

# CONTRACTS

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# Acceptance

1. Where an offeree accepts the offer they form a contract - [Taylor v Johnson](#)
  2. The offeree must agree to accept the terms of the offer (by words or conduct, expressed or implied)
    - There must be unqualified mutual assent (“a meeting of the minds”) to the terms of the bargain - [Carlil v Carbolic Smoke Ball](#)
  3. This information must be communicated to the offeror - [Felthouse v Bindley](#)
- The objective approach looks to the external manifestation of consent - disregarding the state of mind of the offeree - which in turn lessens the emphasis on the meeting of the mind. Considers whether an impartial third party observer would believe that the offeree was giving their assent to the terms of the offer - [Taylor v Johnson](#)
  - In [Turner Kempson v Camm](#), the offeree’s response constituted a counter-offer (the offeree suggested new terms as to the delivery of the goods).
  - In [Dunlop v Higgins](#) the acceptance was accompanied by a mere request as to delivery rather than a new condition.
  - Similarly, a mere error contained in the statement of acceptance does not constitute a counter-offer - [Carter v Hyde](#). There is a distinction between a bona fide counter-offer and a mere error made during the act of acceptance in restating the terms of the offer.

## Conditions precedent

- [CJ Bova Pty Ltd v Geoffry Needham Pty Ltd](#)
  - The use of the term ‘subject to confirmation’ was held to be a rejection rather than an acceptance at it clearly implied that further action would be necessary before the offer could be regarded as having been accepted
  - Settlement offer was made by plaintiff. Defendant’s solicitors responded with terms that were subject to the confirmation of the defendant. Plaintiff suggested that this was not an acceptance and sought to reject the defendant’s counter-offer
  - “The term calls for a response by way of confirmation of the matters raised in that letter. It is not an acceptance unless and until such a confirmation is received. Yet on the facts no such confirmation was received.”
  - Is non performance enough to negate the contract? Counter argument - assume it is condition.

## Knowledge of the offer

- An act that would otherwise constitute a valid acceptance but that was performed in ignorance of the offer, cannot therefore be a valid acceptance - [Fitch v Snedaker](#)
- Prisoner in [Crown v Clarke](#) tried to claim a reward for information he provided in order to secure his release. At the time that he provided the information he was unaware of the offer of reward.

## Communication of acceptance

- An acceptance will be effective only when it is communicated to the offeror - [Tinn v Hoffman & Co](#)
- The acceptance must be communicated by someone who has the actual authority to communicate the acceptance - [Powell v Lee](#)
- The offeror cannot stipulate silence to constitutes consent under any circumstances - [Felthouse v Bindley](#)
- An offeror may expressly or impliedly dispense with the need for actual communication, and will commonly do so in one of two ways:
  - The offeror may agree to treat the doing of an act as an effective acceptance. This normally holds true for unilateral contracts and can apply to bilateral contracts.
  - The offeror may treat the dispatch of an acceptance by a particular method as effective, whether or not the acceptance is received by the offeror.