

Contract Law Essay Example (Problem Question, OSCOLA)

Topic: Formation of a Contract via Email Exchange

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Formation of a Contract Through Email Communications

Introduction

The formation of a legally binding contract requires agreement between the parties, demonstrated through a valid offer and acceptance. Traditionally, determining the exact moment of contract formation has been straightforward where acceptance occurs face-to-face or through the post. However, modern commerce increasingly relies upon electronic communications such as emails, raising important questions concerning when acceptance becomes effective. English contract law generally distinguishes postal acceptance from instantaneous methods of communication. While the postal rule provides that acceptance is complete upon posting, electronic communications are generally governed by the rule requiring acceptance to be communicated and received.

This problem concerns whether a contract was formed through an exchange of emails and whether either party can withdraw from negotiations after acceptance was sent but before it was allegedly received. The issues will be analysed using the ILAC method.

Facts

Sarah owns a specialist furniture company. On Monday at 9:00 am she emails James:

"I am willing to sell you 100 handmade oak chairs for £40,000. Please let me know by Friday."

James reads the email immediately.

On Thursday evening at 7:30 pm James sends an email stating:

"I accept your offer."

Due to Sarah's company's email server experiencing technical issues, the acceptance email does not reach Sarah's inbox until Friday morning at 9:45 am when the server is restored.

Meanwhile, believing James had lost interest, Sarah sends another email at 8:30 am on Friday stating:

"I withdraw my offer."

James reads Sarah's withdrawal email at 9:00 am.

Sarah later argues that no contract exists because she withdrew her offer before reading James's acceptance.

James argues that the contract was concluded when he clicked "send" on Thursday evening.

Advise both parties.

Issue 1

Was Sarah's email an offer?

Law

An offer is an expression of willingness to contract on specified terms with the intention that it shall become binding upon acceptance.

In **Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256**, the court held that an offer exists where the language objectively demonstrates an intention to be legally bound.

The courts apply an objective test established in **Smith v Hughes (1871) LR 6 QB 597**, asking how a reasonable person would interpret the communication.

Application

Sarah's email contains precise contractual terms:

- identified goods
- quantity
- price
- deadline for acceptance

The wording:

"I am willing to sell you..."

indicates an intention to contract rather than merely negotiate.

Unlike an invitation to treat, all essential contractual terms are present.

The inclusion of a deadline ("Please let me know by Friday") reinforces the seriousness of the proposal.

Objectively, a reasonable businessperson would conclude that Sarah intended her email to constitute a genuine offer capable of immediate acceptance.

Conclusion

Sarah's Monday email is a valid contractual offer.

Issue 2

Did James validly accept the offer?

Law

Acceptance must be final, unconditional and correspond exactly with the terms of the offer.

This principle was established in **Hyde v Wrench (1840) 3 Beav 334**.

Acceptance must also be communicated to the offeror.

Ordinarily, silence cannot amount to acceptance, as confirmed in **Felthouse v Bindley (1862) 11 CB NS 869**.

The central issue concerns the timing of acceptance by email.

Historically, acceptance sent by post falls within the postal rule.

Under **Adams v Lindsell (1818) 1 B & Ald 681**, acceptance becomes effective upon posting.

This rule was reaffirmed in **Household Fire Insurance Co v Grant (1879) 4 Ex D 216**, even where the acceptance never arrives.

However, the postal rule applies only to non-instantaneous communications.

For instantaneous communications, acceptance takes effect only upon receipt.

In **Entores Ltd v Miles Far East Corporation [1955] 2 QB 327**, Lord Denning held that acceptance by telex is effective only when received.

This approach was confirmed by the **House of Lords** in **Brinkibon Ltd v Stahag Stahl [1983] 2 AC 34**, where acceptance by telex depended upon when the message reached the offeror.

Modern courts generally regard email as analogous to telex rather than post.

In **Thomas v BPE Solicitors [2010] EWHC 306 (Ch)**, the High Court confirmed that emails should normally be treated as instantaneous communications.

Application

James sent his acceptance on Thursday evening.

He argues that pressing "send" should be sufficient.

However, this argument attempts to extend the postal rule to email communications.

English law has consistently refused to do so.

Emails are transmitted electronically within seconds and normally arrive almost immediately.

Therefore, acceptance is effective when received rather than when dispatched.

The complication arises because Sarah's server malfunction delayed receipt.

James had no knowledge of the server failure.

His acceptance entered Sarah's email system only after the technical problem ended on Friday morning.

Following **Entores** and **Brinkibon**, acceptance generally occurs when it becomes capable of being retrieved by the recipient during ordinary business operations.

Here, the email only became accessible at 9:45 am Friday.

Until then, Sarah had no practical ability to read it.

Therefore, acceptance became effective only at 9:45 am Friday.

Conclusion

James validly accepted the offer, but acceptance took effect only when the email reached Sarah's server and became accessible at 9:45 am Friday.

Issue 3

Was Sarah entitled to revoke her offer?

Law

An offer may generally be withdrawn any time before acceptance.

In **Payne v Cave (1789) 3 TR 148**, revocation before acceptance was held effective.

However, revocation itself must be communicated.

In **Byrne & Co v Leon Van Tienhoven & Co (1880) 5 CPD 344**, a revocation sent by post was ineffective because acceptance had already occurred.

The court held that revocation becomes effective only upon communication to the offeree.

Similarly, in **Dickinson v Dodds (1876) 2 Ch D 463**, the court held that revocation may be communicated through a reliable third party provided the offeree becomes aware of it before acceptance.

Therefore:

- revocation must reach the offeree
- acceptance must not already have taken effect

Application

Sarah sent her withdrawal email at 8:30 am Friday.

James read it at 9:00 am.

Therefore, revocation was effectively communicated at 9:00 am.

James's acceptance only became effective at 9:45 am.

Consequently, the sequence is:

Thursday 7:30 pm

Acceptance sent.

↓

Friday 8:30 am

Revocation sent.

↓

Friday 9:00 am

Revocation received.

↓

Friday 9:45 am

Acceptance received.

Because revocation became effective before acceptance, Sarah withdrew the offer while it was still legally open.

James may argue that he accepted earlier by sending the email.

However, this argument fails because electronic communications are governed by the receipt rule rather than the postal rule.

Unlike **Byrne**, where acceptance had already become effective upon posting, James's acceptance had not yet become legally effective.

Therefore, Sarah successfully revoked her offer before any contract arose.

Conclusion

Sarah validly revoked the offer before acceptance became effective.

Issue 4

Does the email server malfunction change the legal position?

Law

The courts recognise that electronic communications occasionally fail due to technical problems.

In **Entores**, Lord Denning stated that where the acceptance fails because of the sender's own fault, no contract arises.

However, where the failure occurs due to the recipient's equipment, the allocation of risk may differ.

In **Brinkibon**, the House of Lords deliberately declined to formulate a universal rule, emphasising that each case depends upon business practice, the intentions of the parties and where the risk of communication failure should properly fall.

Academic commentary increasingly suggests that where an acceptance reaches the recipient's designated information system but remains unread because of internal technical problems, the recipient should bear the risk.

However, English courts have not established a definitive rule for email server failures.

Application

James sent his acceptance correctly.

The delay resulted entirely from Sarah's defective email server.

This creates an argument that Sarah should bear responsibility for the malfunction.

If the court concludes that an email enters the recipient's designated server before becoming readable, acceptance may arguably have occurred earlier than 9:45 am.

However, the facts indicate that the message did not actually reach Sarah's inbox until after the server recovered.

Therefore, unlike cases where an unread email already sits in the inbox, the acceptance had not yet arrived within Sarah's communication system.

Consequently, the stronger interpretation remains that acceptance occurred only when the message became capable of retrieval.

Although James acted reasonably, the law concerning electronic communications prioritises receipt rather than dispatch.

Conclusion

The server malfunction does not alter the general rule.

Acceptance remained ineffective until receipt.

Overall Conclusion

Sarah's Monday email constituted a valid offer because it contained definite terms and demonstrated an objective intention to contract.

James unquestionably intended to accept the offer by emailing his acceptance on Thursday evening. Nevertheless, email communications are governed by the principles applicable to instantaneous communications rather than the postal rule. Accordingly, acceptance became effective only when it reached Sarah's email system and became accessible on Friday morning.

Sarah's withdrawal email was communicated to James before acceptance became legally effective. Applying **Payne v Cave**, **Byrne v Van Tienhoven**, **Entores**, **Brinkibon**, and **Thomas v BPE Solicitors**, the offer was successfully revoked before a contract came into existence.

Therefore, the stronger legal argument is that no binding contract was formed. James's reliance upon the postal rule is unlikely to succeed because English law has consistently limited that doctrine to postal communications and has declined to extend it to email.

References (OSCOLA)

Cases

Adams v Lindsell (1818) 1 B & Ald 681.

Brinkibon Ltd v Stahag Stahl und Stahlwarenhandels-gesellschaft mbH [1983] 2 AC 34 (HL).

Byrne & Co v Leon Van Tienhoven & Co (1880) 5 CPD 344.

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256.

Dickinson v Dodds (1876) 2 Ch D 463.

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

Felthouse v Bindley (1862) 11 CB (NS) 869.

Household Fire Insurance Co v Grant (1879) 4 Ex D 216.

Hyde v Wrench (1840) 3 Beav 334.

Payne v Cave (1789) 3 TR 148.

Smith v Hughes (1871) LR 6 QB 597.

Thomas v BPE Solicitors [2010] EWHC 306 (Ch).

Books

Ewan McKendrick, *Contract Law: Text, Cases and Materials* (10th edn, Oxford University Press 2024).

Edwin Peel, *Treitel on the Law of Contract* (16th edn, Sweet & Maxwell 2024).

Paul Richards, *Law of Contract* (16th edn, Pearson 2023).

