What does “Offer + Acceptance = a Contract” mean?

A contract is in our Law created where parties reach consensus on the essential elements of the specific contract. Where formality requirements are prescribed, the contract will only be binding if these have been complied with.

Consensus is in most cases reached by one party making an offer to the other party, who accepts such offer. If the offer sets out further terms and conditions, apart from the essential elements of that specific type of agreement, these terms and conditions must also be accepted by the offeree. In the case of immovable property the offer and the acceptance thereof must be in writing and signed by both parties in terms of section 2(1) of the Alienation of Land Act 68 of 1981.

What if the seller of a fixed property signs an offer received from a purchaser after making some changes to the clause relating to inspection of the property by a building inspector? This is what happened in the case of Cooper v Clark (2015/31475) [2016] ZAGPJHC 79. The purchaser offered R6.3 million for a property. After the seller had changed the contract and signed it, the purchaser paid a 10% deposit. He only noticed the changes made by the seller to the contract after payment of the deposit. The purchaser consequently claimed a refund of the deposit. The seller only paid back a portion thereof arguing that a valid agreement had been created. The purchaser went to court to sue for the balance of the deposit.

The court found in favour of the purchaser based on the legal principles set out above.

This case again makes it clear that the conditional acceptance of an offer, i.e. the acceptance thereof after having made changes to the contract, amounts to a rejection of the offer, alternatively a counter offer, which again needs to be accepted by the initial offeror. Where the offeree therefore makes changes to a contract before signing it, the contract should be taken back to the offeror to sign again or at least initial next to the changes to confirm his acceptance thereof.

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