

**Logocratic Method and the Modes of Common Law Argument**  
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***James Baird and Drennan: Common Law Contract Background for these two cases***

**Basic patterns of U.S. "bilateral" and "unilateral" contracts**

**Example of two contracting parties, A and B**

**(1) offer for bilateral contract, A says to B: If you *promise to do Act X*, I promise to do Act Y.**

This is an *offer* for a "bilateral" contract, defined as a promise in exchange for a promise. When B makes the return promise ("I promise to do Act X), the contract is said to be "formed." The "consideration" to A is *B's promise*, and the consideration to B is *A's promise*.

**(2) (1) offer for unilateral contract, A says to B: If you *do Act X*, I promise to do Act Y.**

This is an *offer* for a "unilateral" contract, defined as a promise in exchange for a performance. Under traditional rules, when B *completes the performance* that A seeks, the contract is said to be "formed." The "consideration" to A is *B's performance*, and the consideration to B is *A's promise*.

**The idea of a conditioned contract**

Some contracts are *conditioned* on certain acts or events taking place. (This is a contractual condition, not to be conflated, of course, with the *logical condition* of a rule.)

*Restatement (Second) of Contracts* § offers this set of rule enthymemes to define what a condition is, how it operates, and how it is made:

**§224. Condition Defined**

A condition is an event, not certain to occur, which must occur, unless its nonoccurrence is excused, before performance under a contract becomes due.

**§225. Effects of the Non-Occurrence of a Condition**

(1) Performance of a duty subject to a condition cannot become due unless the condition occurs or its non-occurrence is excused.

(2) Unless it has been excused, the non-occurrence of a condition discharges the duty when the condition can no longer occur.

(3) Non-occurrence of a condition is not a breach by a party unless he is under a duty that the condition occur.

**§226. How an Event May Be Made a Condition**

An event may be made a condition either by the agreement of the parties or by a term supplied by the court.

**Common fact pattern of *James Baird and Drennan***

An owner wants a building built, and need to hire a "general contractor" ("GC"). This is the business that hires all the different workers who are needed to build the building according to the wishes of the owner. The workers hired by the GC are "subcontractors" ("SC"). In both *James Baird* and *Drennan v. Star Paving*, a GC was *hoping* to be hired by the owner to build the building, but there were several general contractors who were *competing* to be awarded the general contract by the owner.

GC tries to win the general contract from the owner.

GC asks for bids (a statement of prices) from subcontractors.

When the GC receives those bids from the subcontractors, the GC can calculate how much he would charge the owner to build the building under the general contract.

In both *James Baird* and *Drennan*, the subcontractor (the defendant in the contracts lawsuit) made an offer for a **bilateral contract** to the general contractor. But instead of accepting the offer (even "conditionally"), the general contractor relied on the prices offered by the subcontractor in making the general contractor's offer to the owner. Then, in both cases, the general contractor won the bid for the general contract, but before the general contractor accepts the offer from the subcontractor, the subcontractor seeks to revoke the offer. The question in both cases was whether the offer (promise) from the subcontractor enforceable?

**Question for legal abduction in both *James Baird* and *Drennan***

*The question in both cases was whether the offer (promise) from the subcontractor enforceable?*

*What answer did Judge Hand give in *James Baird*? What arguments does he use? Do a full Logocratic analysis – treating his argument as in dialectical competition with Traynor's in *Drennan**

*What answer did Justice Traynor give in *Drennan*? What arguments does he use? Do a full Logocratic analysis – treating his argument as in dialectical competition with Hand's in *James Baird**