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The Logical Form of Contract Formation

A dissertation submitted in partial satisfaction of the  
requirements for the degree Doctor of Philosophy  
in Linguistics

by

Joseph Patrick Buffington

2015

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# ABSTRACT OF THE DISSERTATION

## The Logical Form of Contract Formation

by

Joseph Patrick Buffington

Doctor of Philosophy in Linguistics

University of California, Los Angeles, 2015

Professor Yael Sharvit, Co-chair

Professor Timothy Stowell, Co-chair

This dissertation lays the foundation for linguistic inquiry into the question of how speakers of English know when a contractual offer has been made. Of primary interest here is the issue of whether the perception that an offer has been made is somehow, apparently silently, reflected in the syntax and semantics of the language of the offer itself or whether such a perception is a matter of intention on the part of the speaker and/or inference on the part of the hearer – notions that have no real reflection in the “literal” meaning of the language of offers in the typical case. Using traditional linguistic methodology, I argue that the latter is more likely: In particular, I show that the postulation of silent offer or promise elements in the syntax and semantics of a typical contractual offer produces incorrect predictions as to which sentences of English should be viable contractual offers and as to what contractual offers should mean. The dissertation is written for popular consumption, so no expertise in linguistics (or law) is presumed.

The dissertation of Joseph Patrick Buffington is approved.

Edward Keenan

Seana Shiffrin

Yael Sharvit, Committee Co-Chair

Timothy Stowell, Committee Co-Chair

University of California, Los Angeles

2015

*to the one who listens*

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Further thanks go to the Linguistics Department at UCLA for giving a mid-career attorney a chance to finish what he started so long ago and to fulfill his love of undergraduate teaching along the way. The department's graduate students, most of whom were 20 or more years my junior, always made me feel welcome and (dare I say it) young again. The department's faculty always made me feel respected ... and even forgiven, for once having left the fold.

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Final thanks go to my friends and family. If you're reading this, and you think I'm referring to you, you are correct.

\* \* \*

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# Chapter 1

## *Introduction*

Most of us form and perform contracts every day. To the reader who thinks of a contract as something formal – a mass of paper with a maze of fine print – this may come as a surprise. But contracts are nothing more than agreements between individuals that involve an exchange of rights and duties. When you pay for a cup of coffee on your way to work in the morning, you’re forming and performing a contract with the coffee seller: In exchange for the right to drink the coffee, you incur the duty to pay for it, and in exchange for the right to your payment for the coffee, the coffee seller incurs the duty to let you drink it. In such mundane situations as this, it may very well be the case that no language is exchanged between you (the buyer) and the seller of the coffee. At one of the many coffee shops I patronized while writing this dissertation, large urns of java were left out for customers to serve themselves. But in walking into the shop, it was clear to me and others that seller wasn’t giving me a caffeinated gift; instead, by leaving the coffee on the counter for me to serve myself, the coffee seller impliedly made me a contractual offer – which, had it been made explicitly, might have been made in the following way:

(1)           If you pay me the price I charge for the coffee, I’ll let you have the coffee.

There would be lots of problems with saying that (1) unambiguously reflects the coffee seller’s offer – for example, it’s not clear whether I have to pay before or after serving myself, or how much coffee I’m entitled to – but (1) might be said to be a prototypical way of making such an offer in that it conspicuously states that the seller’s letting me have the coffee is *conditioned* upon my paying for it. In that respect, (1) is obviously different from the unconditional sentence in (2), which feels more like a “promise” than an “offer”:

(2) I'll let you have the coffee.

Not surprisingly, then, it's not unusual for contractual offers to be as thought of a something along the lines of "conditional promises." In short, the goal of this dissertation is to show that such this conception isn't quite right.

### 1.1. *A Note on Intended Audiences*

I've written this dissertation with the goal that it be accessible to anyone who's interested in the issue of how certain linguistic expressions (and not others) are interpretable as contractual offers. As someone schooled in both law and linguistics, I'm disposed, of course, to addressing some of the "deeper" issues these disciplines are concerned with, and from time to time that means getting into some of the more technical aspects of these fields, but by and large I have attempted to write a dissertation that requires no expertise, or even experience, in either. To be sure, this a linguistics dissertation, and that means that most of its content is devoted the language issues related to contract formation – in particular the linguistic structure of contractual offers – but some attention is paid to the legal issues related to the analysis of contractual offers presented here, especially in Chapter 6.

Given that this dissertation assume no familiarity with linguistics or with the law of contracts, a brief introduction to each is in order.

### 1.2. *An Introduction to Linguistics*

'Linguistics', in the sense that I and many other self-described "linguists" use the word, is the science of human language. I say the "science" of human language and not the "study" of human language because the method employed by linguists is the scientific method, which involves the

formulation of falsifiable hypotheses. I say that linguistics is the study of “human” language because I’ve been trained in the Chomskian tradition, a scientific tradition which seeks to answer the question: “What do humans actually know when they know a language?”<sup>1</sup> Linguistics is often divided into subfields, each charged with the task of modeling different aspects of human language. To offer the most basic of definitions: “Phonetics” is the science of human speech sounds. “Phonology” is the science of the patterns of human speech sounds. “Morphology” is the science of word formation. “Syntax” is the science of sentence formation. “Semantics” is the science of word and sentence meaning. “Pragmatics” is the science of how (non-semantic) inferences are drawn from linguistic expressions. This list isn’t exhaustive, and I can imagine many linguists objecting to these simplified definitions, but they will serve our purposes for now. I will be interested primary in the subfields of syntax, semantics, and pragmatics, and detailed descriptions of the assumptions underlying these subfields will be presented in Chapters 3 and 4.

### 1.3. *An Introduction to Contracts*

The law defines a “contract” as in (2):

- (2) A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.<sup>2</sup>

The law defines a contractual offer as in (3):

- (3) An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.<sup>3</sup>

The contrast between (2) and (3) is intriguing: The law defines a contract as “a promise or set of

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<sup>1</sup> See e.g. Chomsky (1986).

<sup>2</sup> Restatement 2<sup>nd</sup> of Contracts §1.

<sup>3</sup> Restatement 2<sup>nd</sup> of Contracts §24.



promises,” but it doesn’t define a contractual offer as a “promise” or even as a “conditional promise.” In Chapter 2, we’ll explore why the linguists who have looked at contractual offers in the past adopt what seems to be a common sense conception of contractual offers as a “conditional promises,” but even at this preliminary point, it seems as if the law has provided us with a mystery: If *contracts* involve promises, but *contractual offers* don’t, where do the promises in contracts come from?

We can start to answer this question by looking a little more deeply at what the law says is required in order for a contract to be formed. (In Section 1.4, we’ll examine the extent to which these legal requirements are reflected in linguistic intuitions.)

### 1.3.1. *Contract Formation*

Essentially, the law imposes three requirements for contract formation: There must be an offer, there must be an acceptance of the offer, and the offer and the acceptance must be connected by the legal concept of “consideration.”<sup>4</sup>

### 1.3.2. *Offer*

In order for there to be an offer, there must be a manifestation of contractual intent, with clear and definite terms, that has been communicated to an offeree.<sup>5</sup> With respect to contractual intent, under the American rule, so long as it is reasonable for the offeree to believe that the offeror is sincere when communicating contractual intent, the offeree has the power of acceptance, even if the offer was made insincerely.<sup>6</sup>

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<sup>4</sup> Cent. Mortgage Co. v. Morgan Stanley Mortgage Capital Holdings LLC, 27 A.3d 531, 537 (2011).

<sup>5</sup> Lefkowitz v. Great Minneapolis Surplus Store, 251 Minn. 188, 186 (1957).

<sup>6</sup> Lucy v. Zehmer, 196 Va. 493 (1954). See Tiersma (1992) for interesting discussion.

With respect to clear and definite terms, the one term required in all transactions is quantity – that is to say, the offeror must make it clear how much performance is to be exchanged between the parties.<sup>7</sup>

Importantly for our purposes here, an offer can be expressly revoked by the offeror at any time prior to acceptance.<sup>8</sup> (An offer can also be impliedly revoked by reasonable lapse of time, by death of the offeror or offeree, and by destruction of the subject matter: For example, if I offer to buy your house for \$500,000, and my house burns down before you accept my offer, then, by default, my offer is impliedly revoked.)

Also importantly for our purposes here, some offers are deemed to be “unilateral,” meaning that a mere “linguistic” acceptance is insufficient for acceptance: In order to accept a unilateral offer, the offeree must actually perform, i.e. do (or not do) what the offeror asked him to do (or not do). The quintessential example of a unilateral offer is a reward offer. For example, if I offer to pay you \$100 for finding my lost dog and returning it to me, then, in order for you to accept my offer, i.e. in order for me to be committed to paying you, you must actually find my dog and return it to me. This means that my offer is freely revocable at any time before you find and return my dog. The modern legal trend, however, is to treat unilateral offers as irrevocable once the offeree starts performance, in which case the offeror must give the offeree a reasonable time to complete performance.<sup>9</sup> Thus, under the modern rule, once you start searching for my dog, my offer to pay you for finding him and returning him to me is irrevocable for a reasonable time.

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<sup>7</sup> Jurists will note that here I’m suppressing several distinctions between the Common Law and the Uniform Commercial Code (UCC), two bodies of law governing contracts in the United States.

<sup>8</sup> Jurists will note that I’m neglecting “options contracts” as well as “merchants’ firm offers” under the UCC.

<sup>9</sup> Indeed, the offeree’s starting performance is sometimes deemed to involve an implied promise to complete performance. See Murray on Contracts §46[C][2] and Section 1.3.3 *infra*. To be clear: when I refer to acceptance “by performance” in this dissertation, I intend to incorporate this notion of acceptance by *starting* performance.

Offers that aren't deemed to be unilateral are said to be "bilateral," meaning that they can be accepted either by the offeree's performance or by the offeree's linguistic acceptance of the offer. Indeed, it is sometimes difficult to know whether an offer will be deemed to be unilateral or bilateral – in part, one might assume, because the distinction is linguistically blurred, given that an offeror normally asks the offeree to perform, rather than asking the offeree to merely promise to perform. In that sense, (4) would be a very strange offer, indeed:

(4) If you promise to pay me \$100, I will sell you my bike (even if you never actually pay).

Perhaps in part for this reason, there exists a rule of disambiguation to the effect that, unless it's clear that the offeror is unwilling to be committed until the offeree completes performance, the offer will be deemed to be bilateral, such that the offeree may accept the offer with a mere "promise" to perform.<sup>10</sup> The distinction between unilateral and bilateral offers will be discussed in more detail in Chapter 2. In the meantime, let's examine whether contractual offers, when linguistically accepted, must be accepted with "promises" to perform.

### 1.3.3. *Acceptance*

Recognizing that offers may be accepted either by performance or by linguistic acceptance – and moreover that the offeror may demand performance, as opposed to linguistic acceptance, as acceptance – the law defines the acceptance of a contractual offer as follows:

- (5) (i) Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.
- (ii) Acceptance by performance requires that at least part of what the offer requests be performed or tendered and includes acceptance by a performance which operates as a return promise.

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<sup>10</sup> Davis v. Jacoby, 34 P.2d 1026 (1934).

- (iii) Acceptance by a promise requires that the offeree complete every act essential to the making of the promise.<sup>11</sup>

Thus the law seems to indicate that a linguistic acceptance, as opposed to an acceptance by performance, must involve the offeree's "promise" to perform. However, no particular linguistic form of acceptance is actually required for bilateral offers; a linguistic expression certainly won't fail to qualify as an acceptance merely by virtue of the fact that the word 'promise' doesn't appear in the expression.<sup>12</sup> Thus, an expression like (6) will normally suffice as an acceptance of a bilateral contractual offer:

- (6) I accept.

So linguistic acceptances don't necessarily involve promises, at least not explicit ones, any more than offers do. So the question persists: How do contracts come to contain promises?

#### 1.3.4. *Consideration*

The legal concept of consideration reflects the notion that in order for an offer (once accepted) to be enforceable, the offeror must be asking for the offeree to do something or not to do something in return for the offeror's performance.<sup>13</sup> In other words, there must be a exchange of performances, which is linguistically reflected in the conditional "if-then" nature of the offer. To say this another way, gift promises, like the one expressed in (2) above, are not enforceable as contractual offers, like the one expressed in (1) above. The legal consequence of this distinction is that whereas a person who accepts a contractual offer will normally be entitled to the offeror's performance, a person who relies to his detriment on a gift promise will normally be entitled

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<sup>11</sup> Restatement 2<sup>nd</sup> of Contracts §50.

<sup>12</sup> Indeed, in appropriate cases, even silence can serve as acceptance; Restatement 2<sup>nd</sup> of Contracts §69.

<sup>13</sup> *Currie v Misa*, LR 10 Exch. 153 (1875).

only to the value of his reliance.<sup>14</sup> For example, if you promise to treat me to a dinner at a 5-star restaurant, without asking me to do anything in return other than to be treated to the meal, and I, because I own no nice shoes, spend money on nicer shoes than I would normally buy, then I may be entitled to the value of the shoes or to the difference in value between those shoes and shoes that I would ordinarily buy, but I won't necessarily be entitled to value of the dinner, nor to the dinner itself, which would reflect my recovery in contract.<sup>15</sup>

In a sense, then, consideration is the cement that holds a contract together: If I offer to do something for you in return for your doing something for me, then you are legally entitled to my performance, and I am legally entitled to yours. But an agreement involving the reciprocal exchange of rights and corresponding duties doesn't seem to necessarily involve the exchange of promises: It would seem that I could agree to pay you the price for the coffee if you agree to sell it to me without actually *promising* you to pay for it. So it would seem as if examination of the legal criteria for contract formation doesn't yield an answer to the question of why contracts – and contractual offers in particular – are deemed to contain promises.

#### 1.4. *Relevant Linguistic Criteria*

Having identified the legal criteria for contract formation, a natural question arises as to whether these legal criteria are even relevant to linguistic intuitions as to whether a contract has been formed. My short answer to this question is “no.” To be clear, this dissertation isn't concerned with the “meta” issue as to whether a speaker of English will identify a given set of commitments as a “contract.” Rather, this dissertation is concerned with the issue of why, for

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<sup>14</sup> *Robert Gordon, Inc. v. Ingersoll-Rand Co.*, 117 F.2d 654 (7th Cir. 1941).

<sup>15</sup> Jurists will note that, modernly, many courts will enforce gift promises as if they had arisen in contract. Restatement 2<sup>nd</sup> of Contracts §90 indicates that promises in the absence of consideration that induce justifiable detrimental reliance are enforceable “as justice requires.” Becker (1987) offers useful discussion of the issue.

example, speakers of English have the intuition that the utterance of (1) by Speaker A to Speaker B, followed the utterance of (6) by Speaker B to Speaker A, results in a set of commitments in the form of A's right to payment and corresponding duty to let B have the coffee, and B's right to the coffee and corresponding duty to pay for it. In other words, this dissertation isn't about what the law recognizes as a contract or what laypersons would identify as a "contract"; it's about what naïve, native speakers of English recognize as a linguistic event from which reciprocal commitments arise, whether they would call such a thing a "contract" or not. Still, it's worth saying explicitly that, to the extent this dissertation seeks to discover what gives a hearer the impression that a speaker has made the hearer an offer by uttering a given linguistic expression, I doubt whether or not the law would recognize the expression as an offer enters into the hearer's calculation of whether an offer was made (or at least intended) – not even, perhaps, for experts in contract law, when, as normal native speakers of English, they participate in the act of contract formation.

In particular, it seems that the legal element of consideration has no reflection in linguistic intuitions. It's true that contractual offers are inherently conditional (although, in Chapter 5, I will suggest that the sine qua non of contractual offers is not linguistic conditionality per se but rather a related semantic concept), but that doesn't mean that naïve, native speakers of English have intuitions to the effect that gift promises are unenforceable as contracts. Indeed, gift promises can be conditional, as in (7):

(7)            If it rains, I will bring you an umbrella.

The sentence in (7) shows conditional syntax, but there is no legal consideration reflected in (7), because the speaker of (7) isn't asking the hearer of (7) to do (or not to do) anything in exchange

for receiving the umbrella – as contrasted with (8), which involves consideration and thus may legally be taken as a contractual offer:

(8)           If you pay me \$10, then if it rains, I will bring you an umbrella.

But the naïve speakers of English I've surveyed never report that they would expect the person who relies on (7) to have a different legal entitlement than the person who accepts (8), for example, by paying the \$10 – in each case, speakers report that the speaker owes the hearer an umbrella if it rains. In that sense, then, the legal requirement of consideration for the enforceability of a contract doesn't seem to be reflected in naïve linguistic intuitions.

Where speakers of English *do* detect a difference in (7) and (8) has to do with what, if anything, the hearer of the sentences has to do in order for the commitment to bring the umbrella (if it rains) to be created. In general, speakers of English are quick to characterize (7) as a “promise” – perhaps as a “conditional promise” – and speakers tend to report that promises don't require acceptance in order for a commitment to be created. Thus, for example, if I utter the sentence in (7) on your voice mail, you don't have to call me back and utter something like (6) in order for me to be committed to bringing you an umbrella if it rains. In contrast, speakers generally characterize (8) as an “offer” and not as a “promise,” and speakers tend to report that offers require some form of acceptance in order or a commitment to be created. Thus, if I utter the sentence in (8) on your voice mail, I'm not committed to bringing you an umbrella (if it rains) until you call me back and utter something like (6), or unless you pay me \$10.

Readers who aren't convinced that they share these intuitions are invited to ask themselves the following question: Imagine that, after uttering (7) on my voice mail, you discover that you have no umbrella to bring me and moreover that you won't be able to find one in time, and so you call

me up to tell me that you won't be bringing me an umbrella after all. Now ask yourself: How bad do you feel about what you've done? Most speakers of English report that they would feel pretty bad, as if they had done something wrong. Contrast that with an identical situation, except for the fact that you uttered (8) on my voicemail instead of (7). In this situation, if – before I've called you back and uttered something like (6), and before I've sent you the \$10 – you call me up to tell me that you won't be bringing me an umbrella, after all: Do you feel as bad as you did before? Every speaker of English I've put this question to has answered that no, they wouldn't feel as bad this time, because the offer in (8) hasn't been accepted yet, suggesting that (7) and (8) differ in terms of the degree to which they require acceptance: In short, promises don't, but offers do.

For these reasons, I will assume for the duration of this dissertation that, in the sense described, promises – even “conditional” ones – are linguistically irrevocable and don't require linguistic acceptance in order for a commitment to be created, whereas offers are linguistically revocable before acceptance and do require acceptance in order for a commitment to be created. This is not to say, of course, that the linguistic intuitions on which this assumption is based exist because the law recognizes contractual offers as revocable (which it does). If anything, as suggested above, the linguistic intuition that offers are revocable, whereas promises are not, is more likely reflected in the law than vice versa. I further assume that the legal requirements of offer and acceptance for the formation of a contract are reflections of linguistic intuitions, rather than vice versa.

As for whether the unilateral vs. bilateral distinction for contractual offers is linguistically-based, my first instinct, as discussed in Chapter 2, is “no,” but I will revisit issue in Chapter 5 and offer a more qualified answer – the reader is referred to those chapters for discussion of this issue.



### 1.5. *The Ambiguity of Contractual Offers*

The fact remains, however, that both the law and, as we will see in Chapter 2, the linguists who've studied contract formation in the past, adopt the position that contracts (in particular, contractual offers) involve promises – or at least conditional ones. But the question to be answered in this dissertation remains this: Is there any *linguistic* reason for believing so? Before attempting to answer this question, we might first consider why a linguist would care about the distinction between offers and promises and moreover why a linguist would care about whether a given linguistic expression can be interpreted as a contractual offer. Isn't whether a sentence is interpreted as a contractual offer just a matter of common sense? My short answer to this question is “yes, but no.” As will become apparent throughout the course of this dissertation, I believe that speakers and hearers of a sentence like (9) use contextual clues to decide whether a such a sentence is to be interpreted as a contractual offer:

(9)            If you give me some candy, I will stay up later than usual.

but some very similar expressions – for example, (9') – aren't interpretable as offers:

(9')           If you had given me some candy, I would have stayed up later than usual.

The reader may feel that there's nothing surprising about (9'): Surely contractual offers have to be about future events, and (9') is about some event (or non-event) in the past. But what the reader might have missed is that the original version of (9) is actually “ambiguous” between two interpretations, one of which involves a contractual offer and the other of which does not, in spite of the fact that both are about future events. This ambiguity may be slightly easier to perceive if we convert the first/second-person sentence in (9) to the third-person sentence in (10):

(10) If John gives Mary some candy, she will stay up later than usual.

The sentence in (10) is “ambiguous” in the sense that it can be interpreted either as a “claim” about the future or as a “contractual offer.” For the interpretation of (10) as a claim, it may help to imagine a context in which Mary is sensitive to sugar, perhaps a context in which someone has just said to the speaker of (10) that John intends to give Mary some candy and the speaker of (10) is worried about Mary’s bedtime. For the interpretation of (10) as a contractual offer, we have to imagine that the speaker of (10) is an agent of Mary, speaking on behalf of Mary, and that the hearer of (10) is an agent of John, and that the speaker of (10) believes that John may like for Mary to stay up later than usual, and that Mary is willing to do so if John gives her some candy, and so forth.

We can convince ourselves that this ambiguity is real by testing the replies to (10) that are “felicitous” (i.e. appropriate), depending on whether (10) is interpreted as a claim or as a contractual offer:

(11) That’s true!

(12) On behalf of John, I accept.

It seems that (11) is an appropriate reply to (10) if (10) is interpreted as a claim but not if (10) is interpreted as a contractual offer. Conversely, it seems that (12) is an appropriate reply to (10) if (10) is interpreted as a contractual offer but not if (10) is interpreted as a claim. This discrepancy in felicitous replies suggests that the sentence in (10) is indeed “ambiguous” in some sense. And we can corroborate this “ambiguity” with further data. For example, it seems that, whereas the sentence in (10) is interpretable as a contractual offer, the sentence in (10’) is not:

(10’) If John gives Mary any candy, she will stay up later than usual.

Said another way, we can convince ourselves that sentence in (10) is “ambiguous” by showing that it can easily be disambiguated: All you have to do to eliminate the “offer” interpretation of (10) is to change the word ‘some’ to the word ‘any’.

Similar “disambiguation” data is shown in (10’):

(10’)            If John gave Mary some candy, she would stay up later than usual.

While the possibility of interpreting (10’), which isn’t about a past event, as an offer doesn’t seem to be utterly precluded, it certainly seems much harder to interpret (10’) as an offer than (10). Rather, (10’) is naturally interpreted as a claim uttered during the course of negotiation, as witnessed by the fact that saying (6) or (12) in response to (10’) feels somewhat premature.

With this sense of “ambiguity” in mind, further distinctions between claim and contractual offer interpretations reveal themselves: When conditional sentences are interpreted as claims, they’re naturally interpreted as involving temporal precedence and/or causation. For example, when interpreted as a claim, (10) seems to suggest to that John’s giving Mary candy will precede and perhaps cause Mary’s staying up late. When (10) is interpreted as a contractual offer, on the other hand, the speaker doesn’t seem to be suggesting that John will give Mary candy first, i.e. before she stays up late. Rather, as a contractual offer, (10) is interpretable as suggesting that Mary will stay up later than usual so long as John gives her candy at some reasonable point in time, perhaps the morning after her late night. And this apparent lack of what we might call “semantic directionality” in conditional sentences when they’re interpreted as contractual offers is all the more interesting because, unlike claims, contractual offers seem to show “syntactic directionality” in the sense shown by the following examples:

(13) If you do this, I will do that.

(14) If I do this, you will do that.

While it's perfectly possible to interpret both (13) and (14) as claims, only (13) seems to be interpretable as a contractual offer. With normal intonation, (14) may be naturally interpreted as an order, or perhaps as the speaker's confirmation of an earlier offer made by the hearer, but it doesn't seem to be interpretable as an offer itself. These facts regarding semantic and syntactic directionality serve to convince us that claims and contractual offers are different, i.e. that a conditional sentence like (10) is indeed "ambiguous" in some sense of the notion of 'ambiguity'.

To return to the issue of why a linguist would care: Well, to the extent that linguists are interested in what it means to know a human language, a linguist should be interested in how a speaker of English knows, for example, that (10') isn't interpretable as a contractual offer, or that (10'') isn't easily interpretable as a contractual offer, or that contractual offers don't convey temporal precedence of events, etc. Indeed, if we are ever to develop a true artificial intelligence, an intelligence that can do with language what humans can do with language, that intelligence have to have the same knowledge that you and I do to the effect that (10) can be interpreted as a contractual offer but (10') cannot. Of course, it can't be the case that such knowledge derives from memorization of a list of possible contractual offers, as there is an infinite number of those – too many to memorize.

But another reason why a linguist might care is that, given that a sentence like (7) is arguably ambiguous between a claim and a promise, just as (8) is ambiguous between a claim and an offer, it may be that the sentences interpreted as contractual offers in fact do involve, as some linguistic level of representation, an implicit, conditional, promise. In other words, perhaps the

difference between (10) interpreted as a claim and (10) interpreted as a contractual offer is that the latter, but not the former, involves some implicit promise (or even offer) element in the sentence – in which case, the interpretability of a linguistic expression as a contractual offer wouldn't be a mere matter of common sense but rather a matter of linguistic structure. And this sort of question – What is the underlying structure of a linguistic expression, and how does its interpretation follow from that structure? – is the linguist's stock and trade.

### 1.6. *Outline of the Dissertation*

The structure of this dissertation is as follows: In Chapter 2, I review the work of linguists who have examined contractual offers in the past in an effort to discover why they adopt the position that contractual offers are some form of conditional promises. In Chapter 3, I introduce the reader to the basics of syntax and semantics and argue that contractual offers aren't conditional promises in any syntactic / semantic sense. In Chapter 4, I further argue that the disambiguation data presented in the previous section can be explained without assuming that contractual offers are conditional promises in any syntactic / semantic sense. In Chapter 5, which is intended primarily for linguists, I argue against an alternative analysis in which the “ambiguity” of contractual offers is situated in the syntax / semantics, after all. In Chapter 6, which is intended primarily for jurists, I discuss some potential legal ramifications of the core proposal of this dissertation, which is that sentences like (10) are, in fact, “unambiguous” in the strictest sense: In short, this dissertation suggests that contractual offers are “literally” claims – but claims that have been “pragmatically strengthened” into offers.

## Chapter 2

### *The Past: Contractual Offers Are Conditional Promises*

To my knowledge, only two self-described “linguists” have studied the process of contract formation: Sanford Schane and Peter Tiersma. It is true, as we will see in Chapter 5, that some linguists have studied offers in the absence of conditions. However, as we saw in Chapter 1, and as we’ll see in greater detail in this chapter, the essence of a contractual offer is its conditional nature. Indeed, as we saw in Chapter 1, the legal requirement of consideration dictates that in order for a contractual offer (once accepted) to be enforceable, the offeror has to have asked, in the offer, for the offeree to do (or not to do) something in return for what the offeror offered to do (or not to do) in the offer; in other words, the offeror’s doing (or not doing) something has to have been *conditioned* upon the offeree’s doing (or not doing) something in return.

For the linguist, of course, the legal enforceability of an offer isn’t the issue; rather, the issue is how the hearer of a conditional linguistic expression understands the expression as an offer. The task of this chapter, then, is to examine how the linguists who have studied contractual offers in the past have understood the connection between the conditionality inherent to contractual offers and the act of offering. What we will see is that both Tiersma and Schane more or less arrive at a model of contractual offers that follows a common – but, in the sense described in Chapter 3, incorrect – conception of contractual offers seen in the legal literature, namely that they are *conditional promises*.

#### 2.1. *Speech Act Theory*

Both Schane (1989, 2006) and Tiersma (1986, 1993) situate their analyses in the theory of speech acts. Conceived largely in the works of J.L. Austin (1962) and John Searle (1969), speech

act theory seeks to model the effect that linguistic expressions have on the world in which they are uttered. Compare, for example, the sentences in (1) and (2):

- (1) I want you to close the window.
- (2) Close the window!

We will examine the meaning of “meaning” in more detail in Chapter 3; for now, there seems to be a sense in which (1) and (2) “mean the same thing.” Both (1) and (2) seem to express the speaker’s desire that some salient window be closed. Thus it would be a strange thing for the speaker of (2) to utter (2) followed by an utterance of the negation of (1), as in (3):

- (3) #<sup>1</sup> Close the window ... but I don’t want you to close the window!

The utterance of an imperative sentence like the one in (2) has many effects on the world in which it is uttered, one of which is that, after uttering (2), the speaker of (2) is *committed* (in some sense of ‘committed’) to the proposition that he or she wants the window closed. Of course, the utterance of an imperative like the one in (2) has another, more obvious, effect on the world: Assuming that the speaker of (2) has the authority to control the actions of the hearer of (2), then the utterance of (2) produces a duty (in some sense of ‘duty’) on the part of the hearer to close the window. Such is the nature of imperatives like the one in (2).

Intuitively, there are many kinds of speech acts other than imperatives. Questions, greetings, expressions of thanks as well as regret, and many, many others – all of these linguistic expressions have effects on the world in which they are uttered.<sup>2</sup> Even the utterance of a simple

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<sup>1</sup> Throughout this dissertation, linguistic expressions that seem to be “infelicitous” for reasons having to do with inconsistency or an apparent lack of cooperation will be marked with a #. See ff. 14 for discussion of the distinction between “infelicitous” expressions and “ungrammatical” ones.

<sup>2</sup> See Sadock (2006) for a sample inventory of speech acts.

declarative sentence, as in (1), can be thought of as a kind of speech act – perhaps “claim” is a good label. There is, however, some controversy in the literature as to whether declarative sentences are speech acts in some strictest sense of the notion.<sup>3</sup> The controversy is particularly applicable to a language like English, which, unlike some other languages of the world, does not require the speaker of a declarative sentence to indicate the source of evidence for the sentence or the degree of certainty with which it is uttered.<sup>4</sup>

In order to better appreciate the controversy of whether declarative sentences are speech acts, it is useful to invoke Austin’s (1962) distinction between the *locution* and the *illocution* of an expression. The *locution* of an expression is essentially the expression itself – that is to say, the form of the expression and the meaning it expresses, given the syntactic and semantic rules in the language. (“Syntax” refers to the acceptable order of words and phrases within a sentence; “semantics” refers to the meaning generated by a particular order. For a more detailed discussion, see Chapter 3). The *illocution* of an expression, on the other hand, is the effect the expression has, or is “designed” to have, upon the world in which it uttered.<sup>5</sup>

For example, if I utter the sentence in (4):

(4) I congratulate you on your victory.

the locution of (4) is simply the expression of (4), its sounds and syllables, words and phrases (or

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<sup>3</sup> See e.g. Strawson (1971) for discussion

<sup>4</sup> See Aikhenvald (2004) for a comprehensive discussion of evidence-marking in human languages.

<sup>5</sup> Students of Austin will note that I neglect Austin’s third notion of *perlocution* – the effect that an expression has on its hearer if the conventional intent of the expression is “successful.” As noted in Sadock (2006), Austin himself seemed skeptical of the idea that perlocutions could be easily distinguished from illocutions. In any case, a binary distinction between locutions and illocutions suffices and simplifies the story to be told here.



letters, spaces, and punctuation, etc.), nothing more (but see Section 2.3 below).<sup>6</sup> The illocution of (4) is the act of me congratulating you, along with the commitments that correspond to that act – something like: I will not dispute your victory, or publicly resent it, in the future.

In Austin’s terminology, the most interesting illocutions are the *performative* ones – that is to say, the ones that, in a sense, become “true”<sup>7</sup> (or “valid”) merely by virtue of the fact that they have been uttered. An act of congratulations, as in (6) above, is a performative illocution: No act of congratulations happens until something is said – thus a handshake, in the absence of words, seems insufficient – and the thing that is said, nothing more, seems to be the congratulatory act. Christenings, the swearing of oaths, and the delivery of judicial verdicts are among other classic examples of performative illocutions – classic, no doubt, by virtue of the fact that they are typically done *explicitly* – that is to say, with a verb or other word that overtly identifies the very illocution involved. Examples of explicit performative illocutions are given in (5) - (7):

- |     |  |                    |
|-----|--|--------------------|
| (5) | I hereby christen thee The U.S.S. Lollypop.  | [is a christening] |
| (5) | The Court hereby finds the defendant guilty. | [is a verdict]     |
| (7) | I hereby swear to tell the truth.            | [is an oath]       |

As shown in (5) - (7), explicit performatives are often supported by the (optional) adverb ‘hereby’. In fact, the acceptability of adding ‘hereby’ to a verb phrase is often taken to be a diagnostic of the performativity of a verb phrase’s verb.<sup>8</sup> Applying this diagnostic to sentences

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<sup>6</sup> I’m suppressing two important points here for the sake of simplicity: The first point is that, if only because they want to account for the intuitions of illiterate speakers as well as literate ones, linguists rarely have anything to say about the writing conventions (or “orthography”) of a given language. Said another way, speakers of a given language tend to share intuitions about linguistic expressions that seem to transcend the expressions’ mode of transmission. (E.g. imperatives aren’t defined by ‘!’.) The second point is that there is much more to say about what a locution actually contains; with respect to contractual offers, this will be the primary issue of interest in Chapter 3.

<sup>7</sup> The motivation for the use of quotation marks was hinted at in Chapter 1 and will be made clearer in Chapter 3.

<sup>8</sup> See Eckardt (2012) for discussion.

like (8) - (10), however, we see that performativity may actually be a matter of degree:

- |        |                                    |                    |
|--------|------------------------------------|--------------------|
| (8) ?? | I hereby say that it's raining.    | [is a ??]          |
| (9) ?  | I hereby assert that it's raining. | [is an assertion?] |
| (10)   | I hereby claim that it's raining.  | [is a claim]       |

For now, suffice it to say that a core component of the performativity of a locution, and the corresponding associability of the locution with an illocution, seems to be the degree to which the speaker of the locution incurs new commitments upon the utterance of the locution. In other words, there is an intuitive sense in which someone who has made a false 'claim' faces greater linguistic liability than someone who has merely made a false 'assertion' because the former seems to involve a greater degree of commitment than the latter; indeed, there is an intuitive sense in which someone who has merely said something false – without identifying what she uttered as a certain kind of speech act – faces no linguistic liability at all.<sup>9</sup> Thus if I express the simple proposition in (11):

- (11) It is raining.

my locution is not intuitively associated with an illocution, even if I do so with the intent, say, of informing you that bringing an umbrella is a good idea.<sup>10</sup> Thus, if it is sunny out rather than raining, you can say that I am wrong or perhaps accuse me of lying, but you can't say that I have failed in some illocution: I haven't, for example, breached any 'warranty' about the weather.

It would be a mistake, however, to assume that performative illocutions have to be explicit:

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<sup>9</sup> This is of course not to say that there is no *legal* cause of action for fraud, misrepresentation, and the like. By "linguistic liability" here, I mean something like this: The speaker can be accused of not following the rules of language. For example, it would violate the rules of language to make a "promise" and then deny that the "promise" created any sort of commitment. In this special sense, it doesn't violate the rules of language to tell a lie.

<sup>10</sup> This is in fact consistent with Searle's (1969) distinction between 'propositional acts' and 'illocutionary acts', although Searle believed that ASSERT was an illocutionary "force" on par with QUESTION, COMMAND, etc.

- (12)            Speaker:        Bring an umbrella!  
                  Hearer:            Is that an order?

As shown by the hearer's response in (12), the speaker's utterance in (12) is interpretable as an order in spite of the fact that the verb 'order' is not overt in the speaker's locution. To be sure, the speaker in (12) might have less ambiguously uttered (13) instead:

- (13)            I hereby order you to bring an umbrella.

Alternatively, (12) might have been disambiguated in another way:

- (14)            I hereby recommend that you bring an umbrella.

What this shows is that the use of an implicit, as opposed to an explicit, performative expression creates an "ambiguity" (in some sense of 'ambiguity') as to which illocution is intended by the speaker of the locution.<sup>11</sup> This in turn raises the issue of whether there is a useful taxonomy of illocutions. Are there any limitations on the types of illocutions that can be associated with a given locution? Are there actually any illocutions that aren't, in some sense, performative?

Luckily, we need not answer these questions in any general way here.<sup>12</sup> Suffice it to say for our present purposes that both Austin and Searle, and the majority of scholars who have followed in their footsteps, including Schane and Tiersma, agree that there is a class of performative illocutions called "commissives," which commit their speakers to a particular future course of action, as in (15):

- (15)            I promise to bring you an umbrella tomorrow.                            [is a promise]

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<sup>11</sup> See Portner (2012) for a survey of illocutions associated with imperatives.

<sup>12</sup> See Allan (1998) for further discussion.

Such commissive illocutions will, of course, be at the center of attention in this dissertation. In particular, we will be interested in discovering when and why a locution like (16):

(16) I will bring you an umbrella tomorrow.

– as well as its conditional variants – can be associated with a commissive illocution.

## 2.2. *Felicity Conditions*

In the previous section, we saw that the distinction between locutions and illocutions is helpful in detecting a certain kind of “ambiguity” in linguistic expressions: What effect did the speaker who uttered an expression intend to have on the world by uttering the expression? What commitments, if any, did the speaker assume as a result of uttering the expression? In this section, we will see that the distinction between locutions and illocutions will be helpful in a further way. Without getting into the limitations on the types of illocutions that can be associated with a given locution in general, we can say a little more about the types of locutions that can be associated with certain commissive locutions in particular. In order to do so, we will invoke the notion of “felicity conditions.”

Linguists often invoke the notion of a “felicity condition” as a means of explaining why certain linguistic expressions seem to be unacceptable in spite of the fact that they follow the syntactic and semantic rules of the language. A classic example of a felicity condition is found in connection with the use of the word ‘the’. In general, it is unacceptable to use the word ‘the’ in combination with a common noun like ‘student’ unless the combined expression ‘the student’ refers to an individual that has already been established in conversational context as the unique individual that can be referred to by that combined expression. Thus it would be strange for a speaker to begin a conversation with the sentence in (17) – as opposed to the sentence in (18):

- (17) The student said ‘hello’ to me this morning.  
(18) A student said ‘hello’ to me this morning.

unless some earlier conversation between the speaker and hearer had established who ‘the student’ was. We could therefore write a “felicity condition” for the use of ‘the’ as follows:<sup>13</sup>

(19) FELICITY CONDITION FOR ‘THE’

A sentence of the form ‘... the N ...’ (where N is a variable that can stand for any singular common noun) is felicitous (i.e. can be uttered successfully) only if there is one and only one individual X in the conversational context that can be referred to as ‘the N’.

As interesting as this might be, the important point to me made for our purposes here is that felicity conditions can apply not only to locutions (that is to say, words and phrases) but also to illocutions. Consider again the “strange” (i.e. infelicitous) sentence in (3), repeated here:

- (3) # Close the window ... but I don’t want you to close the window!

The infelicity of (3) doesn’t seem to have anything to do with the use of any particular word or phrase. Even when it’s clear which window the speaker is referring to, something strange about (3) remains. That strangeness might be captured in a felicity condition for imperative orders as follows:

(20) FELICITY CONDITION FOR IMPERATIVE ORDERS

An order ‘S’, where S is a variable that can stand for any imperative sentence, is felicitous (i.e. can be uttered successfully) only if the speaker of S is willing to be committed to the truth of the sentence ‘I want you to S’ after X is uttered.

Note that the felicity condition in (20) is not a condition on imperatives or any other syntactic

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<sup>13</sup> The issue of how to handle notion of uniqueness associated with the word ‘the’ has long history, dating back at least to Russell (1905). My way of handling it via a felicity condition is more or less consistent with the ideas of Frege (1918), which persist in such influential modern semantics texts as Heim & Kratzer (1997).

form of linguistic expression in general. (20) is not, for example, a felicity condition on imperatives that are intended as suggestions; thus, (21) is perfectly felicitous:

(21) Divorce me. I don't want you to, but if it's what you want, you should do it.

What matters for our purposes is that if we didn't have a distinction between the locution of an expression and the illocution of an expression, it would be hard to account for the infelicity of (3), because nothing in the locution of (3) seems to be triggering its most notable strangeness. In short, illocutions, like locutions, can be subject to felicity conditions.

### 2.3. *Types of Felicity Conditions*

Searle (1969) proposed that there are four types of felicity conditions on illocutions: propositional content conditions, preparatory conditions, sincerity conditions, and essential conditions.

PROPOSITIONAL CONTENT CONDITIONS limit the type of locution that can correspond to a particular illocution. For example, an act of congratulations has to relate to an event that is located in time – typically, the past. In other words, one typically congratulates another on something that has already happened. Thus it seems impossible to use the infinitive form of a verb, a form that fails to locate an event in time, in an expression of congratulations:

(22) \*<sup>14</sup> I hereby congratulate you to win the game.

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<sup>14</sup> The \* indicates that (22) is not merely infelicitous but actually “ungrammatical,” a concept I will explain in greater detail in Chapter 3. For now, speakers of English will likely agree that (22) is unacceptable in a way that other examples we've seen in this chapter have not been. Also, I'm purposefully neglecting the fact that the introduction of perfect aspect ('have ... -en') into the infinitive in (22) results in a more acceptable sentence, as suggested by “real-life” examples like (22')

(22') I congratulate you to have taken your first steps. [found online 10/1/15]

What matters here is that aspect-less infinitives are incompatible with congratulations, or, more generally, that limitations on the locutions that can correspond with a given illocution (i.e. Searle's propositional content conditions) exist.

PREPARATORY CONDITIONS, on the other hand, restrict the environments in which a locution is likely to correspond to a particular illocution. For example, as suggested above, it would be a strange thing to congratulate someone for something that will happen in the future:

(23) # I hereby congratulate you on tomorrow's victory.

Note, however, that the problem with (23) doesn't seem to be with its locution. Indeed, (23) is perfectly acceptable in a situation where tomorrow's victory is a foregone conclusion.

One might say, then, that propositional content conditions are conditions on form (syntax / semantics), whereas preparatory conditions are conditions on context (pragmatics).

SINCERITY CONDITIONS dictate what has to be on the speaker's mind in order for the illocution to qualify as sincere or genuine, which may be different, of course, from what is required for the illocution to be successful. For example, if I resentfully congratulate you on yesterday's victory, my congratulations may be insincere, but my resentment doesn't entitle me to deny that I congratulated you and thereby acknowledged your victory; thus, in the absence of, say, new evidence indicating that you obtained your victory via cheating, I am not entitled to dispute your victory in the future without subjecting myself to some degree of "linguistic liability."

Finally, ESSENTIAL CONDITIONS establish what a speaker must be trying to do – or what he or she must appear to be trying to do – in order for a locution to correspond to a given illocution, i.e. for a given locution to be "successful." For example, if I congratulate you while walking away from you rather than facing you, one might argue that my locution fails to correspond to an illocution of congratulations, even if I uttered my words sincerely (or as sincerely as possible), because the essence of an act of congratulations is the public, perhaps mutual, acknowledgement of the

hearer's accomplishment.<sup>15</sup>

One might say, then, that sincerity conditions are conditions on intentions, whereas essential conditions are conditions on acts – primarily the act of uttering the locution, of course, but also the circumstantial behavior that typifies the illocutionary act being performed.

#### 2.4. *Contractual Offers as Conditional Promises*

We are now prepared to review the works of Schane and Tiersma on contract formation. The first thing to observe is that both authors assume that contracts involve the exchange of promises, a common, but not uncontroversial, legal conception of contracts introduced in Chapter 1 and discussed in detail in the remainder of this dissertation. Moreover, both authors explicitly assume at some point in their work that not just fully formed contracts but *contractual offers* themselves involve promises, although Tiersma's position on this issue is more nuanced than Schane's:

“A valid [contractual] offer must involve at least one *promise*.”

– Schane (2006), p. 141 (emphasis in original)

“The propositional content [of an offer] ... must specify a promise of the speaker in exchange for a promise or future act of the hearer. An offer is more than a promise that is conditional on a promise made by another party. A promise conditioned on another person's also making some promise commits the speaker only to his own promise, which goes into effect when the other person makes his promise.”

– Tiersma (1986), p. 197

The nuance in Tiersma's formulation has in part to do with identifying the precise moment at which the promise inherent to contractual offers is made – something I will have much more to say about in Chapter 3. For now, let's focus on the observation that both authors, in recognition

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<sup>15</sup> This is my own take on Searle's essential conditions. In Searle's original presentation, the satisfaction of essential conditions seems to amount to little more than a presumption that the other conditions are satisfied. Tiersma (2006) largely agrees – see in particular p. 198 of that work for discussion.



of the general fact that no single locution corresponds to a given illocution, posit a prototype locution for contractual offers, and each author's prototype involves the use of the word 'promise'. For Schane, the prototype locution for a contractual offer is as in (24):

(24)            SCHANE'S PROTOTYPE LOCUTION FOR CONTRACTUAL OFFERS

I hereby promise you that if Y will occur, X will occur.

For Schane, then, contractual offers are promises to the effect that if the hearer does something in the future, the speaker will do something in the future, too – i.e. contractual offers are promises with respect to conditional events in the future, i.e. promises with conditional content.<sup>16</sup>

For Tiersma, on the other hand, the prototype locution for a contractual offer is as in (25):

(25)            TIERSMA'S PROTOTYPE LOCUTION FOR CONTRACTUAL OFFERS

I hereby propose that I promise to do A if you promise to do B.

For Tiersma, then, contractual offers are proposals, not promises, but what they propose is an exchange of promises.<sup>17</sup>

I will say more about the subtle difference between these formulations in Section 2.7 and especially in Chapter 3. For now, let's subsume Schane's and Tiersma's respective conceptions of contractual offers under the general rubric of "conditional promise" and note that, because of the many-to-one association of locutions with illocutions, each author invokes the further notion

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<sup>16</sup> To be more precise: Schane (2006, p. 157) posits the prototype "logical form" for contractual offers in (24'), rather than a prototype locution:

(24')            I hereby promise you that [Y will occur > X will occur].

and he offers more specific variants of (24') for different types of offers. I will say more about the notion of a "logical form" in Chapter 4; for now, the reader may equate "logical form" with "locution."

<sup>17</sup> To be more precise, Tiersma (1986, ff. 43) offers alternative versions of the prototype, depending on whether the offer is "unilateral" or "bilateral" – a distinction sketched in Chapter 1 and discussed further in Section 2.7 of this chapter.

of “equivalence” as a means of associating various locutions with the illocution of a contractual offer. In other words, for each author, in order for a given locution to “qualify” (i.e. be interpretable) as a contractual offer, it has to be “equivalent” (in some sense of ‘equivalent’) to the author’s prototype.<sup>18</sup> Thus the sentence in (11), repeated here:

(11)           It is raining.

fails to qualify as an offer under the Schane / Tiersma conception of a contractual offer, because it isn’t equivalent in any apparent sense to either of the prototypes in (24) and (25).

But why are contractual offers conceived of *as* promises (in the case of Schane) or as *involving* promises (in the case of Tiersma)? So far, we’ve seen no real reason as to why either Schane or Tiersma would assume that contractual offers are, or involve, conditional promises. We noted in Chapter 1, of course, that the law defines a contract (but not a contractual offer) as an enforceable promise or set of promises,<sup>19</sup> and each author is expressly aware of this legal fact. But legal facts aren’t linguistic justifications. What *linguistic* reasons do these authors, *qua* linguists, have for believing that contractual offers are conditional promises?

The answer to this question is surprisingly hard to parse from each author’s work, but for both Schane (2006, p. 141) and Tiersma (1986, p. 200), the basic answer seems to be that the acceptance of a contractual offer creates a set of commitments; thus a contractual offer must be a promise (the quintessential commissive illocution) that is impliedly conditioned upon an acceptance – as Schane, contrary to his original prototype in (25), eventually suggests – or a proposal to make a promise once the proposal is accepted, as in Tiersma’s prototype in (26).

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<sup>18</sup> For Schane (2006, p. 154), the “equivalence” is explicitly “semantic.” Tiersma, once more, is more nuanced: “Any utterance ... that purports to perform the act of offering ... must be the *equivalent of or expressible as* [the prototype].” (Tiersma 1986, p. 201; emphasis in original).

<sup>19</sup> See again Restatement 2d of Contracts §1 [defining a contract] and §24 [defining an offer].

In Chapter 3, I will discuss in detail whether either of these precise conceptions of a contractual offer is linguistically tenable. For now, let's give both authors the benefit of the doubt and see whether there is any corroborating linguistic evidence that contractual offers are, or involve, conditional promises.

### 2.5. *The Performativity of Contractual Offers*

Both Schane and Tiersma note that, like promises, offers are performative illocutions:

(26) I hereby offer to bring you an umbrella tomorrow. [is an offer]

If contractual offers are promises – just conditional ones – it would be surprising if promises were performative illocutions whereas offers were not. So this evidence is consistent with Schane's prototype in (25), in which contractual offers are conceived either as unconditional promises or – as Schane eventually suggests – promises that are impliedly conditioned upon acceptance. If contractual offers merely *propose* promises, as in Tiersma's prototype in (26), this evidence does little more than establish the fact that offers and proposals, like promises, are performative. In either case, the performativity of contractual offers is at least consistent with their being conditional promises, but neither author makes this argument explicitly.

### 2.6. *Felicity Conditions on Contractual Offers*

The most generous account I can give for the linguistic soundness of Schane's and Tiersma's conception of contractual offers as conditional promises is that each author implicitly argues for some version of that conception when he inventories the felicity conditions for contractual offers on the *assumption* that they are conditional promises conforming to the respective prototypes in (25) and (26), because the result of their inventories, which I consolidate below, is a notably

accurate collection of the conditions for the felicitous utterance a contractual offer, suggesting that it is reasonable for the authors to conceive of contractual offers as conditional promises.

### 2.6.1. *Propositional Content Conditions*

Both Schane and Tiersma note that promises must be made with respect to an act that will take place in the future:

(27) # I promise to bring you an umbrella yesterday.

Said another way, promises must be made with respect to an act that is not yet located in time, hence the simple infinitive is an acceptable syntactic form for the content of a promise, given the right temporal modifier (see Section 2.3 above), as is the use of the word ‘will’:

(28) I promise to bring you an umbrella tomorrow.

(29) I promise that I will bring you an umbrella tomorrow.

Likewise, offers, even unconditional ones, must be made with respect to a future event:

(30) I offer to bring you an umbrella {# yesterday / tomorrow}.

The implicit argument in Schane and Tiersma’s work seems to be that if contractual offers are, or involve, conditional promises, then this correspondence is to be expected. If contractual offers are not, or do not involve, conditional promises, then this correspondence seems accidental.

### 2.6.2. *Preparatory Conditions*

Both Schane and Tiersma note that promises can normally be uttered only in a context where (i) the speaker reasonably believes that the hearer wants (or may want) the speaker to do what the speaker promises to do and (ii) it is not obvious that speaker would do what he or she promises

to do anyway, i.e. without making a promise to do so. Thus it would be a strange thing for me to promise to hurt you (unless I'm making a facetious threat), and it would be a strange thing for me to promise you to breathe at some point tomorrow (unless you expect me to commit suicide tonight). And it would still be a strange thing for me to offer either of these things in return for your promise to do something that I want you to do. In other words, contractual offers can normally be uttered only in a context where both (i) and (ii) are true. If contractual offers are, or involve, conditional promises, then this correspondence is to be expected. If contractual offers are not, or do not involve, conditional promises, then this correspondence seems accidental.

### 2.6.3. *Sincerity Conditions*

Both Tiersma and Schane note that a promise is sincere or genuine only if the speaker intends to do what he or she promises to do. However, because promises are performative illocutions, sincerity isn't actually a necessary condition for the making of a promise. (See Section 2.3 above and Section 2.8 below.) Thus if I promise to bring you an umbrella tomorrow, I've made a promise to do so, and I am now *committed* to doing so, even if I utter my promise insincerely. Likewise if I offer to bring you an umbrella tomorrow if you pay me \$10 today: Once I make an offer, I may be free to revoke it (see below), but I can't deny that I made the offer in the first place. If contractual offers are, or involve, conditional promises, then this correspondence is to be expected. If contractual offers are not, or do not involve, conditional promises, then this correspondence seems accidental.

### 2.6.4. *Essential Conditions*

Both Tiersma and Schane note that the essence of a promise is the voluntary assumption of a new, private commitment. This is of course the very essence of a contractual offer, except that

there are conditions on the commitment. (At the very least, there's no commitment until the offer is accepted.) Whatever circumstantial behavior typifies the act of making a promise – say, a communication directed at an identifiable hearer – that very same behavior seems to typify the act of making a contractual offer. If contractual offers are, or involve, conditional promises, then correspondence is to be expected. If offers are not, or do not involve, conditional promises, then this correspondence seems accidental.

#### 2.6.5. *Summary on Felicity Conditions*

Given the common performativity and notable similarity in felicity conditions for offers and promises, it's not surprising that Schane and Tiersma are receptive to the conception of contractual offers as promises, just with conditions. In short, from the point of view of performativity and felicity conditions, contractual offers seem to be, in some sense, conditional promises.

#### 2.7. *Disagreement on Unilateral vs. Bilateral Offers*

We've seen that there may be some linguistic justification for the conception by Schane and Tiersma that contractual offers are, in some sense, conditional promises. Neglecting the subtle difference in their respective formulations of prototypical contractual offers, which I will discuss in detail in Chapter 3, Schane and Tiersma largely agree in their analyses of offers. There is, however, one small point of difference between them having to do with the distinction between “unilateral” and “bilateral” offers that is worth mentioning here before moving on, in the following chapter, to the argument against the conception of contractual offers as conditional promises.

We noted in Chapter 1 that “unilateral offers” are offers that, legally speaking, can be accepted

only by the hearer's performance of the act requested by the speaker; "bilateral offers," on the other hand, are offers that can be accepted either by performance of the requested act or by a "promise" to perform that act. The archetypical unilateral offer is a reward offer, as in (31):

(31)           If you find my lost umbrella and return it to me, I will pay you \$10.

Unlike the reward offer in (31), the conditional sentence in (32) below would normally be interpreted as a bilateral offer, because nothing in (32) indicates that the speaker is unwilling to be committed until the hearer actually pays the speaker the requested \$10:

(32)           If you pay me \$10 today, I will bring you an umbrella tomorrow.

Thus the expression in (33) would normally suffice as an acceptance of the offer in (32):

(33)           I accept your offer. (I'll pay you later this afternoon.)

Of course, both Schane and Tiersma need some notion of "equivalence" to interpret (33), an acceptance, as a conditional promise, but each author effectively analyzes acceptances as reciprocated offers.<sup>20</sup> Thus, for each author, acceptances, like offers, are conditional promises.

Now, the modern legal trend is to treat unilateral offers as irrevocable once the hearer starts (as opposed to finishes) the act requested by the speaker. (See Restatement 2<sup>nd</sup> of Contracts §45; and see Tiersma (1993) for a detailed history.) For this reason – a legal reason – Tiersma argues that unilateral offers should be analyzed as promises, rather than as offers, because, unlike offers, promises, once they are uttered, are irrevocable. In other words, for Tiersma, unilateral offers must involve only one condition, namely that the act requested of the hearer be performed,

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<sup>20</sup> I don't mean to suggest that either Schane or Tiersma analyzes an acceptance as a counter-offer. For our purposes here, the former is distinguished from the latter in that the former is a mirror-image of the offer, whereas the latter involves some alteration of the offer.

whereas bilateral offers must involve two conditions, namely that the act requested of the hearer be performed and that the hearer inform the speaker that the hearer accepts the speaker's offer. For Tiersma, what qualifies a bilateral offer as an offer, and not as a promise, is that an offer becomes a promise only once the offer is accepted, whereas no acceptance is required for a promise, something I myself suggested in Chapter 1.<sup>21</sup> Schane (2006) both agrees and disagrees. On the one hand, Schane claims that all contractual offers, including unilateral offers, are subject to the preparatory condition that the speaker believes that the hearer wants (or may want) the speaker to do what the speaker is offering to do; for Schane, all offers are conditioned in this way, including contractual offers and offers to give gifts. Moreover, Schane argues that if we accept Tiersma's analysis of unilateral offers as irrevocable promises then we are led to the absurd conclusion that unilateral offers that fail to restrict the time for the hearer's performance – as in (31), repeated below – must commit the speaker in perpetuity:

(31)            If you find my lost umbrella and return it to me, I will pay you \$10.

Surely, says Schane, there must some point at which the speaker of (31) is no longer committed to pay the hearer of (31) \$10 even if the hearer finds and returns the speaker's umbrella.<sup>22</sup> For Schane, the most natural way to limit the speaker's commitment is assume that there is a time

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<sup>21</sup> Similarly, Hancher (1979) divides speech acts into two categories: "autonomous" and "cooperative" ones. Promises, orders, and other members of the former category require no participation on the part of the intended hearer; offers, bets, and other members of the latter category do.

<sup>22</sup> Linguists will likely object that Schane (himself a linguist!) is neglecting the phenomenon of "domain restriction," something that happens in natural language all the time. For example, if I utter the sentence in (i):

(i)            I didn't bring my umbrella.

I'm not saying that there has *never* been a time in the past when I brought my umbrella; rather, I'm saying that there is a time, or a series of moments in time, in the past, when I didn't bring my umbrella – but this is trivially true, as there were moments in time before I was born, unless I'm referring only to times within a restricted domain, say the last few hours. (31) surely refers to a reasonable period of time, beginning with the moment in which (31) is uttered, during which the hearer of (31) can find and return the speakers umbrella and expect to be paid \$10 for doing so. Those who are curious as to the effect of adding the word 'ever' to the 'if'-clause in (31) are referred to Chapter 5.



limit on the *acceptability* of every offer. Thus, contrary to his original prototype in (25), contractual offers, Schane claims that contractual offers, whether unilateral or bilateral, can't be promises until they've been accepted. In that sense, Schane and Tiersma essentially agree on the following primary points, presented in table form:

Table 2.1

	Offers	Promises
Revocable?	Yes	No
Requires Acceptance?	Yes	No

The gist of Table 2.1 will be of great importance to us in Chapter 3, where I will discuss whether the Schane / Tiersma conception of contractual offers as conditional promises is linguistically tenable. But neither here nor there will I settle the dispute between Schane and Tiersma as to whether unilateral and bilateral offers are linguistically distinct, because I believe that, at least for typical conditional (“if-then”) sentences, the distinction is essentially legal one.<sup>23</sup> In other words, I don't believe that speakers of English have *linguistic* intuitions as to when a promise to perform is insufficient for acceptance.<sup>24</sup> They may indeed have quasi-legal intuitions and/or ontological reasons for believing that a ‘reward’ (which is a concept) is special kind of ‘offer’ (which is another concept) – the kind of thing for which a verbal acceptance may be socially insufficient. But what in the locution of (31) could possibly indicate that the expression in (35) isn't a viable means of accepting the arguably unilateral offer in (34), such that once (35) is uttered, it's too late to revoke (34)?

<sup>23</sup> And not a very solid legal one at that. See Tiersma 1993 for a discussion of the various legal arguments to the effect that the distinction is “false.”

<sup>24</sup> Again, at least not for typical “if-then” sentences like (31). For a short discussion of other syntactic types of offers that seem to be more naturally interpreted as unilateral offers than as bilateral ones, see Chapter 5, Section 5.2.

(34) If you read my entire dissertation, I'll fly you to France.

(35) I accept!

As far as I can tell, nothing.<sup>25</sup>

## 2.8. *Final Thoughts on the Past*

I have a few further objections to the works of Schane and Tiersma related to the objections interspersed in the discussion above. For example, in addition to a linguistic analysis of offers as conditional promises, Schane offers a separate linguistic analysis of the legal requirement of consideration. As I suggested in Chapter 1, it's not surprising that we would find a correlation between the linguistic elements of contractual offers and the legal requirements for their enforceability, but surely the effort to offer a linguistic analysis of a legal requirement is misguided. And while Tiersma (1986) argues that, as far as *the law* is concerned, the preparatory intention required for a contractual offer is that the speaker intend for the hearer to believe that the speaker is sincere, not that the speaker actually be sincere,<sup>26</sup> this is a legal point, not a linguistic one.

In short, both of the self-described “linguists” who have studied contract formation in the past tend to conflate legal criteria with linguistic evidence. Both authors arrive at a conception – or, perhaps more precisely, start and finish with an assumption – that contractual offers are, in some sense, conditional promises.

In the next chapter, I will show that this conception is linguistically untenable, at least in a “literal” sense.

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<sup>25</sup> For the unconvinced reader: Again, I revisit this issue in Chapter 5.

<sup>26</sup> I hereby inform the reader that the offer in (34) is insincere.



## Chapter 3

### *The Problem: Contractual Offers Aren't Conditional Promises*

In the preceding chapter, we saw that the linguists who studied contract formation in the past claimed that contractual offers are, in some sense, conditional promises. More precisely, these authors argued, or at least assumed, that in order for a given conditional locution to be associated with the illocution of a contractual offer, the locution must be “equivalent” to a prototype locution that involves a conditional (‘if-then’) sentence and one or more instances of the word ‘promise’. In this Chapter, I will argue that this conception of contractual offers – both in general and in the specific prototypes proposed by Schane and Tiersma – is linguistically untenable.

The argument will proceed as follows: First, I show that sentences have syntactic structure and that there is a direct connection between the syntactic structure of a sentence and its semantics. Next, I propose a basic syntax and semantics for conditional sentences. Finally, I apply the proposed semantics of conditional sentences to contractual offers and to show that contractual offers aren't conditional promises in any strict linguistic (or “literal”) sense.

#### 3.1. *Syntactic Structure and Its Relation to Semantics*

In Chapter 1, we noted that some linguistic expressions are interpretable in more than one way; when this is the case, we say that the expression is “ambiguous.” Some ambiguities seem to be “lexical” – that is to say, we can isolate the ambiguity onto a particular word. For example, the sentence in (1) is ambiguous because the word ‘bat’ is ambiguous:

(1) I have a bat.

The hearer of (1) might be disposed to interpreting the sentence in one way or another depending

on whether the speaker is wearing a baseball uniform or attending a convention for owners of exotic pets. But now consider the sentence in (2):

(2) I read the book in the library.

The sentence in (2) is ambiguous in a different way from the sentence in (1). For those who don't see the ambiguity in (2) instantly, an easy way to elicit the ambiguity is to alter the structure of (2) slightly, as in (3) and (4):<sup>1</sup>

(3) The book in the library, I read.

(4) The book, I read in the library.

Intuitively, in one interpretation of (2), namely the interpretation suggested by (3), the book that was read is the book that is (or was) in the library; in other words, the phrase 'in the library' tells us *which* book the speaker is referring to. In the other interpretation of (2), namely the interpretation suggested by (4), the reading of the book (whichever book that is) happened in the library; in other words, the phrase 'in the library' tells us *where* the reading happened.

Now, no single word in (2) seems to be the source of this ambiguity. In (2), as well as in (3) and in (4), the word 'I' seems to mean what it always means (essentially, it refers to the speaker); likewise for 'read', 'the', and the rest of the words in the sentence – they all seem to mean what they always mean, i.e. none of these words seems to be lexically ambiguous. So what is the source of the ambiguity of the sentence in (2)? We can take a hint from the alterations of (2) in (3) and in (4) and propose that there is some sense in which 'book in the library' is a unit in one

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<sup>1</sup> The sentences in (3) and (4) involve the syntactic process of "topicalization," which sometimes seems more natural in a contrastive context, as in (3') and (4'):

(3') The book in the library, I read. The book in the classroom, I didn't.

(4') The book, I read in the library. The article, I read in the classroom.

interpretation of (2), the one suggested by (3), but not in the other, the one suggested by (4).<sup>2</sup> In fact, we can corroborate this proposal by revisiting the felicity condition for the word ‘the’ discussed in Chapter 2, repeated here:

(5) FELICITY CONDITION FOR ‘THE’

A sentence of the form ‘... the N ...’ (where N is a variable that can stand for any singular common noun) is felicitous (i.e. can be uttered successfully) only if there is one and only one individual X in the conversational context that can be referred to as ‘the N’.

But first we need to revise the condition in (5). The need for revision derives from the fact that nouns are optionally modifiable with prepositional phrases, and whether or not a noun is modified with a prepositional phrase has no effect on its distribution in sentences. In other words, there doesn’t seem to be a sentence of English where the single word ‘book’ can’t be replaced by the string of words ‘book in the library’ – syntactically, they are interchangeable.<sup>3</sup>

With this in mind, let’s invent a new symbol, N’, a variable than can stand for any singular

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<sup>2</sup> The reason for suggesting that ‘book in the library’ is a unit to the exclusion of ‘the’ will be clear in a moment.

<sup>3</sup> The reader may feel that this is false. Consider the sentences in (i) and (ii):

- (i) I wrote a book report.
- (ii) \* I wrote a book in the library report.

The explanation for the unacceptability of (ii) has to do with the distinction between morphology (word building) and syntax (sentence building). Essentially, the string ‘book report’ is a compound word, not a phrase. The difference between compounds and phrases can be seen, for example, in the strings ‘green house’ with stress on ‘green’ (sometimes, but not always, spelled as “one word”; see ff. 6 in Chapter 2 for discussion of writing conventions) as compared with ‘green house’ with stress on ‘house’: The former is a compound and the latter is a phrase. The distinction between compounds and phrases is more than merely phonetic: a ‘green house’ with stress on ‘green’ need not be green and in fact need not be a house, whereas a ‘green house’ with stress on ‘house’ must be green and must be a house. In fact, modifiers in general (not just prepositional phrases) are prohibited in the left member of a compound word; even pluralization of the left member of a compound word is highly restricted:

- (iii) \* I wrote a books report. [unacceptable even if the report concerns multiple books]

So the sentence “Whether or not a noun is modified with a prepositional phrase has no effect on its distribution in sentences” is roughly true if we’re referring to syntactic distribution (sentence building) as oppose to morphological distribution (word building). Still, there’s more to be said than I will say here. For example, I neglect the issue of whether recursive replacement of ‘book’ with ‘book in the library’ is acceptable:

- (iv) ?? I read the book in the library in the library in the library ...

common noun with or without an optional prepositional phrase modifier on its immediate right, and revise the felicity condition for ‘the’ as in (6)<sup>4</sup>:

(6)            FELICITY CONDITION FOR ‘THE’ [*revised*]

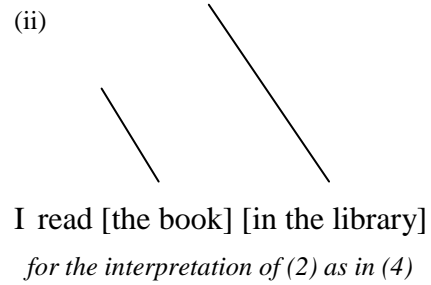
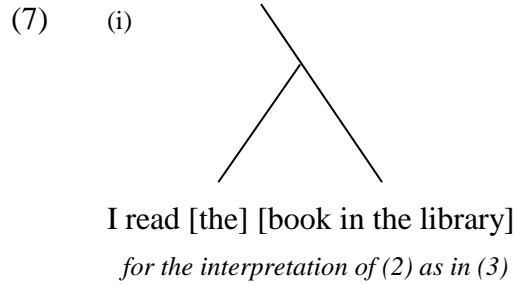
A sentence of the form ‘... the N’ ... ’ (where N’ is a variable that can stand for any singular common noun with or without an optional modifier in the form of a prepositional phrase on its immediate right) is felicitous (i.e. can be uttered successfully) only if there is one and only one individual X in the conversational context that can be referred to as ‘the N’.

Let’s now return to the interpretation of (2). When (2) is interpreted as in (3), we have the intuition that there must be one and only one thing in the conversational context that can be referred to as ‘the book in the library’ – more crudely: There must be one and only one book in the library. The condition in (6) suggests that this is because the N’ that is being combined with ‘the’ is the string of words ‘book in the library’ – in other words, ‘book in the library’ is the unit that combines with ‘the’. Not so for the interpretation of (2) as in (4). In this latter case, we don’t get the intuition that there must be only one book in the library (although, of course, there must be one and only one book that is salient in the conversational context). The condition in (6) suggests this is because the N’ that is being combined with ‘the’ is just the single word ‘book’: the prepositional phrase ‘in the library’ is disconnected from ‘book’ – that is, it is not part of the unit that combines with the word ‘the’.

What all of this suggests is that sentences have *structure*, which can be graphically represented (in whole or in part) with brackets and/or “trees”, as in (7):

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<sup>4</sup> The notation N’ is inspired by the system of “X’ syntax” whose origins trace back to Chomsky (1970).



Now, the trees in (7) are partial: they don't specify how the words 'I' and 'read' are integrated into the structure of the sentence, and the tree in (7ii) doesn't show how 'the book' and 'in the library' are integrated into the structure of the sentence. Moreover, neither of the trees in (7) shows the internal structure of bracketed strings of multiple words. But none of this matters for our present purposes. What matters is that we see that, without access to structures like the ones in (7), we have no way of representing the ambiguity in a sentence like (2). In short, the existence of "structural ambiguities" convinces us that sentences have structure – syntactic structure – and that this structure has a direct connection to semantics.

At this point, the reader may be wondering whether there is any reason to believe that there is such a thing as syntactic structure that is independent from (but still relevant to) semantic interpretation. The answer is "yes." In fact, there are several such reasons, only two of which I will present here: First, notice in connection with the sentence in (2) that if 'in the library' is interpreted as having combined with 'book', as in (7i) – where 'in the library' tells us *which* book the speaker is referring to – it is impossible for the phrase 'in the library' to tell us *where* the reading of the book happened, too! This seems to be because the structure of the sentence in (2) can't be two trees – i.e. both (7i) and (7ii) – at once: Sentences seem to have structure – more precisely, a *single* structure. Second, consider the unambiguous sentence in (8):

(8)           Where did you read the book?



Given that the phrase ‘in the library’ refers to a location, it’s rather surprising that (8) can’t be interpreted as asking where the book that was read by the hearer is (or was) located. Of course, one might wonder whether the reason why (8) can’t be interpreted as asking where the book is (or was) located is that the speaker should use the word ‘which’ to ask such a question, but (8’) is unacceptable as well:

(8’) \* Which did you read the book?<sup>5</sup>

Moreover, many speakers report that the sentence in (8’’) is interpretable as asking which book was read:

(8’’) You read the book where ... in the library?

The problem for interpreting (8) in this same way seems to be structural: in a sense, “moving” ‘where’ (or ‘which’) away from ‘book’ makes it impossible for the words to be interpreted as if they had ever been connected. Like the impossible interpretation of (2) above, in which ‘in the library’ would have been doubly connected in the structure of the sentence, this impossible interpretation of (8) seems to be structurally, not semantically, defective. When a sentence shows these kinds of structural defects – whether in the explicit form of the sentence, as in (8’), or with respect to an impossible interpretation, as in (2) or (8) – a linguist will refer to the sentence as “ungrammatical” and mark the sentence / interpretation with a \* (see Chapter 2, ff. 14 ).

In summary, it seems that the meaning of a given locution is more than the sum of its parts: The meaning of a given locution is a function of how those parts are structurally combined in the syntax.

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<sup>5</sup> And in case the reader thinks the problem is the redundancy between ‘which’ and ‘the’, note that (8’’) is unacceptable, as well:

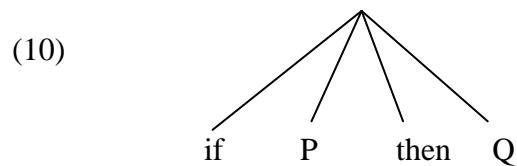
(8’’) \* Which did you read book?

### 3.2. *The Syntax of Conditional Sentences*

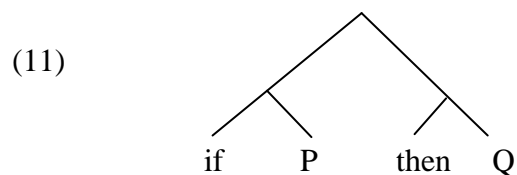
So what is the syntactic structure of a conditional, ‘if-then’ sentence? This is a question that has intrigued linguists for some time, and it would be impossible for us to do more than skim the surface of the subject, which turns out to involve a number of surprising subtleties. Indeed, the semantics of conditional sentences, to which I will turn in a moment, is of greater concern to us in this chapter in particular – but a word about the syntax of ‘if-then’ sentences is order, as it will prove useful when we turn to the meaning of contractual offers in Section 3.4.

The simplest syntactic structure for the sentence in (9), where P and Q are variables over sentences, would be as in (10):

(9) If P then Q.



However, there are a number of reasons to believe that (10) is not the correct structure of (9), the most basic of which is the naïve intuition that the sentence should be divided into halves:



an intuition that is reinforced in writing and speech: The “antecedent” [‘if P’] and the “consequent” [‘then Q’] of a conditional sentence are often separated by a comma, which is correlated with a prosodic separation between the antecedent and the consequent. Moreover, for reasons we will not explore here, many linguists believe that it is impossible for more than two

units to combine at once in syntactic structures.<sup>6</sup> If this is true, then (11) is preferable to (9) in that it's not the case that more than two units combine at once in (11), whereas in (9) four units are combining at once.

At the same time, the word 'then' in (9) seems to be dependent on the word 'if' in a way that isn't captured in (11). Notice, for example, that whereas (9') is an acceptable alteration of (9), (9'') is not:

- (9')            Q, if P.  
(9'') \*        Then Q, if P.

This can be seen more clearly in an example like (12), which is acceptable, but only on an interpretation where 'then' refers, in a sense, to earlier conversation:

- (12)            Then I will bring an umbrella, if it rains.

To be a little more precise, in a typical 'if-then' sentence, we get the feeling that the word 'then' refers to the situation(s) described by the antecedent. Not so in (12), where 'then' seems to be translatable as something like: "Given what we we've said so far," as can be seen even more clearly in the dialogue in (13):

- (13) (i)    Speaker 1:    I want to go the party, but it may rain.  
      (ii)    Speaker 2:    I want to go with you, but I don't have an umbrella.  
      (iii)   Speaker 1:    Then I will bring an umbrella, if it rains.

Notice, too, that (12) / (13iii) can be altered as in (14):

- (14)            I will bring an umbrella if it rains, then.

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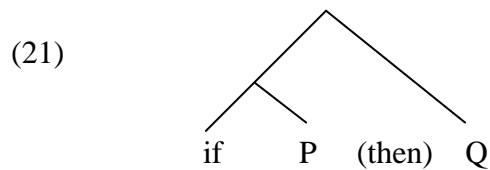
<sup>6</sup> See e.g. Kayne (1994).



of ‘then’ seen in ‘if-then’ sentences:

(20) When it rains, *then* I will bring an umbrella.<sup>7</sup>

We might suppose, then, that the word ‘if’ is doing all the heavy lifting in ‘if-then’ sentences and suppress the word ‘then’ from syntactic structure, as in (18). I will include it as an optional element in syntactic structures, however, without identifying its precise structural position, as in (21) – all the while assuming that it makes no significant contribution to the semantics of conditional sentences, to which we turn next.



### 3.3. *The Semantics of Conditional Sentences*

Students of introductory logic are often told that a conditional sentence of the form in (9) above, repeated in (22) below, has the same meaning as the disjunctive sentence in (23):<sup>8</sup>

(22) If P then Q.

(23) Q, or it’s not the case that P.

This is called the “material implication” analysis of conditional sentences:

(24) THE MATERIAL IMPLICATION ANALYSIS

The meaning of ‘if P (then) Q’ = the meaning of ‘Q, or it’s not the case that P’.

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<sup>7</sup> There are interesting complications I won’t address here, not only the apparent need for stress on ‘then’ in (20ii), but also contrasts like the following:

- (i) After it rains, *then* I will bring an umbrella.
- (ii) ?? Before it rains, *then* I will bring an umbrella.

<sup>8</sup> See e.g. Suber (1997), discussed in von Stechow & Heim (2011).

The idea behind the material implication analysis is that when I say ‘if P then Q’, I am saying something false only when P is true (and therefore ‘it’s not the case that P’ is false) and Q is false. This can be summarized in a “truth table” like Table 3.1:

Table 3.1

P	Q	if P then Q	Q, or it’s not the case that P
True	True	True	True
False	True	True	True <sup>9</sup>
True	False	False	False
False	False	True	True

As a model for the meaning of ‘if-then’ sentences, however, the material implication analysis faces a number of problems. For example, consider the suite of sentences (a) - (f) in Table 3.2 below, where the predictions of the material implication analysis are compared with native intuitions as to whether the sentences are true or false:

Table 3.2

	<u>Material Implication</u>	<u>Intuition</u>
(a) If $1+1=2$ , then $1+1=2$ .	True	True
(b) If $1+1=2$ , then $1+1=3$ .	False	False
-----		
(c) If $1+1=3$ , then $1+1=2$ .	True	False?
(d) If $1+1=3$ , then $2+2=6$ .	True	True?
(e) If $1+1\neq 2$ , then $1+1=2$ .	True	False
(f) If $1+1\neq 3$ , then $1+1=2$ .	True	?

The material implication analysis gets it right for sentences (a) and (b) in Table 3.2 but clearly

<sup>9</sup> Note that I am assuming that ‘or’ is “inclusive” – meaning that “X or Y” is true when both X and Y are true.

gets it wrong for sentence (e) and seems to get it wrong – or at least not quite right – for sentences, (c), (d), and (f). Students of logic often object that the problem for the material implication analysis is that ‘if P then Q’ is neither true nor false when P is false, but Table 3.2 shows that the problem runs deeper than that, and not just for the sentence in (f), where P is true. Rather, the more general problem for the material implication analysis seems to be that it cares only about the *independent* truth of P and Q and therefore says nothing about the *relation* between P and Q, which is precisely what conditional sentences seem to be about. For example, the intuitive problem for sentence (e) is that it’s an apparent contradiction – that’s how the antecedent and the consequent are actually related – but the material implication analysis cares only about the truth of one (or both) of the following: the negated antecedent and the consequent.

This more general problem for the material implication analysis can be seen even more clearly when a conditional sentence like (23) is negated, as in (25):

(25) It’s not the case that if P then Q.

Assuming that the negation of a true sentence results in a false sentence and vice versa, then if the material implication analysis were correct, the sentence in (25) should have the truth values in Table 3.3:

Table 3.3

P	Q	if P then Q	it’s not the case that if P then Q
True	True	True	False
False	True	True	False
True	False	False	True
False	False	True	False

Let’s apply this table to the sentence in (26):

(26) It's not the case that if I have to bring an umbrella, then you do, too.

According to the truth table in 3.3, (26) is true only when it's true that I have to bring an umbrella and it's false that you have to bring an umbrella, too. In other words, according to the material implication analysis, (26) means the same thing as (27):

(27) I have to bring an umbrella, but you don't.

But this is incorrect. A natural paraphrase of (26) might be something like the following: "There's no rule that says if one of us (namely me) has to bring an umbrella then the other one (namely you) has to bring an umbrella, too." In other words, (26) seems to be denying a rule about the relation between us. At most, (27) denies a rule about you and you alone. Once again, the general problem with the material conditional analysis is that it says nothing about the relation between the antecedent P and the consequent Q of a conditional sentence.

In response to this general problem, many linguists adhere to an alternative analysis of conditional sentences called the "strict conditional analysis." (In fact, there are several different versions of this analysis. I generalize them here. See Bennet (2003) for a survey.) The basic notion of the strict conditional analysis is that a conditional sentence expresses a relation between the antecedent and consequent of the sentence – essentially, the relation in (28):

(28) THE STRICT IMPLICATION ANALYSIS

The meaning of 'if P (then) Q' = In all situations in which P is true, Q is true.

As indicated in (28), the strict implication analysis relates the antecedent and consequent by requiring that the consequent be true whenever the antecedent is true.

Let's see how this analysis handles the problems presented above. Compare Table 3.2 above



with Table 3.4 below:

Table 3.4

	Strict Implication	Intuition
(a) If $1+1=2$ , then $1+1=2$ .	True	True
(b) If $1+1=2$ , then $1+1=3$ .	False	False
(c) If $1+1=3$ , then $1+1=2$ .	False <sup>10</sup>	False?
(d) If $1+1=3$ , then $2+2=6$ .	True?	True?
(e) If $1+1\neq 2$ , then $1+1=2$ .	False	False
(f) If $1+1\neq 3$ , then $1+1=2$ .	True?	?

Table 3.4 shows that the strict implication analysis comes much closer than the material implication analysis to getting it right. For example, under the strict implication analysis, sentences (c) and (e) are now contradictions: Sentence (c) now means that all situations in which  $1+1=3$  are situations in which  $1+1=2$ , and sentence (e) means that all situations in which  $1+1\neq 2$  are situations in which  $1+1=2$ , both of which propositions are intuitively false (for discussion of the questionable status of (c), see below). As for sentence (d), there is a sense in which it seems to be true: All situations in which  $1+1=3$  would seem to be situations in which  $2*(1+1)=2*3$  (again, for discussion of the questionable status, see below).

But sentence (f) remains something of a problem, and here's why: If we take it for granted that  $1+1=2$ , then it would seem to be true that in all situations in which  $1+1\neq 3$ ,  $1+1=2$  – making sentence (f) – similar to sentence (c), in fact – apparently true, and yet (f) in particular doesn't

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<sup>10</sup> The mathematically-inclined reader will note that if we formulate the strict implication analysis in set-theoretic terms (“the set of situations in which the antecedent is true is a subset of the situations in which the consequent is true”) then we reproduce a problem presented by the material implication analysis, called “material explosion”: Whenever the antecedent is false, the sentence is true! This is because the empty set is a subset of every set. This problem will be rectified by the revision of the strict implication analysis to follow.

seem to be true, because a number's equaling 2 doesn't follow from its not equaling 3. This suggests that the strict implication analysis, in its current form, isn't quite right.

One way to resolve this problem is to recognize that conditional sentences don't seem to be statements only about the situation we are actually in – right here, right now ... a situation in which  $1+1=2$ , surely – but rather seem to be statements about situations that are similar to the one we are actually in, but possibly different: In very simple terms, uttering 'If P, then Q' – even when Q happens to be true – is different from merely uttering 'Q' (see Chapter 4 for further discussion of this idea). Thus, uttering 'If  $1+1\neq 3$ , then  $1+1=2$ ' is different from uttering ' $1+1=2$ '.

In slightly more subtle terms, when I utter 'if P then Q', what I seem to be doing is something like this: I instruct you to imagine situations in which P is true that are reasonably similar to the situation we think we're in – meaning that if you think that P is false in the situation we're in, you must imagine situations in which P is true that are still reasonably similar to the situation you think we're in ... and if you think that P is actually true, you must imagine situations that are reasonably similar – but not necessarily identical<sup>11</sup> – to the situation you think we're in. With these situations in mind,<sup>12</sup> what I'm saying is that Q is true in all such situations.

Let's revise the strict implication analysis accordingly:

- (29)           THE STRICT CONDITIONAL ANALYSIS [*revised*]  
                  The meaning of 'if P (then) Q' = In all situations in which P is true that  
                  are reasonably similar to the situation we think we're in, Q is true.

Applying (29) to sentence (f), we see why the sentence is not clearly true, as the original version

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<sup>11</sup> The reader familiar with the literature on conditionals will note that I'm rejecting at least the "strong" version of "centering" found in the works of Stalnaker, Lewis, and many others.

<sup>12</sup> In my mind, and in yours. In other words, the "truth" of conditional sentences is in a sense dependent on the hearer agreeing with the speaker as to which situations are reasonably similar to the situation they think they're in.

of the strict conditional analysis in (29) suggested – nor clearly false. When tasked with imagining all the situations where  $1+1 \neq 3$  that are reasonably similar to the one we're in, you might imagine situations in which  $1+1 \neq 2$ , depending on how you construct reasonably similar situations. You might imagine situations that are reasonably similar to the one you think we're in with respect to many things other than mathematical truths (I'm here, you're here, I'm speaking to you, the sky is blue, etc.), in which case it might not be the case that all such reasonably similar situations are situations in which  $1+1=2$  – indeed,  $1+1$  not equaling 3 might be the only mathematical truth you incorporate into the reasonably similar situations you imagine! On the other hand, if your construction of reasonably similar situations involves the incorporation of mathematical truths like  $1+1=2$ , well then, all such situations will be situations in which  $1+1=2$ . The reader can verify that the revision in (29) preserves the other relative successes for the strict implication analysis collected in Table 3.4. In particular, sentences (c) and (e) remain contradictions, modulo the considerations above, and sentence (d) becomes true upon the incorporation of the mathematical truth that if  $x = y$  then  $n(x) = n(y)$  for any number  $n$  in the calculation of reasonable similarity.<sup>13</sup>

Indeed, philosophers of language (notably Robert Stalnaker and David Lewis)<sup>14</sup> have argued that some version of the strict conditional analysis in (29) must be the correct semantic model for conditional sentences in English on the basis of data like (30):

(30)            If kangaroos had no tails, they'd topple over.

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<sup>13</sup> For the reader of ff 10: The revision of strict implication in (29) has the further advantage of avoiding the problem of material explosion: If the hearer cooperates with the speaker who uttered the 'if-then' sentence, he should always be able to construct a set of situations that are reasonably similar to the situation the speaker and the hearer think they're in, regardless of whether the antecedent of the conditional is true or false, by being flexible on the notion of reasonable similarity. (If not, then the hearer isn't cooperating with the speaker.) Thus the set of reasonably similar situations should never be empty.

<sup>14</sup> See e.g. Bennett (2003) for a history of the analysis of conditionals in the Stalnaker-Lewis tradition.

The idea is that the truth of (30) seems to depend on which situations count as situations that are reasonably similar to the situation we think we're in – an issue on which the speaker and hearer can disagree. Readers familiar with the laws of physics and the anatomy of kangaroos may be inclined to judge the sentence in (30) true; however, (31) seems to be an appropriate reply to (30):

(31)           What if they learned to use crutches?

Confronted with the reply in (31), the speaker of (30) might respond with sentences like (32) or (33):

(32)           I didn't think of that. I guess what I said was false.

(33)           I'm not talking about such stupid situations. What I said is true.

The choice between (32) and (33) seems to be determined by the speaker's calculation of which situations are reasonably similar to "reality" according to the speaker, i.e. the situation the speaker thinks that he or she and the hearer are in, solidifying the notion that reasonable similarity is a notion inherent to conditional sentences in English.<sup>15</sup>

So the strict conditional analysis seems to yield the right result for English "if-then" sentences, even for non-mathematical examples of the kind seen in Tables 3.2 and 3.4. Further evidence that the strict implication analysis is superior to the material implication analysis even for natural, non-mathematical examples can be found in its superior results for negated conditional

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<sup>15</sup> Some linguists will note that I'm suppressing the distinction between "indicative" and "subjunctive" conditionals here, as well as the potentially unique properties of "counterfactual conditionals." I introduce the notion of conditional "mood" in Chapter 4. Given that contractual offers are future-oriented, I have nothing to say about the notion of counterfactuality per se, but I do discuss the notion of probability and its relation to "tense" or "mood" in Chapter 4, as well. The notion of "reasonable similarity" will play a more important role in Chapter 6 than it does in the remainder of this chapter, but as a natural extension of the argument against the material implication analysis, it seems better to introduce the notion now, rather than later.

sentences, noted above as a problem for the material implication analysis.<sup>16</sup> Consider (30a):

(30a) If my kangaroo loses its tail tomorrow, it topples over.

If the material implication analysis of “if-then” sentences is correct, then (30a) should mean the same thing as (30b)

(30b) Either my kangaroo doesn’t lose its tail tomorrow, or it topples over.

Now, we can negate (30a) as in (30c):

(30c) It’s not the case that if my kangaroos loses its tail tomorrow, it topples over.

If we assume that the phrase “it’s not the case that” reverses the truth value of the sentence it precedes, then (30c), given the equivalence of (30a) and (30b), should have the meaning in (30d):<sup>17</sup>

(30d) My kangaroo loses its tail tomorrow, and it doesn’t topple over.

The obvious problem is that (30c) and (30d) don’t seem to mean the same thing. (30c) seems to be denying the relation between a kangaroo’s losing its tail and its toppling over; (30c) *doesn’t* seem to say anything about what *will* happen tomorrow. Now, if the strict implication analysis is correct, then (30a) should mean the same thing as (30e):

(30e) It’s not the case that in all reasonably similar situations in which my kangaroo loses its tail, it topples over.

which means the same thing as (30f):

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<sup>16</sup> The discussion that follows is derived from §4.1 of Fintel & Heim (2011).

<sup>17</sup> This follows from the logic  $\text{NOT}(\text{NOT } A) = A$  and  $\text{NOT}(A \text{ OR } B) = (\text{NOT } A \text{ AND } \text{NOT } B)$ , thus  $\text{NOT}(\text{NOT } A \text{ OR } B) = (A \text{ AND } \text{NOT } B)$ .

(30f) In some reasonably similar situations in which my kangaroo loses its tail, it doesn't topple over.

which comes much closer to the intuitive meaning of (30c), again favoring strict implication.

Were this a dissertation devoted to semantics of conditional sentences in general, there would be much more to say.<sup>18</sup> However, given that we're concerned here with conditional sentences that are viable candidates for contractual offers, the formula in (29) will suffice for our purposes. From now on, I will assume that (29) gives the correct semantics for the 'if-then' locutions we are concerned with.<sup>19</sup>

#### 3.4. *Contractual Offers Aren't Conditional Promises*

We're now prepared to see why contractual offers aren't conditional promises in any syntactic/semantic sense. Let's return to sentence (10) from Chapter 1, repeated here in (33):

(33) If John gives Mary some candy, she will stay up later than usual.

We know from Chapter 2 that contractual offers are performative illocutions, so if (33) is to be interpreted as a contractual offer, it must be an implicit performative, because no explicit performative verb or other word is present in (33) – nor can (33) be modified with 'hereby' at any position in the sentence. Of course, if (33) is to be interpreted as a conditional promise, the silent performative element in the sentence would presumably be a promise (not an offer). Could it be that all we need to do to interpret (33) as a contractual offer is to add a silent promise

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<sup>18</sup> Some linguists will note that I neglect the arguments in favor of Kratzer's "restrictor analysis" of 'if' here. I introduce Kratzer's idea in Chapter 5. For the linguist who can't wait, let me say that, luckily, all of the conditional sentences we're concerned with here involve the universal modal 'will' in the consequent, so we need not worry about the problems presented by the presence of existential modals in the consequent of a conditional sentence. Moreover, contractual offers can't be qualified with probabilities (as in, 'It's likely that if you do X, I'll do Y'), so we need not present a perfectly general semantics for conditional sentences, as Kratzer (1986, 2012) does.

<sup>19</sup> For a discussion of contractual offers that don't involve 'if-then' sentences, see Chapter 5.

element to the syntactic structure of the locution in (33), so as to derive the illocution of a contractual offer? If so, we should decide where in the syntactic structure of (33) the silent promise element would be. But first, let's convince ourselves that it's not preposterous to believe that silent elements might exist in syntactic structures.

We've already seen examples of "optional" elements in sentences: The word 'then' in 'if-then' sentences is an example, as is the word 'hereby' in performative sentences. The word 'that' in a sentence like (34) is another example:

(34) I think (that) it is raining.

It doesn't seem preposterous to suggest that when these kinds of words are "missing" from sentences in which they might have been uttered, they are actually in the syntactic structure of the sentence, just in some unpronounced form. On the other hand, these words don't seem to have much semantic content, so perhaps when they're "missing," they're really *missing*.

A more convincing case for silent elements might be made in light of the fact that some ambiguities seem to be difficult to represent without some reference to them. For example, consider the ambiguous sentence in (35):

(35) The students lifted the weight.

The sentence in (35) can be interpreted either as saying that the students collectively lifted the weight (perhaps it was heavy) or that the students participated in weight-lifting individually, one by one. This ambiguity doesn't seem to be either lexical or structural, at least not with respect to the words that are explicit in the locution of (33): Each of the words in (35) seems to mean the same thing in each of the salient interpretations of (35), and it seems impossible to draw two

different trees for (35) in such a way as to capture the difference in these interpretations.

A different way to capture the ambiguity in (35) would be to propose that, in the “individual” interpretation of (35), there is a silent element in the appropriate structural position that is more or less synonymous with the word ‘each’:

(36)           The students each lifted the weight.

If only for this kind of reason, then, believing in silent elements doesn’t seem preposterous. But if there is a silent promise element in (33) when (33) is interpreted as a contractual offer, where in the structure of (33) could it be?

Letting the symbol  $\square$  stand for a hypothetical silent promise element, one plausible position for the silent promise element is the one shown in (37):

(37)

```
graph TD
    Root[ ] --- Node1[ ]
    Root --- Node2[ ]
    Root --- Node3[ ]
    Node1 --- S["□"]
    Node2 --- IF["if"]
    Node3 --- Node4[ ]
    Node4 --- P["P"]
    Node4 --- THEN["(then) Q"]
```

But (37) won’t work: The obvious problem for (37) as a structure for (33), when (33) is interpreted as a contractual offer, is that (37) roughly corresponds to the meaning of the sentence in (38), which is a horrible paraphrase for an offer:

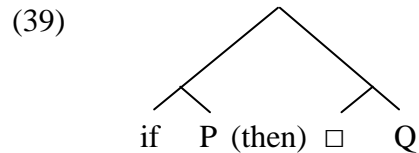
(38)           I promise that if John gives Mary some candy, she will stay up later than usual.

As we saw in Chapter 2 (see Table 2.1), contractual offers are *revocable* and *require acceptance*, whereas promises are *irrevocable* and *require no acceptance*. Intuitively, (38), a promise, is irrevocable on utterance and requires no acceptance! Thus, if there is a silent promise element  $\square$



in the syntax of (33) when (33) is interpreted as a contractual offer, it's not in the position shown in (37).

Another possibility for the structural position of the silent promise element  $\square$  is shown in (39):



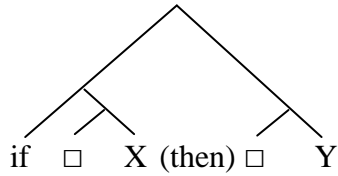
which roughly corresponds to the meaning of the sentence in (40):

(40) If John gives Mary some candy, I promise that she will stay up later than usual.

At first blush, (39) may seem more auspicious as a syntactic representation for contractual offers, but it won't work, either, because it won't allow for an offer to be interpreted as a bilateral offer: According to the semantics in (29), if (39) were the correct structure for the contractual offer interpretation of (33), then (33) would mean that that in all (reasonably similar) situations in which John gives Mary some candy, I promise (or Mary promises) that she will stay up later than usual. The problem for such an interpretation is that Mary isn't necessarily making any promises in any situation in which John doesn't give her some candy! We know from Chapters 1 and 2 that bilateral offers, at least, can be accepted with a mere promise to perform. In a context where (33) is interpreted as a bilateral contractual offer, John doesn't actually have to give Mary candy in order for us to understand that Mary is committed to staying up later than usual; all John (or his agent) has to do is to communicate his acceptance of the offer, i.e. his "promise" to perform.

For similar reasons, it won't help to propose the structure in (41) as a syntactic representation for contractual offers:

(41)



The structure in (41) won't work because it won't allow for an offer to be interpreted either as a unilateral offer *or* as a bilateral offer. We know from Chapters 1 and 2 that unilateral offers can be accepted only with performance and that bilateral offers can be accepted with performance or with a promise to perform. Thus, whether (33) is interpreted as a unilateral or as bilateral contractual offer, John doesn't actually have to *promise* to give Mary candy in order for us to understand that Mary is committed to staying up later than usual; all John (or his agent) has to do is to give Mary some candy.

Moreover, even if it were desirable (either for legal or for linguistic reasons) to treat all contractual offers as bilateral, it seems impossible to interpret the simple present tense on 'gives' in the antecedent in (33) as expressing a promise:

(42)            John gives Mary some candy.                            [\* as a promise on behalf of John]

In other words, while it may be rational to assume that 'will' in the consequent of (33) is the element that expresses the promise sensed in (33) when (33) is interpreted as a contractual offer (see Chapter 5 for further discussion), no such analysis is tenable for the verb in the antecedent of (33).<sup>20</sup> In fact, some speakers report that including an overt 'will' in the antecedent of a conditional sentence is unacceptable, even when the sentence is intended as a contractual offer:

(43)    ??    If John will give Mary some candy, she will stay up later usual.

suggesting that, whether a contractual offer is legally interpreted as unilateral or bilateral, what

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<sup>20</sup> For similar reasons, we can't analyze 'gives' as 'gives or promises to give.'

the speaker is unambiguously asking for, linguistically, when he or she makes a contractual offer is that the requested act be performed, not that the hearer *promise* to perform the requested act. Indeed, this makes practical sense: When I'm bargaining with you, I'm not bargaining not for *words* but rather for some form of *worth*.

No other structural position for the hypothetical promise element □ in the syntax of (33) seems plausible, so it seems that contractual offers aren't "conditional promises" in any strict syntactic / semantic sense. The question then becomes how sentences like (33) are ambiguous in the sense of being interpretable either as claims or as contractual offers, as discussed in Chapter 1. This is the question to which I turn in the following chapter. But first, let's convince ourselves that the specific proposals of linguists from the past fail to survive the objections presented here.

### 3.5. *The Past, Revisited*

We saw in Chapter 2 that both of the linguists who studied contractual offers in the past proposed that in order for a given locution to be associated with the illocution of a contractual offer, the locution had to be "equivalent" (in some sense of 'equivalent') to a prototype locution that involves a conditional, 'if-then' sentence and one or more instances of the word 'promise'. Schane's original proposal (for both unilateral and bilateral offers) is repeated in (44), and Tiersma's proposal (for bilateral offers) is repeated in (45):

(44) SCHANE'S PROTOTYPE LOCUTION FOR CONTRACTUAL OFFERS

I hereby promise you that if Y will occur, X will occur.

(45) TIERSMA'S PROTOTYPE LOCUTION FOR CONTRACTUAL OFFERS

I hereby propose that I promise to do A if you promise to do B.

We've already seen why the locution in (44) won't work as a model for contractual offers in

general: It's essentially the same proposal as the one in (37), which suffers from the fatal fact that offers, unlike promises, are revocable and require no acceptance. As noted in Chapter 2, Schane eventually revises his proposal to suggest that offers become promises only once they've been accepted, but we've seen that there's no easy way of getting the condition of acceptance into the locution (or "logical form")<sup>21</sup> of a contractual offer: We don't want to require performance for the acceptance for a contractual offer, but performance is the only thing the antecedent of a contractual offer seems to be asking for. We've also seen why part of (45) won't work as model even for bilateral offers: Neglecting the "I hereby propose" prologue of (45), the remainder is essentially the proposal in (41), which suffers from the same problem as (37), namely performance is the only thing the antecedent of a contractual offer seems to be asking for, as well as the additional problem that putting the offeror's promise in the consequent of the conditional sentence renders it subject to the truth of antecedent: In the strictest syntactic/semantic sense (i.e. "literally"), the post-prologue locution in (45) commits the offeror only upon the offeree's promise, but bilateral offers (intuitively, and under the law) can be accepted by performance, not just by a promise to perform.

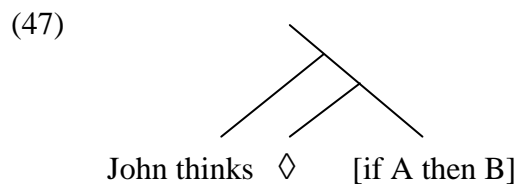
Moreover, there seems to be no linguistic reason to believe that contractual offers contain prologues in the form of a silent offer (or proposal) element, as in (45). In fact, there are several reasons not to believe it: For one thing, most speakers report that they'd never say (45) or anything like it – for example, (46) – as a means of making a contractual offer, which would surely be a strange thing if (45) were a *prototype* for contractual offers:

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<sup>21</sup> In Chapter 4, I will present a more precise meaning of "logical form." For now, the reader can assume that it essentially refers to the semantic interpretation of a given syntactic structure.

(46) I offer that if you do A, I'll do B. [?? as a contractual offer]<sup>22</sup>

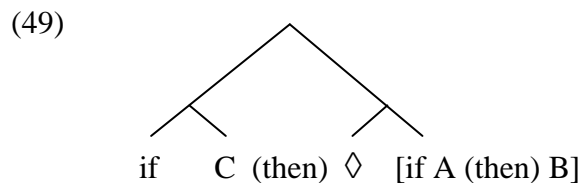
For another thing, if there were a silent offer element in the syntax of contractual offers – let's symbolize it with  $\diamond$  – one might expect that it could interact with other elements in the syntax. For example, it would seem that  $\diamond$  should be able to appear in the structural position shown in (47), where the string ' $\diamond$  if A then B' is the "object" of the verb 'think':



Given a sensible semantics for 'John' and 'thinks', (47) indicates that the sentence in (48):

(48) John thinks (that) if you give me some candy, I'll stay up later than usual.

could be interpreted to mean that John thinks I'm (hereby) making you a contractual offer when uttering (48), when, at most, (48) can be interpreted to mean that John thinks I would be willing to make you an offer. Similarly, if there were a silent offer element  $\diamond$  in the syntax of contractual offers, it seems that it should be able to appear in the structural position shown in (49):



The structure in (49) indicates that it should be possible for an offeror to make a conditional

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<sup>22</sup> Interestingly, (46') seems to be a better candidate for an offer, but it's also more distant from Tiersma's prototype, given that the infinitive form of the verb seems uninterpretable as a promise:

(46') I offer to do A, if you do B.

offer, which at first blush seems linguistically<sup>23</sup> plausible, but given the semantics in (29), the structure in (49) should be interpreted only as a claim that is capable of being true or false, not as a contractual offer. That much isn't a problem, but consider the sentence in (50):

(50) If you pass your barber's test, then if you cut John's hair, he'll pay you \$50.

If the hearer of (47) were to say 'That's not true!' in response to (47), the response could not be interpreted as denying that John would make the hearer an offer upon the passing of the test; rather, the response could be interpreted only as denying that John would pay the money, indicating that (49) isn't a viable syntactic structure for (50).<sup>24</sup> In other words, (50) isn't a

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<sup>23</sup> Whether the law recognizes the notion of a conditional offer is an interesting issue, which I neglect here.

<sup>24</sup> The reader might object that this argument is flawed and moreover that the flaw undermines the entire argument presented in the previous section: We saw in Chapter 1 that contractual offers seem to be incapable of being true or false, and we saw in Chapter 2 that this seems to be true of promises, as well. While I will argue against the idea that offers are incapable of being true or false in Chapter 4, let's assume for now that that's the case, both for offers and promises. If so, then one might argue that the reason why (47) can't be interpreted as a conditional offer is that the semantics of "if P then Q" in (29) works only when Q is capable of being true or false, so the fact that (49) can't be interpreted as a conditional offer doesn't mean that the silent offer element  $\diamond$  can't appear in the syntax, only that that it can't appear in a position that antagonizes the requirements of the other elements in the syntax that it combines with. A similar objection could be levied against (47), depending on the semantics of 'think'. Indeed, my entire argument against the conception of contractual offers as conditional promises depends on the hypothetical promise element being compatible with the semantics of 'if-then' sentences: The meanings predicted by the structures in (37), (39), and (41) can only be said to be wrong if we can say what the right meanings should have been. In anticipation of this objection, let me confess that there are instances of 'if-then' sentences that don't seem to involve the semantics in (29). Here are two examples:

- (i) If you're hungry, there's food in the fridge.
- (ii) If John passed the midterm, why wouldn't he pass the class?

The sentence in (i) doesn't seem to be expressing a relation between the antecedent and the consequent: Presumably, there's food in the fridge regardless of whether the hearer is hungry or not, and the sentence in (ii) seems to involve the antecedent combining with a consequent that is incapable of being true or false: the *answer* to a question can be true or false, but a *question* itself cannot. Could it be, then, that Schane and/or Tiersma are right to conceive of contractual offers as conditional promises; all they need is a different semantics than the one in (29) for 'if-then' sentences in order for everything to work? My reply is 'no', and here's why: Unlike the sentence in (i), contractual offers *do* express relations between antecedents and consequents: The essence of a contractual offer is that if (and only if – see Chapter 4) the offeree does something, the offeror will do something. Further, unlike the sentence in (ii), contractual offers don't express unconditional commitments: In a sense, the hearer of (ii) is committed to answering the question regardless of whether John passed the midterm. A uniform analysis of 'if-then' that accounts for the sentences in (i) and (ii) as well as the sentences I'm interested in here is well beyond the scope of this dissertation, but in the way of a suggestion that the semantics for (29) is appropriate for contractual offers, note that the more (i) and (ii) come to resemble what I (hereby) claim is the prototypical locution for a contractual offer – 'If you do X, I will do Y' (which is also interpretable as a claim) – the more they feel like contractual offers:

statement about when (i.e. if) an offer will be made; rather, (50) *itself* is an offer.

Finally, neither Tiersma nor Schane really explains what it means for a given locution to be “equivalent” to the prototype locution for contractual offers. Presumably (for Tiersma) and explicitly (for Schane) – this “equivalence” is “semantic,” meaning that syntactic similarity isn’t critical. Indeed, that’s what I’ll eventually suggest in Chapter 5, where I discuss examples of contractual offers that don’t involve the ‘if-then’ syntax we’ve seen so far. For that reason, my parting criticism of the Schane-Tiersma conception of contractual offers as “conditional promises” has little to do with the notion of “equivalence” per se, but rather with the simple fact that neither of the prototypes offered by the authors is a tenable syntactic / semantic model for contractual offers.

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- |       |  |                  |
|-------|--|------------------|
| (i’)  | If you save your appetite, there will be food in the fridge.   | [ok as an offer] |
| (ii’) | If John passes the midterm, he’ll pass the class (unless ...). | [ok as an offer] |

In Chapter 5, I will explore why conditional sentences seem to be viable candidates for contractual offers only when they contain a word like ‘will’ in the consequent (as well as simple present tense in the antecedent). For now, I hope the reader will be satisfied that the conditional semantics detected in contractual offers is the kind of conditional semantics reflected in (29). If that’s true, however, our ability to argue against the Schane-Tiersma conception of contractual offers as conditional promises may be limited to the contention that silent promise and offer elements can’t be placed in syntactic positions that can be filled only by things that are capable of being true or false.

## Chapter 4

### *The Proposal – A More Pragmatic Analysis*

In the previous chapter, we saw that the conception of contractual offers as “conditional promises” is linguistically untenable in the sense that when we try to apply the semantics of conditional sentences to syntactic structures with silent promise elements, we derive the wrong meaning for contractual offers. A prime example of the problem was seen in the fact that bilateral offers can be accepted either by performance or by promises to perform – and this is a linguistic intuition as much as a legal one – but nothing in the locution of a contractual offer indicates that this is the case. If anything, the prototypical locution for a contractual offer, as in (1):

(1)            If you do X, I will do Y.

indicates that all contractual offers are unilateral, demanding performance for acceptance, but that’s legally, and linguistically, inaccurate.

The task of this chapter, then, is to explain how locutions like (1) come to be interpreted in the way (or ways) that they are. The core proposal will be that, in spite of first impressions, sentences like (1) are actually *unambiguous* in the strictest sense – i.e. they’re identical to claims (sentences that can be true or false) but are “pragmatically strengthened” into contractual offers. In order to pursue this proposal, we will first have to acquire an understanding of “pragmatics” and its distinction from “semantics.” From there, we’ll review the data from Chapter 1 that make it seem as if conditional sentences are “ambiguous” and show that the data are better explained in reference to pragmatics than in reference to semantics. An alternative to the proposal will be explored in Chapter 5, and the legal ramifications of the proposal will be explored in Chapter 6.



#### 4.1. *An Illustration of Pragmatics*

Imagine that you and I walk into a room, and I see three coins on a table, and I say to you:

(2)           There are two coins on the table.

Intuitively, I haven't lied in uttering (2). As has been noted by many linguists and philosophers of language over the years, sentences containing numerals (like 'two') are difficult to translate into "logical forms" – formulas in an unambiguous logic that represent the meaning of linguistic expressions. (See e.g. Geurts (2012) for a survey of the relevant literature on the meaning of numerals, and see Buffington (2012) for a discussion of the notion of a "lies" in connection with numerals and other expressions; note that I will not offer formal logical formulas when describing "logical forms" in this dissertation.) Specifically, it's not quite clear whether the "logical form" of (2) should state that there are *at least* two coins on the table or that there are *exactly* (i.e. only) two coins on the table.

In light of the discussion of silent syntactic elements in Section 3.2 of Chapter 3, one might suppose that these two interpretations of (2) are dictated by the presence of one silent element (meaning "at least") or another (meaning "exactly") in the syntax of the sentence. However, that would suggest that the sentence is meaningless without one or the other silent element (assuming that there are only two meanings for the sentence), which seems different from what we saw in Chapter 3 with sentences like (3) below, where the "collective" interpretation of the sentence seems to be the default interpretation when the word 'each' is missing from the sentence:

(3)           The students lifted the weight.

Alternatively, one might propose that numerals are lexically ambiguous between the "at least"

and “exactly” interpretations we’ve just seen, but linguists are wary of claiming that a word is ambiguous if one of the two meanings of the word is entailed by the other, such that one meaning seems to be a “narrower” version of the other (in some sense of “narrow”). For example, if I have a puppy, I can truthfully say that I have a dog, but that doesn’t mean that we want to say that the word ‘dog’ is ambiguous between the “puppy” and “non-puppy” interpretations of the word. (For more on this, see Chapter 5.) Applied to sentences like (2): There being exactly two coins on the table entails there being at least two coins on the table, but not vice versa; more explicitly, there being exactly two coins on the table means that the number of coins on the table is equal to two and there being at least two coins on the table means that the number of coins on the table is greater than or equal to two, so when the former is true, the latter is true, but not vice versa. This sort of entailment in one direction and not the other seems rather different from the multiplicity of meanings we saw in Chapter 3 with the word ‘bat’, as in (4):

(4) I have a bat.

Having a baseball bat does not entail having an exotic pet or vice versa; in this sense, ‘bat’ is ambiguous, whereas ‘dog’ is not. If the analogy between the numeral ‘two’ and the word ‘dog’ is apt, then numerals aren’t ambiguous in the strictest sense – that is, they have only one lexical meaning. But if numerals have only one lexical meaning, how can it be that a sentence like (2) is “ambiguous”? The sentence in (2) doesn’t seem to contain a structural ambiguity of the kind seen in Chapter 3 with in sentences like the one in (5):

(5) I read the book in the library.

save for the possibility that one structure for (2) contains only the words we see in the sentence while the other contains one or more silent elements that dictate the difference in meaning.

Pursuing this possibility, one might propose that the sentence in (2), without any silent elements in the syntax, corresponds to the “exactly” interpretation of the sentence, but that would suggest that the “at-least” interpretation of the sentence contains one or more silent elements that not only convey the meaning “or more” but also cancel the meaning of “exactly,” which seems suspiciously complex – especially compared with the hypothetical silent version of ‘each’, which by itself seems capable of distinguishing the “distributive” interpretation from the “collective” interpretation of (3). Similarly, one might propose that the sentence in (2), without any silent elements in the syntax, corresponds to the “at-least” interpretation of the sentence, but that would suggest that the “exactly” interpretation of the sentence contains one or more silent elements that not only convey the meaning “exactly” but also cancel the meaning of “at-least,” which seems no less suspicious.

An alternative would be to propose that logical form of (2) simply states that there are at two coins on the table and allow for hearer of (2) to infer, in an appropriate context, that there are exactly two coins on the table. (In a context where no such inference is warranted, the speaker would interpret ‘two’ as “two or possibly more.”) This alternative seems preferable, in large part for the following reason: Imagine that, in the situation above, you first ask me this question:

(6)           How many coins are on the table?

and then I reply with the sentence in (2). This time, in uttering (2), I seem to have lied. In other words, context – not just the situation we’re in, but also the conversation we’re in – seems to have an effect on how we interpret sentences: Whether or not (2) should be interpreted as stating that there are *at least* two coins on the table or as stating that there are *exactly* two coins on the table is dictated, in part, by whether the sentence is uttered out-of-the-blue or as an answer to a question. What’s the difference? Well, if we assume that the natural interpretation of a ‘how-

many' question is something like "Tell me the exact number ...",<sup>1</sup> then the hearer of (2) – as an answer to (6) – is justified in interpreting (2) as giving an exact number. Not so, it seems, in the case of (2) uttered as an out-of-the-blue assertion, which might be offered by a given speaker for any number of reasons unknown to the hearer. (Perhaps the speaker was searching for two coins to glue together to make a two-headed coin in order to win a dishonest coin toss.) So the interpretation of a sentence seems to depend in large part on how the sentence is related to the conversation in which it's uttered.

Indeed, this is true even for apparently unambiguous sentences. Consider for example the sentence in (7), which seems to have only one interpretation:

(7)           It's raining.

We are inclined to judge (7) as true or false depending on whether it's actually raining in the situation we're in (in terms of where we are and what the weather is like, etc.). We might refer to this as the "semantics" of the sentence, the idea being that the semantics of a sentence essentially describes for us the set of situations in which the sentence is true.<sup>2</sup> But we might also interpret (7) as saying something quite different. Consider the conversation in (8):

(8)           Speaker A:   Should I bring an umbrella?

              Speaker B:   It's raining.

In (8), Speaker A would be justified in interpreting Speaker B's (arguably rude) reply as equivalent to the sentence in (9):

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<sup>1</sup> Evidence that a 'how-many' question like (6) seeks an exact (or maximal) number for an answer is found in the fact the 'how-few' variant of the question can't be answered with a minimal number. For example, if there are two coins on the table and you ask me "How few coins are on the table?", I can't truthfully answer "One!" (or "None!").

<sup>2</sup> For arguments in favor of this notion of semantics, as well as a brief introduction to its history, see e.g. Heim & Kratzer (1997).

(9)            You should bring an umbrella.

But surely we don't want to say that (7) and (9) have the same semantics. It is easy to imagine a situation in which the sentence in (9) is true but the sentence in (7) is not: Suppose that the hearer of (9) is auditioning for the role of Mary Poppins on a sunny day. Likewise, it's easy to imagine a situation in which the sentence in (7) is true but the sentence in (9) is not: Suppose that the hearer of (7) is a pluviophile, and the speaker of (7) likes to indulge such unusual folk. So if the "semantics" of a sentence essentially tells us the set of situations in which the sentence is true, we surely don't want to say that (7) and (9) have the same "semantics" or "logical form": neither sentence entails the other, meaning that, in the literal sense, they "mean" different things.

As for how the sentence in (7) comes to be interpreted as (9) in the context like (8), at a minimum it seems that Speaker B must assume that Speaker A is cooperating in conversation – that is to say, answering the question. Linguists and philosophers of language have devoted much attention to the notion of cooperativity over the years, frequently in search of a taxonomy of "maxims" of cooperative conversation. Fortunately, we need not delve into the details here.<sup>3</sup> It suffices for our purposes to recognize that the means by which (7) comes to be interpreted as (9) in the context of (8) is a matter of non-semantic reasoning – call it "pragmatic" reasoning: In (8), Speaker A assumes that Speaker B's reply is relevant to current conversational goals, the most current of which is getting Speaker A's question answered, and the most obvious way in which Speaker B's reply is relevant is in recommending that Speaker A bring an umbrella, because that's what she's currently wondering whether or not she should do.

Applying this to the sentence in (2): When (2) is uttered out-of-the-blue, rather than as an answer

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<sup>3</sup> See e.g. Grice (1978), Sperber & Wilson (1995), Levinson (2000) and Horn (2006);

to a question, conversational goals haven't necessarily been identified, making it difficult for the hearer of (2) to know whether to interpret (2) as stating that there are at least two coins on the table or as stating that there are exactly two coins on the table. As we've seen, there being two coins on the table doesn't preclude the possibility that there are more coins on the table, nor does it preclude the possibility that there are only two coins on the table, so we can maintain that the sentence in (2) is unambiguous in the strictest sense and allow for the "at-least" and "exactly" interpretations to be derived "pragmatically," without positing unnecessary complexity in the syntax or semantics. In other words, we can think of the "exactly" interpretation of (2) as a form of "pragmatic strengthening": The sentence in (2) says that there are two coins on the table; the inference of the additional information that there are exactly (i.e. only) two coins on the table is a matter of pragmatics, not a matter of silent elements in the syntax / semantics of the sentence.

In summary, some sentences that seem to be "ambiguous" may actually be unambiguous in the literal sense, having a fixed semantics or "logical form," with the apparent ambiguity arising solely as a matter of how the sentence is interpreted in context.<sup>4</sup>

#### 4.2. *The "Ambiguity" of Contractual Offers*

We're now prepared to return to the "ambiguity" in contractual offers we identified in Chapter 1.

Consider again the sentence in (10):

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<sup>4</sup> Some linguists may object, noting that the most prevalent "semantic" theories are indeed context-sensitive. I respect the objection. For any reader who seeks clarification on the border between semantics and pragmatics, let me offer this classic illustration: If you tell me "Pat is a bachelor," I semantically infer (or am free to infer) that Pat is male and unmarried, thanks to the meaning of the word 'bachelor'. If, on the other hand, you tell me "Pat was a bachelor," I pragmatically infer (or am free to infer) that he's married now, because if Pat were still a bachelor, you probably wouldn't have bothered to use the past tense. Further common contrasts between semantics and pragmatics are as follows: Valid semantic inferences are deductive; valid pragmatic inferences are inductive. Semantic inferences aren't cancelable (so it's a contradiction to say that Pat is a married bachelor) but pragmatic ones are (so it's not a contradiction to say that Pat was a bachelor and in fact still is). "Semantics" refers to "literal" truth; "pragmatics" refers to everything else. See e.g. Gutzman (2015) for a recent treatment of the semantics / pragmatics distinction.

(10) If John gives Mary some candy, she will stay up later than usual.

As we saw in Chapter 1, the sentence in (10) is “ambiguous” in the sense that it can be interpreted either as a claim<sup>5</sup> about the future or as a contractual offer.<sup>6</sup> For the interpretation of (10) as a claim, it may help to imagine a context in which Mary is sensitive to sugar, perhaps a context in which someone has just said to the speaker of (10) that John intends to give Mary some candy and the speaker of (10) is worried about Mary’s bedtime. For the interpretation of (10) as a contractual offer, we have to imagine that the speaker of (10) is an agent of Mary, speaking on behalf of Mary, and that the hearer of (10) is an agent of John, and that the speaker of (10) believes that John may like for Mary to stay up later than usual, and that Mary is willing to do so if John gives her some candy, and so forth (see the felicity conditions for contractual offers discussed in Chapter 2).

But is the “ambiguity” in (10) “semantic” or “pragmatic” in the sense just described? If the former, there must be something in the language (syntax/semantics) that dictates the difference in meaning; if the latter, there must be something in the context that dictates the difference in meaning. Of course, in Chapter 3 we saw arguments to the effect that contractual offers can’t be interpreted as involving silent promise (or offer) elements in the syntax. Assuming that the semantics of a linguistic expression is calculated directly from the syntactic structure of the expression (see again the discussion of structural ambiguity in Section 3.1), it would seem that the only way in which the locution of (10) could come to be associated with the illocution of a

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<sup>5</sup> Here, I use ‘claim’ more or less synonymously with ‘assertion’. See Chapter 2, Section 2.1 for discussion of whether this is justified.

<sup>6</sup> Intuitively, the sentence in (10) is linguistically viable as a contractual offer, even if it’s not legally viable as such given that a court of law may be reluctant to decide when an indefinite (“some”) amount of candy has been tendered by John to Mary.

contractual offer is via pragmatic inference. And the fact that context (e.g. Is the speaker Mary's agent?) seems to be critical to the elicitation of one or the other interpretation of (10) only fortifies the impression that it's not semantics but rather pragmatics that dictates the difference in meaning.

On the other hand, an agent is as free to make a claim about her principal, as opposed to a contractual offer on behalf of her principal, as any other person, and at any given time – even during the course of contractual negotiations. In other words, nothing would seem to prevent Mary's agent from uttering (10) as a claim, as opposed to a contractual offer, even if Mary's agent were in the middle of negotiations with John's agent with respect to candy and bedtimes. For this reason, “context” – both in terms of the situation we're in and in terms of the conversation we're in – seems insufficient for the disambiguation of (10). Indeed, if we put ourselves in Mary's agent's shoes, we get the sense that when we're making a contractual offer, we're somehow communicating the intention to do so to the offeree – there's no other way to say it than to say that making an offer feels like making an offer (and making a claim feels like making a claim), as if there were something in the language of an offer that manifests that intention. All of this suggests that a purely pragmatic analysis of the “ambiguity” in (10) faces non-trivial challenges.

Still, we've seen examples – as in (8) above – where what we might call the intended meaning of an expression is so far removed from the literal meaning of the expression that it seems hopeless to try to locate the intention of the expression in the expression itself. Moreover, we're all familiar with the use of sarcasm, innuendo, and the like, where one might say that the intended



meaning of an expression isn't contained in the expression itself.<sup>7</sup> With these sorts of worries in mind, maybe it's better if we suppress the notion of intention or intended meaning and declare a modest ambition for the much of the remainder of this chapter: Let's see if we can explain the data from Chapter 1 that corroborate the intuition that sentences like (11) are ambiguous without having to assume that the illocutionary force associated with a locution is somehow represented in the locution itself, if only silently. If so, we'll follow the principle of Occam's Razor, which says that the simplest explanation tends to be the correct one, and conclude that the ambiguity is "pragmatic" rather than "semantic." I wish to defer to future research a deep investigation of how the ambiguity that distinguishes claims from contractual offers arises as a function of context; however, in Section 4.4, I will present a preliminary sketch on how such "pragmatic strengthening" might occur.

#### 4.2.1. *Felicitous Replies*

We've seen that contractual offers can be accepted or rejected.<sup>8</sup> Thus either (11) or (12) would be a felicitous reply to (10) when (10) is interpreted as a contractual offer:

- (11)            On behalf of John, I accept.
- (12)            On behalf of John, I reject.

On the other hand, claims can be believed or denied. Thus either (13) or (14) would be a felicitous reply to (10) when (10) is interpreted as a claim:

- (13)            That's true.

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<sup>7</sup> It's possible, of course, that intonation, facial gestures, and other cues to sarcasm are part of what's "in the language." Linguists will note that (10) can be interpreted as an offer, but not as a claim, when spoken with a fall-rise intonation (H\* L-H%). To the extent that intonational contours convey pragmatic information (see e.g. Ward & Hirschberg 1985), this evidence seems to corroborate the suggestion that offerhood is not "in the semantics."

<sup>8</sup> I don't mean to suggest that this is an exhaustive list of options. Obviously, an offeree may respond with a request for time to consider the offer, etc.

(14) That's not true.

As we saw in Chapter 1, it seems that these replies can't be mixed and matched. That is to say, (13) and (14) don't seem to be felicitous replies to (10) when (10) is interpreted as a contractual offer, and (11) and (12) don't seem to be felicitous replies to (10) when (10) is interpreted as a claim. In short, it seems that claims are illocutions that are capable of being true or false, whereas contractual offers are not.

Indeed, the law subscribes to this position in connection with "hearsay," defined as an out-court-statement offered in court to prove that the content of the statement is true. Hearsay is inadmissible, unless an exception applies.<sup>9</sup> Thus, if I testify in court that you said, out-of-court, that it was raining on the day of the murder, and if my testimony is offered to prove that it was, in fact, raining on the day of the murder, my testimony will, by default, be stricken as hearsay.<sup>10</sup> On the other hand, if I testify in court that, out of court, you made me a contractual offer to bring me an umbrella in exchange for \$10, my testimony will be admissible, i.e. the court would overrule a hearsay objection, on the grounds that contractual offers aren't capable of being true or false; thus your out-of-court statement couldn't be hearsay, because I couldn't be offering your statement for its "truth." In short, it's always possible to testify in court that, out of court, someone made a contractual offer.

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<sup>9</sup> Federal Rules of Evidence, §801 et seq.

<sup>10</sup> I'm assuming that your statement has to be true in order to be relevant, i.e. is being offered to prove the truth of the proposition expressed in the statement. In other words, I'm neglecting situations where your statement, although it's the kind of statement that is capable of being true or false, isn't being offered for its truth but for some other relevant purpose. For example, if I were trying to prove that you were mistaken in believing that it was raining on the day of the murder, my testimony that you said out of court that it was raining wouldn't be stricken as hearsay, because I wouldn't be using your out-of-court statement for its truth, i.e. to prove that it was actually raining on the day of the murder. I'm also neglecting all of the exceptions (and "exemptions") to the hearsay rule, which allow me to offer your out-of-court statement for its truth in certain circumstances – for example, when I'm a party and you're my party-opponent in the case.



must be within the offeror's control to do, or not to do, the thing offered, i.e. the offeror must have the choice to do or not to do the thing offered. But choices can't be true or false, even when expressed as claims. Imagine, for example, that we're at Thanksgiving dinner, and I have the choice between pumpkin and pecan pie for dessert, and I utter the following:

(17) I'll have pumpkin pie.

Assuming you interpret my locution as an illocution of choice, it would be infelicitous for you to reply with (13) or (14), repeated here:

(13) That's true! [# as a reply to (17) interpreted as a choice]

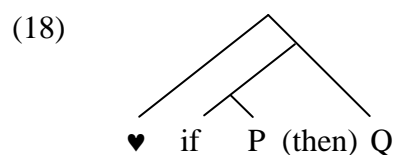
(14) That's not true! [# as a reply to (17) interpreted as a choice]

On the other hand, if you interpret my locution in (17) as not involving a choice that is being exercised now, (13) and (14) become viable replies: Imagine a context in which I utter (17) to my mother the day before Thanksgiving, when she's deciding how many pies of each variety to bake; in that case, you might utter (14) if you believe that I intend to have pecan pie for dessert at dinner but hope for there to be sufficient pumpkin pie for me to enjoy a slice with my coffee on Friday morning. This shows that (17) is interpretable as capable of being true or false in the appropriate context, just not in the context where (17) is interpreted as an immediate choice on a matter over which the speaker has control or authority to choose – for that interpretation, the replies in (13) and (14) are infelicitous.

It seems reasonable to conclude from this that when (10) is interpreted as a contractual offer on behalf of Mary, (13) and (14) are infelicitous replies not because of some silent offer element in the syntax of (10) but rather because the replies affirm [in (13)] or deny [in (14)] the very thing the hearer has to assume in order to interpret (10) as a contractual offer as opposed to a claim in

the first place – namely that the speaker has the authority to choose (or presumes to do so) and is, in fact, in the process of making a choice.

The tenacious reader might resist, however, and insist that we haven't really shown that whatever dictates whether a sentence is capable of being true or false isn't in the syntax of (10) when (10) is interpreted as a contractual offer: Maybe there's a silent "choice" element in the syntax of (17) when (17) is uttered as a choice – not the kind of silent promise or offer element we considered in Section 3.5 of Chapter 3, but something more subtle – and that's what the speaker of (14) is inappropriately attempting to deny when uttering (14) in response to (17). But even if that were the case for (17), the analysis above for the infelicity of (13) and (14) as replies to (10) when (10) is interpreted as a contractual offer still seems preferable, given that, when making a contractual offer, an offeror isn't actually choosing to do the thing he or she is offering to do (or, to the extent that offers are revocable, choosing much of anything at all, other than to put herself in a position of potential liability); thus the structure in (18) – with ♥ representing a silent choice element – would seem to be a poor syntactic structure for contractual offers:



In other words, the reason why (14) is an infelicitous reply to (10) when (10) is interpreted as a contractual offer can't be that the offeree is denying the offeror's choice to do Q. Rather, the reason why (14) is infelicitous as a reply to (10) when (10) is interpreted as a contractual offer seems to be that, in uttering (14), the offeree is denying the speaker's presumption of authority over what she is offering on Mary's behalf, i.e. whether or not Mary will stay up later than usual.

The tenacious reader might agree but persist as follows: Sure, it seems that sentences like (13) and (14) can't be used to target the assumption in (10), when (10) is interpreted as a contractual offer, that the speaker has, or presumes to have, authority on the issue of whether or not Mary will stay up later than usual, but there are lots of presumptions that seem to be *in* the locutions of natural language expressions that can't be targeted with sentences like (13) and (14). For example, recall from Chapters 2 and 3 that the word 'the' is subject to the felicity condition that a sentence of the form '... the N' ...' can be uttered felicitously only when there is one and only one N' in context that can be referred to as 'the N'' – in other words, the sentence in (19) below effectively presumes that there is one and only one salient book in context. However, (14) can't be used to deny that presumption:

(19) Mary read the book.

(14) That's not true! [# as meaning the number of salient books in context ≠ 1]

Similarly, the sentence in (20) seems to assume, in some sense, the content of the material in parentheses; however, (14) can't be used to deny that presumption:

(20) Mary (as you know) read the book.

(14) That's not true! [# as meaning that you didn't know that Mary read the book]

So maybe the sentences in (13) and (14) just can't be used to target "linguistic presumptions," i.e. maybe there's a silent presumption of authority, autonomy, or something of that kind somewhere in the locution of a contractual offer, perhaps in the form of a felicity condition or covert parenthetical content, to the effect that the speaker has, or presumes to have, the authority to choose whether or not to do what he or she is offering to do, and *that*, rather than a silent choice element like ♥, is what can't be targeted with replies like (13) and (14).

The problem for this argument is that it doesn't explain why the part of (10) that *isn't* assumed in this linguistic sense – namely the very information that the speaker is actually making an offer – can't be targeted with sentence like (13) and (14), either. To see what I mean, it may help to remember something we learned in Chapter 2, namely that performative illocutions in general seem to be incapable of being true or false. For example, none of the explicitly performative sentences in (21) - (23) can be affirmed with (13) except as a joke, nor denied with (14):

- (21) I hereby christen thee The U.S.S. Lollypop. [# 'That's not true!' as a reply]  
(22) The Court hereby finds the defendant guilty. [# 'That's not true!' as a reply]  
(23) I hereby swear to tell the truth. [# 'That's not true!' as a reply]

Note in particular that the illocution in (23) seems to have nothing to do with authority: Oaths don't require such a thing; indeed it's not at all clear what presumptions, if any, have to be made in order for the speaker of an oath to utter an oath or for the hearer of an oath to interpret an oath as an oath. So it can't be the case that the infelicity of (13) or (14) in response to a locution with non-assertive illocutionary force derives from a general inability to target an assumption of authority *per se*. Instead, performativity – and the autonomy associated with it – seems to be the problem. But what is performativity? I won't really answer that question here, except to repeat what has already been said: A sentence is performative if and only if it becomes “true” or valid upon utterance.<sup>11</sup> We see now why the word ‘true’ is in quotation marks in the previous sentence: The promise in (24) doesn't seem to be capable of being true or false in the sense that, once again, a sentence like (14) seems to be an inappropriate reply:

- (24) I promise to stay up later than usual.

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<sup>11</sup> See e.g. Szabolcsi (1982), Searle (1989), Jary (2009), Condoravdi & Lauer (2012), and Eckardt (2012) for further discussion.









#### 4.2.2. *Negative Polarity Items*

As we saw in Chapter 1, it seems that the “ambiguity” in (10) can be eliminated by substituting the word ‘any’ for the word ‘some’, as in (10a):

(10a)            If John gives Mary any candy, she will stay up later than usual.        [\* as an offer]

The word ‘any’ is an example of what linguists refer to as a “negative polarity item” (NPI). The linguistics literature is rich with analyses as to why NPI’s like ‘any’ are licensed only in certain syntactic contexts, most obviously “negative” ones.<sup>16</sup> Compare (30) with (31):

(30)            \* I have any candy.

(31)            I don’t have any candy.

Interestingly, NPI’s are widely believed to be licensed in the antecedents of conditional sentences:

(32)            If you have any candy, you should share it with your sister.

(33)            If you ever have candy, you should share it with your sister.

and yet it has been known at least since Lakoff (1969) that not all conditional antecedents are hospitable to NPI’s, as shown in (34) and (35):<sup>17</sup>

(34)            If you have {some / \*any} candy, you’ll feel better.

(35)            If you have {\*some / any} candy, you’ll feel worse.

Interestingly, however, it seems that *focused* NPI’s are licensed in conditionals that are interpreted as contractual offers, at least in the case of focused ‘any’:

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<sup>16</sup> Krifka (1995) provides a decent history; Hoeksema (2012) provides a short, but more recent, history.

<sup>17</sup> The sentences in (34) and (35) are mine, not Lakoff’s, but represent the sort of contrast she was interested in.

(10b) If John gives Mary *any* candy, she will stay up later than usual. [ok as a an offer]

Like the sentence in (10), the sentence in (10b) seems to be linguistically viable as a contractual offer even if it's not legally viable as such, given that a court of law may be reluctant to decide when an minimal amount of candy has been tendered between the parties.<sup>18</sup> In other words, the focused '*any*' in (10b), unlike the unfocussed '*any*' in (10), seems to have the flavor of "any at all," and I take this to be informative.

Israel (1995) identifies certain syntactic contexts where "indefinite" NPI's (like '*any*') are licensed but "minimizing" NPI's (like '*any*' and '*any at all*') are not. Israel attributes this to a licensing condition for NPI's different from the semantic and pragmatic licensing conditions prevalent in the literature. I submit that the data in (10a) and (10b) indicates that Israel's analysis is on the right track, given that his analysis predicts not only that there should be syntactic contexts in which indefinite NPI's are licensed while minimizing NPI's are not (as he shows) but also that there should be syntactic contexts in which minimizing NPI's are licensed while indefinite NPI's are not (as the data above shows).

In short, the fact that unfocused NPI's aren't licensed in the antecedent of conditional sentences interpreted as contractual offers doesn't indicate that there is something in the syntax of a contractual offer that interferes with NPI-licensing in the antecedent of the offer. Rather, the NPI licensing facts can be explained in reference to the lexical semantics of NPI's as well as the pragmatic fact that when an offeror is making a contractual offer, he or she isn't asking for a random (or "indefinite") performance from the offeree but rather is identifying the *minimum* performance from the offeree that will induce his or her reciprocal performance; hence

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<sup>18</sup> See ff. 6.

minimizing, but not indefinite, NPI's are licensed in the antecedents of conditional sentences interpreted as contractual offers.<sup>19</sup>

#### 4.2.3. *Tense / Mood*

As we saw in Chapter 1, the ambiguity in (10) can be “reduced” by changing the “tense” of the antecedent and consequent, as in (10c):

(10c)            If John gave Mary some candy, she would stay up later than usual. [? as an offer]

By a “reduction” in ambiguity, I mean that it seems to be more difficult to interpret (10c) as a contractual offer than it is to interpret (10) as a contractual offer, as evidenced by the fact that speakers report that they would be reluctant to respond to (10c) with a statement of acceptance or rejection as in (11) or (12), i.e. (10c) feels like a statement of negotiation that could lead to a contractual offer rather than a contractual offer itself.<sup>20</sup>

The sentence in (10c) modifies the sentence in (10) by substituting the verb ‘gave’ for the verb ‘gives’ as well as the auxiliary verb ‘would’ for the auxiliary verb ‘will’. There is some debate in the linguistics literature as to whether this is a change in tense on these verbs or a change in mood (e.g. from “indicative” to “subjunctive”), but the common theme in the work by authors who have investigated pairs like (10) and (10c) as claims is that past “tense” in both the antecedent and the consequent of a condition seems to correlate with reduced probability.<sup>21</sup>

Compare (36) with (37):

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<sup>19</sup> For a comment on the NPI ‘ever’ in contractual offers, see Ch. 5, ff. 9.

<sup>20</sup> Some speakers report that they can imagine interpreting (10c) as a contractual offer if the speaker of (10c) were being particularly polite, not wanting to give the impression that she is assuming that John is willing to give Mary some candy. This observation is consistent with the analysis that follows.

<sup>21</sup> See e.g. Iatridou (2001), Ippolito (2003), and Stowell (2008) for discussion.

(36) If John takes his medicine, he will feel better.

(37) If John took his medicine, he would feel better.

The minimal difference between (36) and (37) seems to be that, whereas (36) is neutral with respect to whether or not John will take his medicine, (37) implies that John is relatively unlikely to do so, as evidenced by the natural follow-up to (37) in (38):

(38) But I doubt that he'll take his medicine.

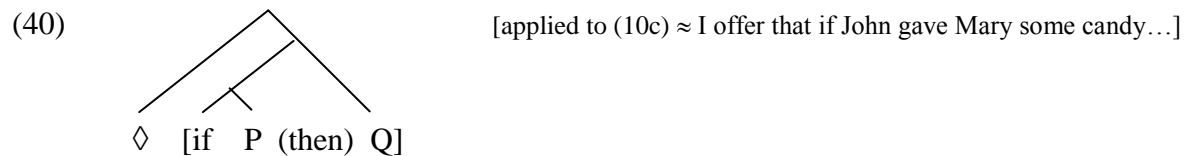
This difference in probability seems to be a matter of pragmatic inference rather than strict semantics, given that the antecedent in (39) isn't a contradiction:

(39) If John took his medicine – and in fact he probably will – he would feel better.

But even if the reduction in probability were somehow semantically entailed by the use of past “tense” in the antecedent and consequent of a conditional, what matters for our purposes is the striking observation that, just as the switch from (10) to (10c) seems to involve a reduction in the probability of truth of the antecedent when the sentence is interpreted as a claim, so, too, there seems to be a reduction in the interpretability of the sentence as a contractual offer. What could possibly account for this correlation if contractual offers and claims weren't essentially the same thing?

To stay consistent with the ambition of this chapter, what we want to know in particular is whether the contrasts in (10) and (10c) indicate that the interpretation of these sentences as contractual offers involves silent offer elements in the syntax of the sentences. I submit that the data indicates just the opposite. Consider, for example, what we would expect if the structure for (10), when (10) is interpreted as a contractual offer, were the structure in (40), where the symbol

◇ stands for the hypothetical silent offer element:



The problem for (40) with respect to the data in (10c), when (10c) is interpreted as a contractual offer, is that it would seem that the structure in (40) should be neutral with respect to whether the ‘if-then’ sentence is interpretable as an offer, because the tense/mood properties of the ‘if-then’ sentence are too local to the ‘if-then’ sentence to affect the interpretation of ◇, which simply identifies the sentence as an offer. So not only do the contrasts in (10) vs. (10c) not require us to assume that there are silent illocutionary (offer) elements in contractual offers, they actually suggest that opposite, i.e. that there are no such silent elements in the syntax of conditional sentences when the sentences are interpreted as contractual offers.

The data in (10c) still remains to be explained, however, but this could be easily done: It’s reasonable to believe that another felicity condition for the making of a contractual offer is that the offeror must assume that the offeree may be willing to do what the offeror is asking the offeree to do. The less that the offeror assumes that the offeree will do, or is willing to do, what the offeror is asking the offeror to do, as is indicated by the use of past “tense” in the locution of the offer, the less easy it is to interpret the locution as having the illocutionary force of an offer.

#### 4.2.4. “*Semantic Directionality*”

As we saw in Chapter 1, when a conditional sentence is interpreted as a claim, it seems to express a directional semantic relation between the antecedent and consequent, one which can go either “forward” or “backward.” For example, the sentence in (41) is naturally interpreted as

saying that the arrival of the mail carrier will precede and cause the dog's barking, not vice versa; likewise for (42), which can naturally be interpreted as involving either "backward causation" or "forward inference."

(41) If the mail carrier is at the door, the dog will bark.

(42) If the dog barks, the mail carrier will be at the door.

In contrast, when a conditional sentence is interpreted as a contractual offer, it doesn't seem to involve any directional semantic relation between the antecedent and the consequent. For example, with respect to (10) when (10) is interpreted as a contractual offer, John's giving Mary candy doesn't have to *precede* Mary's staying up later than usual: Mary may be willing to collect the candy after a short night's sleep. Nor is it the case that John's giving Mary candy will *cause* Mary's staying up (or having to stay up) later than usual: Mary's duty to stay up late arises from John's (agent's) acceptance of the offer in (10). In contrast, when (10) is interpreted as a claim that is capable of being true or false, it seems difficult not to interpret the sentence as saying that John's giving Mary candy will precede and cause Mary's staying up later than usual; in other words, (10) can't easily be interpreted as saying that all situations in which Mary stays up later than usual are situations in which John gives her candy later than that.

Indeed, the law supports the position that the interpretation of a conditional sentence as a contractual offer doesn't involve a directional semantic relation between the antecedent and the consequent by adopting the notion of "anticipatory repudiation," defined as a breach of contract that occurs before the performance of a contractual duty is due.<sup>22</sup> For example, if an agent of Mary utters (10d) to an agent of John:

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<sup>22</sup> Restatement 2<sup>nd</sup> of Contracts §250 et seq.



(10d) If John gives Mary some candy tonight, she will stay up later than usual tomorrow night.

and John's agent accepts, Mary's performance isn't due until tomorrow night, but Mary can breach tonight, before (or after)<sup>23</sup> John has given her candy – in fact, immediately after the acceptance of the offer – by unequivocally communicating (directly or via her agent) to John (or his agent) that she will not stay up later than usual tomorrow night. If the law didn't recognize that contractual duties arise from the acceptance of a contractual offer and therefore may exist even before they are “due” – and thus ordering the party's performances isn't essential to the formation of contract – there would be no need for the notion of anticipatory repudiation. Of course, the parties to a contract are free to agree as to who will perform first as in (10d) above, but the law will decide for the parties who performs first if the parties do not decide that for themselves, suggesting again that nothing in the meaning of (10), when (10) is interpreted as a contractual offer, dictates the order in which the performances by John and Mary will or must happen.

How can these linguistic intuitions, which are supported under the law, be accounted for? More to the point of this chapter, do these facts require us to assume that there are silent speech act elements in the syntax of contractual offers that somehow neutralize the normal “directional” semantic relation between the antecedent and consequent of a conditional sentence when the sentence is interpreted as a claim? It's hard to imagine how that would work. Indeed, looking once more at the structure in (40), it would seem that once the semantics of the conditional sentence ‘if P then Q’ is calculated, it's too late for the hypothetical offer element  $\diamond$  to effect it's

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<sup>23</sup> If John has given Mary candy tonight, a court may preclude him from suing Mary for breach of contract by anticipatory repudiation, even if it's not time for Mary to stay up late, not because Mary hasn't breached, but because John has little to gain by suing now, as opposed to later, if Mary doesn't perform, because it's too late for him to keep the candy, so he might as well wait and see whether Mary will perform after all. See Corbin on Contracts §961 et seq. (1962).

meaning. A core assumption of most semantic theories is that once the meaning of a sentence is computed, the meaning remains the same, even when embedded inside another sentence.<sup>24</sup> For example, the meaning of “Mary will stay up later than usual” seems to be the same in all of the sentences in (43), even though the verbs in the “main” (i.e. non-subordinate) clauses differ significantly in their semantics:

- (43) a. I suspect that Mary will stay up later than usual.
- b. I think that Mary will stay up later than usual.
- c. I know that Mary will stay up later than usual.

At the same time, cases where the interpretation of an embedded sentence seems to depend in part on the verb with which it combines in the syntax aren’t too hard to find. Consider (44):

- (44) I suspect that Mary might stay up later than usual.

It seems possible to interpret (44) as equivalent to (43a), as if the semantics of ‘suspect’ were echoed in the semantics of ‘might’, such that what the speaker of (44) suspects is that Mary ‘will’ stay up later than usual, not that she ‘might’ – in other words, the suspicion is not that there’s a *possibility* that Mary will stay up later than usual, just a suspicion that she *will*. (This phenomenon is sometimes referred to as “modal concord” – see e.g. Zeijlstra (2007) for discussion.) So it’s not utterly implausible that silent speech act elements like the hypothetical offer element  $\diamond$  in (40) could affect the semantics of the ‘if-then’ sentence it combines with in the syntax. Thus, the question becomes whether there’s an alternative explanation that explains the lack of semantic directionality in conditional sentences interpreted as contractual offers that doesn’t require us to assume that such elements exist in the syntax. I think there is.

For centuries, philosophers (and linguists) have observed that hearers of ‘if P then Q’ sentences

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<sup>24</sup> See again Heim & Kratzer (1997).

are often inclined to interpret them as “if P then Q, and if not P then not Q,” which is semantically equivalent to “if and only if P, then Q”.<sup>25</sup> Logicians frequently view this interpretation (often called “conditional perfection”) as a fallacy, but cognitive scientists and other who are interested in modeling rational inference are typically more forgiving, sometimes going so far as to propose that the word ‘if’ is lexically ambiguous between the “if” and “if and only if” interpretations. As noted in Section 4.1 above, linguists are wary of claiming that a word is ambiguous if one of the two meanings of the word is entailed by the other, but demonstrating that the meaning of “only if” entails the meaning of “if” is something of a delicate matter, and in any case we need not demonstrate that entailment here, because whether or not such an entailment exists, the fact of the matter is that that the move from “if P then Q” to “if and only if P, then Q” explains the lack of semantic directionality in conditional sentences interpreted as contractual offers without requiring the presence of silent speech act elements in the syntax of conditional sentences; the only real problem lies in explaining why the move happens almost as a matter of necessity in conditional sentences interpreted as contractual offers but only optionally in conditional sentences interpreted as claims.

But first, let’s convince ourselves that the conversion of “if P then Q” to “if and only if P, then Q” removes the sense of semantic directionality even for claims. Consider once more the sentence in (41), repeated here, and compare it with the sentence in (41’):

(41)            If the mail carrier is at the door, the dog will bark.

(41’)           If and only if the mail carrier is at the door, the dog will bark.

Speakers report that (41’) lacks the cause-and-effect flavor of (41), and this seems to have to do with the addition of “and only if” to (41), as suggested by (41’), whose cause-and-effect flavor

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<sup>25</sup> See Horn (2000) and references therein for a comprehensive history.

is mild compared with that of (41):

(41'') Only if the mail carrier is at the door will the dog bark.<sup>26</sup> [is the carrier a cause?]

“Only if” sentences like (41'') are often symbolized as in (42), with the arrow representing the direction of rational inference, if not semantic entailment:

(42)  $P \leftarrow Q$  [applied to (41''): mail-carrier-at-door  $\leftarrow$  dog-bark]

whereas “if” sentences like (41) are often symbolized as in (43):

(43)  $P \rightarrow Q$  [applied to (41): mail-carrier-at-door  $\rightarrow$  dog-bark]<sup>27</sup>

The conjunction of (42) and (44), reflecting the directionality of (41'), therefore seems to be well-represented by (44):

(44)  $P \leftrightarrow Q$  [applied to (41'): mail-carrier-at-door  $\leftrightarrow$  dog-bark]<sup>28</sup>

It's not quite clear why “only if” sentences like (41'') and, correspondingly, “if and only if” sentences like (41'), lose the flavor of precedence and/or cause-and-effect seen in simple “if” sentences like (41), but one might speculate that it has something to do with the conflation of the intuitive inferential directionality shown in (42) - (44) with the temporal precedence one might naturally associate with the ostensible “tenses” of the antecedent and consequent of a conditional

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<sup>26</sup> I have nothing to say about the unusual “inversion” of the auxiliary verb ‘will’ in (41'') other than what is said in ff. 30, *infra*.

<sup>27</sup> Aligning the intuitive directionality represented by these arrows with the semantics of ‘if-then’ sentences given in Chapter 3 is a more laborious process than is worth the effort for our purposes. Said another way, I won't wrestle here with the issue as to whether the arrows are better represented in terms of rational (possibly inductive) inference or in terms of (deductive) semantic entailment. All that matters for us at this point is that there's an explanation of the lack of directionality that doesn't require us to believe in the presence of silent speech act elements in the syntax of conditional sentences when the sentences are interpreted as contractual offers.

<sup>28</sup> Notwithstanding ff. 27, I assume, without proof here, that the conjunction of the sentences ‘If P then Q’ and ‘Only if P then Q’ has the same semantics as the single sentence with a conjoined antecedent: ‘If and only if P, then Q’.

sentence, taken separately. For example, consider the sentence in (45):

(45) If you do X, then I will do Y.

Fitting (45) into the ‘if P then Q’ template, we have:

(46) P = You do X.  
Q = I will do Y.

The P in (45) is ostensibly in the present tense, and the Q is ostensibly in the future tense.<sup>29</sup>

Couple this with the fact that the direction of inference normally associated with “if P then Q” is the  $\rightarrow$  direction represented in (43), and one might speculate that the antecedent is interpreted as having preceding, and perhaps causing, the consequent. Not so for the sentence in (47), where the direction of inference  $\leftarrow$  antagonizes this direction of tense:

(47) Only if you do this will I do that.

(48) P = You do X  
Q = Will I do Y.<sup>30</sup>

So one might speculate that the reason why “if and only if” sentences aren’t easily interpreted as involving temporal precedence or causation between the antecedent and the consequent is that there’s an antagonist relationship between the ostensible tense of the antecedent and consequent and the direction of inference ( $\leftrightarrow$ ) associated with the sentence as a whole.

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<sup>29</sup> In Chapter 5, we will consider the possibility that the future “tense” is not really a tense in English.

<sup>30</sup> One might further speculate that the inverted form of Q antagonizes the interpretation of ‘will’ as a (declarative) future tense. The inversion seen in (41’) and (47) is sometimes referred to as “negative inversion,” because it seems to be acceptable only in negative or negative-like environments, as in (i) or (ii):

- (i) Under no circumstances will I do that.
- (ii) In few situations would I do that.

Of course, for reasons unknown, no inversion seems possible in the conjoined (41’), so the suggestion that ‘will’ isn’t declaratively interpreted as ‘will’ in (41’) (i.e. in contractual offers) by virtue of its unusual position in the sentence – thereby explaining why it’s not easily interpreted in temporal or causal sequence with the antecedent of the conditional – seems implausible.

If so, the only thing that remains to be explained is why sentences of the form in (45) are more easily interpreted as “if and only if” sentences when interpreted as contractual offers than as claims. I think the explanation is straightforward, and fully pragmatic. When I make you a contractual offer, I want to give you the impression that I will do what I am offering to do only if you do what I am asking you to do, i.e. I want to give you the impression that I’m unwilling to do what I’m offering to do in exchange for anything other than<sup>31</sup> what I’m demanding, and moreover I’ve arrived at a point where negotiations are over (otherwise, I’m not ready to make an offer), meaning that your only option is to do what I’m asking you to do, otherwise, the deal is off. When I utter a conditional sentence as a claim, on the other hand, no such motivation to represent the condition as a necessary condition exists (at least, not by default).

In this way – no matter what the mechanism for interpreting “if P then Q” as “if and only if P then Q” – the fact that “if-then” sentences like (10) don’t seem to involve a semantic directionality when they’re interpreted as contractual offers, but typically do when they’re interpreted as claims, doesn’t indicate that there is something in the syntax of a contractual offer that dictates the interpretation of the conditional with respect to temporal precedence or causation. Rather, the “semantic directionality” facts can be explained in reference to the pragmatic fact that when an offeror is making a contractual offer, she wants to give the impression that the offeree’s performance defines the only condition under which she would be willing to do what she is offering to do.

#### 4.2.5. “Syntactic Directionality”

As we saw in Chapter 1, the sentence prototype in (49) seems to fail as a contractual offer:

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<sup>31</sup> Or less than – see the discussion of minimizing NPI’s in Section 4.2.2. of Chapter 4.

(49) If I do Y, you will do X.

Similarly, the modification of (10) in (10e) seems to fail as a contractual offer, even when spoken by an agent of Mary to an agent of John:

(10e) If Mary stays up later than usual, John will give her some candy. [\* as Mary's offer]

Somewhat like the sentence in (10b) above, one might imagine the sentence in (10d) being uttered by an agent of Mary to an agent of John in the course of negotiation, in particular when spoken as what linguists refer to as a “tag question” and what lawyers refer to as a “leading question,” as in (10e’):

(10e’) So if Mary stays up later than usual, John will give her some candy, correct?

but as it stands, (10e) seems uninterpretable as a contractual offer, although of course it’s perfectly interpretable as a claim.

The fact that (10e) is uninterpretable as a contractual offer is particularly mysterious in light of what we saw in the previous section with respect to the “semantic non-directionality” of contractual offers: If the “meaning” of a contractual offer, unlike a claim, does *not* involve a directional semantic relation between the antecedent and the consequent of a conditional sentence, it’s not obvious why conditional sentences interpreted as contractual offers seem to be “syntactically directional” in the sense that what the offeror is requesting from the offeree must be expressed in the antecedent and what the offeror is offering must be expressed in the consequent.

We saw in the last section, however, that there is a syntactic asymmetry between the antecedent and consequent of conditional sentences like (10), namely that the antecedent is expressed in

what seems to be the simple present tense, whereas the consequent is expressed in the future tense. Mapping (49) onto the “if P then Q” template, we have:

- (50)            P        =        I do this.  
                  Q        =        You will do that.

An obvious explanation for why (49) isn't a viable candidate for a contractual offer is that the consequent Q feels now like an order, not like an offer. In Chapter 2, we saw that Schane and Tiersma identified futurity as a felicity condition on the propositional content of contractual offers, but it's clear we need to add a further condition of first-person-hood (modulo agency, of course) on the subject of the future-tense sentence in the consequent. In other words, we need for 'I' to be the subject of the consequent in (49), and we need 'Mary' (or 'she') to be the subject of the consequent in (10).

Explaining exactly why it's difficult to offer (propose, suggest, etc.) that someone else do something by expressing the consequent in (50) is harder than one might imagine, although the semantics proposed for “if-then” sentences in Chapter 3, repeated here, gives us a good start:

- (51)            THE STRICT CONDITIONAL ANALYSIS  
                  The meaning of ‘if P (then) Q’ = In all situations in which P is true (that are reasonably similar to the situation we think we're in), Q is true.

Applying the semantics in (51) to (49), the meaning of the sentence is something like this: “In all situations in which I do X, you will do Y.” Assuming that the speaker of (49) has no control over the hearer of (49) as to whether or he or she will do Y, it would be presumptuous for the speaker of (49) to think that he or she could utter (49) *truthfully*. (And if the speaker of (49) did have control over the hearer of (49) as to whether he or she will do Y, it's not obvious why the speaker of (49) would be making an offer in the first place, as opposed to ordering the hearer to



do Y, unconditionally.) Indeed, what I'm suggesting here is that the problem for interpreting (49) – and likewise (10e) – as a contractual offer is precisely that these conditional sentences are actually interpreted as claims that are capable of being true or false. In other words, not only do the facts regarding the “syntactic directionality” of conditional sentences interpreted as contractual offers fail to indicate that there are silent speech act (offer) elements in the syntax of the sentence, they seem to suggest the opposite: Contractual offers are just claims in the strict syntactic / semantic sense.

#### 4.3. *Proposal: Contractual Offers are Claims*

We started this chapter with an explanation of the difference between “semantic” meaning and “pragmatic” meaning and then turned to the question of whether the interpretation of conditional sentences as contractual offers was a matter of “semantic” interpretation or “pragmatic” inference. Noting the difficulty of utterly precluding the possibility that silent speech act (i.e. promise or offer) elements are in the syntax, we declared a modest ambition for much of the chapter: We explored whether the data introduced in Chapter 1 that corroborate the intuition that sentences like (10) are “ambiguous” can be explained without having to assume that the illocutionary force associated with a locution is somehow represented in the locution itself, i.e. in the syntax. What we found in the case of contractual offers is that the answer is “yes”: None of the data gives us any (strong) indication that there are silent speech elements in the language of contractual offers, and some of the data suggested the opposite. And so, following the principle of Occam's Razor, which says that the simplest explanation tends to be the correct explanation, it seems reasonable to conclude that the “ambiguity” of contractual offers like (10) is “pragmatic” rather than “semantic”: Contractual offers are simply claims that are capable of being true or false, “strengthened” in the sense that, when they're false, they lead to some form of liability. In

other words, the contractual offer in (10), repeated here:

(10) If John gives Mary some candy, she will stay up later than usual.

is essentially “pragmatically strengthened” into (10f):

(10f) If John gives Mary some candy, she will stay up later than usual  
... and if she doesn't, she's in trouble [morally, legally and/or otherwise].

The reader may notice, however, that the form of “pragmatic strengthening” shown in the move from (10) to (10f) seems to be rather different from the move from “two” to “two and only two” and even the move from “if” to “if and only if” seen in earlier sections of this chapter: More than minimal information seems to be added in the “strengthened” (10f). The question is, is this a problem for the proposal that the “ambiguity” in sentences like (10) is pragmatic, rather than semantic?<sup>32</sup> I don't think so, but first I should make it clear what I mean by the phrase “pragmatic strengthening.”

Traditionally, linguists, perhaps most notably Larry Horn, have used the notion of “pragmatic strengthening” to refer to the process by which a hearer infers that stronger alternatives are false when weaker alternatives have been uttered.<sup>33</sup> To be a little more precise: Defining the “strong” interpretation of a sentence as the interpretation that unilaterally entails the “weak” version, an implication arises when a speaker utters the weak version that she was not in a position to utter the strong version; thus, a hearer of the weak version is licensed to infer that the strong version is false. For example, having heard that “some” students got an A in a class, a hearer is licensed to infer that “not all” did, reasoning that if all students had gotten an A, the speaker would have said

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<sup>32</sup> Some linguists may wonder whether the move from (10) to (10f) can be modeled as a shift from epistemic accessibility relations to deontic ones in a Kratzerian-style analysis of conditionals. This possibility is addressed in ff. 7 of the following chapter.

<sup>33</sup> See e.g. Horn (1996).

so:

- (52) (i) All students got an A.                   STRONG  
      (ii) Some students got an A.               WEAK

Likewise, having heard that there are “two” coins on the table, a hearer is licensed to infer that it’s not the case that there are only two coins on the table (i.e. there may be more than two coins on the table); otherwise, the speaker would have said so:

- (53) (i) There are only 2 coins on the table.       STRONG  
      (ii) There are two coins on the table.       WEAK

Now, the kind of “pragmatic strengthening” I’ve been alluding to here – for example, in the conversion of “two” to “only two” discussed in Section 4.1 – is in a sense the opposite phenomenon: I argued in Section 4.1 that the strong version (“only two”) in (53) may in fact be inferred from the weaker version (“two”) in the appropriate context (e.g. in the answer to a how-many question). However, in a mathematical sense, the use of the word “strengthening” is justified in both in the traditional sense and in the sense that I’m using it here: In the traditional sense, the term is justified because the set of situations in which the strong version of the sentence is *false* while the weak version is true is a subset of the situations in which the strong version is undetermined and the weak version is true; in my sense, the term is justified because the set of situations in which the strong version is *true* while the weak version is true is a subset of the situations in which the strong version is undetermined and the weak version is true. But the more important point to be made here is that both forms of pragmatic strengthening we seem to arise as a function of context. So while it’s true that if we were to manipulate (10) and (10f) in the same manner as (54), we would have:

- |      |             |   |            |               |
|------|-------------|---|------------|---------------|
| (54) | (i) = (10f) | If ... and if she doesn't she's in trouble. | [an offer] | <b>STRONG</b> |
|      | (ii) = (10) | If ....                                     | [a claim]  | <b>WEAK</b>   |

such that when a speaker utters (54ii), it would seem as if the hearer would, by default, be licensed in interpreting the sentence as a claim and not as a contractual offer (this would be the traditional sense of “strengthening”), it’s surely true, too, that conversational context – for example, whether the speaker and hearer are in the middle of contractual negotiations – can militate against that inference and even militate in favor of interpreting the claim as an offer. Indeed, all the felicity conditions for contractual offers we’ve identified so far, e.g. whether (the hearer believes that) the speaker believes that the hearer may want the consequent of the conditional sentence to be true) surely serve as contextual clues by the hearers of conditional sentences as to whether the sentence is intended as an offer.

But if the reader is bothered by the fact that the “pragmatic strengthening” seen in moving from claims to offers upends the traditional sense of “pragmatic strengthening” seen for example in the works of Horn and others, it’s worth noting that Horn himself (2000) argues that hearers are actually less likely to infer that the strong interpretation of a sentence is false upon hearing the weak version of the sentence when the strong version is less “lexicalized” than the weak version. Consider for example the following sentences:

- |      |      |                        |               |
|------|------|------------------------|---------------|
| (54) | (i)  | I hurt my thumb.       | <b>STRONG</b> |
|      | (ii) | I hurt my finger       | <b>WEAK</b>   |
| (55) | (i)  | I hurt my ring finger. | <b>STRONG</b> |
|      | (ii) | I hurt my finger       | <b>WEAK</b>   |

According to Horn, a thumb is a finger; otherwise, we would have eight fingers instead of ten, and ‘thumb’ is a single word, which means that it is equally lexicalized as ‘finger’, which is also

a single word. When a speaker utters (54ii), then, a hearer is likely to infer by default that (54i) is false; in other words, saying that I hurt my finger implies, by default, that I didn't hurt my thumb – this, according to Horn, is a classic example of traditional pragmatic strengthening. In contrast, “ring finger” isn't a single word (it's a compound), so it's less lexicalized than the single word ‘finger’. Intriguingly, when a speaker utters (55ii), a hearer seems less likely to infer that (55i) is false – in other words, saying that I hurt my finger doesn't seem to imply that I didn't hurt my ring finger.<sup>34</sup> Applying this sort of analysis to (54i) and (54ii) – i.e. (10) and (10f), it's evident that (53i) is less lexicalized than (53ii), and so if Horn is right, there is little, if any, pragmatic motivation to *prevent* a claim from being “pragmatically strengthened” into a contractual offer. In this way, the pragmatic strengthening from claims to contractual offers is not so different from the (also non-traditional) “strengthening” of ‘two’ to ‘only two’ and ‘if’ to ‘if and only if’ we've seen happen before, which can arise as a function of linguistic and para-linguistic context.<sup>35</sup>

To be sure, to suggest that the “pragmatic strengthening” – in my non-traditional sense of the phrase – from claims into contractual offers happens as the result of linguistic (does our conversation involve negotiating?) and para-linguistic (does the speaker want me to do what he's asking me to do?) context isn't saying much. But maybe not much needs to be said. Perhaps the only linguistic difference between claims and contractual offers is exactly there – *in the*

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<sup>34</sup> In his version of (55i), Horn uses “pinky (finger)” instead of “ring finger.” The expression “pinky finger” isn't part of my vernacular; moreover, saying that I hurt my “finger” doesn't seem to imply that I didn't hurt my “pinky,” so I use “ring finger” instead of “pinky (finger)” in my examples, for which I share Horn's judgments. The fact that I don't share Horn's judgments for ‘pinky’ (indeed, Horn's use of parenthesis in “pinky (finger)” in his text may suggest that his own judgments on ‘pinky’ are iffy) may present a problem for Horn's argument, since ‘thumb’ and ‘pinky’ seem to be equally lexicalized; the critical difference between the two seems to be that the latter is a more prototypical ‘finger’ than the former, as opposed to their relative degrees of lexicalization. As for whether this prevents Horn's data from being of use to me, I suppose that one might argue that contractual offers are less prototypical claims than claims *simpliciter*, but I won't pursue such an argument here.

<sup>35</sup> Horn (2000) actually argues that the move from “if p then q” to “if and only if p then q” is “pragmatic strengthening” in the traditional sense, the idea being that when a speaker utters “if p then q” a hearer is licensed to infer that “q, unconditionally” is false; however, Horn's claim that the latter is a stronger version of the former depends on an unidentified semantics for ‘if-then’ (perhaps the material implication analysis) that seems to neglect the kangaroos-and-crutches type of data discussed in Chapter 3.

conversation – that is to say, at a linguist level beyond syntax, semantics, and even pragmatics. Recently, there has been a renewed interest in the theory of speech acts as it relates to the moves speakers make in the course of a conversation (or “discourse”). For example, Krifka (2001) argues that there are speech act operators at a level of discourse representation that take syntactic/semantic structures, as well as linguistic contexts, as multi-variable inputs and produce new linguistic contexts as outputs. (Imagine a machine that, at any point in a conversation, can take a new conversational utterance and model the resulting state of conversation that results from the utterance.) This sort of enterprise, of course, is essentially a formalization of the intuitive idea, alluded to in Chapter 2, that speech acts take propositional content and produce something more, but interesting data have been observed in the course of rigorizing the theory of speech acts in this manner. Farkas & Bruce (2010) note, for example, that both simple assertions and yes-no questions can both be felicitously answered with positive or negative sentences:

(55) A: John gave Mary some candy.  
B: Yeah, he did. / No, he didn't.

(56) A: Did John give Mary some candy?  
B: Yeah, he did. / No, he didn't.

suggesting that simple assertions really are speech acts in the sense that they do more than merely declare propositional content – they propose to update the common beliefs of the speaker and hearer, and the hearer is free to accept or reject the proposal. In that sense, simple assertions (i.e. claims) are actually more similar to contractual offers than one might have thought: Both claims and contractual offers are subject to acceptance and rejection! (The difference, of course, is in the nature of the commitments that result from the making of the claim or offer, as well as the commitments that result from the acceptance or rejection of the same.)

What this suggests is that it may be possible, after all, to encode the intention to make offer as well as the commitments associated with such an intention somewhere “in the language” – in the form of a silent speech act operator, something that exists not in the literal syntax / semantics of a locution but rather at some higher level of representation – indeed, such a thing would seem to be necessary in light of the intuition noted in Section 4.2 that making an offer simply feels like making an offer. Moreover, it seems strange to suggest that, in making a contractual offer, the speaker is effectively strengthening his own assertion; traditionally, pragmatic strengthening is taken to be performed by the hearer, not the speaker.

And yet, we know that speakers often say what they say with the intention that the speaker will draw reasonable inferences from what was said, and this doesn’t necessarily change the linguistic character of the thing said – again, sarcasm and innuendo might be a good examples. So it may not be necessary to postulate the existence of silent offer elements at a high level of discourse representation in order to adequately model how certain conditional sentences are intended and interpreted as contractual offers; ordinary pragmatic inference may suffice. In any case, the important point for the purposes of this chapter is that we need not suppose that silent speech act elements exist in the syntax/semantics of conditional sentences interpreted as contractual offers. In this strictest sense, contractual offers are clearly not “conditional promises.”

#### 4.4. *Summary*

Again, the goal of this chapter has been modest. Having shown in the previous chapter that contractual offers aren’t conditional promises in any “literal” (i.e. syntactic / semantic) sense, we were stuck with the problem of how to model the apparent ambiguity in certain conditional sentences between claim and contractual-offer interpretations. Given that many linguistic

expressions are “pragmatically ambiguous,” a natural thing to suggest was that the ambiguity between claim and contractual-offer interpretations of conditional sentences is a pragmatic one, but to suggest that the ambiguity in such sentences is “pragmatic” rather than semantic left us with certain mysteries, which I’ve attempted to explain in reference to things other than what we expect to find in syntactic / semantic representations.

In particular: With regard to felicitous replies, I suggested that the reason why it (only) seems that contractual offers like (10) can’t be true or false is that, when interpreted as contractual offers, such sentences are taken as equivalent to explicit performative expressions, which can’t be affirmed or denied given their autonomous, self-referential nature. With regard to the (unfocussed) NPI ‘any’, I suggested that the reason why the word is ungrammatical in the antecedent of a conditional sentence interpreted as a contractual offer is that contractual offers stipulate the minimum (not merely indefinite) amount of performance that the offeror is willing to accept in exchange for his performance. With regard to tense and mood, I suggested that “distancing” effects found in claims and contractual offers is precisely the same phenomenon, supporting the conclusion that contractual offers are actually claims. With regard to semantic non-directionality, I suggested that the lack of a sense of temporal precedence and/or cause-and-effect in conditional sentences interpreted as contractual offers follows from the interpretation of “if” as “if and only if”, which I claimed is more likely in contractual offers than in simple claims given that an offeror wants to give the impression that the offeree’s performance constitutes the only condition under which the offeror will to perform. With regard to syntactic directionality, I suggested that the reason why a conditional sentence interpreted a contractual offer must involve the offeree’s performance described in the antecedent and the offeror’s performance described in the consequent of the sentence is that to reverse the order would produce a sentence that feels



like an order, not an offer, which antagonizes one or more of the felicity conditions for offers.

But many things remain unexplained – for example: With regard to felicitous replies, I haven't really explained the nature of performativity or how implicit offers like (10) are interpreted as “equivalent to” explicit performative sentences (but neither do Schane and Tiersma). With regard to NPI's, I haven't said anything about NPI's other than ‘any’, nor, in fact, have I explained why (unfocussed) ‘some’ is acceptable in contractual offers when it seems to encode an indefinite quantity, not necessarily a minimum one (but perhaps this first impression will prove incorrect). With regard to tense and mood, I haven't explained how the “distance” effects arise in the first place; more specifically, I haven't shown that such effects arise as a matter of pragmatics rather than semantics (although if they arise equally in claims and offers, whether they arise as a matter of semantics or pragmatics may not matter to my analysis). With regard to semantic non-directionality, I haven't explained how the move from “if” to “if and only if” occurs as a matter of pragmatics (but that debate remains unsettled in the literature at large). With regard to syntactic directionality, I haven't explained why syntactically “reversed” contractual offers are naturally interpreted as orders (although the next chapter should shed some light on that matter.) Finally, I haven't explained how the notion of liability (“I'm in trouble”) arises as part of the meaning of contractual offers, other than to suggest that that's just what an ‘offer’ *means*.<sup>36</sup>

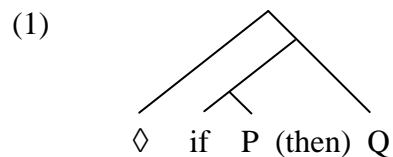
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<sup>36</sup> Tim Stowell (p.c.) wonders whether the “pragmatic strengthening” from claims into offers involves *not* the addition of information related to reliability (“or I'm in trouble”) but rather the addition of information related to the offeree's acceptance, as if the claim “If you do X, I will do Y” is strengthened to include the information “And if I do Y, you will do X.” This suggestion jibes with the intuition I share with virtually every contracts scholar (in law and linguistics) that, when making an offer, the offeror is asking for the offeree to be *committed* to performance. It must be noted that this form of reciprocation, whether it happens via pragmatic strengthening or otherwise, is different from conditional perfection, where “If you do X, I will do Y” is strengthened to include “Only if you X will I do Y,” because conditional perfection doesn't involve saying what the offeree “will” do. The problem I have with supposing that this form of reciprocation arises from pragmatic strengthening, as opposed to as a function of some discourse OFFER operator, is that the offeror can't truthfully *claim* what the offeree “will” do [see Section 4.5.5 of Chapter 4], and it would be strange for a claim to be strengthened into a non-claim. Moreover, it seems that we need for the offeror to be offering a commitment as well, so even if reciprocation arises as a matter of pragmatic strengthening, it may not be the *only* strengthening involved. But a fuller discourse theory is deferred to future work.

## Chapter 5

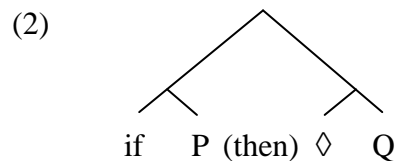
### *An Alternative Analysis*

In Chapter 3, we saw that the conception of contractual offers as conditional promises is linguistically untenable in the sense that when we try to apply the semantics of conditional sentences to syntactic structures containing silent promise elements, we derive the wrong meaning for contractual offers. And in Chapter 4, we saw that there was no evidence that contractual offers contain silent offer elements that introduce conditional sentences as contractual offers, as structurally represented in (1), where  $\diamond$  represents a silent offer element:



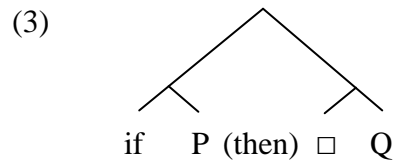
Rather, the evidence from Chapter 4 indicates, if anything, that contractual offers are just claims that are pragmatically strengthened into offers. Moreover, a pragmatic explanation of how conditionals sentences are interpreted as contractual offers seems to be the simplest one, suggesting that it is the correct one.

The reader may have noticed however, that we have yet to consider the structure in (2), where the hypothetical silent offer element is positioned in the consequent of the conditional sentence:



Of course, the obvious problem for (2) as a syntactic structure for contractual offers is similar to

the problem for (3) as a structure for contractual offers, discussed in Chapter 3, where  $\square$  represents a silent promise element:



Given the semantics of ‘if-then’ sentences we’ve been assuming, repeated in (4):

(4)            THE MEANING OF ‘if P (then) Q’  $\approx$

In all situations in which P is true that are reasonably similar to the situation we think we’re in, Q is true.

the problem for (3) is that, according to (4), (3) should mean that the offeror is making a promise (only) in situations in which the offeree does what the offeror is asking the offeree to do; thus the structure doesn’t allow for bilateral offers, where the offeree’s verbal acceptance of the offer is sufficient (both legally and linguistically) for the offeror to be committed. Similarly, (2) – which is identical to (3) except for substitution of  $\diamond$  for  $\square$  – is problematic as a model for contractual offers because it likewise doesn’t allow for bilateral offers. But (2) faces an additional problem: If contractual offers involved silent offer (as opposed to promise) elements in their syntax, the more natural position for them to be in is the one depicted in (1) rather than the one depicted in (2), because contractual offers – unlike promises – are inherently conditional. It therefore makes more sense for the hypothetical silent offer element to be “outside” of the conditional sentence, where it might serve the function of identifying the sentence as an offer as opposed to a claim, than it does for the offer to be “inside” the ‘if-then’ sentence, in the consequent, where, according to (4), it is effective (only) in situations in which the antecedent is true. In other words, I don’t have to wait for you to do what I’m asking you to do in order for me to make you a

contractual offer. Rather, the offer *is* the asking.

So if one were to insist that contractual offers contain silent offer elements in the syntax of their locutions, the position in (1) seems to be a better position than the position in (2) to find them in. Of course, we've seen several arguments against the proposition that (1) is a good syntactic structure for contractual offers: In Chapter 3, we saw that the structure in (1) can't function as a subordinate clause, for example as the "object" of the verb 'think'. And in Chapter 4 we saw that the hypothetical offer element  $\diamond$  can't neutralize the effect of past "tense" in the antecedent and consequent of a conditional sentence, nor can it overrule the syntactic directionality seen in contractual offers: Even if contractual offers are semantically non-directional in the sense that what the offeror is asking the offeree to do need not precede or cause the offeror to do what he or she is offering to do, what the offeror is offering to do normally has to be expressed in the consequent, and what the offeror is asking the offeree to do normally has to be expressed in the antecedent, of a conditional sentence interpreted as a contractual offer.

This reminds us that, in our discussion of semantic and syntactic directionality in Chapter 4, we observed a further asymmetry: While both the antecedent and the consequent of a conditional sentence interpreted as a contractual offer are interpreted as referring to future situations, only the consequent (normally) contains the future "tense." Compare the prototype locution in (5) with the ones in (5') and (5''):

- (5)            If you do X, I will do Y.
- (5')    ??    If you will do X, I will do Y.
- (5'')    \*     If you will do X, I do Y.

In Chapter 4, I suggested that the reason why the locution in (6) can't be associated with the

illocution of a contractual offer:

(6)            If I do X, you will do Y.

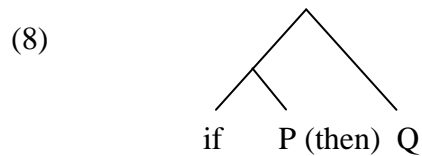
is that the consequent, in isolation and/or in conjunction with an ‘if’-clause, is interpreted as an order (or as a claim) but the asymmetry in (5) - (5’), in itself, remains unexplained. Moreover, the asymmetry in the prototype locutions in (5) seems to hold regardless of whether the locutions are interpreted as claims or as contractual offers, i.e. the judgments in (7) - (7’) don’t seem to depend on whether the sentences are interpreted as claims or as contractual offers:

(7)            If John does X, Mary will do Y.

(7’)    ??     If John will do X, Mary will do Y.

(7’’)   \*     If John will do X, Mary does Y.

If the syntactic structure of an ‘if-then’ sentence is as in (8):



and if the semantics associated with (8) is the formula in (4), then it’s not obvious why the antecedent P resists the word ‘will’, whereas the consequent Q requires it, when both P and Q refer to future situations (in both claims and contractual offers).

One possible explanation for this syntactic asymmetry would be to assume that the word ‘if’ in the antecedent and the word ‘will’ in the consequent of a conditional sentence are somehow connected, such that the reason why P need not be in the future “tense” when it combines with the word ‘if’ in a conditional sentence with a consequent Q that contains the word ‘will’ is that the word ‘if’ in a conditional sentence with a consequent Q that contains the word ‘will’ is that the word ‘will’ in the consequent conveys the future “tense,” and the interpretation of tense in

the sentence P is somehow parasitic to that “tense.” In fact, this very sort of thing has been proposed by a number of linguists, most notably Angelika Kratzer.<sup>1</sup> In the case of ‘will’, the idea is that ‘will’ is not merely a word that conveys the sense of future tense; it conveys quantification over possible situations. In other words, for linguists like Kratzer, it’s not the ‘if’ (or ‘then’) of an ‘if-then’ sentence that conveys the core meaning in (4), but rather the word ‘will’.

To argue convincingly in favor of this proposal would warrant an additional dissertation.<sup>2</sup> However, I will present a bit of evidence supporting the proposal, in the form of observations I believe are largely original to the literature:

There is a fundamental difference in meaning between the past tense<sup>3</sup> and the future “tense.” Compare the sentence in (9) with the sentence in (10):

- (9) Mary stayed up later than usual.
- (10) Mary will stay up later than usual.

At first, (9) and (10) each seem to refer to a single situation of staying up late – in the case of (9), one in the past, and in the case of (10), one in the future. However, further inquiry suggests that (10) refers to more than just a single situation. Consider once more the reply in (11):

- (11) That’s not true!

If someone were to respond to (9) with (11), then (12) would be a natural thing for that person to

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<sup>1</sup> Indeed, Kratzer has argued for over 35 years that ‘If P then Q’ sentences are better understood as a sort of modification of the consequent Q with the antecedent P, rather than the conjunction of the antecedent and consequent with a 2-place operator like ‘and’ or ‘or’. See Kratzer (2012) and references therein for discussion.

<sup>2</sup> In fact, this proposal was more or less the thesis of Kratzer’s (1978) dissertation.

<sup>3</sup> I won’t compare the present tense with the future “tense” here, because the present tense, as in (i), seems to convey a sense of habituality or narrativity, which complicates the analysis.

- (i) Mary stays up later than usual.

say next, but (13) would not:

(12) She went to bed on time.

(13) Maybe she went to bed on time. [# as a follow-up to (11) in response to (9)]

However, if someone were to respond to (10) with (11), then either (14) or (15) would be natural things for that person to say next:

(14) She will go to bed on time.

(15) Maybe she will go to bed on time.

What this seems to show is that, whereas the past tense in (9) conveys a present *certainty* with respect to a past fact, the future “tense” in (10) conveys a present *probability* with respect to a future fact. The follow-ups to (11) in (13) and (15) refer to possibilities and are therefore proper responses to sentences expressing probabilities, but not proper responses to sentences expressing certainties. The appropriate way to respond to the past tense sentence in (9) with the *possibility* that Mary went to bed on time is (11’):

(11’) That may not be true!

What this suggests is that the sentence in (9), by itself, says nothing about possibilities or probabilities, whereas the sentence in (10), by itself, says something about possibilities or probabilities, rather than certainties.

Seen in this light, a viable “logical form” for the future-“tense” sentence in (10) would be something like (16):

(16) The meaning of (10)  $\approx$

In all future situations that are reasonably probable continuations of the current situation we think we’re in, Mary stays up later than usual.

There are a lot of problems with (16) as it stands, which I won't discuss here, but representing the meaning of the future-“tense” sentence in (10) with the formula in (16) seems like a good idea, given that it makes sense of the fact that (11), followed by (13), is a felicitous reply to (10), as if the thing in (10) that is being negated by (11), in particular when (11) is followed by (13), is the quantifier ‘all’ contained, according to (16), in the “logical form” of (10).

If this is on the right track for the unconditional future-“tense” sentence in (10), then it seems that a sentence that contains the word ‘will’ is capable of involving “universal quantification” (the kind of quantification seen with words like ‘all’, ‘every’, and ‘each’) even when the sentence isn't contained in the consequent of an ‘if-then’ sentence. If that's true, then the question becomes what the function of the antecedent of an ‘if-then’ sentence is when the consequent contains the word ‘will’. For linguists like Kratzer who propose that ‘will’, by itself, involves universal quantification over future situations, the answer, essentially, is that the antecedent of an ‘if-then’ sentence restricts the set of situations under discussion. In other words, the difference between (17) and (17')

(17) Mary will stay up later than usual.

(17') If John gives her some candy, Mary will stay up later than usual.

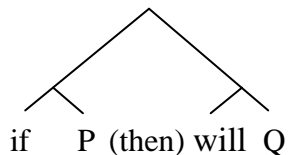
is that (17) quantifies over reasonably probable continuations of the situation we think we're in (in general), whereas (17') quantifies over reasonably probable continuations of the situation we think we're in where John gives Mary some candy. Both (17) and (17') convey the meaning that all of the continuations under discussion are such that Mary stays up later than usual. As for the tense in sentences like (17) and (17'), the basic idea is that ‘will’ identifies the situations that are being quantified over as future continuations of the current situation we think we're in. Once that future orientation is identified, there's no inherent need to identify the tense of the antecedent as



future tense; the use of simple present tense in a sentence whose purpose is to restrict the future situations under discussion seems to result in a future interpretation of the antecedent by default.

Now, why should we care? Well, this line of inquiry suggests that the key element in the interpretation of an ‘if-then’ sentence with the word ‘will’ in its consequent is, in fact, the word ‘will’, regardless of whether the sentence is interpreted as a claim or as a contractual offer. Of course, given the nature of English sentence structure, the word ‘will’ isn’t normally the first word of the consequent of conditional claims or contractual offers, but, semantically speaking, it’s as if the structure of the sentences in (17) and (17’) were the structure in (18):

(18)



where the word ‘will’ – rather than ‘if’ or ‘then’ – is the source of universal quantification over future situations involving Q. If that’s the case, then we have actually something very close to the structures in (2) and (3) above as a viable model for conditional sentences.

What, in turn, might this suggest? Well, consider the sentence in (19):

(19) Mary must stay up later than usual.

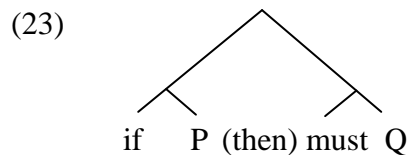
The sentence in (19) seems to be “ambiguous” in the sense that it might be interpreted as saying that Mary must stay up later than usual if she is going to do what John wants her to do, or if she is going to do what the law requires of her, or if she is going to finish her dissertation on time, etc. In other words, there seems to be a kind of covert antecedent in (19) that can be made overt, as in (20), and/or further restricted, as in (21):

- (20) If she's not going to get in trouble, Mary must stay up later than usual.
- (21) If John gives her some candy, and if she's not going to get in trouble, Mary must stay up later than usual.

Now, a natural "logical form" for (21) would be something like (22):

- (22) The meaning of (21)  $\approx$   
 In all situations in which John gives Mary candy and Mary doesn't get in trouble, Mary stays up later than usual.

as if the structure for (21) were the structure in (23):



where the word 'must' is the source of universal quantification over situations involving Q.

But if the word 'must', which involves quantification over possible situations, is "ambiguous" in the way we've just seen – that is, if 'must' can refer to John's demands, or Mary's desires, or the law's dictates, etc. then maybe the word 'will', which involves quantification over future situations, is "ambiguous" in this sense as well. In other words, maybe the difference in meaning between claims and contractual offers has only to do with which situations are being quantified over by the word 'will' – in the case of claims, the situations being quantified over are simply future situations that are reasonably foreseeable continuations of the current situation we think we're in, and in the case of contractual offers, the situations being quantified over are future situations that are reasonably foreseeable continuations of the current situation we think we're in where the offeror, at least, is not in trouble for not keeping his or her "promise." And if that's true, maybe the "ambiguity" in sentences like (24):

(24) If John give Mary some candy, she will stay up later than usual.

isn't really "pragmatic" at all, i.e. maybe the "ambiguity" in (24) can be reduced to a lexical ambiguity in the word 'will'.

In the remainder of this Chapter, I argue that, while many of the observations presented in this section are accurate, the ambiguity in sentences like (24) isn't exactly "lexical."

### 5.1. *Lexical Ambiguity, Revisited*

We said in Chapter 3 that the word 'bat' is lexically ambiguous, and that this lexical ambiguity is the source of the ambiguity in the sentence in (25):

(25) I have a bat.

And we said in Chapter 4 that linguists are wary of claiming that a word is ambiguous if one of the two meanings of the word is entailed by the other, such that one meaning seems to be a "narrower" version of the other. Hence we don't want to say that the word 'dog' is lexically ambiguous simply because it can be used to describe a young dog, i.e. a 'puppy'.<sup>4</sup> In other words, the fact that we can refer to a puppy as a 'dog' doesn't indicate that the word 'dog' is ambiguous between the 'puppy' and non-'puppy' interpretations of the word. The set of young dogs, or puppies, is a subset of the set of puppies; that is, every puppy is a dog, but not vice versa. In this sense, one "meaning" of the word dog is just a narrower version of the other, so it seems wrong to say that the word is lexically ambiguous.

For a similar reason, we probably don't want to say that the word 'will' is lexically ambiguous.

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<sup>4</sup> Jurists may be aware of the case *Frigalment Importing Co. v. B.N.S. International Sales Corp.*, 190 F.Supp. 116 (S.D.N.Y. 1960), in which the word 'chicken' was essentially held to be "ambiguous" between "chicken" and "young chicken" interpretations. However, the point here is not whether a given word can be said to have different senses in this respect but rather whether we want to say that each sense of a word should be separately memorized as a separate lexical item. If not, linguists say that the word is not "ambiguous" in the strictest (lexical) sense.

The set of future situations that are reasonably foreseeable continuations of the current situation we think we're in where I'm not in trouble is a subset of the set of future situations that are reasonably foreseeable continuations of the current situation we think we're in (in general). In other words, every situation that is a reasonably foreseeable continuation of the situation we think we're in *and* in which I'm not in trouble is a situation that is a reasonably foreseeable continuation of the situation we think we're in, but not vice versa.<sup>5</sup> So it seems wrong to suggest that 'will' is lexically ambiguous in a way that discriminates between claims and contractual offers. In effect, one "meaning" of the word entails the other. To suggest otherwise is to suggest that the sentence in (26') isn't entailed by the sentence in (26):

(26) If you do X, I will do Y.

(26') If you do X, I will do Y, or I will be in trouble if I don't.<sup>6</sup>

But whenever (26) is true, (26') is true, too – suggesting, to repeat, that the “ambiguity” in (24) shouldn't be reduced to a simple lexical ambiguity in the word 'will'.<sup>7,8</sup>

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<sup>5</sup> I'm neglecting a number of subtleties here – among them, the idea that in making a contractual offer I'm not quantifying over situations in which I'm not in trouble in general, but quantifying only over situations in which I'm not in trouble for not doing what I'm offering to do (and in which you do what I'm asking you to do), as well as the idea that what the calculation of which situations are reasonably foreseeable continuations of the situation we think we're in may depend in part on the extent to which a breach of contract is itself foreseeable. These complications raise interesting questions beyond the scope of this dissertation, but I will say something about the foreseeability of breach in Chapter 6.

<sup>6</sup> (26') is constructed on the premise that “If A and not B then C” entails “If A then C or B” – such that “If you do X and I don't get in trouble, then I will do Y” entails “If you do X, then I will do Y, or I will get in trouble.” This seems intuitively correct, at least if we assume an exclusive interpretation of 'or' (such that “P or Q” precludes “P and Q”), but I won't pursue a proof of the entailment using the semantics of 'if-then' sentences I've been assuming since Chapter 3.

<sup>7</sup> Some linguists will wonder whether the ambiguity in sentences like (24) can be accounted for with a silent free variable ranging over accessibility relations in the Kratzerian style of semantics for conditional sentences – the idea being that, whereas claims involves an epistemic accessibility relation for 'will', contractual offers involve some sort of deontic accessibility relation, such that 'will' would mean something like 'must'. I have no objection to this kind of analysis, so long as it recognizes that the contextual assignment of values to variables ranging over accessibility relations is more or less a matter of “pragmatics” (as is the contextual assignment of values to free pronouns) and that the accessibility relation for 'will' in a contractual offer like (24) isn't a pure deontic relation but rather a “combined” epistemic / deontic relation: In other words, when I make a contractual offer, I'm not only reporting what I must do (if you do what I'm asking you to do); I'm also reporting what I will do. Were that not the case, a

## 5.2. Other Syntactic Structures for Contractual Offers

Even if the “ambiguity” in sentences like (24) could be reduced to a simple lexical ambiguity in the word ‘will’, the problem *in general* for reducing the ambiguity between claims and contractual offers to a particular lexical ambiguity is that no particular word – not even the word ‘will’ – is required within a locution in order for the locution to be associated with the illocution of a contractual offer. Consider for example the sentences in (27) - (30):

- (27) Every student who brings me candy gets to stay up later than usual.
- (28) Each student who brings me candy gets to stay up later than usual.
- (29) Students who bring me candy get to stay up later than usual.
- (30) All students who bring me candy get to stay up later than usual.

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defendant could respond to a plaintiff who complained that the defendant didn’t perform his or her contractual duty with something like the following: “When I made you that offer, which you accepted, I was only saying that you could sue me if I didn’t do what I said I would do. I didn’t actually say that I would do it.” Such a response seems preposterous.

As for whether such a combination (?) of accessibility relations is a viable linguistic option in general, that’s a matter I will defer to future research. Likewise as for whether there is an epistemologically sound means of testing between a “semantic” theory of the Kratzerian kind sketched here and a purely pragmatic theory that doesn’t depend on silent elements in the syntax. I will, however, say this much: Perhaps the fact that there don’t seem to be any natural language quantifiers capable of binding silent variables of the Kratzerian kind is evidence in favor of a purely pragmatic analysis. For example, there is no adverb *always* such that (i) can mean something like (ii):

- (i) John will *always* give Mary some candy.
- (ii) In every sense of the word ‘will’ (e.g. in the senses of ‘will’ and ‘must’), John will give Mary some candy.

<sup>8</sup> Some linguists may also wonder whether the ambiguity in sentences like (24) can be accounted for with a silent “jussive” element in the syntax (a head that merges with tense) that distinguishes the ‘will’ in claims from the ‘will’ in promises, rendering English similar to Korean, which has a special morphological marker for promises, as described in Zanuttini et al. (2012). Even if that were silently the case for English promises, we’ve already seen the arguments against the idea that contractual offers are conditional promises. (And with respect to the concerns expressed in ff. 26 of Chapter 4, it’s not obvious how the semantic force of such a jussive head could permeate both the antecedent and the consequent of a conditional sentence in such a way as to distinguish contractual offers from conditional promises, assuming that such an ambiguity exists when the antecedent refers to an act by the addressee.) Moreover, a unified analysis of jussive expressions (including imperatives, promises, and hortatives) that distinguishes jussive expressions from assertions in terms of semantic type, like the analysis of Zanuttini et al., seems incapable of capturing the fact that when making a contractual offer, I’m not only asserting what I will do if you accept my offer, I’m also incurring a kind of (potential) liability even if you don’t. For example, if I make an offer like the sentence in (5), which doesn’t state when the offer expires or how soon you must do X, I’ve not only asserted a claim as to what I will (conditionally) do, I also seem to have added an item to what Zanuttini et al. would refer to as my “to-do list”: After uttering (5), I now have to revoke my offer before you accept it if I decide I don’t want to be liable for not doing Y. (See again the discussion of revocability in Chapter 1.)

Like the sentence in (24), the sentences in (27) - (30) are “ambiguous” in the sense that they can be interpreted as claims or as a contractual offers. (The reader is invited to apply the diagnostics in offered in earlier chapters to confirm this.)

There are a couple of interesting subtleties worth noting here. The first is that, as we move from (27) to (30), it seems to become slightly more difficult with each new sentence to interpret the sentence as a contractual offer, but this can be fairly easily explained: A contractual offer needs to be made to an identifiable offeree, and – for reasons I won’t explore here – it seems to be easier to interpret ‘every student’ than ‘each student’ as an indirect way of addressing a set of (one or more) students; likewise for ‘each student’ and ‘students’, and so forth, pair-wise, down the list of sentences. (Notice that the difference in interpretability of the sentences as contractual offers seems to disappear when the sentences are interpreted as being spoken to an agent or agents of the students, suggesting that this analysis is correct.) So the fact that the sentences in (27) - (30) aren’t equally interpretable as contractual offers can be explained without sacrificing the fact that they’re each interpretable as a contractual offer to a greater or lesser degree.

A second subtlety for the sentences in (27) - (30) is that they seem to be interpretable only as unilateral offers, not as bilateral offers. In other words, the utterance of (31), by itself, would seem to be an insufficient means of acceptance for the offers in (27) - (30), even if spoken by a relevant student:

(31)            I accept!

In theory, this second subtlety could be explained in more or less the same way as the first: If it’s difficult to interpret (27) - (30) as being spoken to one or more student offerees, then of course it’s difficult to imagine the hearer of (27) - (30) responding as if he or she were an offeree (or an

agent of an offeree), even if he or she is a relevant student. However, it doesn't seem to become increasingly difficult to interpret the sentences in (27) - (30) bilaterally in the same way that it became increasingly difficult to interpret the sentences as contractual offers in the first place, suggesting that a different explanation for the difficulty in interpreting the sentences in (27) - (30) as bilateral offers is required.

One might wonder whether it's the absence of 'will' in (27) - (30) that's responsible for the fact that the sentences can't be interpreted as bilateral offers, but adding 'will' to the sentences doesn't seem to make them more interpretable as bilateral offers:

(27') Every student who brings me candy will get to stay up later than usual.

(28') Each student who brings me candy will get to stay up later than usual.

(29') Students who bring me candy will get to stay up later than usual.

(30') All students who bring me candy will get to stay up later than usual.

Instead, what seems to be happening in these sentences is that the relative clause they contain makes it difficult to interpret the sentence bilaterally. That is to say, the relative clause in (32):

(32) ... who bring(s) me candy ...

seems to function as a modifier of 'student(s)' in (27) - (30) in such a way as to restrict the set of offerees to students who actually bring candy – as opposed to students who merely promise to do so.

There is some independent evidence that it's the relative clause in (27) - (30) that's making the difference. Consider the sentence in (33):

(33) When a student brings me candy, he or she gets to stay up later than usual.

The sentence in (33) contains a ‘when’-clause, which, like the relative clause in (32), is an example of a “wh-clause.” Semantically, wh-clauses tend to function as modifiers of the things that they attach to in the syntax. So on the assumption that the relative clause in (32) attaches to ‘student(s)’ in (27) - (30) [see Chapter 3 for a discussion of how prepositional phrases like ‘in the library’ attach to nouns like ‘student’], (27) - (30), as contractual offers, make offers only to students who (eventually) bring candy. And on the assumption that the ‘when’-clause in (33) attaches to the sentence ‘he or she gets to stay up ...’, (33), too, makes an offer only to students who (eventually) bring candy. Not surprisingly, then, (33) – to the extent that it’s interpretable as a contractual offer at all – is interpretable only as a unilateral offer.<sup>9</sup>

### 5.3. *Universal Quantification*

Neglecting the subtleties discussed in the previous section, each of the sentences in (27) - (30) is a viable locution for a contractual offer. The question is, what do these locutions have in common? The answer, suggested above, is in their semantics: The logical forms of (27) - (30) all

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<sup>9</sup> (33) seems even more difficult to interpret as a contractual offer than the sentences in (27) - (30). One reason for this, of course, is that it’s difficult to interpret ‘a student’ as an indirect way of addressing offerees. Moreover, one further felicity condition for contractual offers is that the offeror not presuppose that the offeree will do what the offeror is asking the offeree to do no matter what, but ‘when’-clauses, unlike the antecedents of ‘if-then’ sentences, seem to involve a presupposition that the event in the ‘when’-clause will happen no matter what, making (33) a very poor candidate for a contractual offer. To the linguist: I assume that, whereas ‘if’-clauses are arguments of modals like ‘will’, ‘when’-clauses (and relative clauses) are adjuncts and thus don’t contribute to modal force. I admit, however, that conditional sentences with the NPI ‘ever’ in the antecedent seem to be interpretable only as unilateral offers, and nothing I’ve said so far accounts for this:

- (i) If you ever do Y, I will do X.

Presumably, ‘ever’, which seems to denote times rather than quantities - but, like the NPI ‘any’, seems to be indefinite – effectively eliminates any deadline for the offeree’s acceptance. (See again Schane’s criticism of Tiersma’s analysis of unilateral offers, discussed in Chapter 2.) But discourse doesn’t go on forever, i.e. conversations have beginnings and ends; otherwise, ‘hello’ and ‘goodbye’ would seem to serve no function. Could it be that the reason why (i) doesn’t seem to be interpretable as a bilateral offer has to do with the idea that it’s inconsistent to suggest that there’s no deadline for acceptance and also that the offeree may accept by participating in the current conversation? Probably not, given that bilateral offers can be accepted either by performance or by a “promise” to perform. In other words, the mere fact that the offeree may accept indefinitely in the future doesn’t mean that the offer may not accept in the course of the current conversation. Thus it seems that we need a more precise semantics for ‘ever’, perhaps one in which it denotes situations, rather than times, in a way similar to wh-operators in earlier examples.



involve “universal quantification” over situations<sup>10</sup> of the kind we’ve seen before. Without suggesting that the meaning of each of the sentences in (27) - (30) is exactly the same, the common logical form for the sentences seems to be the formula given in (34):

(34)            THE COMMON MEANING OF (27) - (30) ≈

All future situations (that are reasonably foreseeable continuations of the situation we think we’re in) in which a student gives me candy are situations in which the student gets to stay up later than usual.

This common core of universal quantification in contractual offers makes sense, of course: What would it mean for me to be (conditionally) committed to doing something if I didn’t have to do it in *all* relevant situations?

It’s easy to convince ourselves that universal quantification is the core component of sentences

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<sup>10</sup> The reader may object that the quantifier ‘everyone’ in (27) - (30) seems to quantify not over situations but rather over individuals, i.e. potential offerees. Such an objection would be well-received; however, it’s been known for over a century that many quantifiers (including universal ones) that seem to quantify over individuals can actually quantify over situations expressed in relative clauses. The most famous example is (i):

(i)            Every farmer who owns a donkey beats it.

The sentence in (i) seems to mean that every situation involving farmer-donkey ownership involves a situation of farmer-donkey beating (not that there’s a donkey that every farmer beats or that every farmer beats only one of his donkeys). Similarly, (27) - (30) seem to mean that every situation involving student-candy-bringing involves a situation of student-A-getting. In other words, it’s not (too) inaccurate to say that (27)-(30) quantify over situations. For a recent (advanced) discussion of “donkey sentences,” see Brasoveanu (2007).

A more interesting issue is that in order for the sentences in (27) - (30) to be interpreted as contractual offers, it seems that somehow the tense or mood on the verb ‘gets’ must be interpreted as if it were ‘will get.’ Many linguists have observed that simple present tense in English is normally interpreted “generically” unless it’s read “dramatically” (i.e. as if it were stage direction in a play). Thus the sentence (ii) is normally interpreted to mean that John usually / habitually / generally gets an A:

(ii)            John gets an A.

Intriguingly, the sentence in (iii) is ambiguous between a claim and a promise:

(iii)            Everyone here gets an A.

and when (iii) is interpreted as a claim it seems to have the generic interpretation, but when it is interpreted as a promise, it doesn’t – said another way: as a promise, (iii) can’t guarantee the regular receipt of A’s. Searle (1989) argues that explicit performatives (as in “I hereby promise...”) use the “dramatic present tense” simply because they describe something that is happening simultaneous with the utterance. I assume that Searle’s argument can be extended to implicit performatives like (iii), but I admit that such an extension may prove difficult to execute.

interpreted as contractual offers: All we have to do is to substitute other, non-universal quantifiers for the universal quantifiers in sentences like (27) - (30) above, as in (35) and (36):

(35)           Some students who bring me candy get to stay up later than usual.   [# as an offer]

(36)           Most students who bring me candy get to stay up later than usual.   [# as an offer]

The sentences in (35) and (36) are interpretable only as claims, and the reason for this seems to be that the quantifiers ‘some’ and ‘most’ are less than universal: ‘Some’ is naturally interpreted as ‘some but not all’ and ‘most’ is naturally interpreted as ‘most but not all’, suggesting that the notion of ‘all’ (or ‘each’ or ‘every’, etc.) is what’s critical in the association of a given locution with the illocution of making a contractual offer, not the use of ‘if-then’, nor the use of the word ‘will’, but rather the use of any syntactic structure whose corresponding logical form conveys the force of universal quantification.

Even the syntactically exotic (37), which is interpretable as a contractual offer, seems to involve something akin to universal quantification:

(37)           Bring me candy, and you’ll get to stay up later than usual.<sup>11</sup>

Sentences like (37), sometimes called “pseudo-imperatives,” seem to involve the conjunction of an imperative sentence (‘bring me candy’) with a declarative sentence (‘you’ll get to stay up ...’) in such a way that the imperative is interpreted as the antecedent, and the declarative is interpreted as the consequent, of a conditional (‘if-then’) sentence – i.e. (37) is naturally paraphrased as (37’):

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<sup>11</sup> An interesting question is whether (37) is interpretable as a bilateral offer. My intuitions here aren’t clear. On the one hand, I could imagine a hearer of (37) feeling that he could accept the offer in (37) with a verbal acceptance like (31). On the other hand, I could imagine a speaker of (37) feeling justified in revoking the offer in (37) after a hearer’s utterance of (31) but before the bringing of candy.

(37') If 'you bring me candy, you'll get to stay up later than usual.

There's no apparent consensus in the linguistics literature as to how the interpretation of (37) as (37') happens;<sup>12</sup> however, there is an intuitive sense in which the imperative, by itself, conveys universal quantification. That is to say, the imperative in (38) seems to mean something close to (39):

(38) Bring me candy!

(39) The meaning of (37)  $\approx$   
In all situations in which you are not in trouble, you bring me candy.

As for how the declarative sentence after the 'and' in (37) is incorporated into the consequent in (37'), that's an unsettled matter, which I won't discuss here.<sup>13</sup>

So even in sentences like (37), the sense of universal quantification seems to be the core component for the logical form of a contractual offer. This is not to say, of course, that universal quantification is a sufficient condition for the ability to associate a locution with the illocution of making a contractual offer, only that it is a necessary one. For example, Copley (2001, 2012) argues that the unconditional sentence in (40) isn't interpretable as an offer, in spite of the fact that 'be going to' seems to have a sense of universal quantification, similar to 'will':

(40) I'm going to make the coffee. [ # as an offer]

And this uninterpretability seems to persist in conditional structures like (41):

(41) If you pay me \$10, I'm going to make the coffee. [ # as a contractual offer]

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<sup>12</sup> See e.g. Franke 2010 and references therein for discussion.

<sup>13</sup> For an interesting discussion of how 'and' and 'or' behave differently in pseudo-imperatives interpreted as "conditional promises" and "conditional threats," see van Rooij and Franke (2010).

But in general, in order for a locution to be associated with the illocution of making a contractual offer, the locution must relate to a logical form that involves universal quantification. And, in general, sentences that involve a sense of universal quantification are interpretable as claims as well as contractual offers.

So the idea that the “ambiguity” in sentence like (24) is reducible to a lexical ambiguity in the word ‘will’ is too specific a solution to be of any real merit. Rather, the “ambiguity” between claims and contractual offers seems to be more generally related to the restriction on situations over which universal quantification applies: In claims, universal quantification applies to generic future situations; in contractual offers, universal quantification applies to specific future situations in which the offeror keeps his or her “promises.”



## Chapter 6

### *Some Legal Ramifications*

In the preceding chapters, we came to the conclusion that there was nothing in the syntax or semantics of sentences interpreted as contractual offers that identifies the sentences as offers, suggesting that contractual offers are literally claims, involving universal quantification over future situations, that are capable of being true or false. In this chapter, we'll explore some potential legal ramifications of this analysis. In particular, we'll discuss whether the linguistic analysis presented in the previous chapters justifies: (a) the legal recognition of excuses for breach of contract, (b) judicial awards of punitive damages for breach of contract, and (iii) the suppression of contractual offers in court under the hearsay rule. (To be clear, the first two of these issues can be said to be potential legal ramifications of the analysis presented in previous chapters only to the extent that fully formed *contracts* preserve the critical linguistic features of *contractual offers* identified in previous chapters. I assume that they do, but this assumption may not be immune from attack, in particular given the suggestion at the end of Chapter 4 that discourse moves (say, acceptances) may introduce pertinent new features into linguistic representations.<sup>1</sup> Alternatively, one might argue that issues (a) and (b) remain relevant for any contract-like theory of recovery that doesn't require discourse beyond an original offer – for example, the theory of promissory estoppel, alluded to in Chapter 1 and discussed in some detail in Section 6.3 *infra*.)

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<sup>1</sup> Similarly, while I've argued in previous chapters that a contractual offer doesn't have the semantic structure of a conditional promise, that doesn't guarantee that a fully formed contract doesn't contain, or isn't understood as containing, conditional promises. Presumably, an offeree's acceptance of a contractual offer involves a reciprocation of the offer, such that if I offer "If you do X, I will do Y," your acceptance, however communicated, is interpreted as something like: "And if you do Y, I will do X" (see ff 26 of Chapter 4). Even if such an offer and such an acceptance, taken in isolation, are both conceived of as claims in the sense described in previous chapters, that doesn't mean that the end result of such a *discourse* can't be conceived of as an exchange of conditional promises – but I confess that I haven't developed such a discourse theory here. This is fodder for future work.

## 6.1. *Excuses for Breach of Contract*

In a nutshell, a breach of contract is defined as a failure to perform a contractual duty when the duty is due.<sup>2</sup> However, courts will often find that a plaintiff has adequately proven that a breach of contract has occurred and yet still rule in favor of the defendant, denying the plaintiff a remedy, because the defendant has adequately proven that he or she has an excuse for breaching the contract. Such excuses – including impossibility, impracticability, and frustration of purpose – require circumstances to have changed since the time of contract formation, i.e. since the time the contractual offer was accepted.

### 6.1.1. *Impossibility*

If it becomes objectively possible for either party to perform his or her duties under a contract, he or she is excused from performance.<sup>3</sup> For example, if you and I have a contract under which I have a duty to paint your house for \$1000, but your house burns down, I am excused from my performance, meaning that you can't successfully sue me for not painting your house. Of course, given that your performance (i.e. payment) is conditioned on my performance, I can't successfully sue you for breach of contract for not paying me \$1000, either.<sup>4</sup>

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<sup>2</sup> Of course, it's possible for a party to breach a contract "early" under the notion of "anticipatory repudiation," as discussed in Section 4.3.4.

<sup>3</sup> Taylor v. Caldwell, 122 Eng.Rep. 309 (1863).

<sup>4</sup> If it turns out that it was impossible for a party to perform all along, the party may not invoke impossibility as a defense to breach – because, to repeat, performance must have *become* impossible since the time of formation in order for a party to invoke impossibility as an excuse to breach. However, the party may be able to invoke mistake as a defense to formation. For example, if you and I enter into a contract under which I have a duty to prove that there is a largest prime number, and you have a duty to pay me for the proof, I won't be able to invoke impossibility as an affirmative defense to my inevitable breach, because it didn't *become* impossible for me to breach; rather, it has always been, and will always be, impossible for me to perform. However, if I can prove that you and I both assumed at the time of formation that the proof was possible ("bilateral mistake") or that you knew that proof was possible and I did not ("unilateral mistake"), then I can seek rescission of the contract and be relieved of liability for nonperformance. See Restatement 2d Contracts §266.

### 6.1.2. *Impracticability*

If it becomes unforeseeably impracticable for either party to perform his or her duties under the contract, then he or she is excused from performance.<sup>5</sup> Reasonably foreseeable increases in the cost of performance are insufficient for invoking this excuse. Thus, for example, if I agree to paint your house for \$1000, using paint that I agree to purchase (with no right to pass the cost of the paint on to you), and the cost of the paint increases even to the point that I will lose money on the contract if I purchase the paint, I will not be excused from painting your house, unless the cost increase was unforeseeable – meaning for example, that if I don't paint your house, and you have to spend \$1500 to get someone else to paint it, I will be liable for the \$500 difference.

### 6.1.3. *Frustration of Purpose*

If a party enters into a contract for a reason (other than to receive the other party's performance) that is known to the other party, but the party's reason for entering the contract is unforeseeably frustrated at the time of performance, then he or she is excused from performance.<sup>6</sup> Thus, for example, if you and I have a contract under which I agree to rent your apartment for a day so that I can watch a parade that is scheduled to pass right in front of your apartment, and you are aware that that is the reason I'm renting your apartment (perhaps because you advertised your apartment as a good place for watching the parade), then, if the parade is canceled, I will be excused from having to pay rent for the apartment, unless it was reasonably foreseeable that the parade would be canceled.

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<sup>5</sup> Restatement 2d Contracts §261; *Transatlantic Financing Corp. v. United States*, 363 F.2d 312 (D.C. Cir. 1966).

<sup>6</sup> Restatement 2<sup>nd</sup> Contracts §265; *Krell v. Henry*, 2 KB 740 (1903).



6.1.4. *The Linguistic Basis for Excuses for Breach*

In Chapter 3, we concluded that the meaning of an English ‘if-then’ sentence is as in (1):

- (1) THE STRICT CONDITIONAL ANALYSIS  
The meaning of ‘if P (then) Q’ = In all situations in which P is true that are reasonably similar to the situation we think we’re in, Q is true.

In Chapter 5, we suggested that the meaning of a prototypical contractual offer like (2):

- (2) If you do X, I will do Y.

is as in (3):

- (3) THE LOGICAL FORM OF A PROTOTYPICAL CONTRACTUAL OFFER ≈  
All future situations (that are reasonably foreseeable continuations of the situation we think we’re in) in which you do X are situations in which I do Y.

Now, if (3) represents the “logical form” of a prototypical contractual offer, then we have reason to say that the *language* of a contractual offer accommodates the notion of an excuse for breach of contract: An excuse for breach arises when the continuation of the situation in which the offer is made (and accepted) ends up, at the time of breach, being one of the continuations that wasn’t reasonably foreseeable at the time the offer was made. In this way, at least two of the three excuses for breach inventoried above – impracticability and frustration of purpose – aren’t merely legally justified on the basis of fairness or public policy, they’re *linguistically* justified: Each of these excuses applies when circumstances have unforeseeably changed since the time of contract formation, because the universal quantification involved in contractual offers operates only over reasonably foreseeable future situations.<sup>7</sup>

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<sup>7</sup> The defense of impossibility has no foreseeability component to it, per se, so either it’s justified only legally (say on the basis of fairness or public policy) or we need to work a little in order to justify it linguistically: We might

Of course, we saw in Chapter 5 that there are many linguistic ways of making contractual offers other than the prototypical offer in (2), but, in the end, each of them, like the offer in (2), seemed to involve universal quantification over foreseeable continuations of the situation in which the offer is made. The set of examples of non-prototypical offers in Chapter 5 was of course not exhaustive. For example, (4) seems to be a viable locution for a contractual offer:

(4) I will trade you Y for X.

But this should come as no surprise: The essential element in any sentence interpreted as a contractual offer is an element that introduces universal quantification over situations, and we saw in Chapter 5 that that element is not necessarily the antecedent (i.e. the ‘if’-clause) of a conditional sentence. Thus the absence of an antecedent in (4) doesn’t render the semantics in (3), complete with the notion of foreseeability, unavailable; all we need in order to derive the right meaning of (4) is an appropriate lexical semantics for ‘for’, which I will not present here.<sup>8</sup>

It seems reasonable, then, to postulate that *all* contractual offers, not just the syntactically prototypical ones, have the logical form in (3), generalized in (5):

(5) THE LOGICAL FORM OF CONTRACTUAL OFFERS ≈  
All future situations that are reasonably foreseeable continuations of the situation we think we’re in in which you do what I’m asking you to do are situations in which I do what I’m hereby offering to do.

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assume that, by default, continuations of the current situation where it becomes impossible for the offeror to perform aren’t reasonably foreseeable – likewise for the offeree with respect to his or her acceptance – especially if the parties fail to stipulate what happens in such an event. But this would seem to confuse foreseeable situations with foreseen ones: What matters for impracticability and frustration of purpose, at least, is not whether the parties foresaw the event that gives rise to an excuse (indeed, if they did, that raises the issue that one or the other may have assumed the risk of the event) but rather whether they could have foreseen the event.

<sup>8</sup> Indeed, the sentence in (4) is interesting in that it seems to be ambiguous between a presumptuous interpretation “in all foreseeable future situations, there will be a trade” (a claim) and the contractual-offer interpretation, “in all foreseeable future situations in which you agree to a trade, I will trade” (a different claim). The offer interpretation seems more likely with the fall-rise intonation mentioned in ff. 7 of Chapter 4, but if we restrict ourselves just to the syntax / semantics of (4), it seems we either need a different syntactic / semantic representation for the two interpretations (as both are claims), or we need for the phenomenon of domain restriction (see ff. 22 of Chapter 2) to be sensitive to the semantic content of the sentence it operates on (i.e. have “access” to the ‘for’-phrase).

In a sense, (5), imperfect as it is, is more or less my version of the “prototype” for contractual offers presented by Schane and Tiersma, as discussed in Chapter 2. It captures the notion that contractual offers are claims that involve universal quantification over situations and moreover that the situations quantified over in contractual offers are those that are reasonably foreseeable continuations of the situation we think we’re in. Thus, given the *linguistic* limitation of quantification in contractual offers over only those future situations that are reasonably foreseeable continuations of the current situation, the notion that a breach of contract can be excused by unforeseeable changes in circumstances after the offer is made is inherent to the linguistic act of making a contractual offer. In other words, judicial recognition of excuses for breach of contract is not merely legally justified in terms of fairness or public policy, it’s linguistically justified.

## 6.2. *Punitive Damages for Breach*

Punitive damages for breach of contract – that is to say, damages beyond the minimum amount necessary to compensate the non-breaching party for the breach – are generally unavailable.<sup>9</sup> The most frequently cited justification for the preclusion of punitive damages, the purpose of which, of course, is to punish the breaching party for breaching (and to deter future breaches by the breaching party as well as breaches by others), is that breaching parties shouldn’t be discouraged from breaching a contract when it is “efficient” for them to do so – that is to say, when the cost of not performing their contractual duty (including paying damages to compensate the non-breaching party for her loss) is somehow less than the cost of performance – as, for example, when the breaching party gets a better offer for his performance from someone else. As the legal scholar William Dodge (following Judge Richard Posner, an influential American jurist)

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<sup>9</sup> See Corbin on Contracts §1077 (1962).

explains:

If a widget manufacturer, by breaching her contract with A and selling to B, can make enough to compensate A for his loss and still come out ahead, she should do so. The manufacturer is better off, A is no worse off, and the widgets end up with B, who values them most. [Dodge (1999), p. 631.]

Many courts apply the notion of “efficiency” as a justification for precluding awards of punitive damages even when breaches aren’t particularly “efficient,” as when the breaching party simply wants to take the non-breaching party’s performance and run; on the other hand, a number of courts have held that punitive damages are available for “willful” breaches of contract, but, as Professor Richard Craswell observes:

The existing literature has not yet developed *any* adequate definition of ‘willful’, mostly because it has not addressed the question of which event in the sequence leading up to the breach should be assessed for deliberateness or intentionality. [Craswell (2009), p. 23; emphasis in original.]

Some sources (e.g. Rest. 2d of Contracts §355) indicate that punitive damages should not be available for breaches that don’t amount to acts that would be actionable in the body of law called ‘tort’ – which is more or less everything that the law recognizes as something that one person can sue another person for other than breach of contract. In the context of contractual breaches, the position that punitive damages should be available only for tortious breaches effectively reduces to the position that punitive damages should be available for breach of contract only when the breaching party has committed the tort of “fraud” (sometimes called “intentional misrepresentation”), which requires the following elements: a false statement, known to be false, spoken with the intent to induce reliance, and causation of reliance to the detriment of the hearer.<sup>10</sup>

Now, most cases of fraud that are litigated in the context of a breach of contract involve a false

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<sup>10</sup> Restatement 2d of Torts §525; Restatement 2d of Contracts §162.

statement pertaining to the subject matter of the contract – as for example when the seller of a car intentionally misrepresents the history of a used car to a buyer.<sup>11</sup> These cases don't deal with the context in which a party to the contract simply doesn't do what he or she "promised" to do. A few such cases do exist, however. Judges deciding some of them have held that a "promise" to do something in the future is not a representation of fact and therefore can't be the basis for a fraud claim<sup>12</sup>, while others have held that if a defendant had no intention of doing what she "promised" to do at the time she made her "promise," then she has indeed made a misrepresentation of fact that can form the basis of claim for fraud.<sup>13</sup> For these latter cases, the mere fact that a "promise" wasn't kept is insufficient evidence of a lack of intent keep the "promise" at the time the contract was formed,<sup>14</sup> but if a plaintiff can allege further facts that make it "plausible" that the a defendant in a breach of contract action had no intent to perform at the time he made his offer (or acceptance), he may be able to succeed in a civil action for fraud.<sup>15</sup> With respect to the issue of whether a breach of contract can give rise to claim for fraud, the obvious consequence for the analysis offered in the previous chapters is that if contractual offers (and acceptances) are actually claims that are capable of being true or false, then the position that "promises" can't be representations of fact is undermined, raising the possibility that every breach of contract gives rise to a potential claim for fraud – a scenario that courts in general seem

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<sup>11</sup> See e.g. *Krysa v. Payne*, 176 S.W.3d 150 (Mo. App. 2005), in which a used car dealer sold a truck that had been welded together from two other vehicles as an original used truck and represented that the truck had had only one previous owner, when a CARFAX report obtained after the sale indicated that the truck had in fact had 13 previous owners. The buyers, a husband and wife, sued the dealer for fraud and for breach of contract, and a jury awarded them \$500,000 in punitive damages in addition to damages to compensate them for their financial losses. The punitive damage award was upheld on appeal.

<sup>12</sup> See e.g. *Enomoto v. Space Adventures, Ltd.*, 624 F. Supp. 2d 443, 454 (2009).

<sup>13</sup> See e.g. *SuperValu, Inc. v. Johnson*, 276 Va. 356, 368 (2008).

<sup>14</sup> See e.g. *Poth v. Russey*, 99 F. App 446, 454 (4th Cir. 2004).

<sup>15</sup> See e.g. *Cyberlock Consulting, Inc. v. Information Experts, Inc.* 876 F. Supp 2d 672 (ED VA, 2012).

to find unpalatable.<sup>16</sup>

But would recognizing that contractual offers are capable of being true or false, by itself, entail that contractual offers are false whenever contractual “promises” aren’t kept? Perhaps not: Linguists – semanticists in particular – are fond of noting that sentences are interpreted as true or false with respect to particular times. Consider for example the sentence in (6):

(6)           It’s raining.

The sentence in (6), of course, may be true or false depending on the time (and place) of its utterance. Likewise, the past tense sentence in (7) may be true or false depending its time of utterance; in simple terms, in order for (7) to be true there must have been a time before the time of utterance where the present-tense sentence in (6) is true:

(7)           It was raining.                           [meaning of (7) ≈ at some time before now, (6) was true]

As for the future “tense” sentence in (8), it would seem that in order for (8) to be true, there must be a time after the time of utterance where the present-tense sentence in (6) is true:

(8)           It will rain.

However, we saw in Chapter 5 that future-“tense” sentences like (8) seem to involve universal quantification over reasonably foreseeable continuations of the situation we think we’re in; in other words, future-tense sentence seem to make reference to probabilities rather than certainties. In that sense, (8) isn’t necessarily false if it never rains, so long as it was going to rain in all reasonably foreseeable continuations of the situation in which (8) was uttered. Similarly, if I hold a coin in front of me and say the sentence in (9):

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<sup>16</sup> See e.g. Blair Constr., Inc. v. Weatherford, 253 Va. 343, 347 (1997).

(9) If I drop this coin, it will hit the floor.

it seems as if I've spoken the truth, even if someone who was hiding behind me unexpectedly catches the coin after I let it go. Thus, to put it in simple terms, the mere fact that a future-tense sentence (or any sentence that involves universal quantification over foreseeable future situations) "turns out to be false" doesn't mean that it was "false" at the time it was made. To the extent, then, that the tort of fraud requires the "false statement" to have been false (and known to be false) at the time it was made, there's no need for courts to be concerned that the mere recognition that contractual offers (and corresponding "promises") are capable of being false entails that every breach of contract will give rise to a potential claim for fraud.

But this raises an interesting issue: For the courts that wish to maintain the position that if a defendant had no intention of doing what she "promised" to do at the time she made her "promise" then she has made a misrepresentation of fact that can form the basis of claim for fraud, the question becomes where the representation is manifest. Based on the analysis above, it would seem that the representation is not linguistically manifest, at least not "literally," since nothing in the logical forms of (3) or (5) relays the speaker's intention. Still, future-"tense" sentences with first-person subjects do seem to involve a suggestion that the speaker intends the future event to happen. That to say, the sentence in (10) seems to imply that I intend to bring you an umbrella:

(10) I will bring you an umbrella.

as evidenced by the fact that (11) feels like a contradiction:

(11) I will bring you an umbrella, but I don't intend to bring you umbrella.

On the other hand, the implication that (11) entails an intention on the part of the speaker to do what he says he will do may derive from a felicity condition on the utterance of first-person future-“tense” sentences – something like the felicity condition for imperative orders discussed in Chapter 2 – given that (12) feels less like a contradiction than (11):

(12) I don’t (currently) intend to bring you an umbrella, but I will. [i.e. will bring you one]

That is to say, first-person future-“tense” sentences may be subject to a felicity condition like (13):

(13) FELICITY CONDITION FOR 1<sup>ST</sup> PERSON FUTURE-“TENSE” SENTENCES

A sentence S of the form ‘I will X’ is felicitous (i.e. can be uttered successfully) only if the speaker of S is willing to be committed to the truth of the sentence ‘I intend to X’ after S is uttered.<sup>17</sup>

In this way, the speaker who says he will do something when he has no intent to do it is in fact manifesting something false – not something “literally” false, as his sentence doesn’t exactly say that he intends to do what he says he will do, but something that is false by implication. And for those who wish to award punitive damages for those “willful” breaches of contract where the defendant’s only false representation is the representation by implication that he intended to do what he “promised” to do, this is good news: If there were no representation in such a situation that the defendant intended to do what he said he would do – i.e. if there were no *act* of any kind that the defendant couldn’t be said to have perpetrated – then it would be difficult for a court to order him to pay punitive damages for his wrongdoing, given that a fundamental principle in American jurisprudence is that a reprehensible mental state, by itself, isn’t punishable: Only

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<sup>17</sup> Of course, the felicity condition in (13) would need to be revised for conditional and similar sentences in order to be applicable to contractual offers, something like “A sentence S of the form ‘If you do X, I will do Y’ is felicitous only if the speaker of S is willing to be committed to the truth of the sentence ‘I intend to do X if you accept my offer’ after S is uttered.



those reprehensible mental states that coincide with harmful<sup>18</sup> acts can be litigated in court.

In any case, the mere recognition that contractual offers are capable of being true or false doesn't entail that every breach of contract will give rise to a claim for fraud: A contractual offer can be true even if, in the end, the offeror fails to do what he or she "promises" to do.

### 6.3. *Contractual Offers Under the Hearsay Rule*

In Chapter 4, we saw that when it comes to "hearsay," which is defined as an out-court-statement presented in court to prove that the truth of the content of the statement is true, contractual offers are taken to be sentences that can't be true or false; thus, although hearsay is inadmissible unless an exception applies, contractual offers are generally admissible in court without the need for a dedicated hearsay exception.<sup>19</sup> To repeat the examples from Chapter 4: If I testify in court that earlier, out-of-court, you said that it was raining on the day of the murder, and if my testimony is offered to prove that, in fact, it was raining on the day of the murder, my testimony will be stricken as hearsay, unless an exception applies. On the other hand, if I testify in court that, out of court, you made me a contractual offer to bring me an umbrella in exchange for \$10, my testimony will be admissible, i.e. the court would overrule a hearsay objection on the grounds that contractual offers aren't capable of being true or false; thus your out-of-court statement couldn't be hearsay, because I couldn't be offering your statement for its "truth."

With respect to hearsay, the obvious consequence for the analysis offered in the previous chapters

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<sup>18</sup> The requirement that the defendant's act be harmful to the plaintiff in order for the plaintiff to have a cause of action in court would seem to yield the curious result that if a party to a contract had no intent to keep her contractual "promises" at the time the contract was formed but eventually performs (even accidentally!) then punitive damages, which are sometimes calculated as a multiple of compensatory damages, won't be awarded to the plaintiff in spite of the fact that the defendant did something reprehensible, because the plaintiff will have suffered no harm. (But I am not aware of any case that addresses this possibility.)

<sup>19</sup> Federal Rules of Evidence, §801 et seq.

is that if contractual offers (and acceptances) are actually claims that are capable of being true or false, it would seem that, when a plaintiff sues a defendant for breach of contract and, as part of her proof that a contract between her and the defendant exists, testifies that the defendant made her a contractual offer (or accepted her offer), then she would seem to be offering the defendant's offer (or acceptance) for its truth – i.e. for the truth of the statement that the defendant would do what he “promised” to do.<sup>20</sup> Thus, if the analysis presented in the preceding chapters is correct, it would seem that every suit for breach of contract necessarily involves a violation of the hearsay rule. Said another way, one might argue that if we take the hearsay rule at face value and don't craft a dedicated hearsay exception for contractual language, then contractual offers (and acceptances) should be suppressed in court. The clear problem for that, of course, would be that it would be impossible to sue for breach of contract given that, in order to successfully sue for breach of contract, a plaintiff must first prove that a contract existed, and how is she to do that, other than by proving that an offer was made?<sup>21</sup>

The position taken by most sources as a justification for admitting contractual language in court in spite of the hearsay rule is that contractual language is “legally operative” merely by virtue of the fact that it was uttered. The “legally operative language” doctrine, which is sometimes referred to as the “verbal acts doctrine,” is reminiscent of the notion of performativity discussed

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<sup>20</sup> Of course, many actions for breach of contract involve the admission of a “written contract,” i.e. a document that states something like (i):

- (i) The parties agree as follows: A will do X and B will do Y.

But even in such situations, the plaintiff is apparently offering the statement in (i), which was written out-of-court, in court for its truth, i.e. to prove that the parties, in fact, agreed that A would do X and B would do Y.

<sup>21</sup> There is in fact a codified “exemption” from the hearsay rule to the effect that statements made by an opponent party are admissible for their truth. See Federal Rule of Evidence 801(d)(2). Thus, if a plaintiff sues a defendant for breach of contract, the defendant's offer (or acceptance) would ordinarily be admissible “for its truth.” I neglect that exemption in the discussion that follows since, in an appropriate case, a party may need to prove that a contract was formed by a non-party. For example, a plaintiff who is litigating a claim against an attorney's malpractice liability insurance company may need to prove that the attorney actually offered to perform legal services for the plaintiff.

in previous chapters: The idea is that contractual language has legal effect even if it's false or insincere.<sup>22</sup> Thus, even if I utter my contractual offer insincerely, I've still made you an offer. In Chapter 4, however, we saw that the notion of performativity is only loosely understood, and this is true in particular for implicit performatives, which don't seem to be self-referential in the same way that explicit performatives are, so perhaps we'd be better served by an alternative justification for admitting contractual language for its "truth."

One candidate for such an alternative might be the doctrine that says that an out-of-court statement that is presented in court to prove its "effect on the listener" falls outside the definition of hearsay, because it's not being presented for its truth.<sup>23</sup> For example, if I'm on trial for murder, I might want to introduce in court the fact that, before the victim was killed, someone said to me out of court that the victim was sleeping with my partner, because if I can prove that I killed the victim in the "heat of passion," I might be eligible for a reduction in the charge to voluntary manslaughter, which carries a lighter sentence. Of course, whether or not I killed the victim in the heat of passion depends not on whether the statement that the victim was sleeping with my partner is true but rather whether I believed it to be true, even if it was false. In that sense, the out-of-court statement that the victim was sleeping with my partner isn't being offered for its truth but rather for the effect it had on me, the listener.

Applied to the context of contractual language, could we say that contractual offers (and acceptances) don't need a dedicated hearsay exception because they fall under the "effect on the listener" doctrine? On the one hand, yes: We might say that when a plaintiff sues a defendant for breach of contract, she's essentially claiming that she's done something with the expectation that

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<sup>22</sup> See Advisory Committee Notes to Federal Rule of Evidence §8019(c).

<sup>23</sup> See e.g. *Bady v. Murphy-Kjos*, 628 F.3d 1000, 1002 (8<sup>th</sup> Cir. 2011)

the defendant would do the thing he offered (or “promised”) to do in return, and what justifies her expectation is the fact that the defendant made an offer to her (or accepted her offer). In short, the defendant’s offer (or acceptance) need not be “true” in order for her to be justified in her expectation. On the other hand, the law of contracts seems to be sensitive to the distinction between contractual expectations and justifiable reliance: There are non-contract theories of recovery that are available to a plaintiff who has justifiably relied to her detriment on representations made by the defendant – including fraud, discussed in Section 6.2 above, as well as “promissory estoppel,” which is normally applied in the context of gift promises. An example ripe for an analysis under promissory estoppel was given in Chapter 1 : If you promise to treat me to a dinner at a 5-star restaurant (without asking me to do anything in return, other than to be treated to the meal), and I, because I own no nice shoes, spend money on nicer shoes than I would normally buy, then I may be entitled to the value of the shoes (or to the difference in value between those shoes and shoes that I would normally buy), which reflects my recovery in promissory estoppel, but I won’t necessarily be entitled to the value of the dinner, nor to the dinner itself, which would reflect my expectation in contract, which, as we saw in Chapter 1, requires an exchange of “promises” (i.e. in legal terminology, contracts require “consideration”).

Still, the distinction between contract (which requires consideration) and promissory estoppel (which doesn’t) may not be so deep as to divide suits in contract from suits in promissory estoppel at the level of admissible evidence: If, in the case of promissory estoppel, the defendant’s promise is admissible in spite of the hearsay rule by virtue of the fact that the plaintiff detrimentally relied on it, there’s no apparent reason why, in the case of contract, the defendant’s offer (or acceptance) shouldn’t be admissible merely because offers (and acceptances) can’t, as we saw in Chapter 3, be analyzed as conditional promises. Said another

way, contractual offers aren't conditional promises in any linguistic, literal, syntactic, or semantic sense, but that doesn't mean that they don't behave like promises in terms of the effect of reliance they have on their listeners. In short, when you make me a contractual offer, what matters is not whether you mean what you say, but rather whether I believe that you mean what you say.<sup>24</sup>

For these reasons, the analysis in the previous chapters does *not* justify the suppression of contractual offers and acceptances in court under the hearsay rule.

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<sup>24</sup> Note that I'm not suggesting that "justifiable reliance" is a literal element that the plaintiff must prove in claim for breach of contract, as it is for promissory estoppel. Rather, the elements the plaintiff essentially needs to prove for breach of contract are: offer, acceptance, consideration, nonperformance, and damages. But as noted in Chapter 1, the law defines an "offer" as a "manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." (Restatement 2d of Contracts §24.) Thus, a plaintiff must prove that she was justified in believing that the offeror was offering her a bargain, i.e. that he would do what he was "promising" to do, in order to recover for breach of contract.

## The Logical Form of Contract Formation

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UCLA Ph.D. Colloquium

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### 1. *The Basics of Contract Formation*

For our purposes here, a **contract** is defined as a linguistic event via which two speakers of a language (English) come to create reciprocal commitments to do or not to do certain things.

Example:

- (1) Speaker A: If you mow my lawn, I'll pay you \$10.
- (2) Speaker B: I accept!

As the result of this conversation, Speaker A has a duty to pay and corresponding right to a mowing; Speaker B has a reciprocal duty to mow and a corresponding right to payment.

Of course, as linguists we're not interested in whether the law would recognize the conversation in (1) and (2) as creating a legal obligation or even whether Speaker A and Speaker B would refer to their rights and duties as a "contract." Still, some legal terminology will be helpful:

Under American law, in order to form a contract there must be an **offer**, an **acceptance**, and **consideration**, which essentially means that in order for Speaker B to have right to Speaker A's performance, Speaker B must agree to reciprocally perform – in other words, the conversation in (3) and (4) would not result in a contract:

- (3) Speaker A: I'll give you \$10.
- (4) Speaker B: Thanks!

The legal requirement of consideration appears to be just that – a legal requirement – in the sense that naïve speakers report that both of the conversations above create commitments on the part of Speaker A. (According to the law, only the first conversation creates a commitment on the part of Speaker A to pay Speaker B \$10; in general, the only legal commitment created for Speaker A in the second conversation is to compensate B for the value of her reliance on what Speaker A said.)

As for Speaker B's commitments: Even for naïve speakers, only the first conversation creates a commitment on the part of Speaker B to do something (other than accept the \$10, and maybe not even that). Moreover, (1) and (3) seem to differ in that speakers report that (1) creates a commitment on the part of Speaker A only upon Speaker B's utterance of (2) [or perhaps Speaker B's mowing of the lawn], whereas (3) seems to create a commitment on the part of Speaker A even in the absence of Speaker B's utterance in (4). [Discuss.]

For these reasons, I'll say that (1) reflects an **offer**, whereas (3) reflects a **promise**, and I'll assume for the duration of this talk that whereas offers require acceptance and are revocable at any time before acceptance, promises don't require acceptance and are irrevocable once made.

- (5) 

<b>offers:</b>	revocable, require acceptance
<b>promises:</b>	irrevocable, don't require acceptance

cf. Hancher (1979)

Of course, promises can be conditional, as in (6):

- (6) If it rains tomorrow, I'll give you my umbrella.

So it's natural to assume that contractual offers are just conditional promises, with the condition

being a condition of reciprocal performance from the offeree – as has more or less been assumed by the two linguists who have looked at contracts in the past: Schane (2006) and Tiersma (1986, 1993). I will argue that that’s not quite true.

A couple of other preliminaries:

First, I’m not going to say much about acceptances today, except in Section 5.5.

Second, the law distinguishes between **unilateral offers**, which can be accepted only via performance, not via verbal acceptance as in (2), and don’t involve the offeree’s commitment, and **bilateral offers**, which can be accepted either via performance or via verbal acceptance and do involve the offeree’s commitment. The quintessential unilateral offer is a reward offer, as in (7), but non-reward examples exist, as in (8). Comparing (8) with (9) suggests that, at least for conditional (‘if P then will Q’) sentences – arguably the canonical linguistic form for contractual offers – the unilateral/bilateral distinction is (legal and) pragmatic, not semantic:

- |     |  |              |
|-----|--|--------------|
| (7) | If you find my lost umbrella and return it to me, I’ll pay you \$10. | [unilateral] |
| (8) | If you exercise daily for a month, I’ll pay you \$1000.              | [unilateral] |
| (9) | If you rent me your apartment for a month, I’ll pay you \$1000.      | [bilateral]  |

But later we’ll see that this may not be true for other types of offers.

## 2. *Some Interesting Properties of Canonical Contractual Offers*

I will be focusing today primarily on conditional (‘if P then will Q’) sentences as candidates for contractual offers. Such sentences seem to be “ambiguous” between “claim” and “offer” interpretations:

- |      |   |               |
|------|---|---------------|
| (10) | If John gives Mary some candy, she will stay up later than usual. | [“ambiguous”] |
|------|---|---------------|



This isn't surprising, since (11) is ambiguous, too, between "claim" and "promise" interpretations:

(11) Mary will stay up later than usual. [“ambiguous”]

For both (10) and (11), the “ambiguity” seems to be located at the level of “illocution” in the theory of speech acts à Austin (1962) & Searle (1969), and perhaps related to the phenomenon of performativity, in the sense that offers and promises have an intuitive “word-to-world” direction of fit – see e.g. Searle (1989):

(12) That's not true! [apparently # a response to (10) as an offer and (11) as a promise]

But conditional sentences have some interesting properties that reveal the “ambiguity” between claim and “performative” interpretations a little more explicitly – for example:

#### ■ SEMANTIC NON-DIRECTIONALITY

As claims, conditional sentences are naturally interpreted as involving temporal precedence of the antecedent / causation of the consequent – see e.g. Horn (2000). Not so for contractual offers; thus, in (10) neither John nor Mary necessarily performs first.

#### ■ SYNTACTIC DIRECTIONALITY

In spite of the semantic non-directionality of contractual offers like (10), they're syntactically directional in that (10) isn't a viable candidate for a contractual offer on behalf of *John*. Cf. (13):

(13) If I do X, you will do Y. [# as an offer]

#### ■ REMOTENESS IN TENSE / MOOD

Just as “remoteness” in the tense or mood of a (subjunctive) conditional sentence is connected to

remoteness in subjective probabilities [Iatridou (2000); Ippolito (2003)], remoteness in the tense or mood of (10') seems to be connected to remoteness in probability that an offer is being made:

(10') If John gave Mary some candy, she would stay up later than usual. [% as an offer]

### ■ NEGATIVE POLARITY ITEMS

While NPI's are generally licensed in the antecedents of conditionals [von Stechow (1999) *inter alia*], (10'') seems to be interpretable only as a claim, not as an offer:

(10'') If John gives Mary any candy, she will stay up later than usual.

This last fact in particular raises the possibility that “ambiguity” in (10) is “in the semantics.”

### 3. *Problems with a Semantic Analysis*

For the linguists who've looked at contractual offers in the past, a given locution must be “equivalent” to a prototype with the word ‘promise’ in order to qualify as a contractual offer:

(14) Schane's (original) prototype for contractual offers:

I promise that if you do X, I will do Y.

(15) Tiersma's prototype for (bilateral) contractual offers:

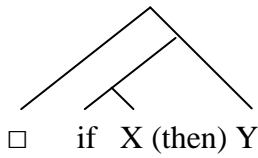
I propose that if you promise to do X, I will promise to do Y.

But given some form of the Stalnaker-Lewis analysis of conditionals [see e.g. Bennett (2003) for a history], as in (16):

(16)  $[[\text{if } P \text{ (then) will } Q]] = 1$  iff in all (foreseeable, future) situations in which P is true, Q is true

we see that we can't come up with a compositional analysis of conditionals and silent promise elements ( $\square$ ) that yields that right result (i.e. we can't semantically embed the speech act):

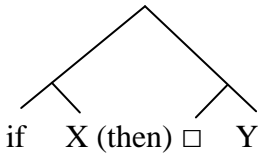
(17)



applied to (10)  $\approx$  Mary promises that if John gives candy ...

→ **WRONG MEANING:**    ■ As a promise, (17) isn't revocable – but offers are!

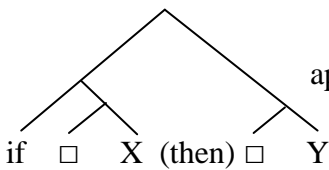
(18)



applied to (10)  $\approx$  If John gives candy, then Mary promises ...

→ **WRONG MEANING:**    ■ Mary has no liability unless John gives candy  
                                  ■ doesn't allow for bilateral offers

(19)



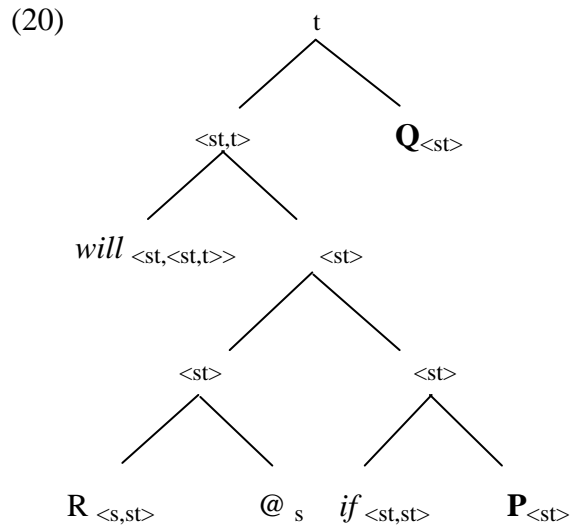
applied to (10)  $\approx$  If John promises, then Mary promises ...

→ **WRONG MEANING:**    ■ simple present tense not normally interpreted as promise  
                                  ■ doesn't allow for unilateral (or bilateral) offers

So it seems that contractual offers aren't semantically equivalent to "conditional promises" in the sense of embedded speech acts, which may be a shame, since a semantic difference between claims and offers may have helped us explain some of the data in Section 2 (esp. the NPI data).

A Kratzerian (1986, 2012) analysis of conditionals as in (20) may seem to be a more auspicious means of accomplishing a semantic analysis of the ambiguity in (10) and (11), given that that style of analysis involves an inherent connection between conditionals and modals like *will* and posits the existence of a silent variable R ranging over accessibility relations. In such an analysis, the claim interpretations of (10) and (11) would in theory involve R being assigned to an

epistemic relation and the offer and promise interpretations of (10) and (11), respectively, would involve **R** being assigned to a deontic relation (such that *will* is interpreted as something like *must*), with a contractual offer being nothing more than an explicit conditional where **P** expresses the proposition of the offeree's reciprocal performance:



However, such an analysis doesn't seem to be in a better position to explain much of data than the earlier analysis to the effect that contractual offers involve silent promise elements. For example, whereas contractual offers don't involve temporal precedence, deontic conditionals seem to:

- (21) If you double park, you must pay a fine.
- (22) If X happens, Y must happen. [Discuss.]

Perhaps more importantly, offers and promises seem to involve simultaneous epistemic and deontic accessibility relations in the sense, for example, that if Speaker A's statement in (1) were to be interpreted purely deontically, she should be able to defend against B's claim for breach of contract by saying something like the following (which seems preposterous):

- (23) I said that if you mowed my lawn I'd *have to* pay you \$10, not that I actually *would*.



a set-theoretic perspective, (27) is as stronger than (26) as (25) is than (24), so “strengthening” seems like an acceptable term to use in both cases.

Of course, we’d like to have a model of when, where, why, and how speakers (and hearers) make the move from (1) to (1’). Presumably, this sort thing happens as a function of context in connection to the **felicity conditions** for offers (as well as Gricean maxims). For example, (10) requires a context in which the speaker has or is perceived to have authority to speak on behalf of Mary, and in which the speaker believes or is perceived to believe that Mary would like for John to give her some candy, and in which the speaker believes or is perceived to believe that John would not give Mary some candy regardless of when she goes to bed, etc. In theory, an ambitious mathematical model could be constructed to predict when the speaker would go to the trouble of saying (1’) as opposed to (1).

My more modest ambition here is to show that the data in Section 2 can be explained in ways that are consistent with a pragmatic (i.e. non-semantic) analysis of the “ambiguity” in (10).

## 5. *Explanations*

### 5.1. *Semantic Non-Directionality*

In theory, the lack of semantic directionality (precedence / causation) between the antecedent and the consequent of a conditional sentence interpreted as a contractual offer can be explained by the phenomenon of “conditional perfection,” i.e. the conversion of *if* to IFF:

- (28) If you mow my lawn, I’ll pay you \$10.  $\vdash\rightarrow$   
(29) If and only if you mow my lawn, I’ll pay you \$10.

which can suppress the tendency to infer directionality from the antecedent to the consequent:

- (30) If X happens, Y will happen.  $[X > Y]$   
(31) Only if X happens will Y happen.  $[X < Y]$

(32) If and only X happens, Y will happen.

[Discuss.]

There is disagreement in the literature as to how (28) implicates (29) – see e.g. Horn (2000) – but the consensus is that the move is a pragmatic one, perhaps via (33) to (34) or (35) to (36):

(33) If P, then Q.  $\vdash$

(34) Not Q (unconditionally).

(35) If P, then Q.  $\vdash$

(36) Not (If P, then Q & If P', then Q & ... )

But what we're interested here is when (28) implicates (29) ... or more precisely why conditional perfection seems to happen as matter of necessity in contractual offers but not in claims.

But this seems easy: When I'm making you a contractual offer, I want to give the impression that your reciprocal performance (the thing that I want) constitutes the only condition under which I will perform what I'm "promising" to perform. By default, there's no such motivation in claims.

## 5.2. *Syntactic Directionality*

In theory, the reason why (10) isn't easily interpreted as an offer on behalf of John / why (13) isn't easily interpreted as an offer by the speaker can be explained in reference to the Kratzerian analysis of conditionals in (20), in which the antecedents of conditionals are essentially optional modifiers to modal statements.

(10) If John gives Mary some candy, she will stay up later than usual.

(13) If I do X, you will do Y.

In other words, (13) can't be an offer any more than (13') can be a promise:

(13') You will do Y.

Indeed, what I'm suggesting here is not only that the felicity conditions on speech acts like offers and promises (e.g. Searle's propositional content condition on promises to the effect that the promised act must be a future act) are sensitive to syntax, which is not controversial, but also that claims and contractual offers are both propositions that are capable of being true or false (see Section 5.5 below) – i.e. the problem with interpreting (13) as an offer is that it's presumptuous for the speaker to utter the sentence truthfully.

### 5.3. *Tense / Mood*

In fact, the only thing that would seem to easily explain the similarity between (10) and (10') above [= (39) below] is the suggestion that, at some level – presumably, a semantic level – claims and contractual offers are the same thing: The reason why (10') isn't easily interpreted as a contractual offer is that the intuition that John is unlikely to give Mary some candy (or the speaker's unwillingness to presume that John will do so) generated by the use of past tense / subjunctive mood in the conditional percolates into the act of making the offer. Iatridou (2001) and Ippolito (2003) *inter alia* have argued that the intuitions like the one in (10') that John is unlikely to give Mary some candy arise as a matter of implicature. The details are complicated, but Iatridou, at least, argues that these implicatures arise as the result of the fact that the speaker chose to make a *claim* about possible worlds (or situations) in which the antecedent is true other than the actual world. And further confirmation of the equality claims and offers may come from Ippolito's examples: Whereas “non-past” subjunctive conditionals like (37) implicate that John's marrying Mary tomorrow is unlikely, “mismatched-past” subjunctive conditionals like (38) implicate that John's marrying Mary tomorrow is impossible:

- (37) If John married Mary tomorrow, he would make her happy.
- (38) If John had married Mary tomorrow, he would have made her happy.



Not surprisingly, the way the offeree, i.e. John's agent, would respond to (40) differs from the way he would respond to (39), if he wanted to pursue the deal in each case:

- (39) If John gave Mary some candy tomorrow, she'd stay up later than usual. [= (10')]
  - AGENT'S RESPONSE: % I accept! / ✓ You seem to think that that's unlikely, but ...
- (40) If John had given Mary some candy tomorrow, she'd have stayed up later than usual.
  - AGENT'S RESPONSE: # I accept! / ✓ Wait, it's not too late – John can still do that!

How could these kinds of facts be accounted for if contract formation didn't involve the exchange of claims ... esp. if the fact that the speaker is making a *claim* about non-actual worlds is the source of the relevant implicatures?

#### 5.4. NPI's

Assuming that something like von Stechow's (1999) licensing condition for NPI's – namely that NPI's are licensed in Strawson Downward Entailing (SDE) environments – is correct:

- (41) A function  $\alpha$  of type  $\langle \sigma, \tau \rangle$  is SDE iff  $\forall \phi, \psi$  of type  $\sigma$  such that  $\phi \rightarrow \psi$  and  $\alpha(\phi)$  is defined,  $\alpha(\psi) \rightarrow \alpha(\phi)$ .

then sentences like (10'') above, repeated below, raise the possibility that something in the semantics distinguishes contractual offers from claims, as least if SDE-ness comprises not only the necessary but also the sufficient conditions for NPI-licensing:

- (10'') If John gives Mary any candy, she will stay up later than usual. [\* as offer / ✓ as claim]

Here's an example of how far we might go to explain (10'') semantically: Theories like von Stechow's (static) story for (counterfactual) conditionals ...

- (42) (i) A function  $f$  from worlds to sets of worlds is an admissible modal horizon with respect to an ordering source  $g$  iff:
- $$\forall w, w' \in f(w), w'' [w'' \leq_{g(w)} w' \rightarrow w'' \in f(w)]$$

- (ii)  $[[\text{if } \mathbf{P} \text{ (then) would } \mathbf{Q}]]^{w, f, g}$  is defined only if  $f$  is admissible with respect to  $g$  and  $f(w) \cap \mathbf{P} \neq \emptyset$
- (iii) if defined,  $[[\text{if } \mathbf{P} \text{ (then) would } \mathbf{Q}]]^{w, f, g} = 1$  iff  $\forall w \in f(w) \cap \mathbf{P} [\mathbf{Q}(w) = 1]$

... essentially leave the truth of a conditional up to the offeree in the sense that if the offeree is able to extend the modal “horizon” to the point that it contains some antecedent worlds but not so far that it contains some antecedent worlds that aren’t “best,” then the sentence is true. Following this line of thought, we might propose polysemy in the word *will*, such that  $will^\dagger = will$  as it is interpreted in a contractual offer (although no language seems to lexicalize  $will^\dagger$ ):

$$(43) \quad [[\text{if } \mathbf{p} \text{ (then) } will^\dagger \mathbf{q}]]^w = 1 \text{ iff } DOX(\text{addressee})(w) \subseteq [[[\text{if } \mathbf{p} \text{ (then) } will \mathbf{q}]]]$$

The idea in (43) is that it’s the offeree’s belief in ‘if  $\mathbf{p}$  will  $\mathbf{q}$ ’ – i.e. his acceptance of offer – that makes the sentence true - indeed, the notion that contractual offers involve a loss of autonomy from the offeror to the offeree isn’t foreign to the legal literature – see e.g. Owens (2006). If this is correct, then it’s clear that the conditional ‘if  $\mathbf{p}$  will<sup>†</sup>  $\mathbf{q}$ ’ is not SDE:  $\mathbf{p} \ \& \ \mathbf{p}' \rightarrow \mathbf{p}$ , but the offeree’s belief in ‘if  $\mathbf{p}$  will  $\mathbf{q}$ ’ will not entail the offeree’s belief in ‘if  $\mathbf{p} \ \& \ \mathbf{p}'$  will  $\mathbf{q}$ ’. It’s true that if von Fintel is correct about counterfactuals, and if his analysis of counterfactuals applies to all conditionals, as he assumes in von Fintel (2001), then the offeree’s belief in ‘if  $\mathbf{p}$  will  $\mathbf{q}$ ’ will involve the offeree’s presupposition that there’s no  $\mathbf{p}'$  such that conjoining  $\mathbf{p}'$  with  $\mathbf{p}$  will render the statement false, but that doesn’t mean that the offeree believes that there’s no such  $\mathbf{p}'$ . In other words, when the offeree accepts the offeror’s offer, he is essentially saying “I’m supposing that the conditions required for your performance have been fully stated, which doesn’t mean that I believe that you’ve fully stated such conditions, only that I’m reserving the right to hold you responsible for not having stated any unstated conditions.” Possible bonus of this analysis: In addition to getting the NPI licensing right by rendering offers non-SDE, the advantages of this

sort of analysis further includes the fact that it gibes with the intuition that offers can't be true or false – but we'll revisit that intuition in the next section.

Alternatively, we might seek to relate (10'') to data like (44) and (45) – cf. Lakoff (1969):

(44) If you drink {some / #any} of this, you'll feel better.

(45) If you drink {#some / any} of this, you'll feel worse.

Or we might suppose that (10'') has something to do with “conditional perfection”:

(46) If you have any candy, Mary will be happy.

(47) ? Only if you have any candy will Mary be happy.

(48) ?\* If and only if you have any candy, Mary will be happy.

But I'm suspicious that any (!) of the above will work, in part because focused *any* seems to be perfectly fine in (10'''), where it has the flavor of ‘any at all’ – but not so fine in (44) or (48).

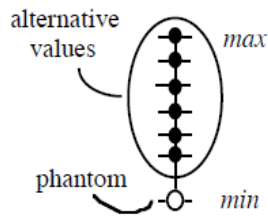
(10''') If John gives Mary *any* candy, she will stay up later than usual.

Moreover, (even unfocused) *ever* seems to be fine in (49), although (50) seems to be interpretable only as a unilateral offer, distinguishing it from (10) and (10'''):

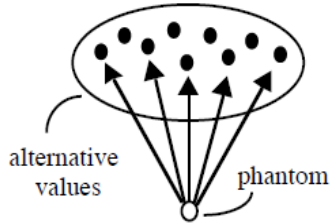
(49) If John ever gives Mary some candy, she will stay up later than usual.

(50) # On behalf of Mary, I accept!

Unless we're prepared to defend separate licensing conditions for focused *any* and unfocused *any* (and I'm not), it seems that what we want to do instead is invoke e.g. Israel's (1995) distinction between minimizing (e.g. focused *any*) and “indefinite” (e.g. unfocussed *any*) NPI's:



Minimizer Construction



Indefinite Construction

... and relate the prohibition against indefinite NPI's in the antecedents of contractual offers, as in #(10'), to the pragmatic fact that, when making you a contractual offer, I'm stipulating the minimum performance from you for which I'm willing to exchange my performance. (Of course, this suggests that *some* in (10) is something like a specific indefinite, which doesn't seem quite right.)

As for the fact that *ever*, while licensed in offers, seems to create a unilateral offer: Presumably, *ever*, which "refers" to times rather than quantities – but, like *any*, seems to be indefinite – effectively eliminates any deadline for the offeree's acceptance (at least by performance). But discourse doesn't go on forever, i.e. conversations have beginnings and ends. Could it be that the reason why (49) doesn't seem to be interpretable as a bilateral offer has to do with the idea that it's inconsistent to suggest, by using *ever*, that there's no deadline for acceptance (by performance) and also to suggest that the offeree may accept by participating in the current conversation by having it at all? Probably not, given that bilateral offers can be accepted either by performance of an act in the future or by a "promise" in the current conversation to perform that act. In other words, the mere fact that the offeree may accept by performance (or "promise"?) indefinitely in the future doesn't mean that the offeree may not accept by a "promise" in the course of the current conversation. Thus it seems that we need a more precise semantics for *ever* to explain how it works in contractual offers, perhaps one in which it quantifies over something like events,

rather than denoting times, in a way similar to quantifiers in examples like (51):

(51) Everyone who brings me candy gets an A. [✓ as an offer, but only as a unilateral one]

Conclusion on NPI's: It's a mystery, and I've said the most about that which I know the least.

### 5.5. "Performativity" / *Felicitous Replies*

Finally, what about the fact that, unlike claims, contractual offers seem incapable of being true or false? (Incidentally, this is how the law views contractual offers in relation to the hearsay rule: Contractual offers are admissible in court in spite of the fact that out-of-court statements generally can't be offered in court for their truth – that's what makes them "hearsay.") Could it be that contractual offers and claims are inherently different? Perhaps claims are propositions, but contractual offers are ... something else, some other semantic type?

Discussion of performativity is virtually always limited to "explicit" performatives, as in (52):

(52) (?) I hereby offer that if you mow my lawn, I'll pay you \$10.

In recognition of the "word-to-world" fit in sentences like (52), some researchers, e.g. Szabolcsi (1982) have gone so far as to suggest that (explicit) performatives are of type  $\langle s, s \rangle$ , such that their meaning is the effect they have on the world; thus, they can't be true or false. Others, e.g. Searle (1989), have worried considerably about the "sincerity problem" – i.e. the issue of whether we want to say that, for example, (52) is true even if I was insincere when I uttered it. Discussion of the sincerity problem, in particular, continues: For recent work see Jary (2007); Truckenbrodt (2009); Condoravdi & Lauer (2012); Eckardt (2012).

But what the discussions of explicit performatives neglect is the fact that implicit performatives like (1) seem equally resistant to the true/false distinction, at least in connection with felicitous

replies; thus any attempt to explain the true/false resistance in reference to the semantics of explicit performative predicates misses a generalization. Informally, that generalization seems to be something like the following:

- (53) When a speaker is understood by a hearer to have exercised her autonomy in incurring new institutional liability via the utterance of a linguistic expression, a hearer may not affirm or deny that institutional liability by stating that the expression is true or false, even if the expression is in the form of an ordinary proposition.

The notion of institutional liability has been invoked recently by van Rooij and Franke (2010) in explaining why we can make disjunctive threats but not disjunctive “promises” (or offers):

- (54) Sell me your house, or there will be trouble.  
(55) Don't see me your house, or I will pay you \$100,000. [still seems like a threat]

I don't mean to suggest that institutional liability is limited to traditional “commissive” illocutions. For example, if I utter (56), I haven't made any “commitments” in the traditional sense:

- (56) You are hereby fired!

But I have taken on new institutional status – if nothing else, I've made a choice, and I can't unchoose without incurring social (i.e. “institutional”) liability. Importantly, (53) doesn't preclude a hearer from denying a linguistic expression when the hearer doesn't understand the speaker to have incurred new institutional liability due to the nature of the institution involved:

- (57) You are hereby banished!  
(58) ✓ That's not true.

Nor does (53) preclude hearer from denying a linguistic expression when the hearer understands the speaker to have misspoken. For example, imagine that you and I have been

discussing whether I'm going to bring you various items of raingear if it rains tomorrow and we reach a point in the discussion where it's clear that I won't, under any circumstances, bring you an umbrella, but I'm more than willing to bring you a pair of galoshes. In such a context, the conversation in (59) and (60) is perfectly felicitous:

(59) I hereby promise to bring you an umbrella if it rains.

(60) That's not true. You promise to bring me galoshes (if anything).

What's interesting here is that the negation in your reply in (60) isn't necessarily denying that I'm making a promise; the only thing it's necessarily denying is the content of my promise. Of course, if you really think I meant to say *galoshes* instead of *an umbrella*, you might interpret my statement in (59) as a promise, just one with a mistake in it. Alternatively, you might not be sure that I made any promises at all, in which case your response in (60) is still felicitous, but not because you're denying that I'm making a promise; rather, your response is felicitous because you're denying the content of my promise, and a promise without content is no promise at all.

But if promises and offers, both implicit and explicit, are propositions that can be true or false, after all, then why can't an offeree accept the offer in (1) by uttering (61) or (62) instead of (63)?

(61) ✗ That's true.

(62) ✗ I agree.

(63) I accept.

I think the easiest answer is that, even if they're not embedded in semantic representations, i.e. in logical forms, speech acts actually do exist in linguistic representations in the way suggested e.g. by Krifka (2001), who claims that speech act operators are functions from utterances and input context states to output context states. Such a framework can easily allow for propositions like

(1) to serve as arguments both for CLAIMS and for OFFERS, with appropriate responses for each dictated in the system. But I haven't pursued this idea very far, so I won't say more here.

## 6. *Conclusion*

The goal here has been quite modest. What I've attempted to do is to argue against the common conception in the legal literature that contracts are, in a "literal" sense, "conditional promises." Linguistic methodologies show that that's false: If we posit silent promise speech act operators in the conditional syntax of canonical contractual offers, we derive the wrong results. Further, the "ambiguity" in sentences like (10) between claim and offer interpretations seems to reflect a form of "pragmatic strengthening." At the very least, none of the data forces us to conclude that the ambiguity is semantic, and some of the data suggests the contrary: At a semantic level, claims and offers are identical. This raises the question of why the felicitous responses to claims and offers are different, but that question may be better answered by discourse analysis.

## 7. POSSIBLE TOPICS FOR FURTHER DISCUSSION

- other viable syntactic forms for offers
- intonational differences in offers vs. claims
- the progressive problem, a la Copley (2012)
- Korean promissives and jussive syntactic heads, a la Zanuttini et al. (2012)
- the feasibility of embedding silent offer elements (◇)
- the number of parties to a contract (and gay marriage!) ...
- ... or you can ask for free legal advice ☺

## 8. THANKS!

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