

A U.S. West-Coast manufacturer gave a hardware retailer who was relocating to the East Coast the following signed "letter of introduction" to an East-Coast hardware wholesaler:

"This will introduce you to my good friend and former customer, who is a retailer and will be seeking to arrange the purchase of hardware inventory from you on credit. If you will let him have the goods, I will make good any loss up to \$25,000 in the event of his default."

The retailer presented the letter to a wholesaler, who then sold and delivered \$20,000 worth of hardware to the retailer on credit. The wholesaler promptly notified the manufacturer of this sale.

Which of the following is NOT an accurate statement concerning the arrangement between the manufacturer and the wholesaler?

- A. Although the manufacturer received no consideration from the retailer, the manufacturer's promise is enforceable by the wholesaler.
- B. By extending the credit to the retailer, the wholesaler effectively accepted the manufacturer's offer for a unilateral contract.
- C. It was important to enforceability of the manufacturer's promise to the wholesaler that it be embodied in a signed writing.
- D. The manufacturer's promise is enforceable by the wholesaler whether or not the wholesaler gave the manufacturer seasonable notice of the extension of credit to the retailer.

### Explanation:

A **unilateral contract** arises when one party (offeror) promises to do something in return for performance of a specific act and the other party (offeree) accepts by *completing* the requested performance.\* **Notice is not required** to make the acceptance effective unless the offer so requires. But if the offeree has **reason to know** that the offeror would **not learn of the completed performance** within a reasonable time, then the offeror's **duty is discharged unless:**

the offeree exercises **reasonable diligence to notify** the offeror  
the offeror learns of the performance within a reasonable time *or*  
the offer indicates that notification of acceptance is not required.

Here, the manufacturer promised to guarantee repayment of up to \$25,000 if the wholesaler would let the retailer purchase hardware on credit (offer for unilateral contract). The wholesaler then sold and delivered \$20,000 worth of hardware to the retailer on credit (acceptance) **(Choice B)**. But the manufacturer would have had no way of learning about that transaction on its own. Therefore, the fact that the wholesaler *notified* the manufacturer of the wholesaler's extension of credit is the reason why the wholesaler can enforce the manufacturer's promise.

\*In contrast, an offer to enter into a bilateral contract can be accepted by making a return promise or by starting the requested performance.

**(Choice A)** Although the manufacturer received no **consideration** from the *retailer*, its agreement with the *wholesaler* was supported by consideration. That is because the manufacturer's promise was induced by the wholesaler's extension of credit to the retailer (and vice versa). Therefore, the promise is not unenforceable for lack of consideration.

**(Choice C)** The manufacturer's promise created a suretyship—ie, a contract where one party promises to assume responsibility for the duty of a third party to the contract. Therefore, it fell within the **statute of frauds** and needed to be in writing and signed by the party to be charged (the manufacturer).

### Educational objective:

Notice of acceptance is not required to form a unilateral contract unless the offer requires notice OR the offeree has reason to know that the offeror would not learn of the completed performance within a reasonable time.

### References

Restatement (Second) of Contracts § 54 (Am. Law Inst. 1981) (acceptance by performance and necessity of notification to offeror).

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## Bilateral v. Unilateral contracts

