

The valid contract essay



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A valid contract consists of all essential components which present and the court will enforce as a legally binding promise . One of the elements contract to create a contract is agreement which included an offer and acceptance. “ Acceptance is a final and unqualified assent to the terms of the offer, made in the manner specified or indicated by the offeror” . Acceptance may be express orally, in writing, occasionally, or even by implied from the offeree’s conduct.

In communication of acceptance, general rule claimed that acceptance ordinarily occurs at the time when, and the place where the offeror receives the acceptance . As a general rule, “ what must be accepted is what was offered” , it exclusive of addition, deletion, or qualification. However, there is one major exception to the rule that acceptance must be communicated that is postal rule. Postal rule is a well-known legal principle in contract law. The postal rule of acceptance of an offer became entrenched in the common law of contract in the English courts and therefore in the Australia courts during the nineteenth century.

Moreover, it continues to apply today even that more efficient methods of communication have since emerged. Postal rule states that “ postal service is an acceptable method of communication between offeror and offeree, if a letter of acceptance takes effect immediately upon posting, rather than upon receipt , and acceptance is therefore taken to have been communicated at the time of posting the letter” . As an academic problem, three possible solutions that offer made through the post might be regarded as acceptance in complete either, when the letter of acceptance put into the post; when it is delivered to the offeror’s address; or when the letter of acceptance is

brought to the actual notice of the offeror. Therefore, the disadvantage is that acceptance is formed before offeror know about the acceptance.

Indeed, the postal rule is unfair to the offeror, because offeror does not know that had bounded to a contract with acknowledgement. The postal rule was first established in *Adams v. Linsell* when the court decided the moment of contract development by post. In this case, court held that the defendants were liable in the consideration of both parties that the post would be used as the means communicating acceptance . The actual acts were that the offer, which was limited to “ acceptance by return post”, was misdirected and reached the offeree late. The offeree replied immediately, but by the time acceptance had reached the offeror, unfortunately that had sold the goods to third parties.

Therefore, the court held that the contract was complete at the moment the offeree mailed the acceptance. The court also found that parties when communicating acceptance by post were not sure at the accurate time the acceptance had been communicated. As postal communication is subject to delay, the parties were not simultaneously aware of the communication. This created a number of problems and led to a formulation of the rule. The views expressed in *Adams v. Linsell* have been accepted and applied consistently ever since and have even extended to include acceptance by telegram.

The exclusive limitation, as stated by Lord Herschell in *Henthorn v. Fraser* is: “ the circumstances [must be] such that it must have been within the contemplation of the parties that, according to the ordinary usages of mankind, the post might be used as a means of communicating the

acceptance of an offer, the acceptance is complete as soon as it is posted” . In such case the courts presume that acceptance by post was considered unless the offeror, either expressly or by implication, indicated that actual receipt was required. Offeror can stipulate the required method of acceptance.

Offeror prescribe specifies actual communication as the means of acceptance. In other words, the offeror can say to offeree: “ I must receive your acceptance for it to be effective”. Such a statement can arise expressly or by implication In addition, Tallerman and Co. Pty Ltd v.

Nathan’s Merchandise (Vic) Pty Ltd is a first case happened in Australia. The facts is that delayed mail over the defendant’s alleged wrongful failure to take delivery of a consignment of bullets, the plaintiff’s solicitor wrote accepting a negotiation offer that the defendant’s solitors had put forward in the previous letter . However, in the circumstances the mere posting of the “ acceptance” did not give rise to completed contract. Therefore, the postal rule does not apply if its application would produce manifest inconvenience or absurdity; indeed, it is usually that the parties never really intended the postal rule to apply. Moreover, Dixon C. J and Fullagar J stressed out on this issue that a contract is completed by posting of a letter of acceptance cannot be justified it is to be inferred that the offeror contemplated and intended that his offer might be accepted by the doing of that act , in such case as the present, where solicitors are conducting a highly contentious correspondence, one would have thought that actual communication would be regarded as essential to the conclusion of agreement on anything.

Furthermore, one might doubt when the postal rule is applied, even though he or she had never received the notice of acceptance causes by the lost or never delivered. In the cases of Household Fire & Carriage Accident Insurance Co. (Ltd) v. Grant , the defendant applied for, and was allotted, shares in the plaintiff company. The letter of allotment was properly addressed and was posted to Grant at his home. However, Grand did not received and therefore never paid the amount due on the shares when the company when into liquidation .

Certainly, Grant refused liquidator's payment and arguing that this offer to purchase the shares had never been accepted. Nevertheless, the court held that " postal rule applied because it had been within the contemplation of the parties that the acceptance would be by mail. Accordingly the company's acceptance of his offer to take up shares (the allotment) was complete upon posting and Grant was a shareholder from that point. As a result he was liable to the liquidator for the uncalled amount. Therefore, non-delivery of acceptance was immaterial" . Moreover, if the acceptor address the letter incorrectly, if the address is incomplete or if the letter is incorrectly stamped, the postal rule will probably not apply .

Other courts have justified the rule by saying when the offeror uses the mail to communicate his offer he makes the post office his agent with authority to receive his acceptance , in effect, he authorizes the offeree to accept the offer by mail. However, the post office is in fact neither an agent nor a servant of the sender because it is not subject to his control. The post office is independent contractor and has merely undertaken to deliver the message The postal rule specifically applies to acceptance by mail and by telegram.

However, the effort has been made to extend the operation of the rule other mean of communication (such as telex, telephone, e-mail, etc), but these have not been successful. The court have consistently held that the general rule applies to acceptance by telephone, telex, and other forms of instantaneous and near instantaneous communication. Acceptance therefore occurs when and where the offeror receives the communication.

In the case of *Entores Ltd v. Miles Far East Corp* , where plaintiff is a London company who telexed an offer to the defendants in Amsterdam. Defendants accepted it also by telex. The defendants then allegedly breached the resulting contract and plaintiffs wanted to sue. However which court had jurisdiction either England or Holland? The defendants argued that as their acceptance had occurred in Holland, the contract had also been made in Holland. Indeed, the court held that contract had been made in England; the requirement for actual communication applied to telexed acceptance and there was no acceptance until it was actually received in London.

Thus the contract was made in England and Entores could sue in English court using the English Law . The Commonwealth has recently introduced the Electronic Transactions Act 1999 (cth), which contains rules to determine when and where an electronic communication (such as e-mail) is sent and received. Eventually, similar legislation will passed in all states and territories, even apply equally throughout Australia . An electronic is received when it enters an information system designated by the addressee as the system for the receipt of electronic communication or, if no system is designated, when it comes to the attention of the addresses. However, “ another authority on communication of acceptance is the Electronic

Commerce Act 2000, which deals specifically, contain provision relating to the time and place of the receipt of electronic communications” In Electronic Commerce Act 2000, Article 14 offers that “ the order and the acknowledgement of receipt are deemed to be received when it first becomes accessible by the offeror” Several authors had expressed the view that email and other methods of online contracting are instantaneous communication and that the general acceptance rule should apply to their acceptances. It despite operating instantaneously, it does not go directly to its destination.

E-mail is unlike other instantaneous forms of communication such as fax and telex. It cannot be say that the sender had control over the message or the message actually reaching its destination host, it is a gap between dispatch and deemed receipts therefore the postal rule should apply to this scenario . In contrast, it can be say that it occurs instantaneously, one cannot say that there is a delay that would result in either party to a contract bearing a risk during the transit time of the acceptance . This suggests that the postal rule should therefore not apply to this scenario. E-mail also stated that the data reached its destination when it had reached the host. E-mail goes through quite a few hosts before it reaches its destination; making it unique among instantaneous forms of communication .

If there is an error occurs at any one of these host, the mail may be delayed or missing away entirely. Besides that, there is a conclusion was recently pointed out in Singapore, Chwee Kin Keong v Digilandmall. com Pte Ltd case. This court found that “ fax or telephone call, it is not instantaneous. E-mail processed through servers, routers and internet service providers.

Different procedure may result in messages arriving in an incomprehensible form. Arrival can also be immaterial unless a recipient accesses the email, but in this respect email does not really differ from the mail has not been opened” . Lastly, E-mail cannot be considered as an instantaneous method of communication since there are some delays and gaps between sending and receiving messages. In conclusion, postal rule is an acceptance of an offer that is made through the post is deemed to be communicates.

It must be conclude that the offeror who always bears the risk. This simply because in making the offer, they are able to state that they need actual notice delivered to them within the time frame. However, the court pointed out that we are living in a time radically different from that when Adams v. Linsell was decided. In deed, the case was established before the telegraph and all the instantaneous communication or non-instantaneous method was even invented.

The court felt that legal; practices should change to suit changed condition. (1895 words) References D. Parker & G. Box. Business Law of Business Students 2008, Thomas Custom Publishing Sydney 2008Graw.

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