

Business law assignment

[Business](#), [Management](#)



The consumer could therefore withdraw his or her offer to buy because they have not received actual communication of acceptance. “ Offers can be withdrawn at anytime before acceptance has been notified”. The consumer could argue that he or she did not become aware of the acceptance by the online merchant until reading his or her reedit card statement, so there is a problem in billing a credit card as a signifier of acceptance. Sodden (p. 141) The [Commonwealth] Act also deals in s 14 with the time and place of both dispatch and receipt of electronic documents.

Importantly, the parties are free to agree on these matters, but in the absence of agreement: o if an electronic communication enters one (or more) systems outside the control of the originator, then the dispatch of the electronic communication occurs when it enters the information system or the first system if there is more than one; o if the addressed of an electronic communication has designated an information system for the purpose of receiving electronic communication, then the time of receipt of the electronic communication is the time when the electronic communication enters that Business Law By seven designated an information system for the purpose of receiving electronic communications, then the time of receipt of the electronic communications is the time when the electronic communication comes to the attention of the addressee; o an electronic communication is taken to have been dispatched at the place where he originator has its place of business; o an electronic communication is taken to have been received at the place where the addressee has its place of business. The postal rule is a feature of contract law and as its name suggests, the rule relates to the acceptance of a contract via the post.

But before the postal rule is explained in detail, the key features contracts are paraphrased from Nonhuman (2000): The basic elements of all contracts are the offer by one party, its acceptance by the other party, the intention to create a legal relationship, consideration (usually involving money) which must be paid for, the legal capacity of the parties, genuine consent of the parties and the legality of the agreement. A contract is made by an offer from one party (the offer) which is accepted by the other party (the offered). This is not an offer to negotiate about price or terms, it is an offer to sell or provide a service as long as the exact terms of the offer are accepted by the offered.

The postal rule specifically relates to the acceptance part of a contract. Generally, an offered accepts a contract when he or she communicates acceptance. Clarke & Gamble (1997: 36) states "... It is not sufficient for the offered merely to mentally decide to accept an offer?? this decision must be actually communicated to the offer. " Generally, acceptance requires actual communication, but the postal rule provides an acceptance to this. The postal rule allows for constructive communication as opposed to actual communication. Gram (2005: 88) states that "... Where the parties contemplate acceptance by mail, acceptance will be complete as soon as the letter is properly posted. It may be that actual communication does not occur because, on rare occasions, letters are lost in the mail. However, actual communication is not required because the postal rule allows for constructive communication. Correctly posting a letter is sufficient and the communication is constructed by the process of posting it; in other words, actual communication is deemed to have occurred, whether or not actual

communication does occur. This viewpoint is reiterated in Cushman et al (1999: 20): “ The effect of the rule is that acceptance is complete as soon as the letter is properly posted and it is immaterial that it is later delayed or lost in the post... One case which serves as a precedent for his viewpoint is *Wentworth v Fraser* [1892] 2 Chi 27 at 33 in which it is stated per Lord Herschel: of the parties that... The post be used as a method of communicating the acceptance of the offer, the acceptance is complete as soon as it is posted. ” Wolcott et al (2001: 65) traces the history of the postal rule to the case of *Adams v Lindsey* [1818] 106 ERR 250 which was a very brief Judgment. The reasoning behind *Adams v Lindsey* was that if the offer should not be bound until actual receipt of acceptance, then the offerer should not be bound until actual receipt of advice that he offer received the acceptance.

But if the offer sends confirmation of actual communication by post, how does the offer know that the offerer received this? To avoid such impracticality the postal rule came into being. Importantly, it provides certainty for the offerer that a contract has been formed when the acceptance is posted. Some seventy-four years later in 1892, the aforementioned case of *Wentworth v Fraser* provided more detail on the exact operation of the postal rule. Thus the common law postal rule came into being. Given that the Commonwealth of Australia resulted from the federation of several English colonies, Australia and its States and Territories have adapted the English common law. However with the passage of time, the world has changed.

Wolcott et al (2001: 68) notes that: When the postal acceptance rule was originally formulated and refined, alternative communication in the form of electronic communication such as e-mail was not in existence?? or for that matter, even contemplated. As more technologies have been invented, the courts have broadly attempted to classify communication into instantaneous and non-instantaneous communication. Communication which is instantaneous has properties similar to actual communication between parties in each other's presence. For instance, telephone communication allows the offered to communicate acceptance to the offer, the offer to acknowledge receipt of actual communication and for both parties to then summarize that actual communication has occurred before ending the phone call.

Since communication by telephone allows actual instantaneous communication, the general rule (requiring actual communication) applies and the exception provided by the postal rule does not. The case of *Enters Ltd v Miles Far East Corp.* [1955] 2 CB 327 involved both an offer and acceptance made by telex. Gram (2005: 91) states that: " The postal rule did not apply to telexes. Therefore, the acceptance was not effective until it had been actually communicated to the offer. " An important fact in the above case is the recognition in Wolcott et al (2001: 69) that: "... Telex messages were not ' completely instantaneous'. Nevertheless, this form of communication was regarded in the same way as communication by telephone. " telexes, emails may also not be instantaneous.

However, if communication between parties in each other's presence is to be regarded as instantaneous and if communication by post is to be regarded as non-instantaneous, then communication by email would arguably be most closely positioned at the instantaneous end of a scale between the two extremes. The consequence of this is that the postal rule is unlikely to apply. Therefore, acceptance occurs at the time of actual communication?? but when does actual communication occur? It could be argued that actual communication of acceptance occurs when the offeror sends an email to the offer, that is, when it leaves the offeror's computer system. Or it could be that it occurs when the acceptance enters the offeror's computer system. But timing is only half of the problem.

Electronic mail, as its name suggests, shares many common features with traditional mail: A message is sent in one direction without the sender knowing (a) if actual communication occurs, and if actual communication does occur, the sender does not know (b) the time of the actual communication. Sending an email does not guarantee actual communication. The offeror may not receive the email because his or her computer system may have a spam filter which erroneously blocks the email. And even if the email is received by his or her computer system, the offeror may not read the email at all. If the postal rule does not apply, then actual communication is required and it cannot occur until the offeror becomes aware of the acceptance. The parties to a potential contract are thus prone to the same issues which were excepted by the postal rule which began in *Wentworth v Fraser* [1892] 2 Ch 27.

It is therefore wise for parties to a potential contract to establish protocols regarding communication. It could be that the offer sends an offer via email stipulating that acceptance of the offer will be followed by a receipt of acceptance from the offer within a specified time. In that way, the offered knows that actual communication of his or her acceptance has occurred as such communication has been receipted. The offer has received actual communication and is confident that a contract has been accepted. Furthermore, the offer knows that the offered was expecting a receipt. Most probably, the offered has received the receipt and thereby knows that acceptance has been actually communicated.

If the offered does not receive the receipt, there is the possibility that actual communication has not occurred. In this case, the offered could telephone the offer and enquire as to why a receipt has not been received. However, there are a range of different scenarios under which parties interact in the formation of contracts. In light of this, Wolcott et al states (2001 : 70): “ Given the variety of factors that can operate and the range of technologies used, a universal rule may be neither appropriate nor desirable. ” Wolcott et al also states (2001 : 70): avoided if parties reach agreement on these matters in advance. Of course, in the usual case this will not occur.

The viewpoint taken by the Commonwealth, State and Territory governments correlates with this. For instance, the Commonwealth Electronic Transactions Act 1999 does not provide a universal rule because to quote Wolcott, it “ may be neither appropriate nor desirable”. Sub-section 14(1) of the Act states: For the purposes of a law of the Commonwealth, if an electronic

communication enters a single information system outside the control of the originator, then, unless otherwise agreed between the originator and the addressee of the electronic immunization, the dispatch of the electronic communication occurs when it enters that information system.

The key words in the above sub-section are “ unless otherwise agreed”. This therefore allows the two parties to make specific arrangements which are appropriate to the nature of their engagement with each other. Importantly however, the Act does provide a framework in cases where the parties have not specified the rules of Furthermore, the explanatory memorandum to the Electronic Transactions Bill 1999 explains that the Commonwealth, State and Territory governments have a common IM of relatively consistent national legislation: The Commonwealth has developed a proposal for a national uniform legislative scheme to facilitate the use of electronic transactions.

The scheme requires all governments to enact legislation within their Jurisdiction to facilitate the removal of existing legal impediments to electronic commerce. As an example, sub-section 13(1) of the Electronic Transactions (Victoria) Act 2000 (Vic.) is as follows: For the purposes of a law of this Jurisdiction, if an electronic communication enters a single information system outside the control of the originator, then, unless Note that this sub-section is almost identical to the sub-section of the Commonwealth Act quoted above. There present situation is thus as follows: The postal rule is an exception to the general rule which requires actual communication.

The various Acts allows parties to agree to their own terms in forming a contract, but in the absence of an explicit agreement, the Act defines matters such as if and when actual communication occurs. The law does distinguish between an offer and clause to invitation to create. An invitation to treat is merely an invitation to discuss offers, negotiate in other words. It maybe surprisingly to learn that advertising often considered to be an invitation to treat, for example marking a price on the shelf. By taking the goods off the shelf and presenting it to the checkout operator, the consumer is in fact making an offer at that point based on the price marked on the goods or listed on the shelf.

Acceptance must be expressed that is in writing or spoken words or can be implied by conduct that the parties seem to have preceded on the bases a contract existed between them. An offer may dictate the terms of acceptance. In other words it may say how the offer is to be accepted. However if the offer isn't accepted in those terms there is no acceptance. Acceptance: – must be expressed that is in writing or spoken words or – can be implied between them. Acceptance is the unqualified acceptance of the offer. To have a valid acceptance, it must be communicated and made in response to that offer. Of you want to vary A contract does not come into existence unless the parties to that contract intend to enter a legal relationship.

What about arrangements that occur socially or within the family? The law presumes make. For example, one of the kids want to borrow a parents car on the weekend, the parent is free to change their mind. Lending money

between family and friends is another good example. Parties to a commercial or business arrangement are presumed to be entering into a legal relationship. Consumer and suppliers intend to mean business so a consumer can't go back to a supplier for example after a contract has been entered into and say I didn't really intend to buy it in the first place.

Bibliography Nonhuman (2000), *The Law of Contract*, Stratified: Law Vision Pity Ltd