Postal Acceptance Rule

Contract is formed at the time and place an acceptance is communicated to the offeror. An acceptance must correspond to the offer. There is no particular method of acceptance prescribed by law. The appropriate method of acceptance will depend on the fact of each situation. The offerees may find themselves faced with two types of situation. First the offer may dictate a method of acceptance. It may indicate that acceptance should be sent by return fax by a certain date. The second broad category is where there is no indication in the offer of an appropriate method of acceptance. The general rule followed by offeree is that acceptance may be given by the same or an equally expedient method as adopted for the making of the offer. Hence it follows that until the acceptance is received by the offeror the offer may be revoked.

In the late 19th century an exception to the general agreement for communication of an acceptance arose in order to avoid the extraordinary and mischievous consequences that would follow if it might be held that the offer might be revoked at any time until the letter accepting it had actually been received. This is the postal acceptance rule.

The rule as accepted in Australia is "Where the circumstances are such that it must have been within the contemplation of the parties that, according to the ordinary usages of mankind, the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted"
(Source: Gibson, A. & Fraser, D. 2003, *Business Law*, Pearson Education Australia Pty Ltd, Frenchs Forest, NSW.)

The rule can easily be excluded by the parties to a contract. The postal acceptance rule can be displaced if the parties either expressly or by implication from the terms of their contract require that acceptance be received by the offeror. The case by which the rule can be excluded is exemplified by the case of Bressan v Squires. In this case, clause 1 of an option agreement provided that " This option may be exercised by you by notice in writing addressed to me at any time on or before 20th December 1972. The plantiff posted a notice of exercise of the option addressed to the defendant on 19 December 1972, which the defendant received on 21 December 1972 (1 day after the prescribed time period). The plantiff sued the defendant claiming that he had validly exercised the option to purchase the defendants property. The issue before the court was whether the notice had been validly given within time, which necessarily involved consideration of the applicability of the postal acceptance rule. Chief Justice Bowen held that in the circumstances of the case and upon true construction of the option agreement, clause 1 of the agreement required actual notice to be given to the defendant on or before 20th December 1972 to effect a valid exercise of the option. Accordingly, the material date to be considered was the date of receipt by the defendant of the notice of exercise and not the date of posting by the plantiff. Since the defendant did not receive the notice until 21 December 1972, it was held that the option had not been validly exercised by the plantiff. (Source: Kathryn O' Shea and Kylie Skeahan (1997) "Acceptance of offers by E-mail – How Far should the postal Acceptance Rule Extend? " QUT Law Journal, Vol 13, pp 247-262)

The postal acceptance rule was initially formulated as an attempt to provide some degree of certainty to an offeree accepting an offer by post. In support of the postal acceptance rule, the courts maintained that if the general rule relating to the acceptance of an offer is applied to an acceptance sent by post, then an offeree would never truly be certain of the existence of a binding contract until the offeror communicated the fact of receipt of the letter of acceptance. The courts were compelled to examine further policy considerations in order to determine whether the postal acceptance rule should be retained. The courts formed the view that the postal acceptance rule could be justified on the grounds of agency. It was argued that the post office was the agent of the offeror and offeree and that consequently acceptance must be viewed as complete upon delivery to the post office.

The argument was that the reason is not satisfactory. "The post offices are only carriers between them. They are agents to convey the communication, not to receive it. The difference is between saying ' Tell my agent A, if you accept' and 'Send your answer to me by A.' In the former case A is to be intelligent recipient of the acceptance, in the latter he is only to convey the communication to the person making the offer which he may do by letter, knowing nothing of its contents. The post office are only agents in the latter sense. The most persuasive reason for wholly rejecting the justification based on agency has been stated by Simon Gardner, who argues that an offeror's agreement to use the post as a means of communicational acceptance "surely does not establish agency. Even if it is possible to regard the post office as his agent to carry the letter (which still seems unreal, with a prepaid letter) there is surely no agency to receive it and so conclude a contract on its behalf, which is what would be needed to justify the rule". (Source: Kathryn O' Shea and Kylie Skeahan (1997) "Acceptance of offers by E-mail – How Far should the postal Acceptance Rule Extend? " QUT Law Journal, Vol 13, pp 247-262)

The basic assumptions of postal acceptance rule is that

- There will be substantial delay in delivery of the letter, depending on where the letter will be sent.
- There is a small risk that due to difficulties the message may be delayed.

Hence someone should take the risk for a short while not knowing whether the contract has been formed or not. Hence the offeror or the offeree must take the risk The courts have reached a conclusion that the offeror has to bear the risk. This is simply because in making the offer, they are able to state that they need actual notice delivered to them within the time frame. The offerees cannot accept the risk because in the event the letter gets lost it is not their fault so there is no reason why they should suffer.

The most frequently cited justification for retention of the rule is that "of business convenience, which stems from the need to create certainty in contractual relations. If acceptance is complete upon proper posting, this effectively allows the offeree to structure his or her affairs on the basis that a binding contract is formed on postage. Additionally, it has also been held that upon posting an acceptance the offeree has done all that he or she can do to communicate acceptance to the offeror and should therefore not be held responsible for any events which may occur after the offeree effectively loses control over the letter of acceptance. "

Another historical justification for the postal acceptance rule was the notion that the sender 'lost control' over the communication at the time of posting. When an individual posts a letter, once the letter is in the e-mail box they cannot retrieve it, nor are they in a position to know if the mail gets lost in transit. (Source: Simone W B Hill (2001) **"***E-mail contracts –When is the contract formed*"Journal of Law and Information Science, Vol 12, No1, pp 46-56)

Although the business convenience justification has been the subject of criticism on the basis that it unfairly favours the interests of the offeree, Thesiger LJ in the case of Household Fire Insurance company v Grant presents a persuasive case in favour of the postal acceptance rule on this basis. It has been argued that an absolutely binding contract is formed as soon as the acceptance of an offer is posted. Contract is formed at the moment acceptance takes place. The mistake on the part of mutual agent falls equally upon the shoulders of both and this causes inconvenience or hardship. However this can be counter argued. If an offeror choses he can always make the formation of the contract, however he proposes absolute formation of contract upon actual communication to himself of the acceptance. If the offeror does not receive any reply from the offeree he can always make inquiries to the offeree about the offer. If the contract is not concluded there would be considerable delay in transactions and the acceptor would never be safe until he has received notice that his letter of acceptance had reached its destination. (Source: Kathryn O' Shea and Kylie Skeahan (1997) "Acceptance of offers by E-mail – How Far should the postal Acceptance Rule Extend? " QUT Law Journal, Vol 13, pp 247-262).

The nature of postal acceptance rule denotes a separation of parties by time and distance. If each party felt that they were not bound by their assent to contractual terms until they received confirmation of the other's receipt then the situation ' might go on ad infinitum'. Hence no contract would ever be completed by post unless a legal ruling was made on the matter.

References

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