

clear that conduct must be referable to the offer and be identifiable as acceptance of the offer terms.²⁴

However, care has to be taken here to avoid being over zealous in demanding 'exactness'.²⁵ Treitel makes the point that an acceptance could be effective even though it departed from the wording of the offer by making express some term that the law would in any case imply.²⁶ A reply which adds some new provision by way of benefit to the offeror (e.g. one allowing him to postpone payment) may be an acceptance. Conversely, an acceptance in which the acceptor asks for extra time to pay may be effective, so long as he makes it clear that he is prepared to perform in accordance with the terms of the offer even if his request is refused.²⁷ Again, there is no definitive answer.

In general terms an acceptance has no contractual effect until it is communicated ie brought to the attention of the offeror.²⁸ What is clear is that there is no contract if the acceptance is communicated to the offeror through a third party when the offeree has not given authority for the third party to communicate such acceptance, as illustrated in *Powell v Lee*²⁹. In *Henthorn v Fraser*³⁰, if the agent of the offeree had full authority to transmit such acceptance, the acceptance would be binding.

In standard bilateral negotiations, the general rule is that the offeror cannot waive the need for communication and stipulate that silence will constitute acceptance (*Felthouse v Bindley*³¹).³² Although, if there has been a course of dealing whereby the offeree has taken benefit of the services offered, or if it is the offeree who is attempting to hold the offeror to the offeror's stipulation of the silence, then the offeree's silence/conduct can constitute acceptance.³³ In *Re Selectmove Ltd*³⁴, Peter Gibson LJ suggested, in obiter comments, that an acceptance by silence could be sufficient if it was the offeree who suggested that their silence would be sufficient.³⁵ Again, there is no clear rule.

Acceptance can be by conduct (*Taylor v Allen*³⁶), although it is difficult to determine precisely what the terms of the contract are this way. This may result in the court refusing to acknowledge the existence of a contract at all.³⁷ In situations where the price may not have been fixed the courts are prepared to impose a reasonable price provided that it clear that the parties have agreed to contract as opposed to merely

²⁴ *Day Morris Associates v Voyce* [2003] EWCA Civ 189.

²⁵ *Tinn v Hoffman & Co* (1873) 29 LT 271.

²⁶ Insite Law Magazine (2012), *Acceptance* (n 1).

²⁷ *Lark v Outhwaite* [1991] Lloyd's Rep. 132.

²⁸ Insite Law Magazine (2012), *Acceptance* (n 1).

²⁹ (1908) 99 LT 284.

³⁰ [1892] 2 Ch 27.

³¹ (1962) 11 CB 869.

³² Poole, *Contract Law* (n 2) 66.

³³ Poole, *Contract Law* (n 2) 67.

³⁴ [1995] 1 WLR 474.

³⁵ Insite Law Magazine (2012), *Acceptance* (n 1).

³⁶ [1966] 1 QB 304.

³⁷ Insite Law Magazine (2012), *Acceptance* (n 1).