

The conduct of the parties during the negotiations is interpreted objectively --

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For example:

- raising your hand at an auction means you want to make a bid - even if what you subjectively intended was to wave to a friend.
- The **efficient working** of the market and the legal system, as well as the need of others to rely on your conduct with certainty, means that sometimes your free will is disregarded.

- HL held that a contract had not been concluded because the Council had not made an offer capable of being accepted.
- Lord Diplock stated: The words '*may be prepared to sell*' are fatal to a valid offer - so the words are an invitation.
- Filling the form is not an acceptance but a 'formal application to buy' on the enclosed application form. It is... a letter setting out the financial terms on which the council would be prepared to consider a sale and purchase in due course.

*Partridge v Crittenden* [1968] 2 All ER 421 (criminal)

- Plaintiff had inserted an advertisement in a periodical which read “Bramblefinch cocks & hen, 25s each”.
- Plaintiff was charged with **unlawfully offering** for sale a wild live bird contrary to the Protection of Birds Act 1954.
- Held: the advertisement was an **invitation to treat, not an offer for sale**. Followed that the plaintiff could not be guilty of the offence charged.

# *Blackpool & Fylde Aero Club Ltd v*

## *Blackpool BC*

[1990] 1 WLR 1195

- Plaintiff and others invited by Council to tender for a concession to operate flights from the airport.
- Tenders would not be considered if received after 12.00pm on 17 March 1983. Club's tender put in the Town Hall letter box at 11am. Letter box not cleared.
- Club's tender - not considered on the basis - received too late. Council decided to carry out whole exercise again. Successful tenderer threatened to sue -- the Council retracted.
- Club sought damages for breach of warranty, arguing Council had promised that tender would be considered if it was received by deadline.

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- Once an offer is established - it is capable of acceptance.
  - But acceptance must **generally** be **communicated** to the offeror for there to be a binding contract -- express words or conduct may be required to show acceptance but acceptance has to be on the same terms as the offer.

- Once valid offer is established - has to be matched by an acceptance.
- No particular formula required for a valid acceptance - 'yes I agree' or 'yes I accept' will suffice
- But not always easy to match up offer and acceptance especially where there are negotiations over time.

*Tinn v Hoffman* (1873) 29 LT 271

Blackburn J stated

- When a contract is made between two parties, there is a **promise by one in consideration of the promise by the other**--- there is an exchange of promises.
- But exchanging offers **would not** be the same thing... promise or offer made on each side in ignorance of the promise or offer made on the other side, **neither of them can be construed as an acceptance** of the other.

- But suppose the failure in the communication is negligent on the part of the offeror:
- Lord Denning in Entores:
- If due to the offeror's mistake - ink on the teleprinter fails at the receiving end, but the clerk does not ask for the message to be repeated, so that the man who sends an acceptance reasonably believes that his message has been received,
- The offeror in such circumstances is bound - he will be stopped from saying that he did not receive the message of acceptance. It is his own fault that he did not get it.

Where acceptance is communicated by post - contract formed as soon as letter is posted even if it never reach offeror.

- *Adams v Lindsell* (1818) 1 B & Ald 681 (offer letter delayed because offeror misdirected the letter. Acceptance consequently delayed and the goods had already been sold when the acceptance reached the offeror. Was there a binding contract?)
- Held: the contract was **formed** as soon as the offeree **posted the letter**.
- Why: Postal service so slow that to hold otherwise would delay contract;
- **Post office acts as agent of the offeror -posting completes the contract.**

## *Household Fire Insurance Co v Grant* (1879) 4 Ex. D 216

- Defendant applied for shares in plaintiff's company. Shares allotted but letter of allotment never received.
- Company went into liquidation and liquidator claimed the balance of the purchase moneys from him.
- Defendant disputed that he was not a shareholder on the basis that he had not received an acceptance, in the form of the letter of allotment.
- Held: contract entered when the letter of allotment had been **posted** to defendant despite the fact that it had never arrived.

- Now established in *Brinkibon Ltd v Stahag Stahl* that acceptance is effective when it is placed in the **control** of the Post Office - put into a post box, or handed to an officer authorised to receive or collect letters.
- Postman delivering letters is not so authorised and the handing a letter of acceptance to him would take effect only when actually communicated to the offeror.

- Acceptor who tries to send a message by telex can generally tell if his message has not been received on the other party's (the offeror's) machine
- Offeror will not know if an unsuccessful attempt has been made to send an acceptance to him.
- Therefore convenient that the acceptor, being in the better position, should have the responsibility of ensuring that his message is received.
- In the ordinary case - actual communication is required) and not the postal rule should apply.
- But the general rule will not cover all the many variations that may occur with telex messages.

- Held: no binding contract.
- When parties propose to enter into a contract, the manner in which the contract is to be created must be gathered from the intention of the parties, express or implied.

*RTS Flexible Services Ltd v Molkerel Alois Muller GmbH  
& Co KG (UK Production)* 2010

- Terms of contract including price agreed but only letter of intent signed which stated no binding agreement until contract signed. Performance rendered - Question was there an enforceable agreement.
- Supreme court - looking at the overall communication and actions of the parties - binding contract intended to be governed by those terms settled in negotiations

- There cannot be assent without knowledge of the offer, and ignorance of the offer is the same thing whether it is due to never hearing of it or to forgetting it after hearing.
- But for this candid confession of Clarke's - might fairly be presumed that Clarke, having once seen the offer, acted on the faith of it, but he himself has rebutted the presumption.

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- Held: Plaintiff entitled to the reward. X and his superior were plaintiff's **agents** for the purposes of conveying the information.
- Terms of offer required the information to be given to Penn. Acceptance was the supply of the information to Penn, and at that time plaintiff knew a reward had been offered.

# *Byrne v Van Tienhoven* (1880) 5 CPD 344

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- Defendants (Gardiff) wrote to claimants (New York) on 1<sup>st</sup> October offering to sell 1,000 tons of tinplate at a fixed price.
- 8<sup>th</sup> October defendants wrote again revoking the offer.
- 11<sup>th</sup> October claimants received offer letter and immediately telexed acceptance - confirmed by post on 15<sup>th</sup> October.
- 20<sup>th</sup> October - revocation reached claimants.
- Held contract into existence on 11<sup>th</sup> October (postal rule also applies to telegram/telexes).

- Subjectively parties were never in agreement - no meeting of minds - courts applied objective standards to determine if there is an acceptance - view that to come to any other conclusion would have led to extreme injustice.

# Errington v Errington [1952] 1 KB 290 CA

- (ii) Implied contract not to withdraw offer -
- Father bought a house for son and daughter-in-law to live in - promised he would transfer it to their names once they had paid off all the mortgage. Father died. Son left his who continued to live in house and to pay mortgage.
- Question - whether the daughter-in-law could be forced to surrender possession of the house.

- Lord Denning: Father's promise was a unilateral contract --- a promise of the house in return for their act of paying the instalments.
- **It could not be revoked by him once the couple entered on performance of the act but it would cease to bind him if they left it incomplete and unperformed....'**