

FOCUS

Law and Our Rights

The Postal Rule in an Internet Era

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SSECTION 2 (h) of the Contract Act, 1872 which prevails in Bangladesh defines the term 'Contract' as 'An agreement enforceable by law is a contract.' Thus for the formation of a contract, there must be (i) an agreement, and (ii) the agreement should be enforceable by law. 'Agreement' is defined as 'every promise and every set of promises forming the consideration for each other'. [Section 2 (e) of the Contract Act]. And a promise is defined as an accepted proposal. Section 2 (b) says: 'A proposal, when accepted, becomes a promise'. This is another way of saying that an agreement is an accepted proposal. The process of definition comes down to this: A contract is an agreement; an agreement is a promise, and a promise is an accepted proposal. Thus every agreement, in its ultimate analysis is the result of a proposal from one side and its acceptance by the other.

An agreement is regarded as a contract when it is enforceable by law. In other words an agreement that the law will enforce is a contract. The condition of enforceability are stated in Section-10. According to the section, an agreement is a contract when it is made for some consideration, between parties who are competent, with their free consent and for a lawful object. Thus every contract is an agreement, but every agreement is not a contract.

A proposal and its acceptance is the universally acknowledged process for the making of an agreement. So, the proposal is the starting point. And 'acceptance' is the assent given to a proposal into promise. According to section 2 (b), the assent should be signified. It may be signified or accepting intends to communicate his assent or which has the effect of communicating it. A very common instance of an act amounting to acceptance is the fall of the hammer in the case of an auction sale. The principle is that there should be some external manifestation (overt act) of acceptance. A mere mental determination to accept unaccompanied by any external indication will not be sufficient. In *Bhagwandas Vs Giridhar Lal* (1966) I SCR 656: AIR 1966 SC 543, Shah J. (Afterwards C.J.) comments:

'An agreement does not result from a mere state of mind: intended acceptance of an offer does not give rise to a contract. There must be ... some external manifestation of that intent by speech, writing or other act.'

But acceptance has to be made in the manner prescribed or indicated by the offeror an acceptance given in any other manner may not be effective, particularly where the offer or clearly insists that the acceptance shall be made in the prescribed manner. Where no mode of acceptance is prescribed, acceptance must be expressed in some usual and reasonable manner.

But when the parties are at a distance and are contracting through post or by messenger, the question arises when is the contract concluded? Does the contract arise when the acceptance is posted or when it is received? The question first arose in England in *Adams Vs Lindsell* (1818) 106 ER 250 in the Court of King's Bench.

The Postal Rule

The fact of the case (*Adams Vs Lindsell*) was as follows:

'On September 2, 1817, the defendants sent a letter offering to sell quantity of wool to the plaintiffs. The letter added "receiving your answer in course of post". The letter reached the plaintiffs on September 5th. On the evening the plaintiffs wrote an answer agreeing to accept the wool. This was received by the defendants on September 9th. The defendants waited for the acceptance up to September 8th and not having received it, sold the wool to other parties on that date. They were sued for breach of contract'. It was contended on their behalf that till the plaintiffs' answer was actually received, there could be no binding contract and therefore, they were free to sell the wool on 8th. But the court said:

'If that were so, no contract could ever be completed by post. For if the defendants were not bound by their offer when accepted by the plaintiffs ought not to be bound till after they had received the notification that the defendants had received their answer and assented to it. And so it might go

[1883] 32 WR 185. Offer by telegram held to imply requirement to accept by equally speedy means.'

Applications of the Postal Rule

The result of the exceptions mentioned earlier that the postal rule only applies in a limited range of cases. It is important, therefore, not to over-emphasize its significance. There are, however, two other situations where it may apply:

(i) **Tele messages:** There is clear authority that subject to the limitations outlined above, the postal rule does apply to telegrams (*Burner V Moore* [1904] 1 Ch 305) — i.e. an acceptance takes effect when the form containing the telegram message is handed in for transmission. The telegram has been replaced within the UK by the tele messages. This involves dictating a message over a phone, rather than filling in a form. In other respects, however, it has all the characteristics of a telegram. The delivery of the message is not instantaneous and is under the control of a third party [e.g. British Telecom, T&T].

There seems no reason why the postal rule should not also apply to tele messages! There is, however, no authority on this, so the point is open to agreement.

(ii) **Courier Services:** There has been a recent growth in the operation and use of courier services, offering delivery of documents and packages in competition to the post office. It seems likely that this competition will grow. The courier service has all the same essential characteristics as the post. Subject to the limitation that it must be within the reasonable contemplation of the parties that such a service will be used, there seems no reason why an acceptance should not become effective on delivery, however, the courier service. Again, however, there is no authority on the issue.

If the postal rule does not apply, does the acceptance take effect on delivery, opening, or being read? This is another issue.

(iii) **The rule will not apply where actual notice of the acceptance is specifically asked for by the offeror (*Hollowell Securities Vs Hughes* [1974] 1 All ER 161).**

(iv) **The rule will not apply where the form of the offer expressly or impliedly makes clear that the post is not an exceptional means of communication (*Quennerduaine V Cole* [1880] 5 VPD 344).**

(v) **The rule only applies where it must have been within the contemplation of the parties that, the post might be used (*Henthorn V Fraser* [1892] 2 Ch 27).**

In other words, was it reasonable to use the post?

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