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Contract Inter-Praesentes and Contract Inter-Absentes

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ABSTRACT

The paper provides a comprehensive explanation of the doctrine of Unilateral error using both inter preasentes and inter absentes. Cases using both in-person and written decisions will demonstrate that judges' decisions are inconsistent and that they cannot produce clarity in the eyes of the law and those of us who are subject to it. In addition, we'll try to show how inconsistent these claims are in the abstract and what impact it has on society today. The distinction made between inter preasentes and inter absentes is the main issue.

I. INTRODUCTION

Inter praesentes: When a contract is made over the phone, online, or by mail, the parties are not physically present, so the courts will only discover a mistake if the claimant can identify the person or company, they actually wanted to do business with. Mistakes about their qualities won't do**.**

Inter absentes: There is a presumption that parties intend to interact with the person in front of them when they get into a face-to-face contractual transaction. When one of the contractual parties' identities is misrepresented, the doctrine of unilateral error is invoked. A mistake of this kind, when the identity of one party is crucial, renders the contract worthless from the outset**.**

II. CONTRACT INTER PRAESENTES

Bhagwandas Goverdhandas Kedia vs M/S. Girdharilal Parshottamdas ... on 30 August, 1965

ACT:

Indian Contract Act, 1872, ss. 2, 3, 4-Contract when complete-Offer and Acceptance by telephone-Acceptance complete were spoken or where heard?

HEADNOTE:

(i) By long-distance telephone, the respondents and the appellants entered into a contract. The response made the offer in Ahmedabad, and the recipient made the acceptance defendants in Khamgaon. The respondents filed a lawsuit in Ahmedabad,

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alleging breach of the aforementioned contract. Regarding the jurisdictional issue brought up by the appellants, the trial court determined that the Ahmedabad Court was competent to hear the case. After the appellant's in limine revision petition was denied by the High Court, he sought special leave to appeal to this Court.

HELD: I Making an offer that has already been accepted elsewhere does not constitute a basis of action for damages or contract breach. Ordinarily a [2]contract is created by the acceptance of the offer and the indication of that acceptance. The same visible indication that the law considers sufficient must be used as the intimation. The same visible indication that the law considers sufficient must be used as the intimation.

Baroda Oil Cakes Traders v. Purshattam Naravandas and Anr. I.L.R. [1954] Bom. 1137 and Sepulechre Brothers v. Sati, Khushal Das Jagjivan Das Mehta, I.L.R. [1942] Mad. 243, referred to.

(ii) In accordance with the fundamental principle that a contract is finalised when an offer is accepted, the recipient is informed. offerer, who is engrafted with an exception based on the benefit of convenience over logic or principle in support, but slow acceptance by a court ruling. The following can be summed up as an exception: When by agreement, a contract's or a trade's custom, acceptance by mail, or the agreement is reached, the telegram is authorised, and the When the acceptance is entered into a, the contract is finished. Mode of dissemination to the offeree via letter posted online or sending out a telegram.

(iii) However, telephone contracts are exempt from the law that governs acceptance of telegrams by post. The regulation that applies to telephone contracts is the customary norm that a contract is considered final only once the buyer has received notice of acceptance. In the case of a telephone discussion, the parties are practically there with one another because each can hear the other's voice. ' A mere is a verbal expression used to indicate an offer, acceptance, rejection, or counter-offer. An electrical impulse's intervention, which causes immediate communication of messages from a distance, does not change the character of the dialogue to make it comparable to that of an offer and acceptance post or by telegram. It is true that the Posts and Telegraphs Department has general authority over telephone communication, particularly long-distance calls, but that is not a need reason to believe that this method of contracting will be governed by the analogy of a 657-

[2] CONTRACT, https://www.jstor.org LAST VISITED ON 21/11/22

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contract sent by mail. In the case of correspondence by postal service or telegraph, a third-party step in, and without that third party's successful intervention, letters or messages cannot be transmitted. When having a telephone discussion, once the connection is made, there is typically no additional involvement from another agency. Parties conversing over the phone cannot see one another, and they are physically separated from one another in space, but they can hear one another. Through the use of a mechanical device, they can instantly hear each other out and are able to communicate without the intervention of an outside agency.

(iv) When it comes to the administration of contract law, Indian courts have typically followed the principles of English [3]common law that apply to contracts.

A conflicting statutory provision is in effect. The provisions of their respective letters patent govern the courts in the erstwhile Presidency towns, whereas the regulations of Bengal Regulation III of 1793, Madras Regulation 11 of 1802, and Bombay Regulation IV of 1837 govern the courts outside of the Presidency towns and by various Acts governing civil courts were enforced when there was no a rule requiring compliance with "law and equity" existed in the case of Chartered High Courts and other instances as per the terms "justice, equity, and good conscience" been commonly understood to indicate the English language's norms common law, to the extent that they apply to Indian society and environment.

(v) The Indian Contract Act's drafters did not consider having a talk over the phone parties that were geographically apart and were unable to communicate

intended to establish any law in that regard. Instance Court wag right in the perspective it adopted, believing that one of the causes of action occurred within the City Civil Court's jurisdiction. The acceptance was announced in court in Ahmedabad by calling the plaintiffs via phone. (i) As per J. Hidayatullah I disagree in the Entores case. Lord Denning believed that the acceptance made by

The rules for oral communication applied to telephone acceptance that had place with both parties present other, and that the comparison to letters conveyed via mail was inapplicable to be used. However, the Court of Appeal was not requested to interpret a written law in a way that emphasises its rigidity its own dialect. It was not necessary to interpret the words discovered in s. the Indian Contract Act, namely Section 4 "The exchange of an acceptance has ended, as opposed to when it is sent to the proposer in the course of transmission,

[3] COMMON LAW, https://indiankanoon.org LAST VISITED ON 21/11/22

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so as to be beyond the acceptor's control."

(ii) The law in question was drafted before the invention of the telephone, wireless technology, Telstar, and Early Bird. If time has passed and innovations have been created Instantaneous communication over great distances is simple, and the wording of our laws may be changed to reject outdated ideas if necessary. But accepting a specific interpretation without taking our Act's words into account would be going against the letter of the law.

(iii) A telephone conversation is covered by the language of Section 4 of the Indian Contract Act. Our Act does not include specific provisions for post, telegraph, telephone, or wireless, etc. While some of these have not changed since 1872, no attempt has been made to change the law. It is possible to assume that the language has been deemed sufficient to 658 encompass instances of these new creations. Today, not only can you speak on the phone, but you can also record what you say on tape, making it simple to establish that a certain claim is true. Conversation was had. Television is now a part of telephones. The regulation about missing letters of acceptance was created for practical purposes because it was simpler in business circles to demonstrate the delivery of letters but highly challenging to refute a claim that the letter was not received. If the rule put out by the plaintiffs is accepted, the proposer would have a very strong defence at his disposal if his denial that he heard the speech caused the implications of our law that acceptance is complete to go awry.

(iv) It might be challenging to determine whether a contract forms at all when the acceptance over the phone cannot be heard due to mechanical issues. though where the only question that remains in such a situation is where the contract may be regarded to have taken peace when the speech has been fully heard and understood.

(v) In the current case, both parties acknowledged that the Ahmedabad could plainly hear acceptance. The recipient was able to confirm that the communication of the as far as he was concerned, acceptance was complete when he (the acceptor) sent him a message of his acceptance. Considering it to be beyond his (the acceptor's) control of recall in relation to s. the Contract Act, Section 4. It is certain that at Khamgaon, the word of acceptance was spoken.

and as soon as the acceptor expressed his acceptance, he said during transmission, the proposer had gone beyond his memory. He was unable to withdraw his acceptance after that. Perhaps that the period between events was so brief that one can claim that the instantaneous hearing of speech, however if we have to put fresh, we must incorporate inventions into the scope of our statute legislation to claim that the acceptor uttered the statement into the phone acceptance of his input into the source of transmission to the proposer.

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The contract was therefore made at Khamaon and not Ahmedabad, Case-law considered.

JUDGEMENT:

CIVIL APPLELLATE JURISDICTION: No. 948 in Civil Appeal from 1964. Civil Revision Application No. 543 of 1964: Appeal by special permission from Gujarat High Court's [4]judgement and decree dated July 24, 1964.

A.V. Viswanatha Shastri, Bishan Narain, S. Murthy and B. P. Maheshwari, for the appellant. G. B. Pai, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondents.

Wanchoo and Shah, JJ, Judgment. was spoken by J. Shah and J. Hidayatullah. gave a dissident opinion. Shah, J. Messrs Girdharilal Parshottamdas & Company, also known as "the plaintiffs," filed a claim in the City Civil Court of Ahmedabad against Kedia Ginning Factory Oil Mills of Khamgaon, also known as "the defendants," seeking a decree for Rs. 31,150/- on the grounds that the defendants had failed to provide cotton seed cake, which they had agreed to supply under an oral [5]agreement dated July 22, 1959, negotiated between the parties. The plaintiffs argued that the defendants' offer to sell cotton seed cake, which the plaintiffs accepted at Ahmedabad, as well as the fact that the defendants were contractually required to provide the goods at Ahmedabad and that the defendants were to be paid for the goods through an Ahmedabad bank, all led to the cause of action for the lawsuit arising there. The plaintiffs allegedly made an offer to buy cotton seed cake in a message sent over the phone, according to the defendants. ... they (the defendants) had accepted the offer in Khamgaon, which stated that delivery of the products ordered was to be performed at Khanigaon in accordance with the contract that a portion of the cause of action for the lawsuit had not arisen within the territorial jurisdiction of the City Civil Court Ahmedabad and that the sum was also to be paid in Khamgaon. The Trial Court determined that the goods were under the contract to be delivered at Khamgaon, and that payment was also to be made at Khamgaon. The plaintiffs had made a long-distance telephone offer to the defendants to purchase the goods from Ahmedabad, and the defendants had accepted the offer at Khamgaon According to the court, the contract was intended to be fulfilled in Khamgaon, and because Ahmedabad had made an offer to buy the items, the court there did not have the authority to hear the case. However, the Court ruled that when a contract is created over the phone, the area where the offeror is informed of acceptance is where the contract is made. As a result, the Civil Court in Ahmedabad was given jurisdiction to hear the case. The High Court of Gujarat rejected in limine a revision motion made by the

[4] JUDGEMENT, https://indiankanoon.org LAST VISTED ON 21//11/22
[5] AGREEMENT, https://www.studocu.com LAST VISITED ON 21/11/22

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defendants against the judgement directing the litigation to continue on the merits. This appeal has been filed in defiance of the Gujarat High Court's decision. The defendants argue that when a contract is created over the phone, the offer's acceptance constitutes the contract's making, and that only the court located closest to the location where the offer is accepted and the acceptance is recorded on the telephone instrument is authorised to hear the case. It is asserted that Sections 3 and 4 of the Indian Contract Act establish the rule that determines the place where a contract is made and that it applies consistently regardless of the method used to put the acceptance into a course of transmission. It is further asserted that decisions made by courts in the United Kingdom, which do not rely on express statutory provisions but rather on the somewhat flexible rules of common law, have established the rule that determines the place where a contract is made. On the other hand, the plaintiffs argue that making an offer is a component of the cause of action in a lawsuit for damages for breach of contract, and that the lawsuit belongs in the court where the offeror made the offer, which upon acceptance resulted in a contract. As an alternative, they assert that because receipt of an indication of acceptance of the offer is necessary for the formation of a contract, the contract is formed when the offeror receives the indication. The first argument put forth by the plaintiff is unfounded. A claim for damages for breach of contract does not include the making of an offer at a location where it has already been accepted elsewhere. In most cases, a contract is created by the acceptance of an offer and the indication of that acceptance. When an offer is implied when the parties are not together, the offeror is considered to be making the offer constantly until it reaches the offeree. By doing so, the offeror only indicates that he intends to engage into a contract with the offer's terms. The offeree cannot be forced to agree, and the offeror cannot declare that the offeree's silence will be seen as consent. A contract is created when one party makes an offer, the other accepts it, and both parties indicate their acceptance of the offer through an indication of acceptance that the law deems to be external.

III. CONTRACT INTER ABSENTES

There are still open questions regarding the creation of contracts between parties who are not present at the time of the contract, as concerning the occurrence of such a contract, its circumstances, and its components. Naturally, the employment of the mail has generally raised this issue, which has frequently led to a discussion about such contracts and occasionally to the conclusion that an offer and acceptance by mail involve some doctrines sui generis and must be taken into account and explained as an exception to the general rule. However, despite the fact that opposing viewpoints have been put out regarding the underlying principles, both English and this country may be seen as having completely resolved the issue of when a contract is

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formed once a properly addressed and postage-paid letter of acceptance is mailed following the mailing of an offer with no particular instructions regarding forwarding an [6]acceptance. In Massachusetts, a contrary view was enunciated in McCulloch v. Eagle Ins. Co. to the effect that " The offer did not bind the plaintiff until it was accepted, and it could not be accepted to the knowledge of the defendants, until the letter announcing the acceptance was received, or at most, until the regular time for its arrival by mail had elapsed.

On the basis of this case, it has been determined that Massachusetts law differs from that of the majority of jurisdictions in this country. However, it was commonly known that Mr. Chief Justice Holmes adopted the opposing viewpoint, and the 1897 decision in the case of Brauer v. Shaw2—which may not have directly addressed this issue—seems to reflect a shift in the local government's thinking.

In the case of Bauer v. Shaw2, a telegram offering was dispatched from Boston to New York and appropriately accepted. At twenty-eight minutes after the deadline, New York received a telegraphed acceptance. At twenty minutes after one, he arrived in Boston at twelve. The Boston offerors telegraphed a revocation at one o'clock. According to the Court, a contract was formed and the attempted cancellation was ineffective because it was not communicated prior to acceptance. Although it is not in dispute in this case whether Massachusetts or New York law should apply because the acceptance was really made, It would seem that a contract would form before the offeree was informed of the renunciation would seem that a contract would arise under either theory. However, Mr. Chief Justice Holmes writes in the court's opinion: "There is no doubt that the response was promptly turned over to the [7]telegraph company, and at the very least it would have been possible for the jury to determine that the plaintiffs had fulfilled all requirements on their side to finish the contract. The contract was made if the offer was outstanding when it was accepted at that point. It seems evident from these facts that the Court actually decides nothing more than that a revocation of an offer must be communicated to the offeree, but nevertheless, the case is regarded by high judicial authority in Massachusetts as quietly overruling McCulloch v. Eagle Ins. Co.,1 and conforming the Massachusetts Law to that of the rest of the count.

Professor Langdell has ably criticised the norm that has thus been adopted by the majority of Courts. 2 He approaches the issue from the perspective of a bilateral agreement, and his argument can be summed up as follows: since the acceptance is a counter promise, an offer

[6] ACCEPTANCE, https://www.studocu.com LAST VISITED ON 21/11/22
[7] TELIGRAPH, https://www.thinkswap.com LAST VISITED ON 21/11/22

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must first be made before it can be accepted. It appears impossible to avoid his conclusion if this premise is true. Understanding what the term "acceptance" in contract law means, as well as its purposes and components, will help in the analysis of this subject. The parties' consent—each intending that the law annex the contractual obligation to their reciprocal acts—is the distinguishing characteristic of a contract. Mutual assent is the appropriate manifestation of each party's goal. By making an offer, the offeror communicates to the offeree his intention for a contract to be formed between them that contains specific terms. At that point, just one party's intention and desire are known. It is clear that the next stage must be a manifesto in order for a contract to exist confirmation from the offeree that he also wants the suggested arrangement in the offer to become a contract. The offeree's expressed assent demonstrates that the parties are in agreement, and thus acts as the agreement and mutual assent. But this does not mean that each party must be aware that the agreement is binding for there to be mutual assent. If both parties needed to be aware that a contract had been formed, it would be necessary to come to the logical but nonsensical con-Since it is impossible for separate parties to a contract to know that it has been formed at the exact moment it originates when they are not present with each other, at least one of the parties must learn of the existence of the contract at some point after it was first formed. For instance, if the contract does not arise until the acceptance is communicated to the offeror, but does arise at that instant, then the offeree is in ignorance of the fact of communication to the offeror, i.e., the contract would arise without his knowledge. Consider the well-known example of a unilateral contract. Suppose a homeowner comes down his front porch one cold morning, sees a man walking by with a snow shovel, and calls him Before the shovel man can respond, the woman calls out, "Clear my sidewalk and I will give you fifty cents," and quickly leaves the neighbourhood. However, in response to this offer, the man shovels the snow. Despite the fact that there is no question that a con- tract emerges as soon as the act is finished, the householder, the offeror, is in the city and neither has the other party. He has not received notice of acceptance, and he is unaware that the contract has come into existence. Without such information and contact, he is obligated. 1 Therefore, it would seem beyond a reasonable question that a declaration of approval that contains no other components and no communication is sufficient.

The acceptance, however, comprises the additional element when an offer contemplates a contract made up of mutual [8]promises, or a bilat- eral contract of the offeree making a counter commitment. The simple acceptance in this situation, unless it expresses a guarantee explicitly or implicitly, is insufficient, just as it because in a bilateral contract the counter promise is

[8] PROMISES, https://www.jstor.org/ stable/1109070 LAST VISITED ON 21/11/22

necessary to provide the consideration for the promise into which the initial offer ripens, this would be the case in the proposed unilateral contract. Does this aspect of the counter promise necessitate communication? If this counter promise first needs to be an offer, then communication must be certainly Ex vi termini, an offer involves communication, and Professor Langdell's claim would seem to be unanswerable, therefore definitely is required. But must the counter promise come before the offer? It doesn't seem to be the case, and it doesn't seem that any principle dictates that this position be taken. What is there about a promise that would indicate the necessity of its being first an offer? It is true that we often do have an offer which subsequently ripens into a promise, but because some promises are first offers, it by no means follows that all promises must go through this process.

Furthermore, there doesn't seem to be any particular justification for doing so in the case of a proposed bilateral contract. One could argue that since there can be no promise without communication, the counter promise is merely an offer until there is communication. However, as was previously stated, there can be no communication before there is a promise, so this argument is false.

It appears that as soon as the proposed acceptance is anything at all, it becomes a promise.

Felthouse v. Bindley is a case in point. Following earlier discussions, Paul Felthouse wrote a letter to his nephew John making an offer to buy a horse. this message said, "If I hear nothing further about him, I consider the horse to be mine at? $30, I5s." The lines mentioned contradict the notion that implicit terms accompanying the offer required reasonable effort to transmit a reply, hence no reply was required because no response was made to the offer. If the nephew John had immediately displayed via d-manifest overt actions indicating he accepted the proposition; for example, He'd placed the steed in a stall with Paul Felthouse or had demonstrated his intent through other suitable behaviour, it seems like a contract should have developed in theory that very moment. However, the uncle made the offer on January 2, and nothing in the circumstances provided demonstrates that the nephew made any indication of a desire to accept. Until February 26. At that point, the uncle's offer would have unquestionably run out by a realistic deadline, and it would be irrelevant whether the uncle had made an unevinced mental determination to be satisfied to keep making the [9]offer. It appears that no contract arose on this reason alone.

IV. CONCLUSION

[9] OFFER, https://glosbe.com LAST VISITED ON 21/11/22

The opinions presented above result in a conclusion that is consistent with the law as it is stated in the decisions, and they logically account for the contract instances that result from the for cases like Howard v. Daly 2 and others of a similar nature, mailing of an acceptance.

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