
The Concept of Unilateral Contracts in Illinois

DePaul College of Law

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

DePaul College of Law, *The Concept of Unilateral Contracts in Illinois*, 7 DePaul L. Rev. 213 (1958)
Available at: <https://via.library.depaul.edu/law-review/vol7/iss2/6>

This Comments is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

The next step was to consider the Fellowship of Humanity in light of the First Amendment to the United States Constitution.³³ This amendment does not restrict the government from legislating in this field. Every state and the District of Columbia has a constitutional or statutory provision exempting church property from taxation. If the exemption is limited to those who advocate theism, the humanists argue that such an interpretation encourages particular religious doctrines and thus violates the division between Church and State. The California court reasoned that if the state cannot constitutionally subsidize religion under the First Amendment, then it cannot limit tax exemptions to theistic religions.

The state, said the California court, has no power to determine the validity of religious beliefs. It must apply the purely objective test of whether or not the belief occupies the same place in the lives of its holders that orthodox beliefs occupy in the lives of believing majorities.

CONCLUSION

The *Fellowship of Humanity* and *Washington Ethical Society* cases accept a new legal definition of religion, at least in the field of taxation. In such a concept the test of belief or non-belief in a Supreme Being is not a factor. Religion simply includes

(1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment.³⁴

This test does not involve the determination of what the particular belief, dogma, or doctrine of members must be.

Two cases do not in themselves establish a trend, but it will be interesting to observe the influence, if any, of these cases in other jurisdictions.

³³ U.S. Const. Amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

³⁴ Authority cited note 31 supra at 406.

THE CONCEPT OF UNILATERAL CONTRACTS IN ILLINOIS

The name "unilateral" has been suggested for contracts executed on one side and executory on the other, or at least for such contracts of this class as are created by performing the act required for acceptance of the offer. Contracts of this class are distinguishable from others in the fact that in the other simple contracts the acceptance furnishes the consideration, leaving the performance executory on both sides; while in contracts of this class, the acceptance furnishes not only the consideration, but also the performance on one side. A distinctive name for a contract of this sort is undoubtedly to be desired; and the term "uni-

lateral" is satisfactory enough as far as derivation is concerned. The objection to it is that it is already used too much, with too many meanings.¹

Thus, in 1920, Professor Page recognized a problem which has today grown into a greater enigma for law students and practicing attorneys everywhere.

In the light of the modern concepts and terminology of Williston,² Corbin,³ the *Restatement of the Law of Contracts*, and the cases⁴ which have adopted their "language" in regard to the use of the words "unilateral" and "unilateral contracts," it is difficult, if not impossible, to read and interpret past and recent Illinois decisions which have dealt with the problem.

Williston defines a unilateral contract as one "where only *one* promises performance, the consideration from the promisee being actually given and being something other than a promise."⁵ In § 65 Williston says, "An offer for a unilateral contract generally requires an act on the part of the offeree to make a binding contract. This act is consideration for the promise contained in the offer and doing it with intent to accept without more will create a contract." The *Restatement of the Law of Contracts* recognizes that "(i)n a unilateral contract, the exchange for the promise is something other than a promise. . . . There must always be at least two parties to a contract, whether unilateral or bilateral. . . ."⁶ Corbin says:

The term unilateral contract . . . means . . . that the promise or promises have been made by one party alone . . . however, the promise of this party will not be an enforceable contract unless a sufficient consideration has been given in return for it. . . . In most cases, therefore, even though a contract may properly be described as unilateral, it takes two persons to make it. . . . In all cases of "bargain," one party offers his promise in exchange for a specified consideration; and in order to "close the deal" and make a "contract" that consideration must be given. If this consideration is action or a forbearance instead of a promise, the resulting contract is "unilateral;" it nevertheless takes two to make it.⁷

It can be seen, therefore, that three of the foremost authorities on the subject of contracts speak of a unilateral contract in the following sense—

¹ Page, *The Law of Contracts* § 51 (2d ed., 1920).

² Williston, *Contracts* (1st ed., 1920); Williston, *Contracts* (rev. ed. by Williston and Thompson, 1936).

³ Corbin, *Contracts* (1950).

⁴ *Mid-Century, Limited v. United Cigar-Whelan St. Corp.*, 109 F. Supp. 433 (D.D.C., 1953); *Byram v. Vaughn*, 68 F. Supp. 981, 983 (D.D.C., 1946); *Martendell v. Fiduciary Counsel*, 131 N.J. Eq. 523, 26 A. 2d 171 (1942), aff'd 133 N.J. Eq. 408, 30 A. 2d 28 (1943).

⁵ 1 Williston, *Contracts* § 13 (rev. ed., 1936) (Emphasis added).

⁶ Rest., *Contracts* § 12, Comments a and b (1932).

⁷ 1 Corbin, *Contracts* § 21 (1950).

an offer for an act, the unilateral contract coming into existence when the act is performed. The use of the words, "unilateral contract," appears to be limited to the definitions above mentioned. The Illinois courts have not so limited their concept of these words, nor have they seen fit to adopt the use of the words as indicated by the above authorities.

ATTEMPTED BILATERAL CONTRACTS VOID FOR WANT OF MUTUALITY
ARE CALLED UNILATERAL CONTRACTS

Illinois courts have repeatedly held in situations where there was a lack of mutuality of obligation that, ". . . the contemplated contract was unilateral and void for want of mutuality. . . ." ⁸ These cases seem to say that because a contract lacks mutuality of obligation, (each party in a bilateral contract making a valid promise to make it a valid bilateral contract) it is therefore, a unilateral contract and void. Williston says that the use of the term unilateral contract has nothing to do with bilateral contracts.

. . . The term "unilateral contracts" should be reserved for cases where a legal obligation has been created, but only one party to the obligation has made a promise. Where there is no obligation, the transaction may be a unilateral promise or a unilateral offer, but it certainly cannot properly be called a unilateral contract. ⁹

In *Schlitz Brewing Co. v. Komp*,¹⁰ the defendant promised to purchase from the plaintiff brewery company exclusively, for five years, the beer manufactured by the company. Before the expiration of the period, defendant stopped buying the plaintiff's beer. The contract was held *unilateral* for while it bound the defendant to use only the plaintiff's beer, it did not obligate Schlitz to sell any to the defendant. "As a general rule a *unilateral contract* of that kind, whereby one party is bound and the other is not, will not be specifically enforced in a court of equity."¹¹

The interpretation of the court in the case of *Weber v. Hulbert*,¹² where the plaintiff promised to purchase some property from the defendant, but nowhere in the alleged contract did the defendant promise to sell, was:

⁸ *Olsen v. Whiffen*, 175 Ill. App. 182, 185 (1912); See *Crane v. Crane Co.*, 105 F. 869 (C.A. 7th, 1901), where it was held that a promise by X to provide all the lumber needed by Y during 1897 was void, the court on page 872 saying that "It is needless to say that such a contract is unilateral and void for want of mutuality." Accord: *Joliet Bottling Co. v. Joliet Citizens' Brewing Co.*, 254 Ill. 215, 98 N.E. 263 (1912).

⁹ 1 Williston, *Contracts* § 13 (rev. ed., 1936).

¹⁰ 118 Ill. App. 566 (1905).

¹¹ *Ibid.*, at 569 (Emphasis added). Accord: *American Refrigeration Transit Co. v. Chilton*, 94 Ill. App. 6 (1900).

¹² 225 Ill. App. 321, 329 (1922) (Emphasis added).

If the so-called proposal, as finally signed by the parties at the time shown, be considered as an attempt to incorporate into a contract all the terms of the purchase of the lot . . . it is void as a *unilateral contract*. . . . The contract, if it is a contract, is unilateral, lacking in mutuality and void.

It can be seen, therefore, that the courts speak of an alleged bilateral contract that lacks mutuality of obligation, as a unilateral contract, void because of a lack of mutuality of obligation. The proper analysis is that there existed no contract at all.

OFFERS TO ENTER INTO UNILATERAL CONTRACTS SPOKEN OF AS BEING
UNILATERAL CONTRACTS AND VOID FOR WANT OF
MUTUALITY OF OBLIGATION

Illustrative of this heading is the case of *Alexander Hamilton Institute v. Jones*¹³ where there was an offer by defendant to make certain payments in consideration of a series of acts to be done by the plaintiff. The court said, "On the face of the paper it is merely an offer by the defendant and not enforceable until accepted by plaintiff so as to bind it to perform. It is what is sometimes called a unilateral contract void for want of mutuality." The court in this case called an *offer* (to enter into a unilateral contract) a unilateral contract, void for want of a mutuality of obligation. A simpler and more correct analysis is that it is an offer to enter into a unilateral contract.

Part of the agreement in *Hanlon v. Dunne*¹⁴ read, "In consideration of your services in endeavoring to sell the said property I agree to pay you in case of a sale a commission. . . ." The plaintiff subsequently made efforts to find a buyer. The court held that "a contract to pay a real estate agent commissions, though *unilateral* in its inception, becomes a valid and binding contract where the agent commences to sell the property."¹⁵

Contrary to the *Alexander Hamilton* case, *Central Guarantee Co. v. Fourth Central Trust Co.*¹⁶ recognized the concept of "an offer for an act." The court did not call the offer a unilateral contract. There the defendant promised to pay, following the date of contract, and annually thereafter, for five years, on the receipt of a certain book. Two copies were sent in successive years, the defendant paid the price, and then cancelled its order. In determining that the defendant could withdraw

¹³ 234 Ill. App. 444, 446 (1924).

¹⁴ 189 Ill. App. 123, 124 (1914).

¹⁵ *Ibid.*, at 125 (Emphasis added). It is not the purpose of this comment to discuss the validity of the statement of the court as to when the agent is entitled to his commission; however, for recent decisions contra see *Nicholson v. Alderson*, 347 Ill. App. 496, 107 N.E. 2d 39 (1952); *Bartlett v. Keith*, 325 Mass. 265, 90 N.E. 2d 308 (1950).

¹⁶ 244 Ill. App. 61 (1927).

the offer at any time before the actual shipment of the book, the court said, ". . . the writing is merely a unilateral offer. . . ." ¹⁷

THE DOCTRINE OF MUTUALITY IN REGARD TO UNILATERAL CONTRACTS

*Plumb v. Campbell*¹⁸ is perhaps the most frequently cited of all Illinois cases when a court is referring to unilateral contracts. The defendant in this case agreed to sell certain bonds within twenty days after the plaintiff gave them to him. The plaintiff did give him the bonds. The court, though it did not expressly so state, recognized that this was an offer to enter into a unilateral contract. In reply to the defendant's contention that since there was nothing obliging the plaintiff to comply with the contract and that, therefore, the contract was void for want of mutuality of obligation, the court said:

It does not follow, however, that a contract in writing, to be complete, must show such mutuality on its face. There is a seeming want of mutuality in many cases of contracts which may be enforced by the parties on the same proof as would have been necessary had that mutuality fully appeared,—“as where one promises to see another paid if he would sell goods to a third person, or promises to give a certain sum if another will deliver up certain documents or securities, or if he will forbear a demand, or suspend legal proceedings, or the like.”¹⁹

The court continues, by quoting from Parsons:

The party making the promise is bound to nothing until the promisee, within a reasonable time, engages to do, or else *does or begins to do*, the thing which is the condition of the first promise. Until such engagement *or such doing*, the promisor may withdraw his promise, because there is no mutuality, and therefore no consideration for it.²⁰

Concluding its discussion of the concept of a unilateral contract the court says that, “A promise lacking mutuality at its inception becomes binding upon the promisor after performance by the promisee. These contracts are sometimes called unilateral contracts.”²¹

Whereas previous cases cited mentioned “mutuality of obligation” and

¹⁷ *Ibid.*, at 64; cf. *Kinder v. McCormick*, 82 Ill. 376 (1876).

¹⁸ 129 Ill. 101, 18 N.E. 790 (1888).

¹⁹ *Ibid.*, at 106 and 791.

²⁰ 1 Parsons, *Contracts* § 450 (7th ed., 1883); *Plumb v. Campbell*, 129 Ill. 101, 106, 18 N.E. 790, 791 (1888). For a discussion of what constitutes performance of the act by the offeree see Rest., *Contracts* §§ 45 and 59 (1932). In Comment A of § 45, it is said that, “Beginning preparations though they may be essential to carrying out the contract or to accepting the offer, is not enough.” In Anderson, *Mutual Assent in Unilateral Contracts Since the Restatement*, 1 De Paul L. Rev. 167, 172-178 (1952), there is a discussion of what does constitute performance of the act called for by the promisor along with an interesting analysis of *Kaiser v. Better Farms*, 249 Wis. 302, 24 N.W. 2d 621 (1946), which case applied the doctrine of substantial performance to unilateral contracts.

²¹ *Plumb v. Campbell*, 129 Ill. 101, 107, 18 N.E. 790, 792 (1888).

"unilateral" when actually talking about alleged bilateral contracts, the *Plumb* case recognized that the contract was unilateral but apparently felt some need to refer to the doctrine of mutuality of obligation in reaching its decision. The doctrine of mutuality of obligation, according to Corbin, should be used only when referring to bilateral contracts:

Mutuality of obligation should be used solely to express the idea that each party is under a legal duty to the other; each has made a *promise* and each is an obligor. This is the meaning with which the term is commonly used. There are cases, however, in which it is otherwise defined. In order to save the supposed requirement of "mutuality," it is sometimes declared that it means nothing more than that there must be a sufficient consideration. Even though one of the parties has made no promise and is bound by no duty, the contract has sufficient mutuality if he has given an executed consideration. Thus, the validity of a unilateral contract is recognized, at the same time appearing not to run counter to the requirement of mutuality. While the result reached in these cases is sound, such a method of rationalizing it merely perpetuates confusion of thought. *There are now plenty of cases that clearly recognize the validity of a unilateral contract. Courts now often say correctly that it is consideration that is necessary, not mutuality of obligation.*²²

The doctrine was correctly held inapplicable in *Schmidt v. Marine Milk Condensing Co.*²³ There the defendant promised to pay a certain amount of money to plaintiff upon delivery of milk to the defendant. Plaintiff delivered the milk but defendant would not pay him the full price. In its analysis of the situation the court said:

Where in accordance with an offer to accept and pay for certain goods at a stipulated price, the delivery thereof is made and accepted, the offer becomes a binding promise to pay therefor, even though the seller was not bound to deliver, the doctrine of mutuality having no application in such case.

Another Illinois court, handling the problem with more care and thought than in the *Plumb* case said:

While consideration is essential to the validity of a contract, mutuality of obligation is not. . . . If mutuality, in a broad sense, were held to be an essential element in every valid contract, to the extent that both contracting parties could sue on it, there could be no such thing as a valid unilateral . . . contract. Such contracts have long been recognized . . . in Illinois.²⁴

UNILATERAL CONTRACTS IN REGARD TO OPTIONS

On being confronted with options, Illinois courts have often referred to the terms "unilateral" and "unilateral contracts." Four situations, based essentially on the same set of facts are herein discussed to indicate the lack

²² 1 Corbin, Contracts § 152 (1950) (Emphasis added).

²³ 197 Ill. App. 279, 281 (1915).

²⁴ *Armstrong Paint Works v. Continental Can Co.*, 301 Ill. 102, 108, 133 N.E. 711, 714 (1922).

of uniformity with which Illinois courts have referred to options in connection with the terms "unilateral" and "unilateral contracts."

X offered to sell certain premises to Y for \$1,000. In consideration for \$100 paid by Y to X, X promised to keep the offer open for one year.

In discussing this "paid for" offer, three of the four courts found it necessary to use the word "unilateral" or "unilateral contract."

1. *Lake Shore Country Club v. Brand*.²⁵

An option contract is unilateral. Under it the optionee has a right to purchase upon the terms and under the conditions therein named. He is not, however, bound to purchase. Because but one party is bound thereby and the other is not, courts will exercise their discretion with great care in determining whether *such a unilateral contract* has been converted into a bilateral contract.

2. *Estes v. Furlong*.²⁶

Where the contract is in *anywise unilateral*, as in the case of an option to purchase . . . in compliance with it, is regarded with especial strictness, for then laches would be more easily fixed upon the vendee, than where the contract was of ordinary character.

3. *Northern Illinois Coal Corp. v. Cryder*.²⁷

An option, so long as it remains unaccepted is a *unilateral writing lacking the mutual elements of a contract*, but when accepted by the optionee there emerges, as the result of such acceptance, an executory contract *inter partes* . . . for the sale and purchase of the optioned property, mutually binding upon the optionor and optionee and containing mutual rights and obligations enforceable as such in accordance with the established rules relating to executory contracts.

4. *Bates v. Woods*.²⁸

[I]f there is an offer by one to do a certain thing, and a promise on his part, without any valuable consideration therefor, to leave the offer open for a limited period, no contract is thereby created, because one of the essential elements of a contract, viz., the consideration is lacking, but that where there is a valuable consideration for the promise to leave the offer open for a limited period a contract arises whereby one acquires a right to accept or reject the offer, within the time limited,—or, expressed in words of the same meaning, a contract arises whereby one acquires . . . an option.

Case four found it unnecessary to use the words "unilateral" or "unilateral contract," showing that an option can be discussed without reference to these words. Cases one, two, and three used these words but the courts in employing them lacked uniformity.

²⁵ 339 Ill. 504, 521, 171 N.E. 494, 501 (1930) (Emphasis added). Accord: *Robbs v. Illinois Rural Rehabilitation Corp.*, 313 Ill. App. 418, 40 N.E. 2d 549 (1942).

²⁶ 59 Ill. 298, 302 (1871).

²⁷ 361 Ill. 274, 283, 197 N.E. 750, 755 (1935) (Emphasis added).

²⁸ 225 Ill. 126, 131, 80 N.E. 84, 85 (1907).

One Illinois court in discussing an offer that was not paid for, said, regarding options:

*An option contract is an executed unilateral contract and not an executory one. . . . An option is a right acquired by contract to accept or reject a present offer within the time limited. In such contract two elements exist: first, the offer to sell, which does not become a contract until accepted; second, a contract to leave the offer open for a specified time. It is clearly apparent that an option is a contract and must, therefore, necessarily contain all the incidents of a contract, among them being the requirement of the existence of a valuable consideration. The so-called option in this case does not specify a time for performance by the optionee, nor was there any consideration given for it. We are of the opinion, therefore, that the instrument sued upon was not an option but was more in the nature of a unilateral offer.*²⁹

Further confusion is illustrated by referring back to the case of *Northern Illinois Coal Corp. v. Cryder*.³⁰ There, after calling an option a unilateral writing the court states that since it lacks mutuality of obligation, it is not a contract. This holding is contrary to the accepted principle that a paid for offer is a contract and that lack of mutuality is of no importance. In *Anderson v. Bills*³¹ the court held that the rule of mutuality of obligation did not apply to, "unilateral or option contracts." The court, contrary to the *Northern Coal* case, recognized that an option is a contract, but used the words unilateral contract. The court quotes from Page who said:

An option is said to be "a *unilateral agreement*" binding upon the party who executes it from the date of its execution, and it becomes a contract *inter partes* when exercised according to its terms.³²

It was concluded by the court that "The contract in this case was an *option or unilateral contract* and by its terms it was binding upon one party alone and could be specifically enforced against that party."³³

It can be seen, therefore, that the Illinois courts differ as to what is an option, and it is difficult, after reading the cases, to understand the significance, correctness, consequences, and purpose of using the term unilateral in regard to option contracts.

Williston, defining an option, says, "If consideration is paid for an offer . . . the offer is a contract. . . . Such contracts are generally called options."³⁴ The *Restatement of the Law of Contracts*, in speaking of options, likewise does not mention unilateral contracts:

²⁹ *Whitelaw v. Brady*, 3 Ill. 2d 583, 589, 121 N.E. 2d 785, 789 (1954) (Emphasis added).

³⁰ Authority cited note 27 supra.

³¹ 335 Ill. 524, 167 N.E. 864 (1929).

³² Page, *Contracts* § 571 (2d ed., 1920); 335 Ill. 524, 528, 167 N.E. 864, 866 (1929).

³³ *Anderson v. Bills*, 335 Ill. 524, 528, 529, 167 N.E. 864, 866 (1929).

³⁴ 1 Williston, *Contracts* § 61 (rev. ed., 1936).

The word "option" is often used for any continuing offer regardless of whether it is revocable for lack of consideration; but more commonly the word is used to denote an offer that is irrevocable and therefore a contract.³⁵

To make unqualified statements, such as were made in several of the above cases, that an, "option contract is unilateral," can be deceiving. Corbin, for instance, says:

An option contract can be either unilateral or bilateral. . . . If A pays B \$100 cash in return for B's promise to convey Blackacre to A for \$5,000 if paid within 30 days, they have made a unilateral option contract. A has an irrevocable option to buy, good for 30 days; he has made no promise of any kind, being equally privileged to buy or not to buy—his option or freedom of choice is wholly unlimited. Nevertheless, B's promise is binding because he has been paid \$100 for it.

On the other hand, suppose that instead of paying cash A had given to B his promissory note for \$100, or his oral promise to pay that sum, in return for B's promise to convey Blackacre to A for \$5,000, if paid within 30 days. The contract thus made is bilateral, each party having made a binding promise.³⁶

According to Corbin's analysis, an option contract may be bilateral as well as unilateral and the unqualified statement that an option contract is unilateral is incorrect. Since neither Williston or the *Restatement* use the words "unilateral contract," and because its use tends to be confusing, and since no purpose is served in calling an option a "unilateral contract," it would be helpful if the words were omitted completely.

CONCLUSION

Professor Page apparently did not think that the term "unilateral contract" was the best that could be used to describe "an offer for an act." Perhaps it is not, but as it now stands, the term is in existence and appears likely to remain firmly entrenched in the legal vocabulary. The problem lies in the fact that the words "unilateral contract" have been tossed about carelessly and confusion has been the result.

The Illinois courts have varied in their repeated use of the terms. If "unilateral" and "unilateral contract" were used uniformly, or better yet, used as defined by Williston, Corbin, and the *Restatement*, much of the confusion revolving around the law of unilateral contracts would be cleared up.

³⁵ § 24 Comment c.

³⁶ 1 Corbin, Contracts § 260 (1950).

BASES FOR AWARDING COMPENSATION TO TRUSTEES

Historically, the law as expressed in the early English cases and in some of the American jurisdictions was that a trustee was not entitled to compensation for his services and time in administering a trust. The trustee's efforts were merely gratuitous without regard to any advantage that