

## A - ACCEPTANCE

### Finding agreement:

- An offer only becomes a contract when accepted unconditionally.
- Subject to terms of the offer, acceptance can be in writing, oral or implied from the offeree's conduct.
- Whether or not an offer has been accepted is determined objectively. Was there an apparent intention to contract, to be legally bound? How would a reasonable person understand the words and actions of the offeree?
- A valid acceptance must be unconditional and correspond w/ the offer, i.e. no deletions, additions or qualifications.

### FINDING AGREEMENT

- An offer by itself has no contractual force; it merely confers on the offeree the ability to create a contract by accepting the offer. Subject to terms of the offer, acceptance may be in writing, oral or implied from the offeree's conduct. To form a contract, an acceptance must be unconditional and correspond to the offer; the offer is accepted without deletions, additions or qualifications. Whether or not an offer has been accepted is decided objectively. Was there an apparent intention to contract, to be legally bound? How would a reasonable person understand the words and actions of the offeree?

### KNOWLEDGE OF THE OFFER:

- An offeree must be aware of the existence and the terms of the offer when acceptance occurs, otherwise there is no acceptance. - *Crown v Clarke* (1927) 40 CLR 227 where the WA Government offered a reward for information of wanted criminals. Clarke was arrested in connection with the criminals and supplied information which led to the conviction of the other men and granted his own release. Clarke then sought to claim the reward. Justice Isaacs ACJ held that Clarke gave information to secure his own release and not in response to the offer for reward. To be effective as an acceptance the information needed to be 'given in exchange for the 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).

### Mode of acceptance:

- 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 Ltd* [1970] 1 WLR 241 –

offeror specified a way in which the acceptance was requested, that is, by post to a specified address, MD sent to another address, not specified by the offeror. Court held that The method of acceptance prescribed in the tender was not *mandatory* - here the offeror was made aware of the acceptance by an equally effective method and thus the acceptance was effective.

Although the o'r cannot prescribe silence as a method of acceptance, the o'r can waive the right to have acceptance communicated, such as in a unilateral contract - *Carlill v Carbolic Smoke Ball Co*

The law requires some objective manifestation of acceptance and it may be appropriate to infer acceptance in some circumstances. For instance, silence of an o'ee in conjunction with other circumstances, may indicate acceptance of an offer.

- Case analysis - *Empirnall Holdings v Machon Paull* (1988) 14 NSWLR 523.

Postal acceptance rule:

- The postal acceptance rule is an exception to the rule that acceptance must first be communicated to the o'r to be effective.
- Where the parties contemplate acceptance by post, the acceptance will be complete as soon as the letter is properly posted.
- This is so even if the letter is not delivered (provided o'ee can prove it was actually posted)
- Case analysis - *Brinkibon Ltd v Stahag Stahl*

#### POSTAL ACCEPTANCE RULE

- The postal acceptance rule deals with communication of acceptance at a distance. It is an exception to the rule that acceptance must first be communicated to the offeror to be effective. Where the parties contemplate acceptance by post or snail mail, acceptance will be complete as soon as the letter is properly posted (*Brinkibon Ltd v Stahag Stahl* [1983] 2 AC 34). If after properly posting a letter it fails to arrive, the posting of the acceptance is nevertheless effective so long as the rule applies (*Adams v Lindsell* (1818) 106 ER 250; see [Ch 2, fn 161]). [Of course this will raise significant evidential issues for the person seeking to rely on the postal acceptance rule.]

In the case of instantaneous or near instantaneous communications such as telex, facsimile or email the general rule is that acceptance is not complete until it is received (*Brinkibon Ltd v Stahag Stahl* [1983] 2 AC 34). The provisions of the Electronic Transactions Act 2000 (NSW) apply to email communications generally and have an impact upon issues concerning writing, signature and time and place of and dispatch and receipt of the email (see [2.310]-[2.320]).

Electronic communication:

- For near instantaneous communications such as telex and fax, the general rule is that acceptance is not complete until it is received - *Brinkibon Ltd v Stahag Stahl*
- What about email, internet acceptance (e.g. online shopping)?
  - *Electronic Transactions Act 2000* (NSW):
    - See especially, ss 13, 13A & 13B