

Acceptance must be final and unconditional law contract essay

Law



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Introduction

There are 6 essential elements to form a contract which is offer, acceptance, consideration, intention to be legally bound, capacity to contract and legality of promises[1]. Offer and acceptance used to determine whether there is an agreement exists between two parties which is offeror and offeree. The purpose of the essay is to analyse the Australian case law whether the cases apply the rule of acceptance which is final and unconditional.

Body

Paragraph 1

Acceptance of offer

Acceptance must be clear, unambiguous, unequivocal and assent to the offer and all of its terms. An acceptance occurs when the offeree to whom an offer is made agrees to the proposal of the offeror. Acceptance may be made by verbal contract, or written in a contract, or implied and the manner indicated by the offeror. There is no magic formula of words when a contract is formed. Acceptance is important in formation of contract because once acceptance takes place, an agreement is formed. At the same time, a contract come into existence[2]. Besides that, it is different from other response to an offer such as counter-offer, inquiry or cross-offer. Counter-offer is modification or variation of an offer. It creates a new offer to be considered and destroy the original offer. As a result, offeree cannot accept the original offer therefore there is no contract for the first offer[3]. When cross-offer come into existence, there is no acceptance because the party does not give final and unqualified assent to the term of an offer[4].

However, request for more information does not destroy the original offer but it is clarify for more information and inquiry about terms of an offer. The original offer still open for acceptance[5].

Paragraph 2

Rule : " Acceptance must be final and unconditional"

The first rule of acceptance must be final and unconditional. The mirror image of the rule is final means cannot only accept some part of offer and reject some part of the offer. Acceptance must be unconditional means cannot suggest or given subject to a conditions or else it would be treated as a counter offer.

Conditional or qualified acceptance

Conditional or qualified acceptance is given subject to a condition requires to decide whether a contract is formed and the conditions need to be fulfilled before full acceptance. The first rule of the acceptance must be final and unconditional. Where a contract is made " subject to contract"[6]. The High Court of Australia set out three categories of interpretation from the case of *Masters v Cameron*[7] into which an agreement containing that phrase might to fall. First category is the agreement is a binding contract, to be performed as and when the obligations fall due, whether or not a formal agreement is executed. Second category is the agreement is a binding contract, but performance is postponed pending execution of a formal agreement. Third category is the agreement is not binding as a contract until execution of a formal agreement[8]. In *Masters v Cameron*[9], the issue raised in this case is whether there was an intention to be legally bound, or whether the parties

intended to postpone their legal obligation until a formal contract had been prepared or executed by them. The court held that by using subject to contract clause the parties had shown no intention to be legally bound and no contract exists between them. Clearly the facts of *Masters v Cameron*[10] fall in third category, there is a conditional acceptance and no contract unless they entered into formal document.

Paragraph 3

Analysis of court's approach to "subject to contract" preliminary agreement

In *Souter v Shyamba Pty Ltd*[11] regarding an agreement for purchase of land and hotel business but there is some negotiations prolonged. Both parties come to finality and informal document setting out the particulars of the parties, the property, the price and the settlement date executed by both parties. The document provides the balance of deposit will be paid to vendor's solicitor on exchange of contracts. The issues raised are whether intention of parties to be legally bound based on the document and surrounding circumstances evidence and whether the terms in the document have contractual effect. The court held that the document was immediately binding and enforceable contract. Besides that, in case of *Blazevic Holdings Pty Ltd v Warwick S Grave*[12], the question for the Court is to determine whether Blazevic and Mr Grave had reached a settlement agreement and whether they intended to be bound by the agreement. Accordingly, the settlement agreement fell into the first category under the principles in *Masters v Cameron*[13] and made a declaration that the parties had reached a settlement agreement. A case fitting into the second category is *Niesmann*

v Collingridge[14]. The parties agreed on the sale of land, the seller signing a written document which provided for certain portion of the price to be payable on the signing of the contract, as to £500, three months afterwards, and as to the balance is within three years. The issue raised in this case are whether there is a binding agreement on a contract or whether there is a contract after they signed the formal document. The court held that the parties had binding agreement. The offer was not indicated to be subject to or condition upon the execution of a formal contract. The execution of the contract was regarding the fixing of a date of payment for the purchase price. All of the essential terms had been agreed upon[15]. Similarly, in the case Godecke v Kirwan[16]. Godecke offer to sell his land to Kirwan and Kirwan accept the offer. It contained a clause stated that the purchaser will execute a further agreement to be prepared by the vendor's solicitor. Therefore, Godecke v Kirwan[17]fall into second category of Masters v Cameron[18]. The agreement was binding and enforceable. In Godecke v Kirwan[19]a execution of formal contract made within 28 days if the preliminary agreement was immediately binding then the parties did not intend for the balance to be paid until the execution of the formal contract. Their obligation to perform the contract is postponed until the execution of the formal document.

Paragraph 4

In addition to these three categories of case, a fourth category of case was recognized in Sinclair, Scott & Co Ltd v Naughton[20]. The issue was whether the parties intended to be legally bound by the agreement and the intention of the parties to be objectively determined from the terms of the document

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when read in the light of the surrounding circumstances. The fourth category where there is also a binding contract is where the parties are "content to be bound immediately and exclusively by the terms which they have agreed upon whilst expecting to make a further contract which by consent might contain additional terms[21]. This category differ from the first two categories in *Masters v Cameron*[22]because here the parties have agreed that there may be additional terms in the formal contract which will be substituted for the existing contract. In addition, they may have reached agreement on all essential terms but they expect to extend and clarify the terms of the original agreement. A case fitting into fourth category is *GR Securities Pty Ltd v Baulkham Hills Private Hospital Pty Ltd*[23]. Although the intention of the parties, as objectively ascertained, will always be paramount, this decision clearly illustrates that circumstances will arise where the magnitude, subject matter or complexities of the transaction may militate against a finding that an agreement was intended to have legal effect. The facts concerned Baulkham Hills made an offer to buy the hospital which subject to certain conditions by letter. The contract was said to be evidenced by certain letters. GR Securities Pty Ltd replied in letter that the term of the offer were amended. Baulkham Hills ' s acceptance stated that its solicitor would contact the vendor. The issue in the appeal was whether three letters together constituted a contract . It was held that in the absence of agreement as to further terms to be inserted in the formal contract, the obligation of each party would be to execute a formal contract in accordance with the terms of the agreement appearing from the informal contract[24]Similarly, the decision of Mullins J in *Teviot Downs Estate Pty Ltd v MTAA*

Superannuation Fund (Flagstone Creek and Spring Mountain Park) Property Pty Ltd[25] provides general guidance as to matters that may be relevant when faced with this thorny issue. The main issue raised was whether a legally binding contract came into existence on 29 August 2003 when the first applicant received the facsimile of that date from MTAA Super. The court held that there was no binding contract and no agreement intended by parties until formal contract were signed and exchanged. Justice Mullins referred in *Masters v Cameron*[26]. The decision is for the putative purchaser it was submitted that the acceptance by the owner of the offer made fell either within the second class identified in *Masters v Cameron*[27] or the so called fourth class.

Paragraph 5

Other " subjects" examples

" Subject to finance" clauses in the case of *Meehan v Jones*[28]. This case involved a contract for the purchase of property which subject to finance. The contract is immediately binding between the parties but will come to an end of purchaser is unable to obtain finance and terminates the contract.

Conclusion

In conclusion, the first rule of acceptance must be final and unconditional. A contract come into existence when acceptance takes place and an agreement between the parties reached. The past case decision shown clear guideline on which category they falls to based on the first rule of acceptance which is clear and unconditional. In my opinion, the suggestion of fourth category is unnecessary and may be unhelpful. There are an infinite

number of points but they have no legal significance. However, The recent cases are unclear on whether the fourth category is thought to lie between which category. I think that the Australian law should change to two categories only which is to determined whether there is a binding contract.

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