

Gratuitous vs. Legal Promises

Promise vs. Offer

Unilateral vs. Bilateral Contracts

Offer vs. Promise

“An offer may propose the exchange of a promise for a performance [unilateral agreement] or an exchange of promises [bilateral agreement]... *the offer itself is a promise*, revocable until accepted.”

Restatement of the Law: Contracts, 2d

Gratuitous

Type of Commissive	Promise
<u>Unconditional</u>	I promise to drive you to the airport tomorrow.
Commitment takes effect	Immediately
Obligation to perform occurs	At time stated

Gratuitous

Type of Commissive	Promise	Offer
Unconditional	I promise to drive you to the airport tomorrow.	I offer to drive you to the airport tomorrow.
Commitment takes effect	Immediately	Only on acceptance
Obligation to perform occurs	At time stated	At time stated

Gratuitous

Type of Commissive	Promise	Offer
Unconditional	I promise to drive you to the airport tomorrow.	I offer to drive you to the airport tomorrow.
Commitment takes effect	Immediately	Only on acceptance
Obligation to perform occurs	At time stated	At time stated
Condition precedent	I promise to drive you to the airport tomorrow, if it rains.	
Commitment takes effect	Immediately	
Obligation to perform occurs	At time stated, provided condition is satisfied	

Gratuitous

Type of Commissive	Promise	Offer
Unconditional	I promise to drive you to the airport tomorrow.	I offer to drive you to the airport tomorrow.
Commitment takes effect	Immediately	Only on acceptance
Obligation to perform occurs	At time stated	At time stated
Condition precedent	I promise to drive you to the airport tomorrow, if it rains.	I offer to drive you to the airport tomorrow, if it rains.
Commitment takes effect	Immediately	On acceptance
Obligation to perform occurs	At time stated, provided condition is satisfied	At time stated, provided condition is satisfied

Legal

Type of Commissive	Promise	Offer
Proposes an exchange: <u>Bilateral agreement</u>		I will drive you to the airport tomorrow, if you promise to wash my car next week.
Commitment takes effect		On acceptance; equivalent to receiving your promise.
Obligation to perform occurs		At time stated, provided you have given me your promise.

Legal

Type of Commissive	Promise	Offer
Proposes an exchange: <u>Bilateral agreement</u>		I will drive you to the airport tomorrow, if you promise to wash my car next week . .
Commitment takes effect		On acceptance; equivalent to receiving your promise.
Obligation to perform occurs		At time stated, provided you have given me your promise.
Proposes an exchange: <u>Unilateral agreement</u>	I will drive you to the airport tomorrow, if you wash my car this afternoon.	
Commitment takes effect	Tiersma: Immediately (equivalent to a condition precedent)	Schane: On commencement of your performance (equivalent to an acceptance)
Obligation to perform occurs	At time stated, on <u>completion</u> of your performance	

Promise vs. Offer Autonomous vs. Cooperative Speech Act

- Autonomous – a speech act that requires no response
- “You’re out”; “Leave the room”; “I promise to go to the bank later.”
- Cooperative – a speech act that requires a response from the hearer
- “I’ll bet you \$5 George will be late”; Lend me \$20”; I offer to sell you this book for \$10.”

Promise vs. Offer

Degree of (Un)certainly of the Benefit

"I promise to drive you to the airport tomorrow."
[very certain: no acceptance required; my commitment goes into effect immediately]

"I offer to drive you to the airport tomorrow."
[less certain: my commitment goes into effect upon your acceptance]" =

"I will promise to drive you to the airport, if you want me to drive you to the airport."

How does an Offer = a Promise?

An offer is equivalent to a promise that will take effect once the promisee agrees to the benefit.

- **Unconditional offer:**

"I promise to drive you to the airport tomorrow, if you want me to drive you there."

- **Unilateral agreement:**

"I promise to drive you to the airport tomorrow, if you mow my lawn this afternoon."

- **Bilateral agreement:**

"I promise to drive you to the airport tomorrow, if you promise to drive me there next week."

The 3 functions of the condition of a promise/offer

"I promise to drive you to the airport tomorrow, if you mow my lawn this afternoon."

1. **Condition precedent to my promise**
2. **Your acceptance to my offer**
3. **Consideration for an enforceable agreement**
