeree responds with an inquiry regarding the possibility of different terms, a request for a better offer, or simply commenting on the terms of the offer, or adding conditions which are already implicit in the offer, there is not a counteroffer. For instance, if Julian merely inquires whether Martin would consider paying $100 per day, this would not be a counteroffer, but rather an inquiry regarding the possibility of different terms. Similarly, if Julian accepts but also states that he wants to remind Martin to leave a key for the house when she leaves, such a response would not be a counteroffer. A true counteroffer must propose a substituted bargain or impose some condition not implicit in the original offer.

A second method of termination is lapse of the offer. Lapse relates to the time for which an offer is available for acceptance. The general rule is an offer will lapse at the end of a reasonable time if no time is specified in the offer. What is a reasonable time? Absent other circumstances, where the parties begin a face-to-face conversation or one by phone, the time for acceptance does not go beyond the conversation. The facts of each case will determine the reasonable time, with an understanding that a reasonable time might be extended where the parties are at a great distance from one another, as opposed to being at the same location. With respect to the dog walking hypothetical, a reasonable time would at most be prior to Martin going out of town for the weekend, but perhaps much sooner as she must make arrangements for the dogs. Of course, if Martin’s offer to Julian states that she needs a response within 24 hours, then the offer will lapse at the expiration of 24 hours. When the offer lapses, the power of acceptance is terminated.

The third method of termination is revocation of the offer by the offeror. Generally, an offer can be revoked by the offeror at any time by communication to the offeree of the intention to revoke the offer before the offer is accepted. This would be true even if the offer expressly states that it will be held open, since there is no consideration for the promise to keep it open. While you might remember that the mailbox rule makes acceptance effective upon dispatch, revocations are only effective upon receipt of the revocation by the offeree. The test to determine whether there has been a revocation is (i) has the offeror acted inconsistently with the offer; and (ii) has there been direct or reliable indirect communication of the revocation to the offeree.

In our dog walking hypothetical, Martin is free to revoke the offer to Julian at any time and for any reason prior to acceptance. If she revokes the offer by communicating her revocation to Julian, the power of acceptance is terminated when Julian receives the revocation. This would be true even if Martin’s offer to Julian has stated that she will wait two days for a response from Julian. If, during the two days Martin said she would wait for a response from Julian, José agrees to walk the dogs, Martin is free to revoke her offer to Julian and terminate the power of acceptance so long as Julian has not accepted before Julian receives the revocation.

However, if Martin has drafted a text message to Julian revoking the offer to walk the dogs, but never sent the text, there would be no revocation because it was not communicated to Julian. But, if Martin has hired José to walk the dogs and José informs Julian that he agreed to walk the dogs while Martin is out of town, there would still be a revocation of the offer to Julian so long as we determine that José is a reliable source.

An exception to this freedom of the offeror to revoke would be if there is an option contract limiting the offeror’s power of revocation. An option contract is created when the offeree promises the offeror a consideration in exchange for keeping the offer open for a stated time. If Martin offers the dog walking contract to Julian and, Julian pays Martin five dollars to keep the offer open for two days, then the offer is irrevocable for those two days because there is an option contract.

Occasionally, there will be an offer that was made to the public or to a number of persons. In such cases, the offeree’s power of acceptance is terminated when a notice of termination is given publicly by a method equal to that given by the offer. For instance, if Martin offered the dog walking opportunity publicly to her contracts class as a whole, she can revoke that offer by making an announcement to the class that she no longer needs a dog walker. If you happen to miss class that day, the revocation is still effective as to you. Sometimes there are more complicated issues with respect to revoking public offers or offers for unilateral contracts, but those issues are taken up in another podcast.

The fourth and final method of termination of an offer is death or incapacity of the offeror or the offeree. Quite simply, if the offeror dies or is incapacitated prior to acceptance, the power of acceptance is terminated. If Martin dies prior to acceptance of the dog walking contract, the power of acceptance is terminated. Similarly, if the offeree dies, the heirs of the offeree cannot accept.

At this point, you should be able to identify the four methods of terminating an offer: rejection or counteroffer by the offeree, lapse of the offer, revocation of the offer by the offeror, or death or incapacity of the offeror or offeree. You should be able to evaluate factual situations to determine when a reasonable person would conclude that the power of acceptance is no longer present such that an offeree cannot accept the offer.

I hope you’ve enjoyed this podcast on Duration of Offers.

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