

Relevance of the postal rule of acceptance



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Write an assignment on the 'rationale & relevance of the postal rule of acceptance in the 21st century' by analyzing the possibility of acceptance by post according to the current practice.

A formation of a contract requires an agreement, it follows that, in order for such agreement to be reached, there must be an offer made by one party which is accepted by the other. An acceptance is that, a final and unqualified expression of assent to the terms of an offer. To discover whether an agreement has been reached under a classical contract theory, an acceptance which matches the offer that has been made is required. In regards to an acceptance, the mode or communication of an acceptance can be broken down into a various components depending on the circumstances. An acceptance can be made or communicated through conduct, silence, private courier, internet transaction, electronic communication and last but not least, by post.

In this modern world, communication can take in many forms. That being said there might be delayed in between the sending of an acceptance. The rule applied here is that no communication is effective until it is received and understood by the person to whom it is addressed. This however, does not apply to the postal rule. The postal rule is an exception to the general rule – an acceptance must come to the attention of the offeror. Basically, this rule can be defined as a rule of contract of law that makes an exception to the general rule and the principle stated was that, a contract is formed as soon as the letter of acceptance is posted, rather than when they are communicated. The rule is designed to remove uncertainty from the contract formation process. It provides the offeree with confidence that an

acceptance once posted will be effective, even if the postal system delays delivery of the acceptance beyond the offer date. The main reason for this rule is historical, at the the time when postage of a letter is slower and less reliable than it is today, in the 21st century. In the practical implication of the postal rule today, it is easier to prove that a letter of acceptance has been sent than to prove whether it has been received or reached the attention of the offeror.

The postal rule was established around the 19th century, as can be seen in the case of *Adam v Lindsell*. The fact of the case in brief; the defendant sent a letter to the plaintiff offering wool for sale, and asking for a reply 'in course of post'. The letter than was misdirected by the defendant, and arrived later than it would have been. The plaintiff replied at once accepting, but the defendant, having decided that because of the delay the plaintiff were not going to accept, had already sold the wool elsewhere. The plaintiff then sued for breach of contract. The court held that to require a posted acceptance to arrive at its destination before it could be effective would be impractical and inefficient. It would be much better if, as soon as the letter of acceptance is posted, the acceptor could proceed on the basis that a contract had been made, and then take action accordingly. The plaintiff therefore succeeded: the defendant was in breach of contract. The offeror, to have a change in mind or a withdrawal of the offer, or made an offer with someone else is possible but nevertheless, the court looked into the conduct business would be better served by giving the offeree certainty, thus the postal rule was created.

In addition, acceptance is also effective on posting, even when the letter is lost in the post. It does not matter that the letter is delayed in post, the offeror is still bound. In this case, Mr. Grant applied for shares in the Household Fire and Carriage Accident Insurance Company. A letter of allotment then was posted to the defendant, but it never reached him. When the company went bankrupt, Mr. Grant was sued for the outstanding payments on the shares, the issue here was, whether Mr. Grant's offer for shares had been validly accepted, and whether there was a binding contract for him to settle the payment. It was held that there was a valid contract, because the rule for the post is that acceptance is effective even if the letter never arrives.

There is difference between acceptance and revocation of an offer by post. Acceptance of an offer takes place when a letter is posted while revocation of an offer takes place when the letter is received. (Facts: Defendants mailed offer to sell tin plates to Plaintiffs on October 1. Offer was received by Plaintiffs on October 11 and immediately accepted via telegram on the same day; acceptance was subsequently confirmed by Plaintiffs by letter on October 15. Defendant mailed a revocation of offer on October 8, which was received by Plaintiffs on October 20, after Plaintiffs had already made assurances to sell the tin plates to another party. Plaintiffs brought action against Defendant for breach of contract and failure to deliver.)

However, there are some limitations to the postal rule. First, it can only apply to acceptances and not to any other type of communication for example an offer or a revocation. Second, it only applies to letters and telegrams. It does not apply to instantaneous methods of communication such as telex or

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probably, fax or email. Besides that, it must also be reasonable to use the post as the means of communication, for example, an offer by telephone or by fax might indicate that a rapid method of response was required. Moreover, letters of acceptance must be properly addressed and stamped. Lastly, the rule is easily displaced, for example, it may be excluded by the offeror either expressly or impliedly. In *Holwell Securities Ltd v Hughes*, it was excluded by the offeror requiring "notice in writing". It was also suggested by the court that the postal rule would not be used where it would lead to manifest inconvenience.

The question should ask in this circumstances is can a letter of acceptance be cancelled by actual communication before the letter is delivered? There is no direct English authority on this point. The argument against is because once a letter is posted, the offer is consider accepted and there is no provision in law for revoking an acceptance. This point is supported by the New Zealand case of *Wenckheim v Arndt* and the South African case of *A to Z Bazaars (Pty) Ltd v Minister of Agriculture (1974)*. Cheshire argues that it would be unfair to the offeror, who would be bound as soon as the letter was posted, whereas the offeror could keep his options open. On the other hand, the argument for in this question is because there is some support for allowing recall in the Scottish case of *Dunmore v Alexander (1830)*. It is argued that actual prior communication of rejection would not necessarily prejudice the offeror, who, by definition will be unaware of the acceptance. It is also argued that it would be absurd to insist on enforcing a contract when both parties have acted on the recall. This however, could be interpreted as an agreement to discharge.

On the other hand, however, in the modern age of the 21st century, without further explanation, the technology is beyond our imagination. The mode of forming a contract, say, for example, an offer, acceptance and the invitation to treat are technically relying on the electronic communication. The infamous mode of an acceptance in the world today – the email, can be made by a simple click. An electronic mail is often being seen as a digital necessity of the postal system, of course, in the modern age. Therefore, the postal rule can apply to the acceptance sent by the mail. Although it is generally accepted that postal communications sent via the Royal Mail do benefit from the rule, other methods of accepting does not benefit from the rule. However, to determine whether a postal rule is applicable to the acceptance by mail, some methods of communication benefit from the rule or not needs to be ascertained. The still ongoing argument is that the postal rule only applies when the offer contemplates acceptance by non-instantaneous means of communication.

In conclusion, and increased reliance on electronic communications, it is perhaps time the postal rule was restated for the 21st century. A possible reformulation would focus on the non-instantaneous nature of communications which benefit from the rule. Perhaps the new rule should state that, ' where an offer contemplates acceptance by a non-immediate form of communication, that acceptance is effective from the time it leaves the acceptor's control'. Such a definition would remove the need for a trusted third party and would encompass all non-instantaneous methods of communication (including those not yet invented). It does though require that methods of communication can be split into immediate and non-

immediate, a distinction that may become blurred with future technological advances.