

ELECTRONIC CONTRACTS OFFER AND ACCEPTANCE

Published 16th August, 2023

Concluding deals and contracts via email, on websites or by online-click-to-agree, is your reality.

If there is one thing that Covid-19 taught us, it is that we do not have to meet in person or to fly across borders to conclude a deal or to sign an agreement. Modern day businesses lean towards access, accessibility and flexibility, hence the use of electronic means of doing business.

That said, this marks a change from centuries of what was traditionally done on paper scratched in ink. With change comes a natural amount of anxiety. The advent of electronic transactions and contracts is no different. In this series, we will help you to better understand this issue, as well as your rights, give you pointers on how to navigate the difficulties and provide risk-management guidelines.

In Botswana, whatever form or means used to conclude a contract, there must be an offer and an acceptance, as well as an intention to be bound by the resulting agreement.

An agreement is concluded once you have sent or communicated the acceptance of an offer. Sometimes, the offer requires a specific time within which acceptance must have been communicated.

The question is, if you are sending communication of the acceptance when is the contract deemed to have been concluded?

If there is a designated information system, the acceptance is deemed to have been concluded when it reaches the offeror's designated information system. If there is no designated information system, the contract is concluded when the offeror is aware of the acceptance i.e. they have opened the email.

What happens if the email does not go through for whatever reason?

Technological challenges happen all the time. This question has not been tested in Botswana, so we are left to look to South Africa for guidance. The case of Jafta is on point.

Jafta applied for a job. He was given an offer with a specific timeframe within which to communicate that he accepted the offer for employment via email. He went to an internet café to send the email. He was subsequently reminded by SMS to send his acceptance. He responded to the SMS by saying that he had responded by email in the affirmative.

When Jafta showed up for his first day at work, he was told that the offer had been given to someone else, because he had not sent the acceptance. The matter went to court and system analysts were called as expert witnesses.

It turned out that the email had gone out but had not reached the employer's information system. The court decided that Jafta's 'affirmative' SMS response was implicit acceptance of the offer of employment.

What if Jafta had not sent the SMS?

Where there are errors or default on the recipient's end, which prevent receipt at the time contemplated and believed in by the sender, the issue must be resolved by reference to the intention of the parties, by sound business practice.

Join us next week for our next instalment. [BBL](#) helps you to navigate everyday challenges, drawing from our decades of experience dealing with contract law, viewed from the perspective of the reality of the changing business and technological landscape. For more information, contact me on olebile@bookbinderlaw.co.bw.