

ACCEPTANCE

Acceptance creates the contract and determines when the contract comes into being.

What is acceptance?

- It possibly determines the law of the contract (the state in which the meeting of the mind occurs in the sale of a car is the law of that contract).
- Acceptance must be in response to an offer and must correspond with the offer.
- Acceptance is a final and unqualified assent to the terms of the offer, made in the manner specified or indicated by the offeror. It can be express or implied acceptance.
- **The General Rule:** Only those that the offer was made to can accept the offer.
 - *Boulton v Jones (1857)*.
 - Acceptance cannot occur unless and until the offeree has received the offer. The offeree must be aware of the existence and terms of the offer before they can accept it.
 - An act done in ignorance of the offer cannot be acceptance of the offer.
 - The offer must be present in the mind of the acceptor when the acceptance occurs.

Communicating acceptance

- The general rule is that acceptance must be communicated to be effective (*Latec Finance Pty v Knight [1969]*).
- Generally:
 - The acceptance must correspond with the offer.
 - If the offeree attempts to vary the terms or add additional terms this amounts to a counter offer.
- Silence cannot constitute acceptance (*Felthouse v Bingley (1862)*).
- Implied agreement through conduct (*Empirnall Holdings Pty Ltd v Machon Paul Partners Pty Ltd (1988)*) → this is different from *Felthouse*.
- It is still possible to have agreement even where there is no apparent offer or acceptance (*Haydon JA Brambles Holdings Ltd v Bathurst City Council (2001)*).

The postal rule

- An exception.
- When the offeree has placed his acceptance in the post there is a fictional meeting of minds, which concludes the offer and gives effect to the acceptance. (*Adams v Lindsell* (1818)).
- Limitations:
 - Did the parties agree that acceptance could be by way of post?
 - The postal rule can be negated by requiring actual communication instead of constructive (postal) communication.
- Emails are not covered by the postal rule.

Summary of Cases

Masters v Cameron (1954)

- Cameron agreed to sell Masters a farm, who pays a deposit.
- There was a term in the contract that this agreement is subject to the preparation of a formal document that is subject to the approval of Cameron's solicitor → condition attached.
- Before the final document had been prepared, Masters decided he didn't want to buy the farm anymore.
- The vendor attempted to enforce the document but purchaser said no because there is no contract.
- The court held that there was no agreement because there was no formal document approved by Cameron's solicitor.
- Three classes:
 - The parties have reached finality in arranging all the terms of their bargain and intend to be immediately bound but wish to have their terms restated in a form that is more full or precise.
 - The parties have agreed to all the terms and plan no departure from the terms but have made performance conditional upon the execution of a formal document.
 - The intention of the parties is not to make a concluded bargain at all unless they execute a formal contract → this is the category of *Masters v Cameron* where the parties did not intend to be bound until there was a formal document approved by Cameron's solicitors.

R v Clarke (1927)

- In Western Australia.
- A reward offered to find the murderer of two police officers and Clarke (a dodgy man) is arrested.
- He made a statement that led to the conviction of other men.
- Clarke is released and then he claimed the reward.
- This case is one that doesn't use the objective approach → the court said that Clarke didn't have the reward in his mind when he gave the names of the other two men.
- He wasn't responding to the offer, even though he gave the information → he was responding to his own dire circumstances.
- You need to have the offer in mind if you are going to accept it.

