Generally, silence of the offeree does not constitute an acceptance of the offer. The reason for this is because acceptance requires that the offeree must express, either by words or by conduct, the assent to the terms of the offer in the way indicated by the offeror. One of the requirements of a valid acceptance is that it has to be communicated to the offeror. Failure to communicate, being silence or inactive, will not constitute an acceptance of the offer and therefore no valid contract is made. .

There is, however, not an absolute rule that silence can never amount to an acceptance. This means that there are exceptions to this rule. For instance, if the offeror has waived communication by indicating that acceptance may beformed by silence or inaction, then under this situation, the acceptance must be characterized by the presence of the intention of the offeree to bind himself to a contractual obligation. Then, the offeree must communicate his intention to the offeror in order for there to be a valid contract.

The idea of communication of the acceptance has been applied very literally so that there is a supposed rule that silence cannot amount to an acceptance. This rule, however, must be treated with some caution. The case which established the proposition that silence cannot amount to an acceptance is *Felthouse v Bindley*.[1] In this case an uncle offered to buy a horse from his nephew. After some negotiations, he made an offer in a letter

saying "if I hear no more about him I shall consider the horse mine".[2] The nephew did not answer this offer but he told the auctioneer to keep the horse out of a sale. The problem arose because the auctioneer mistakenly sold the horse to someone else. The uncle then sued the auctioneer in the tort of conversion on the basis that the horse belonged to him. However, this was only so if there was a valid contract between uncle and nephew. The court held that there could not be a contract in the circumstances where the uncle imposed a contract by saying "if I hear no more about him I shall consider the horse mine".[3] It was not possible for the uncle to unilaterally impose contractual liability on the nephew because of his failure to reply to the offer. As a result, there was no enforceable contract between them and thus the uncle had no claim against the auctioneer.

The Judge held that it was not possible for the offeror to waive the need of communication and that silence can never constitute an acceptance. The rationale behind this rule is that it is unfair for the offeree to be bound by unwanted contractual agreement. The strict rule that is established in this case is somehow disputable because since the uncle has waived communication by indicating that silence will be sufficient as an acceptance, a clear intention of the nephew to accept should bind the uncle. It was obvious that the nephew had accepted and communicated to the auctioneer by telling him

that the horse had been sold, even though he had not communicated the acceptanceto his uncle.

There are a number of later cases which creates exceptions to the rule that silence cannot amount to an acceptance. One of these cases is Taylor v Allon where an uncommunicated acceptance might be sufficient to exist providing the defendant's intention to accept.[4] In this case, Lord Parker implied that if the defendant intends to renew the old policy with the old insurance company, it would amount to an acceptanceeven without communication with the insurance company. This case shows that judges are starting to relax the view that offeror can waive communication and the rule 'silence can never amount to an acceptance' is not as strictly applied as in Felthouse v Bindley.

As a general rule, silence does not constitute an acceptance. Usually, the offeror cannot waive the need of communication by indicating silence will be sufficient as an acceptance. Under some circumstances, however, the court might say that an uncommunicated acceptance is sufficient for a contract providing that the offeree has intention to accept the offer. It all depends on the context in which the party makes the contract.

Endnotes

[1] *Felthouse v Bindley* [1862], 11 C.B.N.S. 869

[2] *Felthouse v Bindley* [1862], 11 C.B.N.S. 869

[3] *Felthouse v Bindley* [1862], 11 C.B.N.S. 869

[4] *Taylor v. Allon* [1966] 1 Q.B. 304.