12-3d Communication of Acceptance

The offeree must communicate his acceptance for it to be effective. The questions that typically arise concern the method, the manner, and the time of acceptance.

Method and Manner of Acceptance

The term *method* refers to whether acceptance is done in person or by mail, telephone, email, or fax. The term *manner* refers to whether the offeree accepts by promising, by making a down payment, by performing, and so forth. **If an offer demands acceptance in a particular method or manner, the offeree must follow those requirements.** An offer might specify that it be accepted in writing, or in person, or before midnight on June 23. An offeror can set any requirements she wishes. Omri might say to Oliver, "I'll sell you my bike for $200. You must accept my offer by standing on a chair in the lunchroom tomorrow and reciting a poem about a cow." Oliver can only accept the offer in the exact manner specified if he wants to form a contract.

If the offer does not specify a type of acceptance, the offeree may accept in any reasonable manner and method. An offer generally may be accepted by performance or by a promise, unless it specifies a particular method. The same freedom applies to the method. If Masako faxes Eric an offer to sell 1,000 acres in Montana for $800,000, Eric may accept by mail or fax. Both are routinely used in real estate transactions, and either is reasonable.

Time of Acceptance: The Mailbox Rule

An acceptance is generally effective upon dispatch, meaning the moment it is out of the offeree's control. Terminations, on the other hand, are effective when received. When Masako faxes her offer to sell land to Eric, and he mails his acceptance, the contract is binding the moment he puts the letter into the mail. In most cases, this **mailbox rule** is just a detail. But it becomes important when the offeror revokes her offer at about the same time the offeree accepts. Who wins? Suppose Masako's offer has one twist:

Mailbox rule
Acceptance is generally effective upon dispatch. Terminations are effective when received.

- On Monday morning, Masako faxes her offer to Eric.
- On Monday afternoon, Eric writes, "I accept" on the fax, and Masako mails a revocation of her offer.
- On Tuesday morning, Eric mails his acceptance.
- On Thursday morning, Masako's revocation arrives at Eric's office.
- On Friday morning, Eric's acceptance arrives at Masako's office.

Outcome? Eric has an enforceable contract. Masako's offer was effective when it reached Eric. His acceptance was effective on Tuesday morning, when he mailed it. Nothing that happens later can "undo" the contract.

Soldau v. Organon, Inc.

860 F.2d 355
United States Court of Appeals for the Ninth Circuit, 1988

Facts: Organon fired John Soldau. Then the company sent to him a letter offering to pay him double the normal severance pay, provided Soldau would sign a full release, that is, a document giving up any and all claims he might have against Organon. The release was included with the letter. Soldau signed it, dated it, and took it to the nearest post office, where he deposited it in the mailbox. When he returned home, Soldau discovered in the mail a check from Organon for the double severance pay. He hustled back to the post office, where he persuaded a postal clerk to open the mailbox and retrieve the release he had posted. He then cashed Organon's check and finally filed a suit against the company, alleging that his firing was age discrimination.

The federal district court gave summary judgment for Organon, ruling that Soldau's acceptance of the proposed release was effective when he mailed it, creating a contract. He appealed.

Issue: ***Did Soldau create a contract by mailing the release?***

Excerpts from the *Per Curiam* Decision: The district court was clearly correct under California law. Soldau does not argue to the contrary. Instead, he contends that the formation and validity of the release are governed by federal law, and would not have been effective unless and until it had been received by Organon. We need not decide which body of law controls. Under federal as well as California law, Soldau's acceptance was effective when it was mailed.

The so-called mailbox or effective when mailed rule was adopted and followed as federal common law by the Supreme Court [at the beginning of the 20th century]. We could not change the rule, and there is no reason to believe the Supreme Court would be inclined to do so. It is almost universally accepted in the common law world. It is enshrined in the Restatement (Second) of Contracts and endorsed by the major contract treatises.

Commentators are also virtually unanimous in [supporting the "effective upon dispatch" rule,] pointing to the long history of the rule; its importance in creating certainty for contracting parties; its essential soundness, on balance, as a means of allocating the risk during the period between the making of the offer and the communication of the acceptance or rejection to the offeror; and the inadequacy of the rationale offered by the Court of Claims for the change.

Since Soldau's contractual obligation to release Organon in return for Organon's obligation to make the enhanced severance payment arose when Soldau deposited his acceptance in the post office mailbox, his subsequent withdrawal of the acceptance was ineffectual. *Affirmed.*

Chapter Conclusion

The law of offer and acceptance can be complex. Yet for all its faults, the law is not the principal source of dispute between parties unhappy with negotiations. Most litigation concerning offer and acceptance comes from *lack of clarity* on the part of the people negotiating. The many examples discussed are all understandable given the speed and fluidity of the real world of business. But the executive who insists on clarity is likelier in the long run to spend more time doing business and less time in court.

Exam Review

1. **MEETING OF THE MINDS** The parties can form a contract only if they have a meeting of the minds, which requires that they understand each other and show that they intend to reach an agreement.

EXAM Strategy

Question: Norv owned a Ford dealership and wanted to expand by obtaining a BMW outlet. He spoke with Jackson and other BMW executives on several occasions. Norv now claims that those discussions resulted in an oral contract that requires BMW to grant him a franchise, but the company disagrees. Norv's strongest evidence of a contract is the fact that Jackson gave him forms on which to order BMWs. Jackson answered that it was his standard practice to give such forms to prospective dealers, so that if the franchise were approved, car orders could be processed quickly. Norv states that he was "shocked" when BMW refused to go through with the deal. Is there a contract?