**Mailbox Rule**

Welcome to this podcast on the Mailbox Rule brought to you by CALI. I am Professor Jennifer S. Martin. The topic of this podcast is the basic concepts related to communications in the contracting process governed by the Mailbox Rule. More particularly, we will look at the rules governing the effect of an offeree’s response by mail or an offeror’s attempt to revoke an offer using the mail.

Let’s begin with acceptances. Unless stated, an offer is presumed to invite “acceptance in any manner or any medium reasonable under the circumstances.” As such, the offeree might elect to respond by return mail, presuming it’s an acceptable method of acceptance. At other times, the offer may restrict the method of acceptance by requesting a response of the offeree by mail. The "mailbox" or "dispatch" rule provides that an acceptance is effective when put in the mail or dispatched.

Let’s look at some examples.

Example #1. Tony operates a popular mountain climbing summer camp for teenagers called High Peaks Camp, limited to 14 campers each year who each pay $1500 for two weeks of mountain climbing camp. Tony telephones Mom on Saturday to make an offer for camp for her son Leeland beginning July 25 saying, “You must decide right away because High Peaks Camp has many applicants this year. I can only hold the offer open for one hour.” Mom hangs up the phone and writes a short note to Tony saying “Leeland is so excited, he’ll be there!” which she puts in an envelope with the $1500 payment and places in a postal service mailbox on Monday. Mom has not accepted the offer of Tony for the High Peaks Camp. Mail is not an acceptable method of acceptance where Tony made his offer to Mom by telephone and told her that he needed to know within one hour. As such, there is no contract here.

Example #2. Same but when Tony telephones Mom to make the offer, Tony only says, “I’m so pleased to make an offer for Leeland to participate in High Peaks Camp, just talk to him to make sure he wants to go and send me a check if he wants to participate.” Mom writes a short note to Tony saying, “Leeland is so excited, He’ll be there!” which she puts in an envelope with the $1500 payment and places in a postal service mailbox on Monday. Tony receives the letter on Wednesday. It would seem that Mom has accepted the offer of Tony for the High Peaks Camp because mail is an acceptable method of acceptance in this situation. While Tony made his offer to Mom by telephone, a reasonable person would believe that acceptance by mail would be appropriate where Tony directed that Mom should send him a check if Leeland wants to participate. Moreover, Mom’s acceptance would be effective when she put it in the mail on Monday. There’s nothing to indicate here that same day acceptance was needed; a reasonable time to accept is sufficient.

Example #3. Same but Tony sends the offer to Mom by regular mail, requesting payment and including a return mail envelope, and Mom receives the offer on Saturday. Mom writes a short note to Tony saying, “Leeland is so excited, he’ll be there!” which she puts in the envelope with the $1500 payment and places in a postal service mailbox on Monday. Tony receives the letter from Mom on Wednesday. It would seem that Mom has accepted the offer of Tony for the High Peaks Camp because mail is an acceptable method of acceptance where Tony made his offer to Mom in the mail and included a return envelope for her use. Moreover, Mom’s acceptance would be effective on Monday when she promptly put it in the mail.

Since the Mailbox Rule provides that an acceptance by mail is effective on dispatch, the Rule allocates the risk to the offeror that a letter of acceptance might get lost in the mail and never arrive. The offeror, as master of the offer, could have guarded against this risk by restricting the means of acceptance to exclude mail or to specify that acceptance is only effective upon receipt.  Of course, though, there must be evidence that the item was actually mailed. Let’s look at two examples.

Example #4. Same as earlier but although Mom put her acceptance in the mail on Monday, the Postal Service lost the letter and Tony never received it. Like in the earlier example, it would seem that Mom has accepted the offer on Monday by her letter to Tony. This is true even though Tony never received the letter because he could restrict the means of acceptance to exclude mail.

Example #5. Again, the same except Tony’s letter also states, “I must have your acceptance in hand by next Friday.” Mom puts the acceptance in the mail on Monday, but the Postal Service loses the letter and Tony never receives it. It would seem that Mom has not accepted the offer of Tony for the High Peaks Camp here because Tony specified that he had to receive the acceptance. The same would be true if Mom’s letter eventually arrived but after the Friday deadline.

Farnsworth states the mailbox rule has no application to instantaneous means of communication, such as an acceptance sent by telephone, private messenger, facsimile, e-mail or other electronic transmission. However, other scholars disagree and apply the mailbox rule to electronic forms of communications as it would be disruptive to have a different rule for electronic versus paper communications. Let’s look at an example.

Example #6. Presume Tony’s letter still states, “I must have your acceptance in hand by next Friday.” Mom emails Tony on that evening saying “Leeland is so excited, he’ll be there! I will mail the check.” Mom mails the $1500 payment, which she places in a postal service mailbox on Thursday. Tony receives the check for Leeland’s camp on Saturday. It would seem that Mom has accepted the offer of Tony for the High Peaks Camp where she sent the response by email the same day. The mailbox rule would make the acceptance effective when she sent the email the same day, forming the contract then. The mailing of the check by Mom later in the week would be part of the performance under the contract which was formed the prior weekend. Here, Tony contracted around the mailbox rule by saying he needed the acceptance in hand, but Mom’s email acceptance is timely.

Before moving on, just a note that the mailbox rule does not apply to option contracts. This is because option contracts are typically subject to a specific time limit. As such, the understanding between the parties is that exercise of an option must be had by actual receipt by the offeror before the time period of the option expires.

Let’s turn to rejections. A rejection by the offeree is only effective upon receipt, while an acceptance is effective upon dispatch. Meaning, if an offeree sends both a rejection and an acceptance, whether there is a contract will depend upon which arrives first. If the acceptance arrives first, there’s a contract. If the rejection arrives first the offeror might: (i) rely upon it, such that there is no contract; or (ii) treat the later arriving acceptance as a counteroffer and accept it to form a contract. Let’s look at an example.

Example #7. The same as earlier except that Mom is thinking Leeland will want to go to tennis camp in the summer so on Saturday she puts into the mail a note to Tony saying, “No thanks, Leeland does not want to go to High Peaks Camp.” After talking to Leeland, though, Mom emails Tony accepting the camp offer on Sunday, which Tony receives on Sunday. Mom’s rejection is not received by Tony until Wednesday. Here, there’s a contract because Mom’s acceptance is made by email to Tony on Sunday and there had been no restriction on the method of acceptance. The rejection here was not received by Tony until after the acceptance, so the later received rejection has no effect in this case.

Before concluding, let’s turn to revocations of offers. We've seen that an acceptance is effective to create a contract when placed in the mail. This results in the offeree being able to rely on the formation of a contract and proceed. However, if the offeror has not yet received the acceptance in the mail, the offeror might send a letter to the offeree revoking the offer. Any such attempted revocation, though, must be received by the offeree prior to acceptance in order to be effective. If the offeree has already accepted, then the attempted revocation is too late, as a contract has already been formed. Let’s look at an example.

Example #8. The same as earlier except that Mom mails the acceptance to Tony for the camp offer on Monday, which is received by Tony on Wednesday. In the meantime, Tony’s concerned that he has too many campers and mails a revocation of the camp offer to Mom on Tuesday, which she receives on Thursday. Mom’s acceptance is still effective upon dispatch, meaning the contract is formed on Monday. Because revocations of offers are only effective upon receipt, Tony’s attempted revocation is simply too late.

At this point, you should be able to explain and apply the mailbox rule, in particular: (i) acceptances are effective upon dispatch and (ii) rejections and revocations of offers are effective upon receipt. You should be able to apply the rule also in the cases of multiple or overlapping communications.

I hope you’ve enjoyed this podcast on the Mailbox Rule.

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