**Manner of Acceptance: Bilateral and Unilateral Contracts**

Welcome to this podcast on Manner of Acceptance: Bilateral and Unilateral Contracts 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 if the offer is one that can be accepted by a return promise, a return promise or performance or whether a return performance is required. Sometimes you will hear reference to bilateral and unilateral contracts. The terms bilateral and unilateral do not relate to the number of parties to the contract. Instead, a bilateral contract is where there is a set of mutual promises made by both parties. A unilateral contract is where one party has made a promise, and some action other than a return promise by the other party is needed in order to form the contract.

As it turns out, most of the time an offer is one for a bilateral contract because the offeror probably is seeking a return promise to perform from the offeree. Sometimes, though, an offeror might want acceptance to occur through performance (the unilateral contract). A classic illustration of this is the reward contract. For example, Martin says to José, if you find my lost dog Angus and return him to me, I will pay you $200. Martin, the offeror, does not want José to promise to locate Angus. Instead, Martin wants José to actually find Angus and return the lost dog. Notice here that there is one person making a promise, Martin, who promises to pay $200 when she makes the offer to José. There is no return promise expected of José in terms of his acceptance. Rather, José can only accept the offer by actually finding the dog and returning him.

Recall that in contracts we use an objective test to evaluate the facts of the situation to determine in what manner a party can accept an offer. That is, what a reasonable person would believe in the circumstances. As it turns out, most offers are for bilateral contracts, meaning the offeror is seeking a return promise from the offeree. If there is any doubt as to whether an offer is requesting a return promise or performance, the offeree can accept by either promising or rendering the performance. Only those offers that can be accepted solely by rendering the performance are offers considered ones for unilateral contracts. Let’s look at two examples.

In example #1, 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. The reasonable person would believe that Julian could accept only by promising to walk the dogs while Martin is out of town because Martin needs to have a commitment from Julian before she leaves. Accordingly, this offer would be an offer that can be accepted by a return promise only.

In example #2, presume Martin is working late at the University and sends Julian a text that says please go to the house and walk the dogs immediately if you can, I’ll pay you $25, the dogs are in the backyard. We might conclude that Julian could accept the offer by immediately going to the house to walk the dogs, such that Julian’s beginning to walk the dogs is equivalent to Julian affirmatively accepting the offer and binding the contract. However, we might also expect that Julian might accept the offer by texting a response to Martin promising to walk the dogs right away. The return promise to walk the dogs would seem to be an acceptance by Julian. Accordingly, this offer would seem to be one where acceptance might be made by performance or a return promise.

In the less common situations where we have an offer that can be accepted by performance only such as the lost dog, the characterization of the offer becomes important in the event that the offeror later seeks to revoke the offer. Recall that an offer can be revoked at any time prior to acceptance. If the offeree has not made a return promise or begun performance, then the offeror is free to revoke the offer. As such, even where an offer requires acceptance by performance, the offeror can freely revoke any time prior to the beginning of performance. For instance, if Martin offers $200 to José if he finds her lost dog Angus (an offer for a unilateral contract), Martin is free to revoke the offer by communicating the revocation to José at any time prior to Jose beginning to look for the dog.

What if José has already begun looking for the dog, though? In the case of an offer for a unilateral contract, an option contract is created when the offeree tenders or begins the performance requested by the offer. At this point, the offeree has the ability, but not the obligation, to complete the performance invited by the offeror. The offeror does not have to perform, though, unless the offeree completes the requested performance. Basically, this option contract makes the offer irrevocable once the offeree has begun performance of an offer for a unilateral contract.

How might this work? If José has already begun looking for the dog, an option contract arose when he began the performance of looking for the dog. José has the ability to complete the requested performance of finding the dog and returning the dog to Martin in a reasonable time. However, the performance is at the option of José, meaning he does not have an obligation to actually find the dog and might abandon the performance prior to completion. If José finds the dog and returns the dog to Martin, then Martin will be obligated to pay him the $200. If José does not find the dog, then Martin’s obligation does not arise. Of course, José only has a reasonable amount of time to find the dog and return Angus to Martin.

You might wonder whether preparing to perform also creates an option contract in the favor of the offeree. The general answer is no, there is a difference between preparing to perform and actually beginning the invited performance. Presume that José has not yet begun looking for Angus, but decides that the task would be better done after lunch. Preparing to perform by having lunch first would not create an option contract in favor of José. As such, Martin would be free to revoke her offer to José while he is eating lunch.

Before concluding, it is worth noting that under the Uniform Commercial Code § 2-206, an acceptance can be made in any manner reasonable under the circumstances. Typically this will mean that an offer to purchase goods can be accepted by prompt or current shipment or prompt promise to ship goods. Meaning, unless otherwise provided, offers for sales of goods can be accepted by a return promise or performance, and the offeree can accept by promising to ship the goods or by performing by means of actually making the shipment.

An example of this would be if Martin orders a 50 pound bag of weight loss dog food for Angus from Supplier. Supplier could accept Martin’s order by either promising to ship the dog food or by actually shipping the dog food promptly to Martin. The ability of Supplier to accept by either promise or performance makes the offer one that can be accepted by a return promise or performance. As such, Martin can revoke her offer any time prior to acceptance by Supplier.

At this point, you should be able to explain the three manners of acceptance: (i) return promise; (ii) return promise or performance; and (iii) return promise only. You should be able to explain how an offer for a unilateral contract creates an option contract when the offeree begins the requested performance. Finally, you should be able to determine whether a seller has accepted an offer of a buyer by either promising to ship goods or by promptly shipping them.

I hope you’ve enjoyed this podcast on Manner of Acceptance: Bilateral and Unilateral Contracts.

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