

WORKSHOP – OFFER & ACCEPTANCE

Objectives:

- ┆ To test your understanding of the process of forming an agreement (offer and acceptance)
- ┆ To practice your problem question solving skills

Workshop tasks

In this workshop, you will be assigned a Pod and work your way through the workshop tasks with your pod members.

1) In pods: What constitutes agreement? Building our toolkit (20 mins)

With your pod members, draw a map of the rules on offer and acceptance using the questions below in the correct logical order. Your map should flow from start to finish and show how a court might decide whether a contract has been formed.

Use arrows, branches, and brief notes to show decision points.

Some questions to consider when structuring your map:

- ⇒ **Has a clear and definite offer been made?** (How do you distinguish an offer from an invitation to treat?)
- ⇒ **What is the response to the offer?** (Is it an acceptance? A counter-offer? A request for more information?)
- ⇒ **Does the acceptance match the offer exactly?**
- ⇒ **Has the acceptance been communicated to the offeror?** (What method of communication was used (e.g. post, email, in person)?, When is the acceptance considered effective?)
- ⇒ **Was the offer still open at the time of acceptance?**
- ⇒ **Have both parties agreed to the same thing (consensus ad idem)?**

Build your map here:

Break

2) Plenary on problem question technique (20 mins)

We will now briefly review the **IRAC method** using the following scenario, which involves an online exchange under a post on Taylor's Latergram account. Taylor posts a photo of a vintage guitar with the caption: "Might sell this beauty for the right price."

Jordan comments: "I can give you £4000 for it?"

Taylor replies: "It's worth more than that-at least £5000. I have a less expensive one though-yours for £3000."

Jordan responds: "Let me think... How about £27500?"

Taylor replies: 👍

What contracts, if any, have been formed? Support your reasoning with authority.

Issue:

Rule:

Application:

Conclusion:

3) In Pods: Warming up for legal problem solving (20 mins)

In this part of the workshop, you are going to apply one simple rule of contract law to a range of fact patterns.

Focus Rule: **“Acceptance—the final and unqualified expression of assent—of an offer must be communicated to the offeror, i.e., it must objectively be brought to the offeror’s attention.”** (*Entores Ltd v Miles Far East Corp* [1955] 2 All ER 493)

In your pod, spend **10–15 minutes** working through the following fact patterns. (3 fact patterns are assigned for each pod.) Your task is to **apply the rule** above precisely and logically to each situation. The goal is to reason from the rule alone and derive a clear, defensible conclusion. For example: **“The rule requires X. In this case, Y occurred. Therefore, Z.”**

In each case, **Felicity offers to sell £100 of handmade jewellery to Marcus. She tells him the offer must be accepted before 9am the next morning.** Unless otherwise stated, Marcus’s actions occur on the same day the offer was made.

In the **remaining time**, I will select a fact pattern for each group and ask a Pod spokesperson to set out your application of the above rule to the facts.

A	1. Marcus is sitting beside Felicity at a coffee shop. He leans over and whispers, “I accept,” but she is wearing headphones and does not react.
	2. Marcus telephones Felicity. The line at Felicity’s end is bad and all she can hear is crackling, but Marcus does hear her say ‘I do’.
	3. Marcus writes “I accept” in chalk on the pavement outside Felicity’s house. She never sees it.
B	4. Marcus was sitting in his garden and shouts ‘I accept’ to Felicity after seeing her walking across the road. She spots her and puts his thumbs up.
	5. Marcus tells Felicity’s flatmate, “Tell her I accept the offer,” and the flatmate passes it on at 9:05am.
	6. Marcus says “I accept” out loud during a group dinner while Felicity is in the bathroom.
C	7. Marcus emails “I accept” at 8pm, and it lands in Felicity’s inbox, marked as “read” at 8:30am.
	8. Marcus leaves a note on Felicity’s desk at work saying “I accept.” She doesn’t return to the office until two days later.
	9. Marcus replies to the offer email with “I accept,” but misspells her address slightly. The email never arrives.
D	10. Marcus hands Felicity a gift box with the £100 inside and a note that says “I accept.” She opens the box the next morning.
	11. Marcus attempts a video call to accept, but his camera is off and Felicity hears nothing due to connection issues.
	12. Marcus leaves a sticky note on Felicity’s car window that says “I accept.” She notices it on her way to work at 8:30am.

4) In Pods: Lecture Case Study (30 mins)

In your pods, draft an outline answer for the following problem question using the IRAC method.

Isaac is the owner of two cars, one red and one blue. He decides to sell both cars. On one Saturday in January, he places an advert in the Headbook Marketplace giving details about both cars and stating:

FOR SALE: red car: £1,000.

FOR SALE: blue car: £2,000.

Isaac then gives his email address for further information. Masood messages Isaac on the following Monday saying "I am very interested in buying your red car. Would you be prepared to accept £900 for it?" Isaac replies that he would not accept £900 but would accept £950. The following day, Masood decides to buy the car at this price. Experiencing problems with Headbook Marketplace app, he writes a letter to Isaac, saying that he will buy the car for £950. Unaware of Isaac's address, he sends it to Gelato Village an ice cream parlour where Isaac works according to his Headbook profile, marking it for the attention of Isaac. Isaac never receives the letter.

Sophia messages Isaac on Wednesday saying, "I would like to buy the red car that you advertised for £1,000". Isaac replies by saying "OK: I'm glad to hear it". However, Isaac then immediately sends another message saying that the car is no longer available, having now changed his mind altogether about selling the red car at so low a price.

Jan wants to buy the blue car. He emails Isaac saying, "I will buy your car for £1,500." Thinking that Jan was referring to the red car, Isaac replied and agreed.

Both Masood and Sophia claim to have contracts to buy the red car. Jan now claims to be entitled to buy the blue car for £1,500.

Advise Isaac.

5) Final plenary (5 mins)

Reflections

Appendix to Workshop

Entores Ltd v Miles Far East Corporation [1955] 2 QB 327

Case summary and commentary by Nicola Jackson, *Essential Cases: Contract Law*, (6th edn)

<https://doi.org/10.1093/he/9780191995682.003.0005>

Facts

Entores Ltd were a company based in London, and the defendants a company partly based in Amsterdam. This was an action for damages for breach of contract to purchase copper cathodes. Entores wanted to serve the defendants outside the jurisdiction, which they could only do, according to the relevant Supreme Court rules if the contract had been concluded in London. So the issue here was not whether a contract had been formed at all, but when and where it had been formed. The issue arose because the offer was made by Entores by telex, following a negotiation as to price and payment/shipment, offering to pay £239. Miles accepted this offer by telex. The question for the Court of Appeal was whether the acceptance occurred once Miles had done all in their power to send the acceptance, like the postal rule, or whether the acceptance had been properly communicated only at the point of receipt at the other end in London. If the former, the contract would have been concluded in Holland; if the latter, London.

Decision

The Court of Appeal unanimously held that the contract had been concluded in London. The starting point was that as a general rule acceptance must be notified to the offeror: per Lindley LJ in *Carlill v Carbolic Smoke Ball Co.* [1893] 1 QB 256, at p.262. The Court of Appeal acknowledged the long-established rule that applies to acceptance by post: *Adams v Lindsell* (1818) 1 B & A 681; *Dunlop v Higgins* (1848) 1 HL Cas. 381, i.e. acceptance is notified once the letter has been posted, and not when it has been received.

The Court of Appeal held that this rule does not apply to instantaneous forms of communication, such as contracts made by telephone. In such cases, acceptance is communicated only when it has been received by the offeror. This applied to the acceptance by telex. Where a contract was concluded face-to-face the person making the acceptance will know whether it has been heard or received by the offeror. Then he will be able to repeat what he said so that it is heard. By telephone, it will be clear if the line goes dead. Or the offeree can repeat what was said if it had not been heard and the offeror draws his attention to this. By analogy, telex is a similarly instantaneous form of communication: per Parker LJ. If the line fails, the offeror will be able to draw the offeree's attention to the fact. If the offeree does not then repeat the message of acceptance, then a contract will not have been formed. Denning LJ considered that there was only one instance in which actual notification is not required in cases of instantaneous communication. This is where the offeror is at fault in not receiving the acceptance. If the offeree reasonably believes that his acceptance has been heard or received at the other end, i.e. is unaware that it has not because the offeror does not ask for it to be repeated or does not declare a fault at their end, then the offeror 'will be estopped from saying that he did not receive the message of acceptance. It is his own fault that he did not get it.' In applying this law to the facts of the case, the message of acceptance had been received in London, and this, therefore, was where the contract had been concluded.

Comment

One particularly noteworthy feature of this case was the way in which Parker LJ considered the place of the instantaneous communication rule within the general framework of the law. As a general rule, the offeror must be notified of the acceptance, i.e. she must actually know of the offeree's acceptance: *Carlill v Carbolic Smoke Ball Co.* [1893] 1 QB 256, at p.262. An exception was made for acceptances by post. If acceptances by post had to be received, then the sender would not be aware of when the letter arrives, i.e. he would not be aware of precisely when he became contractually bound by his acceptance. It might be that the contract would not come into being until he had been notified that his acceptance had been received: 'And so it might go on ad infinitum': *Adams v Lindsell* (1818) 1 B & A 683. The postal rule of acceptance, i.e. that acceptance is complete once the letter has been posted—rather than received, was considered in *Adams* to be required for commercial convenience. The offeror, and not the offeree, bears the risk of not knowing precisely when the contract has come into being. This seems the fairer outcome. It is the offeror who has greater control over the whole process of offer and acceptance. If he wishes, he can expressly prevent the postal rule from operating by requiring direct notification: *Holwell Securities Ltd v Hughes* [1974] 1 WLR 155. *Entores Ltd v Miles Far East Corporation* [1955] 2 QB 327

Wider questions

One question that arises from this case is when an acceptance by, for example, fax or email, will be deemed to have been 'received' even though the message has not been read. This point arose in *Thomas v BPE Solicitors (a firm)* [2010] EWHC 306. The rule in *Entores* was clear. In cases of instantaneous communication acceptance had to have been actually received. However, where the offeree reasonably believes his acceptance has been received and it is the fault of the offeror that it has not, then the law will deem acceptance to have been received. In *Thomas*, an email sent during working hours (6.00 p.m.) was deemed to constitute a valid acceptance, even though it had not been read. You could consider here whether the postal rule could be said to serve a useful purpose any longer. Do you think that it should be abolished? After all, it has a variety of exceptions: *Holwell Securities Ltd v Hughes* [1974] 1 WLR 155 for example. It is probably the case now therefore that the courts will disapply it in favour of the general 'receipt' rule when the postal rule is considered commercially inconvenient. See also *Brinkibon Ltd v Stahag Stahl und Stahlwarenhandels mbH* [1983] 2 AC 34 (HL).