

Communication of Acceptance

Sec.4 - communication of acceptance is complete-

As **against the proposer**, when it is put in a course of transmission to him, so as to be out of the power of the acceptor.

As **against the acceptor**, when it comes to the knowledge of the proposer.

General rule is that **acceptance must be communicated to offeror** & it's not effective (hence there's no contract) until this has been done. But this rule doesn't apply in all cases.

Powell v Lee 1908 - Facts: The claimant was appointed to a post as a headmaster. Without authorisation, he was informed of the appointment by one of the managers. Later, it was decided to give the post to someone else. The claimant sued for breach of contract. Held: Since communication of acceptance was unauthorised, there was no valid agreement and hence no contract.

1. Waiver of Communication

Offeror may dispense with the need for communication of acceptance. Such a waiver **may be express or may be inferred from the circumstances**.

In *Carlill v Carbolic Smoke Ball Co 1893*, it was held that it was sufficient for the claimant to act on the offer without notifying her acceptance of it. This was an example of a unilateral contract, where the offer takes the form of a promise to pay money in return for an act.

2. Prescribed Mode of Communication

Offeror may call for communication of acceptance by specified means.

Communication of acceptance by some other means equally expeditious generally constitutes a valid acceptance unless specified otherwise: *Tinn v Hoffman 1873*.

This would probably apply also to acceptance by fax machine or e-mail. The offeror would have to **use very precise wording** if a specified means of communication is to be treated as mandatory.

Yates Building Co v R J Pulleyn & Sons (York) 1975 - Facts: The offer called for acceptance by registered or recorded delivery letter. Offeree sent an ordinary letter which arrived without delay. Held: Offeror had suffered no disadvantage and had not stipulated that acceptance must be made in this way only. The acceptance was valid.

3. No Mode of Communication Prescribed

The **offeree can use any method** but must ensure that his **acceptance is understood** if he chooses an **instantaneous method** of communication.

Entores v Miles Far Eastern Corporation 1955 - Facts: Claimants sent an offer by telex to defendants' agent in Amsterdam & the latter sent an acceptance by telex. Claimants alleged breach of contract & wished to serve a writ. Held: Acceptance took effect (& the contract was made) when the telex message was printed out on the claimants' terminal in London. A writ could therefore be issued.