



DATE DOWNLOADED: Tue Apr 2 10:30:04 2024

SOURCE: Content Downloaded from [HeinOnline](https://heinonline.org)

Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Bluebook 21st ed.

Robert A. Hillman, Mark Pettit's Classic: Modern Unilateral Contracts, 28 B.U. PUB. INT. L.J. 295 (2019).

ALWD 7th ed.

Robert A. Hillman, Mark Pettit's Classic: Modern Unilateral Contracts, 28 B.U. Pub. Int. L.J. 295 (2019).

APA 7th ed.

Hillman, R. A. (2019). Mark pettit's classic: modern unilateral contracts. Boston University Public Interest Law Journal, 28(2), 295-296.

Chicago 17th ed.

Robert A. Hillman, "Mark Pettit's Classic: Modern Unilateral Contracts," Boston University Public Interest Law Journal 28, no. 2 (Summer 2019): 295-296

McGill Guide 9th ed.

Robert A. Hillman, "Mark Pettit's Classic: Modern Unilateral Contracts" (2019) 28:2 BU Pub Int LJ 295.

AGLC 4th ed.

Robert A. Hillman, 'Mark Pettit's Classic: Modern Unilateral Contracts' (2019) 28(2) Boston University Public Interest Law Journal 295

MLA 9th ed.

Hillman, Robert A. "Mark Pettit's Classic: Modern Unilateral Contracts." Boston University Public Interest Law Journal, vol. 28, no. 2, Summer 2019, pp. 295-296. HeinOnline.

OSCOLA 4th ed.

Robert A. Hillman, 'Mark Pettit's Classic: Modern Unilateral Contracts' (2019) 28 BU Pub Int LJ 295
Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Provided by:

Fineman & Pappas Law Libraries

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

MARK PETTIT'S CLASSIC: MODERN UNILATERAL CONTRACTS

Robert A. Hillman

Mark Pettit was an exceptional teacher and scholar. Most important, he was a wonderful person. Although I did not have the opportunity to know Mark closely, having met him only when he participated in an AALS contracts conference in Ithaca years ago and briefly at other workshops, those interactions sufficed to make me appreciate what a brilliant, yet unassuming, scholar and individual he was. And the evidence is abundant that he was also beloved by his students.¹ In his classes, Mark combined penetrating legal analysis with humor and even entertainment (he was known as “the singing professor”²) to make the contracts course both edifying and enjoyable for generations of law students.³

But the primary reason the Public Interest Law Journal asked me to write this dedication, was to introduce the reprinting of Mark’s remarkable 1983 article, “Modern Unilateral Contracts.”⁴ In unilateral contract cases, offerors require acceptance by return performance instead of return promise. I say “remarkable” because the common wisdom at the time Mark wrote, supported by such luminaries as Llewellyn and by the prestigious Restatement (Second) of Contracts,⁵ was that unilateral contracts were anomalous, unimportant, and functionally obsolete, primarily because the vast majority of contracts included a return promise by the offeree.⁶ Mark’s

¹ *BU School of Law Remembers Professor Mark Pettit Jr.*, B.U. SCH. OF L. (June 11, 2018), <https://www.bu.edu/law/2018/06/11/bu-school-of-law-remembers-professor-mark-pettit-jr/>.

² Tovia Smith, *Singing Law Professor Rocks the Classroom*, NPR: EDUCATION (Nov. 14, 2007, 5:28 PM), <https://www.npr.org/templates/story/story.php?storyId=16275927>.

³ See Bos. Univ., *In the Classroom: First-Year Contracts with Professor Mark Pettit*, YOUTUBE (Sept. 23, 2010), <https://www.youtube.com/watch?v=fADCYiipgZQ>, for a video of Mark’s teaching.

⁴ Mark Pettit, Jr., *Modern Unilateral Contracts*, 63 B.U. L. REV. 551 (1983).

⁵ RESTATEMENT (SECOND) OF CONTRACTS §§ 32, 62 (AM. LAW INST. 1981).

⁶ *Modern Unilateral Contracts* points out that Llewellyn thought the “true” unilateral case involved rare and unimportant offers, such as the offered prize in reward cases. Pettit, *supra* note 3, at 555. For recent examples of facts that would support a unilateral contract analysis in the kind of case Llewellyn had in mind, see ROBERT A. HILLMAN, PRINCIPLES OF

article demonstrated that this perception was entirely wrongheaded. Mark showed in detail the importance and proliferation of modern unilateral contracts in various transactions, especially in those important employment cases where employers promise pensions, bonuses, and the like in return for faithful performance of service by the employee. Mark thoughtfully explained that the continued recognition and expansion of the use of unilateral contract demonstrate “a movement toward increased contractual obligation.”⁷

A brief survey of cases since 1983 more than substantiates Mark’s insight that unilateral contract remains a significant and growing construct in the legal lexicon.⁸ Rather than falling out of favor, unilateral contract continues to provide a useful framework for analyzing a whole series of modern contract cases. Perhaps that insight is even more important now than when Mark contributed this marvelous article. “Modern Unilateral Contracts” is, therefore, a classic well worth reading again.

CONTRACT LAW 58 (4th ed. 2018) (using a tweet by Julian Assange, the founder of WikiLeaks, as an example of an offer to agree to extradition to the United States if President Obama commuted Chelsea Manning’s sentence); *Kearney v. Equilon Enters., LLC*, 65 F. Supp. 3d 1033, 1039 (D. Or. 2014) (finding a gasoline station offer that says “Buy 10 gallons of fuel, get a voucher for a free [ski] lift ticket!” established a unilateral contract).

⁷ Pettit, *supra* note 4, at 594.

⁸ According to Westlaw data, courts mentioned “unilateral contract” in 2889 cases between January 1984 and December 27, 2018, when I wrote this dedication.