

Acceptance

1. *Consensus ad idem*

Acceptance must precisely correspond to the offer.

Acceptance at variance with the offer shall be regarded as a counter-offer. Art. 534

- Can offeree, having made a counter-offer, choose to accept the earlier offer?

2. Timeliness (between remote parties)

Contract is concluded when the acceptance is “dispatched” to the offeror. Art. 531 (cf. Art 111 which, in general, requires “arrival” of the communication)

If the offer stipulates that the acceptance must be made by a certain date or time, contract shall be made only if the acceptance “arrives” in time. Art. 528(1)

- 92□23537: *Acceptance to a firm offer arrives 58 minutes past the expiration. No contract.*

Late arrival of the acceptance

- [When offer was to expire at the designated time] If the late arrival of the acceptance was not intended or anticipated by the offeree, the offeror may not avoid the contract by pleading the late arrival unless the offeror notified before or immediately after the late arrival of the acceptance. Art. 528(2)
- If the late arrival was as anticipated by the offeree,

the acceptance will be treated as a counter-offer. Art. 530

Once acceptance is dispatched by post, and while it is in transit,

- What if the offeror revokes the offer?
- What if the offeree revokes his own acceptance?
- Does it make any difference whether the offer stipulated a deadline for acceptance?

In general, acceptance must be “communicated” to be effective. But the offeree who enjoys the benefit of the dispatch rule may not have the benefit of revoking the acceptance while in transit. Acceptance which is duly dispatched by post is valid and binding even if it is lost and never reaches the offeror.

3. Acceptance by conduct

The court may find acceptance on the basis of the parties’ conduct.

92□29696: On about 20 Nov. 1987, D proposed an exchange of his parcel of land with P’s parcel of land. D subsequently withdrew the proposal. But P believed that the exchange was made and P started cultivating D’s parcel of land until mid-August 1989, when D evicted P. D’s parcel was near D’s home and D knew about P’s occupation all along.

Q: Why did the court not invoke Art. 527?

Q: Was there an acceptance?

“Implicit consent” to terminate a contract

- 2000Da5336: The lessee argued that the lease contract was terminated and demanded that the lease deposit must be returned whereas, for more than 2 years, the lessor

stopped demanding rent from the lessee who never occupied the leased property.

- “Termination of a contract can be effected not only by an express agreement but also by an implicit consent. Where the parties’ express behaviour objectively shows that the parties’ abandonment or the lack of intent to execute the contract is common to the parties, then it is proper to interpret that the contract is terminated by an implicit accord of the parties’ intent not to execute the contract.”
- When a contract is terminated by mutual consent of the parties, the Civil Code provision stipulating the consequences of one party’s unilateral exercise of termination right (the duty to pay interest on the money which has to be returned; Article 548(2)) shall not apply.
- When each of the parties assert that it exercised the right of termination, the court should not lightly find a ‘consent’ to terminate the contract (because it is often the case that there clearly is no consent).

However, rescission by (implicit) consent is not allowed.
93Da58431

Offeror may waive the receipt of acceptance (offer to be bound by the contract without an explicit acceptance)

Commercial Code Art. 53: A merchant who received an offer in his usual line of business must reply without undue delay. Failure to do so shall be deemed to be an acceptance.

EU E-Commerce Directive Art. 11(1) the service provider has to acknowledge the receipt of the recipient’s order without undue delay and by electronic means

Trade practice and customs