Topic Three: Acceptance

<table>
<tr><th colspan="2">ACCEPTANCE</th></tr>
<tr><td colspan="2">Acceptance is defined as unqualified assent to the terms of the offer.</td></tr>
<tr><td colspan="2">Establishing acceptance:</td></tr>
<tr><td>Objective test for acceptance</td><td>Would a reasonable person consider the parties to have reached agreement to having regard to their external manifestations? (Fitness First v Chong)</td></tr>
<tr><td></td><td>Exception for unilateral contracts: acceptance is the performance of the request, but this must be in response to the offer and the person (performer) must be aware of the offer (Clarke)

A would argue that the performance of the request was sufficient for acceptance as the contract was unilateral and A was acting in response to the offer and was aware of the offer (Clarke).</td></tr>
<tr><td>Communication of acceptance</td><td>The general rule is that the acceptance must be communicated to the offeror by the offeree in any reasonable way, unless there is a particular way prescribed by the offeror (Latec Finance)
A may argue that acceptance was communicated reasonably because of [way of communication], however B can point out that they prescribed [way of communication] and since A did not do that it does not count as acceptance (Latec finance)
Exceptions: Time limits for offers are important as acceptance must be communicated before the offer expires
Communication of acceptance is effective when it is received (Latec Finance; Brinkibon).
However, exceptions to this is the postal acceptance rule as the acceptance is effective when the letter is posted, rather than when it is received (Adams v Lindsell).
A can argue that the acceptance was communicated before the time expiry as the letter was posted at [time posted], which is before the time limit (Lindsell)
It is unclear if the PAR applies to emails as emails can behave non-instantenously. But generally, PAR applies to non-instantaneous communication.</td></tr>
<tr><td></td><td>Analogise with Latec: On the facts of the case, it was held the mere signing of the form was not acceptance as they did not communicate that. A can argue that although B signed the contract, it was not communicated to A, thus as A didn’t know, acceptance cannot be made out.</td></tr>
<tr><td></td><td>Silence:
Silence itself does not infer acceptance by a party, (Felthouse v Bindley) however silence in combination with conduct could amount to acceptance (Empirnall).

Objective test from Empirnall: would a silent bystander regard the conduct of the offeree including silence, as signaling to the offeror that the offer has been accepted?
This is a question of fact.
Analogise to Bramble Holdings: in the case, as Brambles’ silent along with their payment of the higher fee amounted to acceptance, thus D’s silence along with [their conduct] will amount to acceptance because…</td></tr>
<tr><th colspan="2">CORRESPONDENCE BETWEEN OFFER AND ACCEPTANCE</th></tr>
<tr><td colspan="2">Last-shot approach</td></tr>
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This purpose purports that a response to an offer which changes the terms is a counter-offer and not acceptance, terminating the initial offer (*Butler Machine Tool*)
Has the counter-offer been accepted? Lord Denning held that if the terms purposed by the counter-offeror then they are likely accepted (*Butler Machine*)
Last shot approach: (*Butler Machine Tool*) Typically, whoever puts forward the latest term and isn't rejected wins (whoever puts forward the last counteroffer) • However, the terms may be construed together by the courts to give a harmonious effect
Ticket cases
A ticket is an offer (like parking ticket), which the purchaser can reject or accept when they had a reasonable opportunity to do so (*MacRobertson*)
CONCLUSION
On balance, it is likely/unlikely that acceptance of the offer is established due to…