

# Contract and italian cuisine



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Tullula Investments Ltd is a large South Australian company, which owns and operates many hotel and restaurants throughout Australia. Italian Cuisine Ltd, a food and catering business whose headquarters are in Brisbane, supplies goods commonly used by businesses such as Tullula Investments Ltd. On September 1, 2000, Italian Cuisine Ltd sent a fax to Tullula Investments Ltd, which read: "Can offer latest 'Speedy Rice Cookers' at \$100 each."

On October 1, 2000, Tullula Investments Ltd faxed a reply stating: "Will have four dozen. Need delivery by November 1, 2000." Upon receiving the fax Italian Cuisine Ltd then wrote back to Tullula Investments Ltd saying "thank you for your fax which is receiving our attention". Subsequently and prior to November 1, 2000, Italian Cuisine Ltd packed the rice cookers and loaded them on a van for delivery to Tullula Investments Ltd, but before the van set out, Tullula Investments Ltd phoned Italian Cuisine Ltd to say that they no longer needed the rice cookers.

### Task

Discuss the legal position of Tullula Investments and Italian Cuisine in relation to the law of contract. Use case references to support your answer. Having read the case study, analyse the case in respect to the following categories. Formulate your answer using these categories.

Introduction - identifies relevant area of the law elements of a simple contract

Identify the issue(s) — offer and acceptance, intention to create legal relations

Define and examine the laws and principles of offer and invitation to treat (ITT)

Apply the laws and principles to the fact — rules of offer and ITT (objective test). Include relevant cases

Apply the laws and principles to the fact — rules of acceptance. Include relevant cases

Apply the laws and principles to the fact — issue of revocation. Include relevant cases

Conclusion

Case study answer guide

This is the answer guide to the Tallula Investments case study. Compare your response to this guide and make sure you have covered each of these points.

- State relevant area of law — contract, in particular simple contract
  - Outline elements of a simple contract
  - Identify elements with which there is a problem — offer + acceptance = agreement (Has there been a genuine offer, which meets all requirements of law? Has there been an unqualified acceptance, which meets all the requirements of contract law?)
  - Fax by Italian Cuisine to sell rice cookers at \$100 does not constitute an offer but an intention to trade (ITT) or supply of information. Define and discuss Case reference: students may quote any case which discusses the difference between ITT and genuine offer, eg they may apply the test from *Carlill v Carbolic* to demonstrate their answer or *Pharmaceutical Society of*
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Great Britain v Boots Cash Chemists (Southern) (1953) 1 QB 401 or Partridge v Crittenden (1968) • Tallula Investments' reply by fax on 1 October, 2000 is not an acceptance but offer to buy the cookers at \$100 each. Define and discuss Case reference: Harvey v Facey (1893)

- Acceptance: define. Apply Italian Cuisine's response to Tallula Investments first reply " fax receiving attention" is not an unqualified acceptance of Tallula Investments' offer Silence is not acceptance see Felthouse v Bindley (1862)

- Revocation — define an offer can be revoked before communication of acceptance by offeror case reference Goldsborough Mort & Co Ltd v Quinn (1910)

Apply: Therefore Tallula Investments would be entitled to revoke their offer before delivery of goods takes place.

Model answer

Below is a model answer based on the previous categories. The green highlighted text shows how the law has been applied to the facts. The yellow highlighted text shows relevant case citations.

The case study deals with a simple contract, which is not required to be in writing. The elements of a simple contract are: 1. Intention to create legal relations

2. Offer and acceptance (an agreement)

3. Consideration

4. Capacity of the parties

5. Certainty of terms

6. Legality of object

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The main issue in this problem is whether there is an 'agreement' - offer and acceptance. However, on the first element of intention to create legal relations, it is clearly a business/commercial relationship between Tallula Investments Ltd and Italian Cuisine Ltd and therefore the presumption is that the parties intend to enter into legal relations. There is no evidence to rebut this presumption (see *Jones v Vernon Pools*). The next issue to be dealt with is the 'offer'. Has Italian Cuisine made an offer to Tallula in the fax September 1, 2000 which read: 'Can offer latest speedy Rice Cookers at \$100 each'.

In my view this is not a genuine offer, it is more in the nature of an invitation to treat. The words 'can offer' is not a definite proposal to sell the cookers at the stated price but is simply suggesting that the Speedy Rice Cookers are available for sale. The test in deciding between an offer and an invitation to treat was set out in *Carlill v Carbolic Smoke Ball Co* which held that an 'invitation to treat is a request for offers' and determined by the 'ordinary person test'.

Clearly here, we have an inducement sent out by Italian Cuisine to Tallula to enter into negotiations for the purchase of the rice cookers. It is not a definite proposal, made with the intention that it becomes binding once accepted (see *Partridge v Crittenden*). As the fax sent on the 1st September, 2000 by Italian Cuisine is not an offer we now need to consider the position with the Tallula fax at 1st October, 2000. This reply is not an acceptance. An acceptance is an agreement to be bound to the terms of an offer. The fax by Tallula is actually an offer to buy the cookers at \$100 (see *Harvey v Facey*).

Italian Cuisine's response to the Tallula Investments' fax 'receiving attention' is not an acceptance to the offer. An acceptance must be clear and unqualified to be binding. It can be argued that Italian Cuisine is actually 'silent' on the issue of acceptance and silence is not acceptance (see *Felthouse v Bindley*). We must now look at the issue of the revocation and decide whether Tallula Investments is required to take delivery and pay for the cookers. Since Tallula made the offer to Italian Cuisine which was not actually accepted, they are entitled to revoke that offer. An offer can be revoked by an offeror before communication of acceptance by the offeree (see *Goldsborough Mort & Co v Quinn*). Tallula Investments therefore, do not have to take delivery or pay for the rice cookers as they are not bound by the contract of law.