

A client emailed an attorney from whom he regularly sought advice, asking, "Please give me an opinion on the attached documents." Without responding to the email, the attorney immediately began reviewing the documents and working on the requested opinion. Two days later, the client sent the attorney a second email stating, "Please ignore my previous email. I have taken care of the problem." Minutes later, the attorney emailed a reply stating, "I have already completed the work."

The attorney has billed the client for the time she spent working on the requested opinion.

Is the attorney entitled to recover?

- A. No, because the attorney failed to timely notify the client that she had begun the work. (17%)
- B. No, because the client revoked his offer before the attorney's acceptance. (9%)
- C. Yes, because a contract was formed when the attorney began working on the requested opinion. (65%)
- D. Yes, because the attorney's email accepted the client's offer, which was irrevocable for a reasonable time. (7%)

Correct

65% Answered correctly

50 secs Time Spent

2023 Version

Explanation:

Bilateral v. Unilateral contracts

	Offer	Effect of beginning performance
Unilateral	Invites acceptance by performance of act	Creates option contract that prevents offeror from revoking offer Offeree is <i>not</i> bound to complete performance
Bilateral	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 (offeree) the power to conclude a contract by accepting the offer. The manner of proper acceptance depends on the type of offer:

Unilateral offer – can be **accepted** only by **completing performance** (eg, reward offer, contest prize)

Bilateral offer – can be **accepted** by (1) a **return promise** or (2) **starting performance**, which operates as an implied promise to render complete performance

When there is doubt as to whether an offer can be accepted by a return promise or by performance, the offeree can accept the offer in either manner. That is because an offer is **presumed to be bilateral**. And once the offer is accepted, it cannot be revoked.

Here, the client's email asking for the attorney's opinion constituted an offer, which is presumed to be *bilateral* because it did not require acceptance solely by completing performance. Therefore, the attorney could accept the offer by a return promise or, as done here, by beginning work on the requested opinion. Once performance began, an enforceable contract was formed, and the client could not revoke his offer (**Choice B**). Therefore, the attorney is entitled to recover from the client for the time that she spent working on the requested opinion.

(Choice A) When an offer can be accepted by performance (as seen here), notice of beginning performance is required only if the offer requires such notice.

(Choice D) Since the client's offer is presumed to be bilateral, the attorney accepted the offer when she began performance—not when she sent the email stating that she had completed the work. Additionally, the client's offer was revocable prior to acceptance and became irrevocable once the attorney accepted it.

Educational objective:

An offer is presumed to be bilateral and can be accepted by a return promise or by starting performance. In contrast, a unilateral offer can be accepted only by completing performance.

References

Restatement (Second) of Contracts § 32 (Am. Law Inst. 1981) (explaining that, in cases of doubt, an offer can be accepted by a promise or performance).

Restatement (Second) of Contracts § 50 (Am. Law Inst. 1981) (discussing different methods of accepting a bilateral offer and a unilateral offer).

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