

A developer, needing a water well on one of his projects, met several times about the matter with a well driller. Subsequently, the driller sent the developer an unsigned typewritten form captioned "WELL DRILLING PROPOSAL" and stating various terms the two had discussed but not agreed upon, including a "proposed price of \$5,000." The form concluded, "This proposal will not become a contract until signed by you [the developer] and then returned to and signed by me [the driller]."

The developer signed the form and returned it to the driller, who neglected to sign it but promptly began drilling the well at the proposed site on the developer's project. After drilling for two days, the driller told the developer during one of the developer's daily visits that he would not finish unless the developer would agree to pay twice the price recited in the written proposal. The developer refused, the driller quit, and the developer hired a substitute driller to drill the well to completion for a price of \$7,500.

In an action by the developer against the driller for damages, which of the following is the probable decision?

- A. The developer wins, because his signing of the driller's form constituted an acceptance of an offer by the driller.
- B. The developer wins, because the driller's commencement of performance constituted an acceptance by the driller of an offer by the developer and an implied promise by the driller to complete the well.
- C. The driller wins, because he never signed the proposal as required by its terms.
- D. The driller wins, because his commencement of performance merely prevented the developer from revoking his offer, made on a form supplied by the driller, and did not obligate the driller to complete the well.

## 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

An **offer** is a communication that **gives the recipient the power to conclude a contract by accepting** the offer in an appropriate manner, **without** the need for any **further action by the other party**. Here, the driller's initial proposal was *not* an offer because the developer could not complete the deal by signing the proposal and returning it to the driller, who also needed to sign **(Choice A)**. But when the developer signed the proposal and returned it to the driller, he was making an offer on the terms described in the proposal.

The driller could have accepted by signing the proposal as required by its terms, thereby making a return promise to complete the well. However, a **bilateral offer that requires a return promise** to accept **can be accepted** with a return promise or **by starting performance** (eg, beginning the well drilling) **(Choice C)**. Starting performance operates as an **implied promise** to render **complete performance** (eg, complete the well). Therefore, the driller's failure to complete the well was a breach, and the developer will win in his action for damages.

**(Choice D)** An offer to form a *unilateral* contract arises when one party promises to do something in exchange for an act of the other party—eg, pay a monetary reward in exchange for finding a lost dog (not seen here). Once performance has begun, the offer is irrevocable for a reasonable period of time to allow for complete performance. However, the recipient is not bound to complete performance.

### Educational objective:

An offer is a communication that gives the recipient the power to conclude a contract by acceptance without further action by the other party. A bilateral offer that requires a return promise to accept can be accepted either with a return promise *or* by starting performance, which operates as an implied promise to render complete performance.

### References

Restatement (Second) of Contracts § 24 (Am. Law Inst. 1981) (offer defined).

Restatement (Second) of Contracts § 62 (Am. Law Inst. 1981) (effect of beginning performance).

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.