

**THE DOCTRINE OF QUASI-MUTUAL ASSENT - HAS IT BECOME THE
GENERAL RULE FOR THE FORMATION OF CONTRACTS? THE CASE OF
PILLAY v SHAIK 2009 4 SA 74 (SCA)**

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SUMMARY

The doctrine of quasi-mutual assent is undoubtedly part of our South African law and has been affirmed and applied in a number of leading decisions. The purpose of this note is to offer a critical analysis of the application of the doctrine in the case of *Pillay v Shaik* 2009 4 SA 74 (SCA). It is argued that the primary basis of contractual liability in South Africa has always been and still remains consensus *ad idem* as determined in terms of the rules relating to offer and acceptance. It is also argued that the doctrine is not an answer to failure by the parties to comply with self-imposed formalities and/or the prescribed manner of acceptance of an offer for the valid formation of contracts. Based on the aim of the incorporation of the doctrine in our law, coupled with its application in previous court decisions, it is concluded that its application in the case of *Pillay v Shaik* was wrong and sets a bad precedent.

KEYWORDS: formation of contracts; doctrine of quasi-mutual assent; prescribed mode of acceptance; offer and acceptance; self-imposed formalities.

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