

Cases research



* *Masters v Cameron (1954)* * Estate agent retained by Cameron drew up a sale note for the sale of Cameron's property to Masters. * Cameron's insistence included in the sale note a clause. * Agreement made subject to the preparation of a formal contract of sale, which shall be acceptable to solicitors on the above terms and conditions. * Both parties signed the sale note. * Masters paid a deposit. * Masters did not signed the contract prepared by Cameron's solicitors as Master experienced difficulties arranging necessary finance and wished to withdraw the purchase. Cameron wished to proceed the sale. * The court have to decide whether the parties were contractually bound by the sale note (which has been signed by both of them) or whether they would only have formed a binding contract by Cameron's solicitors (which could not apply, since Masters did not signed. *

* *Souter v Shyamba Pty Ltd (2003)* * Shyamba owned land at Merimbula, NSW on which it operated a hotel and motel. * 8 October 2001, Souter wrote to Shyamba enquiring whether the property was for sale and one Bennett, a director of Shyamba, telephoned Souter and told him that the price was \$3 million. Negotiations at lower figures failed. * Fresh negotiations in March and April 2002 resulted a signed document by Souter and by Bennett and one Mirabito on behalf of Shyamba. * The document provided that " This sale will become unconditional upon the purchaser paying the amount of \$1, 000 into the vendor's bank account. The purchaser agrees to pay a further \$299, 000 to the vendor's solicitor upon exchange of contracts, not later than 16 June 2002 and the balance (\$2, 700, 00) at settlement 1 July 2002. On 1 May 2002, Souter paid \$1, 000 unto the vendor's bank account and Shyamba instructed its solicitors to prepare formal agreements. * On 31 May 2002, Bennett wrote to Souter, stating that the sale had " hit a hurdle in the form

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of a huge Gazzumpt". * Bennett Stated that he had been informed that the agreement of 1 May did not bind the purchaser and could not therefore bind Shyamba as vendor. * Souter sued for specific performance of the agreement dated 1 May 2002. The court held that the document dated 1 May 2002 did not constitute the binding contract and made an order for specific performance. * The judge held that the decisive issue is always the intention of the parties, which must be objectively ascertained from the terms of the document when read in the light of the surrounding circumstances. * If the terms of the document indicate that the parties intended to be bound immediately, effect must be given to that intention irrespective of the subject matter, magnitude or complexity of the transaction. * The judge itemised the reasons for his finding that the document had the effect of a contract. * Instrument 7020202154 v Ormlie Trading Pty Ltd * The court held that the parties had no intention of entering into a binding contract of sale despite reaching agreement on the essential terms. * In both the letter of offer and in the letter of acceptance of the offer the words "in principle" were used. * The word "in principle" used was indicated and unqualified acceptance by the offeree of the offer. Teviot Downs Estate Pty Ltd & Anor v MTA Superannuation Fund (Flagstone Creek and Spring Mountain Park) Property Pty Ltd * Alleged agreement made on 29 August 2003 for the sale of land of Spring Mountain Estate, Beaudesert in Queensland for \$11m. * Teviot sent a letter of offer to the defendant on 22 August 2003 and a response accepting the offer was sent on 29 August. * Deposit of \$1.1 million was paid. * 3 October 2003, the firstnamed plaintiff wrote to the defendant saying that its due diligence enquiries had been satisfactorily completed and that the contract was unconditional. On the

same day, defendant wrote to Tevoit saying that its Trustee did not approve of the sale. * The Supreme Court of Queensland has to decide whether the exchange of correspondence (the letter of offer of 22 August and the letter of acceptance of 29 August) constituted a legally enforceable agreement (as the defendant contended). * The court observed that the case suggest that there is no binding contract unless and until formal contract documents are signed and exchanged. * *Tinn v Hoffman and CO (1873)* Two offers, identical in terms, cross in the post, there will be no contract as neither can be construed as an acceptance of the other, even though there is a meeting of the minds. * *Patterson v Dolman (1908)* * The offer may be construed by the court as being accepted by a number of persons and the offeror will be bound to each and every person who accept. * The contract is only able to be performed with one party, the offeror may be liable in damages for breach of contract to the others who accepted the offer. *Felthouse v Bindley (1862)* * An uncle and his nephew had conversation about the possible sale of the nephew's horse to the uncle, but there had been some confusion about the price. * The uncle subsequently wrote to nephew, offering to pay \$30 and 15 shillings and saying, ' If I hear no more about him, I consider the horse mine at that price. * The nephew was on the point of selling off some of his property in an auction. He did not reply the uncle's letter, but did tell the auctioneer to keep the horse out of the sale. The auctioneer forgot to do this and the horse was sold. * The court felt that the nephew's conduct in trying to keep the horse out of the sale did not necessarily imply that he intended to accept his uncle offer. * The nephew actually wrote afterwards to apologise for the mistake and so it was not clear that his silence in response

to the offer was intend to sell but there are many situations in which it would be undesirable and confusing for silence to amount to acceptance.