

ACCEPTANCE

- An offer only becomes a contract when accepted unconditionally.
- Subject to the terms of the offer, acceptance can be in writing, oral or implied from the offerees conduct.

ACCEPTNACE V COUNTER OFFER

- A valid acceptance **must be unconditional** and correspond to the offer i.e. no deletions, additions or qualifications.
- There is often negotiation between the parties – be careful to work out who has made the final offer to see whose terms were accepted.
- This will affect when the contract was made and on what terms.

Butler Machine Tool Co Ltd v Ex-Cell-O Corp

KEY POINTS

- Sometimes referred to as the battle of the forms.
- In most cases, there is a contract as soon as the last of the forms is sent and received without objection being taken to it
- If the difference in terms is so material, the buyer ought not to be able to take advantage of the difference unless he draws it to the attention of the seller

Lord Denning MR

- According to the traditional analysis: the quotation was an offer; the order, although purporting to be an acceptance, was a rejection of the offer, substituting for it a counter-offer - "the counter offer kills the original offer"; the sellers then accepted the counter offer.

KNOWLEDGE AND COMPLIANCE

- Generally an offer can only be accepted by those persons to whom it is made
- An offeree must be aware of the existence and the terms of the offer when acceptance occurs, otherwise there is no acceptance.

R v Clarke (1927) 40 CLR 227

KEY POINTS

- Acceptance must be on the faith of / in reliance upon the offer
- Therefore the offeree must be aware of the offer when it is accepted

MODE OF ACCEPTNACE

- Acceptance must be communicated to the offeror prior to termination of the offer.
- The method of communication is a matter for the parties and the offeror may prescribe a particular mode of acceptance - *Manchester Diocesan Council for Education v Commercial and General Investments*