CHAPTER 1

THE INDIAN CONTRACT ACT, 1872

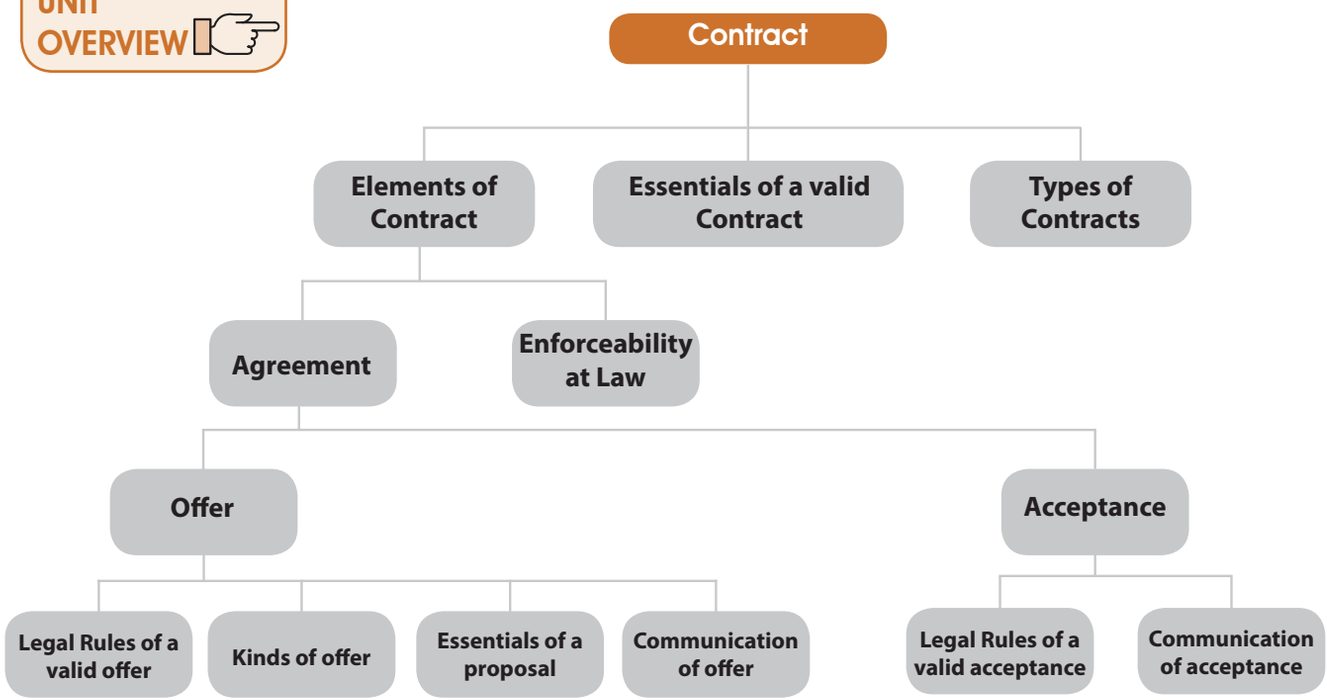
UNIT I : NATURE OF CONTRACT

LEARNING OUTCOMES

After studying this unit, you would be able to:

- Understand the meaning of the terms 'agreement' and 'contract' and note the distinction between the two.
- Note the essential elements of a contract.
- Be clear about various types of contract.
- Understand the concept of offer and acceptance and rules of communication and revocation thereof.

UNIT OVERVIEW



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The Law of contract: Introduction

As a result of increasing complexities of business environment, innumerable contracts are entered into by the parties in the usual course of carrying on their business. 'Contract' is the most usual method of defining the rights and duties in a business transaction. This branch of law is different from other branches of law in a very important respect. It does not prescribe so many rights and duties, which the law will protect or enforce; it contains a number of limiting principles subject to which the parties may create rights and duties for themselves. The Indian Contract Act, 1872 codifies the legal principles that govern 'contracts'. The Act basically identifies the ingredients of a legally enforceable valid contract in addition to dealing with certain special type of contractual relationships like indemnity, guarantee, bailment, pledge, quasi contracts, contingent contracts etc.

All agreements are not studied under the Indian Contract Act, 1872, as some of those are not contracts. Only those agreements, which are enforceable by law, are contracts.

This unit refers to the essentials of a legally enforceable agreement or contract. It sets out rules for the offer and acceptance and revocation thereof. It states the circumstances when an agreement is voidable or enforceable by one party only, and when the agreements are void, i.e. not enforceable at all.

1.1 WHAT IS A CONTRACT?

The term contract is defined under section 2(h) of the Indian Contract Act, 1872 as-

"an agreement enforceable by law".

The contract consists of two essential elements:

(i) an agreement, and

(ii) its enforceability by law.

(i) Agreement - The term 'agreement' **given in Section 2(e)** of the Act is defined as- "every promise and every set of promises, forming the consideration for each other".

To have an insight into the definition of agreement, we need to understand promise.

Section 2 (b) defines promise as-

"when the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. Proposal when accepted, becomes a promise".

The following points emerge from the above definition :

1. when the person to whom the proposal is made
2. signifies his assent on that proposal which is made to him
3. the proposal becomes accepted
4. accepted proposal becomes promise

Thus we say that an agreement is the result of the proposal made by one party to the other party and that other party gives his acceptance thereto of course for mutual consideration.

Agreement = Offer/Proposal + Acceptance

(ii) Enforceability by law – An agreement to become a contract must give rise to a legal obligation

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which means a duly enforceable by law.

Thus from above definitions it can be concluded that –

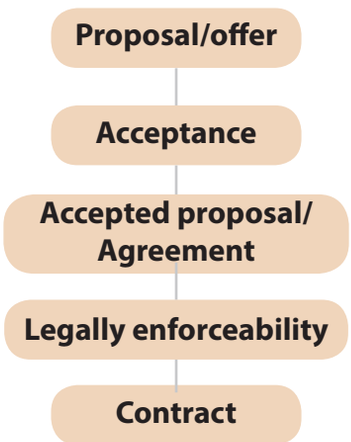
Contract = Accepted proposal/Agreement + Enforceability by law

On elaborating the above two concepts, it is obvious that contract comprises of an agreement which is a promise or a set of reciprocal promises, that a promise is the acceptance of a proposal giving rise to a binding contract. Further, section 2(h) requires an agreement to be worthy of being enforceable by law before it is called 'contract'. Where parties have made a binding contract, they created rights and obligations between themselves.

Example: A agrees with B to sell car for ₹2 lacs to B. Here A is under an obligation to give car to B and B has the right to receive the car on payment of ₹2 lacs and also B is under an obligation to pay ₹2 lacs to A and A has a right to receive ₹2 lacs.

So Law of Contract deals with only such legal obligations which has resulted from agreements. Such obligation must be contractual in nature. However some obligations are outside the purview of the law of contract.

Example: An obligation to maintain wife and children, an order of the court of law etc. These are status obligations and so out of the scope of the Contract Act.



Difference between Agreement and Contract

Basis of differences	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. Offer + Acceptance	Agreement enforceable by law. Agreement + Legal enforceability
Scope	It's a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always grant rights to the parties	Necessarily creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreement are not contracts.	All contracts are agreements.

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1.2 ESSENTIALS OF A VALID CONTRACT

Essentials of a valid contract

	As given by Section 10 of Indian Contract Act, 1872		Not given by Section 10 but are also considered essential
1	Agreement	1	Two parties
2	Free consent	2	Intention to create legal relationship
3	Competency of the parties	3	Fulfillment of legal formalities
4	Lawful consideration	4	Certainty of meaning
5	Legal object	5	Possibility of performance
6	Not expressly declared to be void	6	-

In terms of Section 10 of the Act, *"all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void".*

Since section 10 is not complete and exhaustive, so there are certain others sections which also contains requirements for an agreement to be enforceable. Thus, in order to create a valid contract, the following elements should be present:

1. **Two Parties:** One cannot contract with himself. A contract involves at least two parties- one party making the offer and the other party accepting it. A contract may be made by natural persons and by other persons having legal existence e.g. companies, universities etc. It is necessary to remember that identity of the parties be ascertainable.

   Example: To constitute a contract of sale, there must be two parties- seller and buyer. The seller and buyer must be two different persons, because a person cannot buy his own goods. In State of ***Gujarat vs. Ramanlal S & Co.*** when on dissolution of a partnership, the assets of the firm were divided among the partners, the sales tax officer wanted to tax this transaction. It was held that it was not a sale. The partners being joint owner of those assets cannot be both buyer and seller.

2. **Parties must intend to create legal obligations:** There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

   Example: A husband agreed to pay to his wife certain amount as maintenance every month while he was abroad. Husband failed to pay the promised amount. Wife sued him for the recovery of the amount. Here in this case wife could not recover as it was a social agreement and the parties did not intend to create any legal relations. ***(Balfour v. Balfour)***

3. **Other Formalities to be complied with in certain cases:** In case of certain contracts, the contracts must be in writing, e.g. Contract of Insurance is not valid except as a written contract. Further, in case of certain contracts, registration of contract under the laws which is in force at the time, is essential for it to be valid, e.g. in the case of immovable property.

4. **Certainty of meaning:** The agreement must be certain and not vague or indefinite.

   Example: A agrees to sell to B a hundred tons of oil. There is nothing certain in order to show what kind of oil was intended for.

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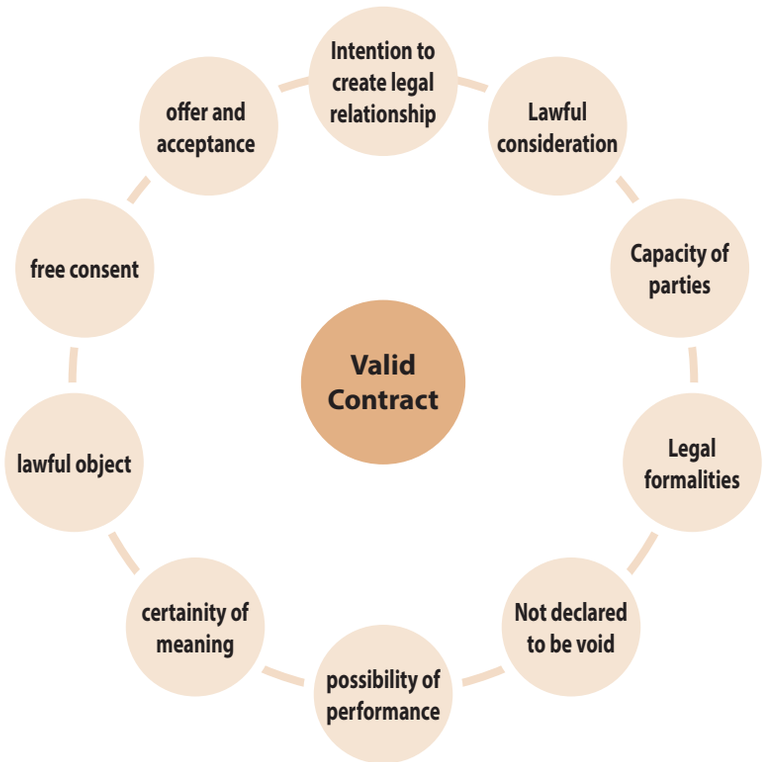
5. **Possibility of performance of an agreement:** The terms of agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced.

   Example: A agrees with B to discover treasure by magic. The agreement cannot be enforced as it is not possible to be performed.

Essential elements of a valid contract



According to Section 10 of the Indian Contract Act, 1872, the following are the essential elements of a Valid Contract:

I. **Offer and Acceptance or an agreement:** An agreement is the first essential element of a valid contract. According to Section 2(e) of the Indian Contract Act, 1872, "Every promise and every set of promises, forming consideration for each other, is an agreement" and according to Section 2(b) "A proposal when accepted, becomes a promise". An agreement is an outcome of offer and acceptance.

II. **Free Consent:** Two or more persons are said to consent when they agree upon the same thing in the same sense. This can also be understood as identity of minds in understanding the terms viz consensus ad idem. Further such a consent must be free. Consent would be considered as free consent if it is not caused by coercion, undue influence, fraud or, misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

   When consent is vitiated by mistake, the contract becomes void.

   Example: A threatened to shoot B if he (B) does not lend him ₹2000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

   (Students may note that the terms coercion, undue influence, fraud, misrepresentation, mistake are explained in the coming units)

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III. Capacity of the parties: Capacity to contract means the legal ability of a person to enter into a valid contract. Section 11 of the Indian Contract Act specifies that every person is competent to contract who

(a) is of the age of majority according to the law to which he is subject and

(b) is of sound mind and

(c) is not otherwise disqualified from contracting by any law to which he is subject.

A person competent to contract must fulfil all the above three qualifications.

Qualification (a) refers to the age of the contracting person i.e. the person entering into contract must be of 18 years of age. Persons below 18 years of age are considered minor, therefore, incompetent to contract.

Qualification (b) requires a person to be of sound mind i.e. he should be in his senses so that he understands the implications of the contract at the time of entering into a contract. A lunatic, an idiot, a drunken person or under the influence of some intoxicant is not supposed to be a person of sound mind.

Qualification (c) requires that a person entering into a contract should not be disqualified by his status, in entering into such contracts. Such persons are: an alien enemy, foreign sovereigns, convicts etc. They are disqualified unless they fulfil certain formalities required by law.

Contracts entered by persons not competent to contract are not valid.

IV. Consideration: It is referred to as *'quid pro quo'* i.e. 'something in return'. A valuable consideration in the sense of law may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

Example:- A agrees to sell his books to B for ₹ 100, B's promise to pay ₹ 100 is the consideration for A's promise to sell his books and A's promise to sell the books is the consideration for B's promise to pay ₹ 100.

V. Lawful Consideration and Object: The consideration and object of the agreement must be lawful.

Section 23 states that consideration or object is not lawful if it is prohibited by law, or it is such as would defeat the provisions of law, if it is fraudulent or involves injury to the person or property of another or court regards it as immoral or opposed to public policy.

Example : 'A' promises to drop prosecution instituted against 'B' for robbery and 'B' promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

VI. Not expressly declared to be void: The agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

Example: Threat to commit murder or making/publishing defamatory statements or entering into agreements which are opposed to public policy are illegal in nature. Similarly any agreement in restraint of trade, marriage, legal proceedings, etc. are classic examples of void agreements.

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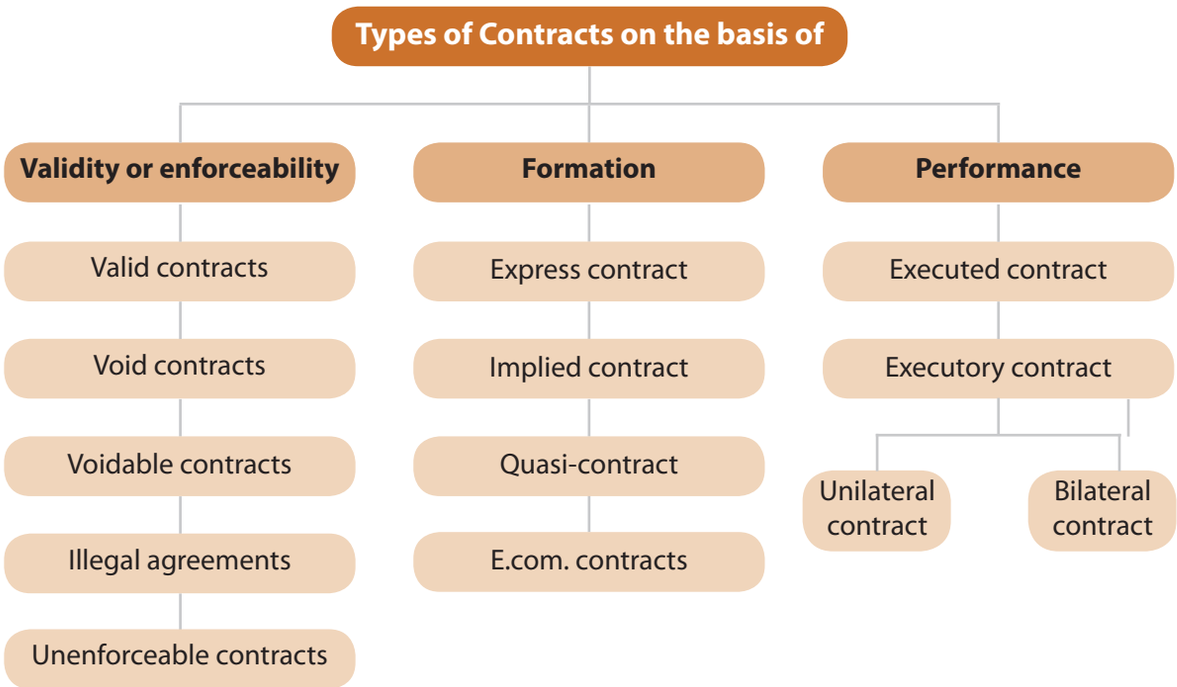
1.3 TYPES OF CONTRACT

Now let us discuss various types of contracts.



I. On the basis of the validity

1. **Valid Contract:** An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.

2. **Void Contract: Section 2 (j) states as follows:** *"A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".* Thus a void contract is one which cannot be enforced by a court of law.

   Example: Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

   Example: A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed. Here the contract becomes void.

   It may be added by way of clarification here that when a contract is void, it is not a contract at all but for the purpose of identifying it, it has to be called a [void] contract.

3. **Voidable Contract:** Section 2(i) defines that ***"an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract".***

   This in fact means where one of the parties to the agreement is in a position or is legally entitled or authorized to avoid performing his part, then the agreement is treated and becomes voidable.

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Such a right might arise from the fact that the contract may have been brought about by one of the parties by coercion, undue influence, fraud or misrepresentation and hence the other party has a right to treat it as a voidable contract.

At this juncture it would be desirable to know **the distinction between a Void Contract and a Voidable Contract**. The distinction lies in three aspects namely definition, nature and rights. These are elaborated hereunder:

(a) Definition: A void contract cannot be enforced at all. A voidable contract is an agreement which is enforceable only at the option of one of the parties but not at the option of the other. Therefore 'enforceability' or otherwise, divides the two types of contracts.

(b) Nature: By nature, a void contract is valid at the time when it is made but becomes unenforceable and thus void on account of subsequent developments or events like supervening impossibility, subsequent illegality etc., Repudiation of a voidable contract also renders the contract void. Similarly a contingent contract might become void when the occurrence of the event on which it is contingent becomes impossible.

On the other hand voidable contract would remain valid until it is rescinded by the person who has the option to treat it as voidable. The right to treat it as voidable does not invalidate the contract until such right is exercised. All contracts caused by coercion, undue influence, fraud, misrepresentation are voidable. Generally, a contract caused by mistake is void.

(c) Rights: As regards rights of the parties, in the case of a void contract there is no legal remedy for the parties as the contract cannot be performed in any way. In the case of voidable contract the aggrieved party has a right to rescind it within a reasonable time. If it is so rescinded, it becomes void. If it is not rescinded, it is a valid contract.

Difference can be summarized as under:

S. No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2	Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
3	Performance of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
4	Rights	A void contract does not grant any right to any party.	The party whose consent was not free has the right to rescind the contract.

4. Illegal Contract : It is a contract which the law forbids to be made. The court will not enforce such a contract but also the connected contracts. All illegal agreements are void but all void agreements are not necessarily illegal.

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Example: Contract that is immoral or opposed to public policy are illegal in nature. Similarly, if R agrees with S, to purchase brown sugar, it is an illegal agreement.

According to Section 2(g) of the Indian Contract Act, "an agreement not enforceable by law is void". The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void. The illegal and void agreement differ from each other in the following respects:

(a) Scope: All illegal agreements are void. However all void agreements are not illegal. Despite this, there is similarity between illegal and void agreements that in both the cases it is void ab-initio and cannot be enforced by law.

(b) Nature and character: Illegal agreements are void since the very beginning they are invariably described as void ab initio. As already emphasized under the scope, a contract by nature, which is valid, can subsequently change its character and can become void.

(c) Effect on collateral transactions: In the case of illegal contract, even the collateral transactions namely transactions which are to be complied with before or after or concurrently along with main contract also become not enforceable. In contrast in the case of voidable contracts the collateral transactions can be enforced despite the fact that the main contract may have become voidable, to the extent the collateral transactions are capable of being performed independently.

(d) Penalty or punishment: All illegal agreements are punishable under different laws say like Indian Penal Code etc. Whereas parties to void agreements do not face such penalties or punishments.

Differences can be summarized as:

Basis of difference	Void agreement	Illegal agreement
Scope	A void agreement is not necessarily illegal.	An illegal agreement is always void.
Nature	Not forbidden under law.	Are forbidden under law.
Punishment	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment.
Collateral Agreement	It's not necessary that agreements collateral to void agreements may also be void. It may be valid also.	Agreements collateral to illegal agreements are always void.

5. Unenforceable Contract: Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation etc. one or both the parties cannot sue upon it, it is described as an unenforceable contract

II. On the basis of the formation of contract

1. Express Contracts: A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words the promise is said to be express.

Example: A tells B on telephone that he offers to sell his house for ₹ 2 lacs and B in reply informs A that he accepts the offer, this is an express contract.

2. Implied Contracts: Implied contracts in contrast come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Act contemplates such implied contracts

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when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Example: Where a coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so, it is an implied contract and A must pay for the services of the coolie detailed by him.

Tacit Contracts: The word Tacit means silent. Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written. A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM]. Another example of tacit contract is where a contract is assumed to have been entered when a sale is given effect to at the fall of hammer in an auction sale. It is not a separate form of contract but falls within the scope of implied contracts.

3. **Quasi-Contract:** A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intentionon part of either party to make a contract but law imposes a contract upon the parties.

   Example: Obligation of finder of lost goods to return them to the true owner or liability of person towhom money is paid under mistake to repay it back cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

4. **E-Contracts:** When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. In electronic commerce, different parties/persons create networks which are linked to other networks through ED1 - Electronic Data Inter change. This helps in doing business transactions using electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

III. On the basis of the performance of the contract

1. **Executed Contract:** The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.

   Example: When a grocer sells a sugar on cash payment it is an executed contract because both the parties have done what they were to do under the contract.

2. **Executory Contract:** In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.

   Example: Where G agrees to take the tuition of H, a pre-engineering student, from the next month and H in consideration promises to pay G ₹ 1,000 per month, the contract is executory because it is yet to be carried out.

   Unilateral or Bilateral are kinds of Executory Contracts and are not separate kinds.

   (a) Unilateral Contract: Unilateral contract is a one sided contract in which one party has performed his duty or obligation and the other party's obligation is outstanding.

   Example: M advertises payment of are ward of ₹ 5000 to any one who finds his missing boy and brings him. As soon as B traces the boy, there comes into existence an executed contract because

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B has performed his share of obligation and it remains for M to pay the amount of reward to B. This type of Executory contract is also called unilateral contract.

(b) Bilateral Contract: A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

Example: A promises to sell his plot to B for ₹1 lacs cash down, but B pays only ₹ 25,000 as earnest money and promises to pay the balance on next Sunday. On the other hand A gives the possession of plot to B and promises to execute a sale deed on the receipt of the whole amount. The contract between the A and B is executory because there remains something to be done on both sides. Executory contracts are also known as Bilateral contracts.

1.4 PROPOSAL / OFFER [SECTION 2(a) OF THE INDIAN CONTRACT ACT, 1872]

Definition of Offer/Proposal:

According to Section 2(a) of the Indian Contract Act, 1872, "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal".

Analysis of the above definition

Essentials of a proposal/offer are-

1. **The person making the proposal or offer is called the 'promisor' or 'offeror':** The person to whom the offer is made is called the 'offeree' and the person accepting the offer is called the 'promisee' or 'acceptor'.
2. **For a valid offer, the party making it must express his willingness 'to do' or 'not to do' something:** Mere expression of willingness does not constitute an offer.

   Example: Where 'A' tells 'B' that he desires to marry by the end of 2017, it does not constitute an offer of marriage by 'A' to 'B'. Therefore, to constitute a valid offer expression of willingness must be made to obtain the assent (acceptance) of the other. Thus, if in the above **example,** 'A' further adds, 'Will you marry me', it will constitute an offer.
3. **An offer can be positive as well as negative:** Thus "doing" is a positive act and "not doing", or "abstinence" is a negative act; nonetheless both these acts have the same effect in the eyes of law.

   Example: A offers to sell his car to B for ₹ 3 lacs is an act of doing. So in this case, A is making an offer to B. On the other hand, when A ask B after his car meets with an accident with B's scooter not to go to Court and he will pay the repair charges to B for the damage to B's scooter; it is an act of not doing or abstinence.
4. **The willingness must be expressed with a view to obtain the assent** of the other party to whom the offer is made.

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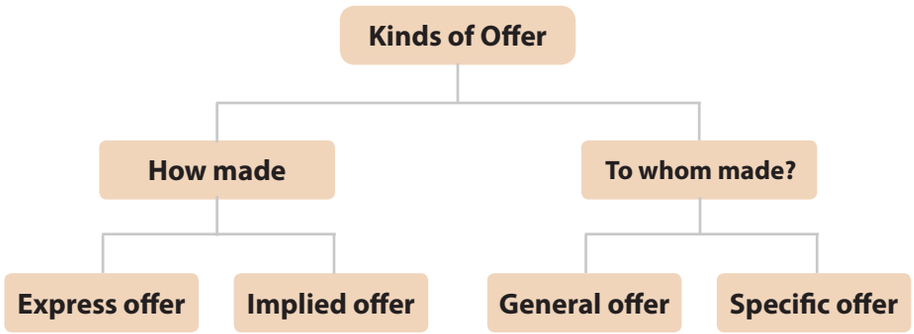
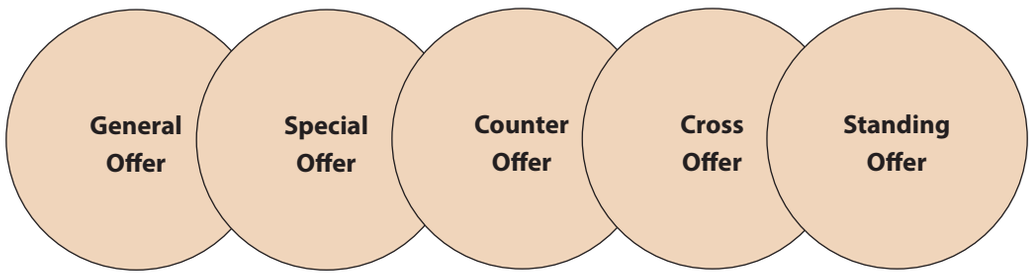


Classification of offer

An offer can be classified as general offer, special/specific offer, cross offer, counter offer, standing/open/ continuing offer.



Now let us examine each one of them.

(a) General offer: It is an offer made to public at large and hence anyone can accept and do the desired act ***(Carlill v. Carbolic Smoke Ball Co.).*** In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.

Case Law: Carlill Vs. Carbolic Smoke Ball Co. (1893)

Facts: In this famous case Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person who contracted influenza after using the smoke balls produced by the Carbolic Smoke Company according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then suffered from influenza. Held, she could recover the amount as by using the smoke balls she had accepted the offer.

Case Law: Lalman Shukla v. Gauri Dutt

Facts: G (Gauridutt) sent his servant L (Lalman) to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L, traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. Held, he was not entitled to the reward, as he did not know the offer.

(b) Special/specific offer: When the offer is made to a specific or an ascertained person, it is known as a specific offer. Specific offer can be accepted only by that specified person to whom the offer has been made. ***[Boulton v. Jones]***

Example: 'A' offers to sell his car to 'B' at a certain cost. This is a specific offer.

(c) Cross offer: When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers. There is no binding contract in such a case because offer made by a

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person cannot be construed as acceptance of the another's offer.

Example: If A makes a proposal to B to sell his car for ₹ 2 lacs and B, without knowing the proposal of A, makes an offer to purchase the same car at ₹ 2 lacs from A, it is not an acceptance, as B was not aware of proposal made by A. It is only cross proposal (cross offer). And when two persons make offer to each other, it can not be treated as mutual acceptance. There is no binding contract in such a case.

(d) Counter offer: When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter-offer amounts to rejection of the original offer. It is also called as Conditional Acceptance.

Example: 'A' offers to sell his plot to 'B' for ₹10 lakhs. 'B' agrees to buy it for ₹ 8 lakhs. It amounts to counter offer. It may result in the termination of the offer of 'A'. Any if later on 'B' agrees to buy the plot for ₹ 10 lakhs, 'A' may refuse.

(e) Standing or continuing or open offer: An offer which is allowed to remain open for acceptance over a period of time is known as standing or continuing or open offer. Tenders that are invited for supply of goods is a kind of standing offer.

Essential of a valid offer

1. ***It must be capable of creating legal relations:*** Offer must be such as in law is capable of being accepted and giving rise to legal relationship. If the offer does not intend to give rise to legal consequences and creating legal relations, it is not considered as a valid offer in the eye of law. A social invitation, even if it is accepted, does not create legal relations because it is not so intended.

2. ***It must be certain, definite and not vague:*** If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship. Thus, where A offers to sell B 100 quintals of oil, there is nothing whatever to show what kind of oil was intended. The offer is not capable of being accepted for want of certainty.

3. ***It must be communicated to the offeree:*** An offer, to be complete, must be communicated to the person to whom it is made, otherwise there can be no acceptance of it. Unless an offer is communicated, there can be no acceptance by it. An acceptance of an offer, in ignorance of the offer, is not acceptance and does not confer any right on the acceptor.

   This can be illustrated by the landmark case of ***Lalman Shukla v. GauriDutt***

   Facts: G (Gauridutt) sent his servant L (Lalman) to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. **Held,** he was not entitled to the reward, as he did not know the offer.

4. ***It must be made with a view to obtaining the assent of the other party:*** Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.

5. ***It may be conditional:*** An offer can be made subject to any terms and conditions by the offeror.

   Example: Offeror may ask for payment by RTGS, NEFT etc. The offeree will have to accept all the terms of the offer otherwise the contract will be treated as invalid.

6. ***Offer should not contain a term the non compliance of which would amount to acceptance:*** Thus, one cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.

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Example: A proposes B to purchase his android mobile for ₹5000 and if no reply by him in a week, it would be assumed that B had accepted the proposal. This would not result into contract.

7. ***The offer may be either specific or general:*** Any offer can be made to either public at large or to the any specific person. (Already explained in the heading types of the offer)

8. ***Offer is Different from a mere statement of intention, an invitation to offer, a mere communication of information, Casual Equity, A prospectus and Advertisement.***

   (i) An invitation to make an offer or do business. In case of "an invitation to make an offer", the person making the invitation does not make an offer rather invites the other party to make an offer. His objective is to send out the invitation that he is willing to deal with any person who, on the basis of such invitation, is ready to enter into contract with him subject to final terms and conditions.

   Example: An advertisement for sale of goods by auction is an invitation to the offer. It merely invites offers/bids made at the auction. Similarly, Red Herring Prospectus issued by a company, is only an invitation to the public to make an offer to subscribe to the securities of the company.

   (ii) A statement of intention and announcement.

   (iii) Offer must be distinguished from an answer to a question.

   Case Law: Harvey vs. Facie [1893] AC 552

   In this case, Privy Council succinctly explained the distinction between an offer and an invitation to offer. In the given case, the plaintiffs through a telegram asked the defendants two questions namely,

   (i) Will you sell us Bumper Hall Pen? and

   (ii) Telegraph lowest cash price.

   The defendants replied through telegram that the "lowest price for Bumper Hall Pen is £ 900". The plaintiffs sent another telegram stating "we agree to buy Bumper Hall Pen at £ 900". However the defendants refused to sell the property at the price.

   The plaintiffs sued the defendants contending that they had made an offer to sell the property at £ 900 and therefore they are bound by the offer.

   However the Privy Council did not agree with the plaintiffs on the ground that while plaintiffs had asked two questions, the defendant replied only to the second question by quoting the price but did not answer the first question but reserved their answer with regard to their willingness to sell. Thus they made no offer at all. Their Lordships held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.

   The above decision was followed in Mac Pherson vs Appanna [1951] A.S.C. 184 where the owner of the property had said that he would not accept less than £ 6000/- for it. This statement did not indicate any offer but indicated only an invitation to offer.

   Similarly when goods are sold through auction, the auctioneer does not contract with any one who attends the sale. The auction is only an advertisement to sell but the items are not put for sale though persons who have come to the auction may have the intention to purchase. Similar decision was given in the case of ***Harris vs. Nickerson (1873).***

9. ***The offer may be express or implied:*** *An offer may be made either by words or by conduct.*

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Example: A boy starts cleaning the car as it stops on the traffic signal without being asked to do so, in such circumstances any reasonable man could guess that he expects to be paid for this, here boy makes an implied offer.

10. A statement of price is not an offer

What is invitation to offer?

An offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

When a person advertises that he has stock of books to sell or houses to let, there is no offer to be bound by any contract. Such advertisements are offers to negotiate-offers to receive offers. In order to ascertain whether a particular statement amounts to an 'offer' or an 'invitation to offer', the test would be intention with which such statement is made. Does the person who made the statement intend to be bound by it as soon as it is accepted by the other or he intends to do some further act, before he becomes bound by it. In the former case, it amounts to an offer and in the latter case, it is an invitation to offer.

Example: The price list of goods does not constitute an offer for sale of certain goods on the listed prices. It is an invitation to offer.

Difference between offer and invitation to make an offer:

In terms of Section 2(a) of the Act, an offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Thus where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms. Hence the only thing that is required is the willingness of the offeree to abide by the terms of offer.

In order to ascertain whether a particular statement amounts to an offer or an invitation to offer, the test would be intention with which such statement is made. The mere statement of the lowest price which the vendor would sell contains no implied contract to sell at that price to the person making the inquiry.

If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer. Thus the intention to be bound is important factor to be considered in deciding whether a statement is an 'offer' or 'invitation to offer.'

Following are instances of invitation to offer to buy or sell:

(i) An invitation by a company to the public to subscribe for its shares.

(ii) Display of goods for sale in shop windows.

(iii) Advertising auction sales and

(iv) Quotation of prices sent in reply to a query regarding price.

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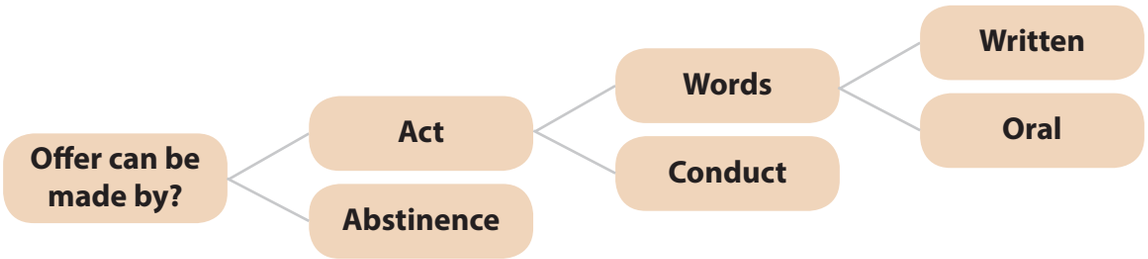
How to make an offer?



1.5 ACCEPTANCE

Definition of Acceptance: In terms of Section 2(b) of the Act, 'the term acceptance' is defined as follows:

"When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".

Analysis of the above definition

1. When the person to whom proposal is made - for example if A offers to sell his car to B for ₹ 200000. Here, proposal is made to B.
2. The person to whom proposal is made i.e. B in the above example and if B signifies his assent on that proposal. In other words if B grants his consent on A's proposal, then we can say that B has signified his consent on the proposal made by A.
3. When B has signified his consent on that proposal, we can say that the proposal has been accepted.
4. Accepted proposal becomes promise.

Relationship between offer and acceptance: ***According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gun powder".*** The effect of this observation is that what acceptance triggers cannot be recalled or undone. But there is a choice to the person who had the train to remove it before the match is applied. It in effect means that the offer can be withdrawn just before it is accepted. Acceptance converts the offer into a promise and then it is too late to revoke it. This means as soon as the train of gun powder is lighted it would explode. Train of Gun powder [offer] in itself is inert, but it is the lighted match [the acceptance] which causes the gun powder to explode. The significance of this is an offer in itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship. Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked. An offer remains an offer so long as it is not accepted but becomes a contract as soon as it is accepted.

Legal Rules regarding a valid acceptance

(1) Acceptance can be given only by the person to whom offer is made: In case of a specific offer, it can be accepted only by the person to whom it is made. ***[Boulton vs. Jones (1857)]***

Case Law: Boulton vs. Jones (1857)

Facts: Boulton bought a business from Brocklehurst. Jones, who was Broklehurst's creditor, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not in his name. Jones refused to pay Boultan for the goods because by entering into the contract with Blocklehurst, he intended to set off his debt against Brocklehurst. **Held,** as the offer was not made to Boulton, therefore, there was no contract between Boulton and Jones.

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In case of a general offer, it can be accepted by any person who has the knowledge of the offer. ***[Carlill vs. Carbolic Smoke Ball Co. (1893)]***

(2) ***Acceptance must be absolute and unqualified:*** As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

Example: 'A' enquires from 'B', "Will you purchase my car for ₹ 2 lakhs?" If 'B' replies "I shall purchase your car for ₹ 2 lakhs, if you buy my motorcycle for ₹ 50000/-, here 'B' cannot be considered to have accepted the proposal. If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition. Therefore the acceptance in this case is unconditional.

(3) ***The acceptance must be communicated:*** To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. The above points will be clearer from the following examples,

(a) Brogden vs. Metropolitan Railway Co. (1877)

Facts: B a supplier, sent a draft agreement relating to the supply of coal to the manager of railway Co. viz, Metropolitian railway for his acceptance. The manager wrote the word "Approved" on the same and put the draft agreement in the drawer of the table intending to send it to the company's solicitors for a formal contract to be drawn up. By an over sight the draft agreement remained in drawer. Held, that there was no contract as the manager had not communicated his acceptance to the supplier, B.

(b) M offered to sell his land to N for £280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly installments of £ 50 each. It was held that N could not enforce his acceptance because it was not an unqualified one. ***[Neale vs. Merret [1930] W. N. 189].***

(c) A offers to sell his house to B for ₹ 1,00,000/-. B replied that, "I can pay ₹ 80,000 for it. The offer of 'A' is rejected by 'B' as the acceptance is not unqualified. B however changes his mind and is prepared to pay ₹ 1,00,000/-. This is also treated as counter offer and it is upto A whether to accept it or not. ***[Union of India v. Bahulal AIR 1968 Bombay 294].***

Where an offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto. ***(Bhagwandas v. Girdharilal)***

A mere variation in the language not involving any difference in substance would not make the acceptance ineffective. ***[Heyworth vs. Knight [1864] 144 ER 120].***

(4) ***Acceptance must be in the prescribed mode:*** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

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Example: If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

(5) ***Time:*** Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses. What is reasonable time is nowhere defined in the law and thus would depend on facts and circumstances of the particular case.

(6) ***Mere silence is not acceptance:*** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

Case Law: Felthouse vs. Bindley (1862)

Facts: F (Uncle) offered to buy his nephew's horse for £30 saying "If I hear no more about it I shall consider the horse mine at £30." The nephew did not reply to F at all. He told his auctioneer, B to keep the particular horse out of sale of his farm stock as he intended to reserve it for his uncle. By mistake the auctioneer sold the horse. F sued him for conversion of his property. **Held,** F could not succeed as his nephew had not communicated the acceptance to him.

Example: 'A' subscribed for the weekly magazine for one year. Even after expiry of his subscription, the magazine company continued to send him magazine for five years. And also 'A' continued to use the magazine but denied to pay the bills sent to him. 'A' would be liable to pay as his continued use of the magazine was his acceptance of the offer.

(7) ***Acceptance by conduct/Implied Acceptance:*** Section 8 of the Act lays down that "the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

For example, when a tradesman receives an order from a customer and executes the order by sending the goods, the customer's order for goods constitutes the offer, which has been accepted by the trades man subsequently by sending the goods. It is a case of acceptance by conduct.

1.6 COMMUNICATION OF OFFER AND ACCEPTANCE

The importance of 'offer' and 'acceptance' in giving effect to a valid contract was explained in the previous paragraphs. One important common requirement for both 'offer' and 'acceptance' is their effective communication. Effective and proper communication prevents avoidable revocation and misunderstanding between parties.

When the contracting parties are face-to-face, there is no problem of communication because there is instantaneous communication of offer and acceptance. In such a case the question of revocation does not arise since the offer and its acceptance are made instantly.

The difficulty arises when the contracting parties are at a distance from one another and they utilise the services of the post office or telephone or email (internet). In such cases, it is very much relevant for us to know the exact time when the offer or acceptance is made or complete.

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The Indian Contract Act,1872 gives a lot of importance to "time" element in deciding when the offer and acceptance is complete.

Communication of offer: In terms of Section 4 of the Act, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made". This can be explained by **an example**. Where 'A' makes a proposal to 'B' by post to sell his house for ₹ 5 lakhs and if the letter containing the offer is posted on 10th March and if that letter reaches 'B' on 12th March the offer is said to have been communicated on 12th March when B received the letter.

Thus it can be summed up that when a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

Mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

He receives the letter on 12th March, but he reads it on 15th of March. In this case offer is communicated on 15th of March, and not 12th of March.

Communication of acceptance: There are two issues for discussion and understanding. They are: The modes of acceptance and when is acceptance complete?

Let us, first consider the **modes of acceptance.** Section 3 of the Act prescribes in general terms two modes of communication namely, (a) by any act and (b) by omission, intending thereby, to communicate to the other or which has the effect of communicating it to the other.

Communication by act would include any expression of words whether written or oral. Written words will include letters, telegrams, faxes, emails and even advertisements. Oral words will include telephone messages. Again communication would include any conduct intended to communicate like positive acts or signs so that the other person understands what the person 'acting ' or 'making signs' means to say or convey.

Communication of acceptance by 'omission' to do something. Such omission is conveyed by a conduct or by forbearance on the part of one person to convey his willingness or assent. However silence would not be treated as communication by 'omission'.

Communication of acceptance by conduct. For instance, delivery of goods at a price by a seller to a willing buyer will be understood as a communication by conduct to convey acceptance. Similarly one need not explain why one boards a public bus or drop a coin in a weighing machine. The first act is a conduct of acceptance and its communication to the offer by the public transport authority to carry any passenger. The second act is again a conduct conveying acceptance to use the weighing machine kept by the vending company as an offer to render that service for a consideration.

The other issue in communication of acceptance is about the effect of act or omission or conduct. These indirect efforts must result in effectively communicating its acceptance or non acceptance. If it has no such effect, there is no communication regardless of which the acceptor thinks about the offer within himself. Thus a mere mental unilateral assent in one's own mind would not amount to communication. Where a resolution passed by a bank to sell land to 'A' remained uncommunicated to 'A', it was held that there was no communication and hence no contract. ***[Central Bank YeotmalvsVyankatesh (1949) A. Nag. 286].***

Let us now come to the issue of when communication of acceptance is complete. In terms of Section 4 of the Act, it is complete,

(i) **As against the proposer,** when it is put in the course of transmission to him so as to be out of the power of the acceptor to withdraw the same;

(ii) **As against the acceptor,** when it comes to the knowledge of the proposer.

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Where a proposal is accepted by a letter sent by the post, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.

For instance in the above *example,* if 'B' accepts, A's proposal and sends his acceptance by post on 14th, the communication of acceptance as against 'A' is complete on 14th, when the letter is posted. As against 'B' acceptance will be complete, when the letter reaches 'A'. Here 'A' the proposer will be bound by B's acceptance, even if the letter of acceptance is delayed in post or lost in transit. The golden rule is proposer becomes bound by the contract, the moment acceptor has posted the letter of acceptance. But it is necessary that the letter is correctly addressed, adequately stamped and duly posted. In such an event the loss of letter in transit, wrong delivery, non delivery etc., will not affect the validity of the contract. However, from the view point of acceptor, he will be bound by his acceptance only when the letter of acceptance has reached the proposer. So it is crucial in this case that the letter reaches the proposer. If there is no delivery of the letter, the acceptance could be treated as having been completed from the viewpoint of proposer but not from the viewpoint of acceptor. Of course this will give rise to an awkward situation of only one party to the contract, being treated as bound by the contract though no one would be sure as to where the letter of acceptance had gone.

Acceptance over telephone or telex or fax: When an offer is made of instantaneous communication like telex, telephone, fax or through e-mail, the contract is only complete when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received ***(Entores Ltd. v. Miles Far East Corporation).*** However, in case of a call drops and disturbances in the line, there may not be a valid contract.

Communication of special conditions: Sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.

For *instance* where a passenger undertakes a travel, the conditions of travel are printed at the back of the tickets, sometimes these special conditions are brought to the notice of the passenger, sometimes not. In any event, the passenger is treated as having accepted the special condition the moment he bought his ticket.

When someone travels from one place to another by air, it could be seen that special conditions are printed at the back of the air ticket in small letters [in a non computerized train ticket even these are not printed] Sometimes these conditions are found to have been displayed at the notice board of the Air lines office, which passengers may not have cared to read. The question here is whether these conditions can be considered to have been communicated to the passengers of the Airlines and can the passengers be treated as having accepted the conditions. The answer to the question is in the affirmative and was so held in ***Mukul Datta vs. Indian Airlines [1962] AIR cal. 314*** where the plaintiff had travelled from Delhi to Kolkata by air and the ticket bore conditions in fine print.

Yet another example is where a launderer gives his customer a receipt for clothes received for washing. The receipt carries special conditions and are to be treated as having been duly communicated to the customer and therein a tacit acceptance of these conditions is implied by the customer's acceptance of the receipt ***[Lily White vs. R. Mannuswamy [1966] A. Mad. 13].***

CASE LAW: Lilly White vs. Mannuswamy (1970)

Facts: P delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, P lost her new saree. Held, the terms were unreasonable and P was entitled to recover full value of the saree from the drycleaner.

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In the cases referred above, the respective documents have been accepted without a protest and hence amounted to tacit acceptance.

Standard forms of contracts: It is well established that a standard form of contract may be enforced on another who is subjectively unaware of the contents of the document, provided the party wanting to enforce the contract has given notice which, in the circumstances of a case, is sufficiently reasonable. But the acceptor will not incur any contractual obligation, if the document is so printed and delivered to him in such a state that it does not give reasonable notice on its face that it contains certain special conditions. In this connection, let us consider a converse situation. A transport carrier accepted the goods for transport without any conditions. Subsequently, he issued a circular to the owners of goods limiting his liability for the goods. In such a case, since the special conditions were not communicated prior to the date of contract for transport, these were not binding on the owners of goods ***[Raipur transport Co. vs. Ghanshyam [1956] A. Nag.145].***

1.7 COMMUNICATION OF PERFORMANCE

We have already discussed that in terms of Section 4 of the Act, communication of a proposal is complete when it comes to the knowledge of the person to whom it is meant. As regards acceptance of the proposal, the same would be viewed from two angles. These are:

(i) from the viewpoint of proposer and

(ii) the other from the viewpoint of acceptor himself:

From the viewpoint of proposer, when the acceptance is put in to a course of transmission, when it would be out of the power of acceptor. From the viewpoint of acceptor, it would be complete when it comes to the knowledge of the proposer.

At times the offeree may be required to communicate the performance (or act) by way of acceptance. In this case it is not enough if the offeree merely performs the act but he should also communicate his performance unless the offer includes a term that a mere performance will constitute acceptance. The position was clearly explained in the famous case of ***Carlill Vs Carbolic &Smokeball Co.*** In this case the defendant a sole proprietary concern manufacturing a medicine which was a carbolic ball whose smoke could be inhaled through the nose to cure influenza, cold and other connected ailments issued an advertisement for sale of this medicine. The advertisement also included a reward of $100 to any person who contracted influenza, after using the medicine (which was described as 'carbolic smoke ball'). Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza. It was held that Mrs. Carlill was entitled to a reward of $100 as she had performed the condition for acceptance. Further as the advertisement did not require any communication of compliance of the condition, it was not necessary to communicate the same. The court thus in the process laid down the following three important principles:

(i) an offer, to be capable of acceptance, must contain a definite promise by the offeror that he would be bound provided the terms specified by him are accepted;

(ii) an offer may be made either to a particular person or to the public at large, and

(iii) if an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer

1.8 REVOCATION OF OFFER AND ACCEPTANCE

If there are specific requirements governing the making of an offer and the acceptance of that offer, we also have specific law governing their revocation.

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In term of **Section 4,** communication of revocation (of the proposal or its acceptance) is complete.

(i) **as against the person who makes it** when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it, and

(ii) **as against the person to whom it is made,** when it comes to his knowledge.

The above law can be *illustrated* as follows: If you revoke your proposal made to me by a telegram, the revocation will be complete, as far as you are concerned when you have dispatched the telegram. But as far as I am concerned, it will be complete only when I receive the telegram.

As regards revocation of acceptance, if you go by the above example, I can revoke my acceptance (of your offer) by a telegram. This revocation of acceptance by me will be complete when I dispatch the telegram and against you, it will be complete when it reaches you.

But the important question for consideration is when a proposal can be revoked? And when can an acceptance be revoked? These questions are more important than the question when the revocation (of proposal and acceptance) is complete.

Ordinarily, the offeror can revoke his offer before it is accepted. If he does so, the offeree cannot create a contract by accepting the revoked offer.

For example the bidder at an auction sale may withdraw (revoke) his bid (offer) before it is accepted by the auctioneer by fall of hammer.

An offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.

Example: X offered to sell 50 bales of cotton at a certain price and promised to keep it open for acceptance by Y till 6 pm of that day. Before that time X sold them to Z. Y accepted before 6 p.m., but after the revocation by X. In this case it was held that the offer was already revoked.

In terms of **Section 5** of the Act a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor.

Example: A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards. Whereas B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

An acceptance to an offer must be made before that offer lapses or is revoked.

The law relating to the revocation of offer is the same in India as in England, but the law relating to the revocation of acceptance is different.

In English law, the moment a person expresses his acceptance of an offer, that moment the contract is concluded, and such an acceptance becomes irrevocable, whether it is made orally or through the post. In Indian law, the position is different as regards contract through post.

Contract through post- As acceptance, in English law, cannot be revoked, so that once the letter of acceptance is properly posted the contract is concluded. In Indian law, the acceptor or can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

Contract over Telephone- A contract can be made over telephone. The rules regarding offer and acceptance as well as their communication by telephone or telex are the same as for the contract made by the mutual

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meeting of the parties. The contract is formed as soon as the offer is accepted but the offeree must make it sure that his acceptance is received by the offeror, otherwise there will be no contract, as communication of acceptance is not complete. If telephone unexpectedly goes dead during conversation, the acceptor must confirm again that the words of acceptance were duly heard by the offeror.

Revocation of proposal otherwise than by communication: When a proposal is made, the proposer may not wait indefinitely for its acceptance. The offer can be revoked otherwise than by communication or sometimes by lapse.

Modes of revocation of offer

(i) By notice of revocation

(ii) **By lapse of time:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely. It was held in ***Ramsgate Victoria Hotel Co. Vs Montefiore (1866 L.R.Z. Ex 109)***, that a person who applied for shares in June was not bound by an allotment made in November. This decision was also followed in ***India Cooperative Navigation and Trading Co. Ltd. Vs Padamsey PremJi***. However these decisions now will have no relevance in the context of allotment of shares since the Companies Act, 2013 has several provisions specifically covering these issues.

(iii) **By non fulfillment of condition precedent:** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offeror for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money. Failure to satisfy any condition will result in lapse of the proposal. As stated earlier 'condition precedent' to acceptance prevents an obligation from coming into existence until the condition is satisfied. Suppose where 'A' proposes to sell his house to be 'B' for ₹ 5 lakhs provided 'B' leases his land to 'A'. If 'B' refuses to lease the land, the offer of 'A' is revoked automatically.

(iv) **By death or insanity:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

(v) By counter offer

(vi) By the non acceptance of the offer according to the prescribed or usual mode

(vii) By subsequent illegality

SUMMARY

Contract: A Contract is an agreement enforceable by law [Section2(h)]. An agreement is enforceable by law, if it is made by the free consent of the parties who are competent to contract and the agreement is made with a lawful object and is for a lawful consideration, and is not hereby expressly declared to be void [Section10]. All contracts are agreements but all agreements are not contracts. Agreements lacking any of the above said characteristics are not contracts. A contract that ceases to be enforceable by law is called 'void contract', [Section2(i)], but an agreement which is enforceable by law at the option of one party thereto, but not at the option of the other is called 'voidable contract' [(Section 2(i)].

Offer and Acceptance: Offeror undertakes to do or to abstain from doing a certain act if the offer is properly accepted by the offeree. Offer may be expressly made or may even be implied in conduct of the offeror, but it must be capable of creating legal relations and must intend to create legal relations. The terms of offer must be certain or at least be capable of being made certain.

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Acceptance of offer must be absolute and unqualified and must be according to the prescribed or usual mode. If the offer has been made to a specific person, it must be accepted by that person only, but a general offer may be accepted by any person.

Communication of offer and acceptance, and revocation thereof-

(a) Communication of an offer is complete when it comes to the knowledge of the offeree.

(b) Communication of an acceptance is complete: As against the offeror when it is put in the course of transmission to him as against the acceptor, when it comes to the knowledge of the offeror.

(c) Communication of revocation of an offer or acceptance is complete: It is complete as against the person making it, when it is put into a course of transmission so as to be out of power of the person making it and as against the person to whom it is made, when it comes to his knowledge.

Meaning of certain terms

Proposal [(i.e., offer) Section 2(a)]	➢ When one person signifies to another ➢ his willingness ➢ to do or to abstain from doing anything ➢ with a view to obtaining the assent of that either to- • such act; or • abstinence, ➢ he is said to make a proposal (i.e. offer).
Promise [Section 2 (b)]	➢ When the person to whom the proposal is made, ➢ signifies his assent thereto, ➢ the proposal is said to be accepted. A proposal, when accepted, becomes a promise.
Agreement [Section 2(e)]	➢ Every promise and every set of promises, ➢ forming consideration for each other, ➢ is an agreement.
Contract [Section 2(h)]	An agreement enforceable by law is a contract.
Promisor and Promisee [Section 2(c)]	When the proposal is accepted- • the person making the proposal is called as 'promisor'; and • the person accepting the proposal is called as 'promisee'.
Consideration [Section 2(d)]	When, at the desire of the promisor, the promisee – has done or abstained from doing something; or – does or abstains from doing something; or any other person – promises to do or abstain from doing something, Such act, abstinence or promise is called a consideration for the promise.
Void agreement [Section 2(g)]	An agreement not enforceable by law is said to be void. A void agreement is not enforceable from the very beginning, i.e. it is void ab initio.

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Voidable Contract [Section 2(i)]	An agreement is a voidable contract if- - it is enforceable by law at the option of one or more of the parties thereto, - it is not enforceable by law at the option of the other or others. Simply speaking, a contract which can be set aside (i.e. terminated or repudiated or avoided) at the option of the aggrieved party is a voidable contract. Until the contract is repudiated, it remains a valid contract. As per Section 64, the aggrieved party must restore the benefit that he has received under the contract. The other party is freed from his obligation to perform the contract.
Void contract [Section 2 (j)]	➢ A contract ➢ which ceases to be enforceable by law ➢ becomes void when it ceases to be enforceable. Simply speaking, a contract which, when entered into, was valid, but subsequently became void due to impossibility of performance or change in circumstances or change in law or some other reason (termed as supervening impossibility), is termed as void contract.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. An agreement enforceable by law is a

   (a) Promise (b) Contract
   (c) Obligation (d) Lawful promise

2. A void agreement is one which is -

   (a) Valid but not enforceable (b) Enforceable at the option of both the parties
   (c) Enforceable at the option of one party (d) Not enforceable in a court of law.

3. An agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others is a

   (a) Valid Contract (b) Void contract
   (c) Voidable contract (d) Illegal contract

4. When the consent of a party is not free, the contract is

   (a) Void (b) Voidable
   (c) Valid (d) Illegal

5. In case of illegal agreements, the collateral agreements are:

   (a) Valid (b) Void
   (c) Voidable (d) None of these

6. An offer may lapse by:

   (a) Revocation (b) Counter Offer
   (c) Rejection of offer by offeree (d) All of these

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7. A proposal when accepted becomes a

   (a) Promise
   (b) Contract
   (c) Offer
   (d) Acceptance

ANSWERS TO MCQS

1	**(b)**	**2**	**(d)**	**3**	**(c)**	**4**	**(b)**	**5**	**(b)**	**6**	**(d)**	**7**	**(a)**

Theoretical Questions

Question 1 "All contracts are agreements, but all agreements are not contracts". Comment.

Question 2 Define the term "Acceptance'. Discuss the legal provisions relating to communication of acceptance.

Question 3 Distinction between Void and Illegal Agreements.

Answer to the Theoretical Question

1. An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.

   All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract. For example, A invites B to see a football match and B agrees. But A could not manage to get the tickets for the match, now B cannot enforce this promise against A i.e., no compensation can be claimed because this was a social agreement where there was no intention to create a legal relationship.

   All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus, existence of an agreement is a pre-requisite existence of a contract. Therefore, it is true to say that all contracts are agreements.

   Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

2. According to Section 2(b), the term 'acceptance' is defined as follows:

   "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. "

   An acceptance in order to be valid must be absolute, unqualified, accepted according to the mode if any prescribed within reasonable time and communicated to offeror. Acceptance can also be made by way of conduct.

   The legal provisions relating to communication of acceptance are contained in Section 4.

   The communication of an acceptance is complete:

   (a) as against the proposer, when it is put in a course of transmission to him, so as to be out of power of the acceptor;

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(b) as against the acceptor, when it comes to the knowledge of the proposer.

Example: A proposes, by letter, to sell a house to B at a certain price:

(1) The communication is complete when B receives the letter.

(2) B accepts the proposal by a letter sent by post. The communication is complete:

as against A, when letter is posted.

as against B when the letter is received by A.

Section 3 of the Act prescribes, in general terms, two modes of communication, namely:

(1) by any act or

(2) by omission intending thereby communicate to the other or which has the effect of communicating it to the other.

The first method would include any conduct and words whether written or oral. Written words would include letters, telegrams, talex messages, advertisements, etc. Oral words would include telephone messages. Any conduct would include positive acts or signs so that the other person understands what the person acting or making signs means to say or convey. Omission would exclude silence but include such conduct or forbearance on one's part that the other person takes it as his willingness or assent. These are not the only modes of communication of the intention of the parties. There are other means as well, e.g., if you as the owner, deliver the goods to me as the buyer thereof at a certain price, this transaction will be understood by everyone, as acceptance by act or conduct, unless there is an indication to the contrary.

The phrase appearing in Section 3 "which has the effect of communicating it", clearly refers to an act or omission or conduct which may be indirect but which results in communicating an acceptance or non-acceptance. However, a mere mental but unilateral act of assent in one's own mind does not tantamount to communication, since it cannot have the effect of communicating it to the other.

3. **Void and Illegal Agreements:** According to Section 2(g) of the Indian Contract Act, an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void. Despite the similarity between an illegal and a void agreement that in either case the agreement is void and cannot be enforced by law, the two differ from each other in the following respects:

(i) Scope: An illegal agreement is always void while a void agreement may not be illegal being void due to some other factors e.g. an agreement the terms of which are uncertain is void but not illegal.

(ii) Effect on collateral transaction: If an agreement is merely void and not illegal, the collateral transactions to the agreement may be enforced for execution but collateral transaction to an illegal agreement also becomes illegal and hence cannot be enforced.

(iii) Punishment: Unlike illegal agreements, there is no punishment to the parties to a void agreement.

(iv) Void ab-initio: Illegal agreements are void from the very beginning but sometimes valid contracts may subsequently become void.

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