English Law of Contract: Acceptance; Intention to create legal relations; Certainty & completeness

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1. What is acceptance? (1)

• What is acceptance?
  i. The final and unconditional expression of consent to offer
  ii. made in response to offer
  iii. exactly matching terms of offer
  iv. communicated to offeror.

• Element (i): final and unconditional expression of consent to offer
  – Acceptance may be oral, written or by conduct on part of offeree. Need to be able to infer intention by offeree to be bound by terms of offer.

  • Cannot stipulate silence as acceptance: see Felthouse v. Bindley (1862), cf Re Selectmove Ltd. (1995).
1. What is acceptance?(2)

- **Element (ii): made in response to offer**
  - Person must know of offer in order to be able to accept it, but motive in accepting is irrelevant.

- **Element (iii): exactly matching terms of offer**
  - Reply to offer is only effective as acceptance if it accepts all terms of offer without qualifications, reservations or additions. See e.g. *Nicolene v. Simmonds* (1953).
    - Note that conditional acceptance is not equivalent to acceptance. See e.g. *Winn v. Bull* (1877).
1. What is acceptance?(3)

- Element (iv): Acceptance must be communicated and is effective when and where received by offeror. See e.g. *Entores v. Miles Far East Corp.* (1955).
  - Onus on offeree to get message through to offeror, and offeree must believe, as reasonable person, that acceptance has been received. Thus, reasonable expectations of offeree = point of departure for resolving issue of when and whether communication of acceptance has occurred. See espec. *Brinkibon v. Stahag Stahl* (1982). (Poole: “a general principle appears to be identifiable, namely that if the offeree has done all that he might reasonably be expected to do to get his message through, that acceptance should take effect when the offeree might reasonably expect it to be communicated to the offeror”.

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1. What is acceptance? (4)

- Element (iv) cont.
  - Specifying method of acceptance?
    - If offeror stipulates that offer must be accepted in a certain way, then only acceptance by that method – or an equally effective one – will be binding. To be equally effective, the alternative acceptance method must be at least as fast and as advantageous for the offeror as the method stipulated by the offeror: see *Tinn v. Hoffman* (1873); cf. *Quenerduaine v. Cole* (1883).
    - If specified method of acceptance is only included for benefit of offeree, then latter does not have to use that method: see e.g. *Yates Building Co. Ltd. v. J. Pulleyn & Sons (York) Ltd.* (1975).
1. What is acceptance? (5)

• Element (iv) cont.
  – Exceptions to communication rule:
    • Communication waived by offeror - typical in case of unilateral contract (*Carlill v. Carbolic Smoke Ball Co.*);
    • However, offeror may not bind offeree by stipulating that silence = consent (*Felthouse v. Bindley* (1862);)
    • Conduct of offeror – if offeror does not receive acceptance due to their own fault (*Brinkibon; The Brimnes* (1975));
    • Postal rule: If reasonable to use post, acceptance deemed completed on posting: *Adams v. Lindsell* (1818)
1. What is acceptance?(6)

• Note re postal rule:
  – Postal rule may not apply if offeror expressly or impliedly excludes it: Holwell Securities v. Hughes (1974);
  – Postal rule does not apply when acceptance is by instantaneous mode of communication (telephone, telex, etc.) (and sent and received within ordinary workin hours): Brinkibon; Entores; The Brimnes
    • Status of message left on telephone answering machine? (Poole, p. 74)
    • Status of email communication? (Poole, p. 74-76: preferred approach is to treat this as instantaneous communication. Also High Court of Singapore takes this line: see Chwee Kin Keong v. Digilandmall.com Pte Ltd (2004)).
2. Time period for acceptance

- Time period for acceptance: when does it begin to run?
  - In England, unclear.
  - Cf. Norwegian legislation: Contracts Act of 1918 (Avtaleloven) §2: *akseptfrist*, if not regulated by offer, begins to run from date of letter if offer sent by letter, and from moment telegram is delivered to telegram office, if offer sent by telegram.
3. Acceptance of unilateral offer?

- Generally assumed that no acceptance occurs until act is *completely* performed.
Intention to create legal relations (1)

- No contract can be made without intention to create legal relations.
- General test of intention:
  - “… the court does not try to discover the intention by looking into the minds of the parties. It looks at the situation in which they were placed and asks itself: Would reasonable people regard this agreement as intended to be legally binding?” (Lord Denning in *Merritt v. Merritt* (1970))

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Intention to create legal relations (2)

• Social and domestic circumstances:
  – There is a rebuttable presumption that no legal relations is intended.
  – “… as a rule, when arrangements are made between close relations, for example, between husband and wife, parent and child or uncle and nephew in relation to an allowance, there is a presumption against an intention of creating any legal relationship. This is not a presumption of law, but of fact. It derives from experience of life and human nature which shows that in such circumstances men and women usually do not intend to create legal rights and obligations, but intend to rely solely on family ties of mutual trust and affection. […] There may, however, be circumstances in which this presumption, like all other presumptions of fact, can be rebutted” (per Salmon LJ in Jones v. Padavatton (1969)).
  – See also Balfour v. Balfour (1919).
  – This is also the position as regards friends: see Coward v. MIB (1963).
  – Rebutting presumption:
    • “The question [whether or not there is a binding contract] must depend on the intention of the parties, to be inferred from the language they use and from the circumstances in which they use it” – Parker v. Clark (1960) per Devlin J.
    • See further e.g. Simpkins v. Pays (1955); Merritt v. Merritt (above).
Intention to create legal relations (3)

• Commercial circumstances:
  – There is a rebuttable presumption that legal relations are intended.
  – Rebutting presumption is difficult and can only be done by clear agreement: see e.g. *Rose and Frank Co. v. Crompton Bros.* (1925) involving “Honourable Pledge Clause”.

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Certainty and completeness (1)

• Agreement must be sufficiently certain and complete before it is legally valid.
  – The criteria of certainty and completeness are separate, albeit related.
    • Certainty refers to need for terms of agreement to be sufficiently precise and clear.
    • Completeness refers to the need for specification of all of the essential terms of agreement.
    • Cf. Poole, chapter 3 treats completeness as aspect of certainty.
  – The requirements are in terms of sufficiency and are thus necessarily relative. Generally, a court will try to find that the requirements are met, but it will not repair a deficiency if the requirements are not fulfilled.

• Regarding completeness, importance of term depends on circumstances of each agreement. For instance, in agreement for sale of land, specification of both property and price (or mechanism for establishing price) is essential.
Certainty and completeness (2)

• If an agreement is executed, a court is more likely to find the requirements are met: see e.g. *Foley v. Classique Coaches Ltd.* (1934).

• Regarding *certainty*, an “agreement to agree” will usually be found void for uncertainty. So too will agreement to negotiate in good faith: *Walford v. Miles* (1992). However, if initial agreement is reached on price in long-term, ongoing contract, certainty will usually be found: see e.g. *Mamidoil-Jetoil Greek Petroleum Co. SA v. Okta Crude Oil Refinery (No. 1)* (2001).