

A toy collector purchased 10 antique toys over several years and had had them restored by an expert in toy restoration. On June 1, the collector sent an 11th antique toy to the expert with a signed note that read: "Here is another toy for you to restore. As with all prior jobs, I will pay \$500 for the work, but no more." On June 4, after receipt of the collector's June 1 note and the toy, the expert began restoring the toy. On June 6, the collector unexpectedly died. On June 7, unaware of the collector's death, the expert sent the collector a note that stated that the restoration work had begun on June 4. The following day, the expert learned of the collector's death.

Does a contract exist that binds the expert and the collector's estate?

- A. No, because the collector died before the expert sent the June 7 note.
- B. No, because the offer lapsed when the collector died.
- C. Yes, because the expert sent the June 7 note before learning of the collector's death.
- D. Yes, because the offer was accepted before the collector's death.

## Explanation:

### Bilateral v. Unilateral contracts

	Offer	Effect of beginning performance
<b>Unilateral</b>	Invites acceptance by performance of act	Creates option contract that prevents offeror from revoking offer Offeree is <i>not</i> bound to complete performance
<b>Bilateral</b>	Invites acceptance by return promise	Serves as acceptance of offer Offeree is bound to complete performance

**Contract formation** requires mutual assent (ie, offer and acceptance). An **offer** that invites acceptance by return promise—or an offer that does not specify a manner of acceptance—can be **accepted** by either (1) promising to perform the requested act or (2) **performing the requested act**. Acceptance by performance is **effective** as soon as the offeree **begins to perform**.<sup>\*</sup> However, the offeror is not obligated to perform until receiving notice of the acceptance. And if the offeror dies prior to acceptance, the offer will [terminate by law](#).

Here, the toy collector offered to pay the restoration expert \$500 in exchange for the restoration of an antique toy. The expert accepted that offer by beginning to restore the toy on June 4—before the collector's death on June 6. Therefore, a contract exists that binds the expert and the collector's estate.

<sup>\*</sup>Unlike in a bilateral contract, in a unilateral contract, only the offeree's complete performance constitutes acceptance.

**(Choices A, B & C)** The offer would have terminated by law if the collector had died before acceptance. But the expert began to perform (acceptance) before the collector's death. Therefore, a binding contract existed regardless of whether the collector died before the expert sent the note or the expert sent the note before learning of the collector's death.

### Educational objective:

Unless an offer specifies a manner of performance, it can be accepted by (1) promising to perform the requested act or (2) performing the requested act. Acceptance by performance is effective as soon as the offeree begins to perform, but the offeror is not obligated to perform until receiving notice of the acceptance.

### References

Restatement (Second) of Contracts § 32 (Am. Law Inst. 1981) (explaining that an offer generally invites acceptance by either performing or promising to perform).

Restatement (Second) of Contracts § 62 (Am. Law Inst. 1981) (explaining that the beginning of performance is an acceptance that obligates the offeree to complete the performance).

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