

UNIT-1. Nature of Contract

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Date	

INDIAN CONTRACT ACT, 1872

Section 1: Applicable to the whole of India.

↓
Effect
↓
1 Sep 1872

* Definition of contract [sec 2(h)]

- ① An agreement
 - ② Enforceable by law
- } contract

* Promise [Sec 2(b)]

- ① One person makes offer/proposal
- ② Other accepts it
- ③ Proposal → accepted → promise

* ① Agreement [Sect. 2(e)]

- Every promise and Every set of promises } forming consideration for each other

Consideration = Something in return
money/money's worth kind

② Enforceability by law

- (i) All conditions of section [10]
- (ii) Legal obligation [Balfour Vs. Balfour]
one of the most imp element

Case law:-Balfour v. Balfour

→ Husband and wife.



England from Ceylone

→ Wife got ill → admitted

→ Husband and wife via domestic arrangement decided that husband will send 30 pounds a month as maintenance.

→ Husband failed and wife sued

Decisions: Suit not maintainable due to lack of legal obligation. It was mere domestic arrangement.* Essentials of a valid contract as per section 10

① Two parties:-

→ one making offer & other party accepting it.

→ contract may be made by :-

① Natural Person ② Other person
(having legal existence)Note:- At the time of dissolution of Partnership, Partners distributing property is not a sale.
[Gujarat vs Ramantal Sand & Co.]

② Intention to create legal relations:-

Social or domestic type of agreements are not enforceable.

- ③ Other formalities to be complied with in certain cases:- → A contract may be written or spoken
 Writing, Registered and Stamped - In certain case
 → Insurance contract
 → Immovable property

- ④ Certainty of meaning :- Ins Agreement → certain
 (clarity)
 not vague
 ↓
 clear
 ↓
 indefinite

- ⑤ Possibility of performance agreement for impossible act is not enforceable.

* Essential of a valid contract as per Section 10

- ① Offer and Acceptance or an agreement :- [sec 2(e)]
 → first essential element of a valid contract

ppt
1.3

- ② Free consent → "consensus ad idem" ppt 1.3
 meeting of minds (consent)
 → Two or more person → agree → upon same thing
 in same sense ←

Consent is free if not obtained via

- (a) Coercion (forced) → physically pressure ppt .1.2
 (b) Undue influence (mentally pressure) ppt .1.2
 (c) Fraud (on purpose) ppt .1.3
 (d) Misrepresentation (not on purpose/unintentionally)
 (e) Mistake ppt .1.3

∴ If consent is obtained by (a), (b), (c), (d) above,
 contract voidable at the option of aggrieved party.
 If by mistake → [void] (victim)

PPT

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③ Capacity of parties:

(a) major

ppt. 1.4.

(b) sound mind (at the time of contract)

(c) not otherwise disqualified

(not a citizen
of our country)

(supreme power)

Disqualification:- Alien enemy, foreign sovereigns, convicts, insolvent, desserted, etc.

④ Consideration: "Quid Pro Quo" → something in return
↓
can be in cash or kind

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⑤ Lawful consideration and Object :-

consideration → or → Object → must be lawful.

⑥ Not expressly declared to be void :-

i.e. illegal or void → Agreement is restraint of marriage, trade, etc.↓
murder,

Smuggling, killing

* Types of Contract (Based on enforceability or validity)

① Valid Contract:

It has all essential elements of contract.

→ Enforceable by law.

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② Void Contract :- (void agreement → void ab initio)

→ Does not have any legal effect

→ Not enforceable by law.

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↓
void from
the very
beginning

③ Voidable Contract :-

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→ Enforceable at the option of aggrieved party

④ Illegal Contract:

→ Forbidden by law

→ Not enforceable

⑤ Unenforceable Contract :-

→ Good in substance. (sec 10 all elements covered)

→ But suffer from technical defect.

Basis	Void	Voidable
Meaning	Ceases to be enforceable by law.	Enforceable at option of aggrieved party.
Cause	Subsequent illegality or supervening impossibility.	If consent of party is not free.
Performance of contract	cannot be performed.	can be avoided by aggrieved party within reasonable time, otherwise performed.
Rights	does not grant any right to any party.	Aggrieved party can rescind the contract.

Basis	Void Agreement	Illegal Agreement
Scope	Not necessary illegal	Always void.
Nature	Not forbidden by law	Forbidden by law.
Punishment	Parties cannot be liable for punishment	Parties liable for punishment
Connected/Collateral	Agreement connected/collateral to void agreement may also be void. It may valid also.	Connected/collateral agreements are always void.

* Types of contract on the basis of formation

① Express Contract

- spoken
- written

② Implied Contract

- made otherwise than words
- parties never intended
- Term & Condition are NOT known

③ Tacit Contract :- Tacit means silent

- It is a situation where a contract has to be understood from conduct of parties.
- Terms & conditions are known
- no use of word spoken or written

④ Quasi-Contract

- Not an actual contract
- Created by law under certain circumstances.

⑤ E-Contracts

- Contract is entered → by two or more parties.
- using electronic means
- such as e-mails
- is known as e-commerce contract

* Types of contract on the Basis of Performance

① Executed Contract :-

Contract which is wholly performed.

② Executory Contract :-

Which is partially performed, or wholly unperformed.

a) Unilateral contract :-

One sided contract in which only one party performs his obligations.

b) Bilateral Contract :-

Where obligations of both parties is outstanding.

* Offer [Section 2(a)]

- When one person expresses to another
 - His willingness
 - to do, or (positive Act)
 - to abstain from doing anything (Negative Act)
 - with a view (intention)
 - to obtain assent of other party
 - for such act or abstinence
- willingness + with intention to obtain assent = Offer

* Essential of Proposal

- ① → Offeror - Offeree
 - ② → Promisor - Promisee
 - ③ → Proposer - Acceptor
- ② Party must express his willingness to do or not to do something ppt. 1.6.
 - ③ Offer → Positive
→ Negative ppt. 1.6.
 - ④ Offer must be made with intention to obtain assent.

* Kinds of Offers :-

① General Offer :-

- Offer made to public at large
- Anyone can accept the offer

Case law :- Carlill Vs. Carbolic Smokeball Co.

- Anyone performing the condition of offer can be said to have accepted the offer until offer is withdrawn.

② Specific Offer :-

- When offer is made to specific person
OR
- ascertained person
- It can be accepted only by person to whom offer is made.

ppt 1.7 ③ Cross Offer :-

- When two parties exchange
- Identical offers > exactly same (no difference even in amount)
- In ignorance of time of each other
- No contract come into picture

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④ Counter Offer :-

- When a person to whom offer is made accepts the offer by modifying terms and condition of offers.
- Also known as conditional acceptance.

- ⑤ Standing or continuing or Open Offer
 → Which remained open
 → over a period of time

* Essentials of valid offer.

- ① It must be capable of creating legal relations:
 → Offer does not intend
 → to give rise to legal consequences
 → and creating legal relations,
 → it is not considered as a valid offer in the eyes of law.
- ② It must be certain, definite and not vague:
 → Terms of an offer must clear,
 → complete and not confusing.
 → If it is vague then it cannot create legal relationship
- ③ It must be communicated to the offeree:
 → An offer, to be complete,
 → must be communicated
 → to the person to whom it is made.

Case laws: Lalman Shukla vs. Gauridutt
 Acceptance of offer in ignorance of offer is no acceptance.

- ④ It must be made with a view to obtaining the assent of the other party :
- Offer must be made with intention to obtain assent.
- ⑤ It may be conditional :
- Offer can be made
 - subject to any terms and conditions by the offeror.
- ⑥ Offer should not contain a term the non-compliance of which would amount to acceptance :
- ⑦ The offer may be either specific or general :
- It made to either public at large
 - or to the any specific person.
- ⑧ The offer may be express or implied :
- may be made by words
 - or by conduct
- ⑨ Offer is different from -
- Mere statement of intention
 - Prospectus and Advertisement
- from an answer to question [Harvey vs. Facee]
- Invitation to offer ppt . 1. 7

* Examples of Invitation to offer

- ① Displaying of goods for sale in window shop.
- ② Advertisement Auction Sales
- ③ Quotation of Price sent in reply to a question.

* Acceptance [Section 2(b)]

- "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."

* Relationship between offer and acceptance

-According to "Sir William Anson",
Acceptance is a lighted match to a train
of gunpowder (offer) ppt. 1.8

Significance :

Offer in itself cannot create any
legal relationship.

Conclusion :

- Once offer is accepted it becomes
promise and cannot be withdrawn
~~or~~ or revoked.
- Offer becomes contract when accepted.

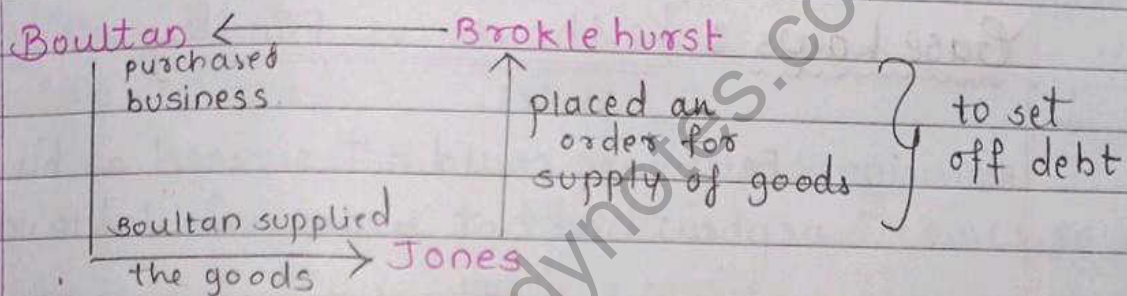
Legal

* Rules regarding 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.

Case laws:- Boulton Vs. Jones



Decision:- Offer was not made to Boulton

∴ No contract between Boulton and Jones

ppt. 1.8 ② Acceptance must be Absolute and Unqualified

- As per section 7 of the Act,
- acceptance is valid only
- when it is absolute and unqualified.

↓
unconditional
in this context

ppt. 1.8 ③ Acceptance must be communicated:

- When the proposal is accepted,
- the offeree must have knowledge of the offer made to him.

Case laws: [A] Brogden vs. Metropolitan Railway Company
[B] Neale vs. Merret

ppt. 1.9

- ④ Acceptance must be in prescribed mode.
- If mode of acceptance is prescribed in the prop
 - It must be accepted in that manner

ppt. 1.8

- ⑤ Time
- must be given in prescribed time OR
 - within the specified time limit reasonable time

- ⑥ Mere silence is not acceptance.

Case laws : Felthouse vs Bindley
 (Uncle)

Decision:- Felthouse could not succeed as his nephew had not communicated to uncle.

- ⑦ Acceptance by conduct / Implied Acceptance
- A) Word or mouth
 - B) In writing
 - C) By performance (By conduct)

* Communication of Offer and Acceptance

Communication of offer & Acceptance / When complete ?

↓
Offer (Sec 4)

→ When it comes to the knowledge of the person to whom it is made

↓
Acceptance

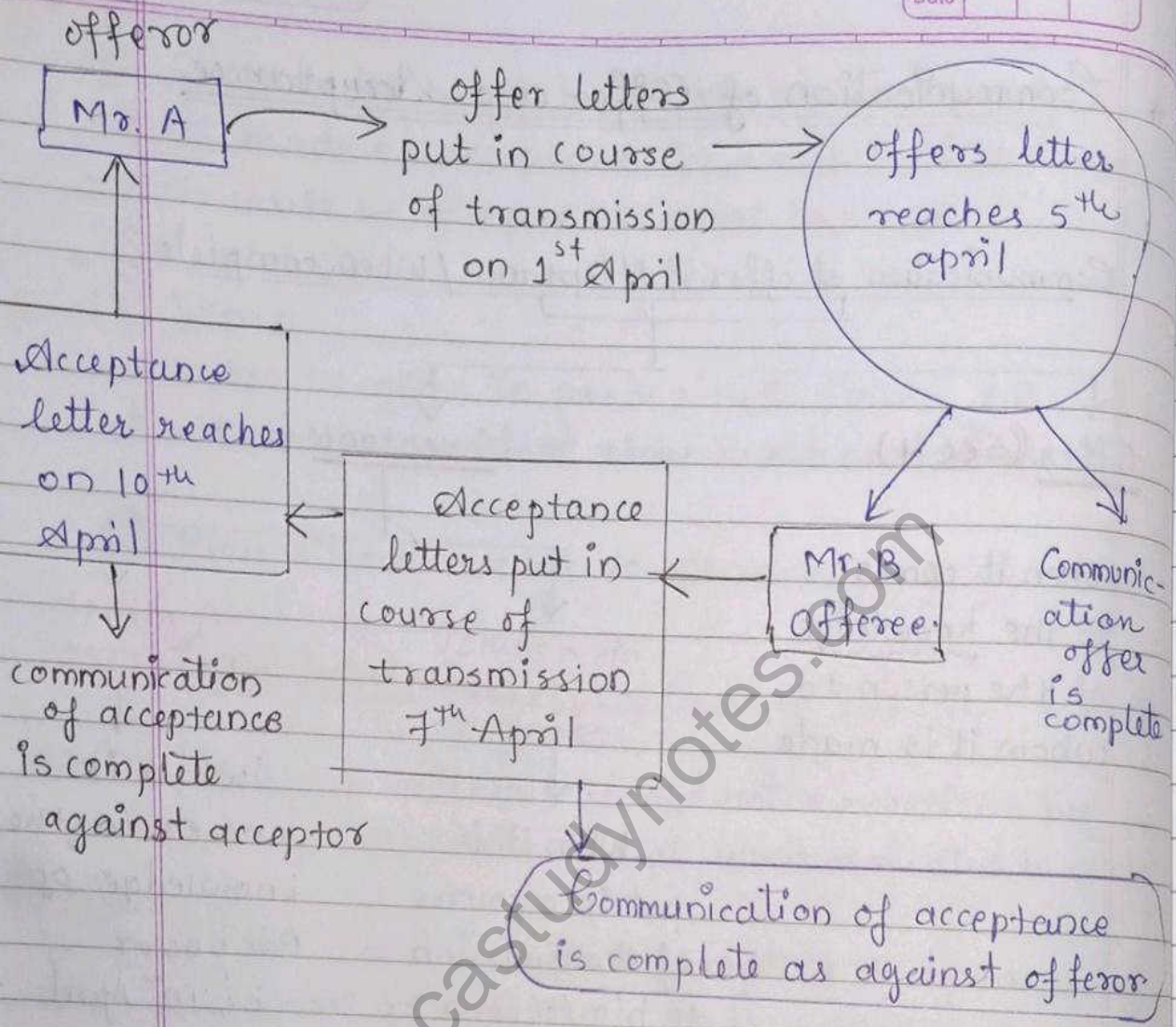
↓
As against offeror

↓
When it is put in a course of transmission to him (offeror)

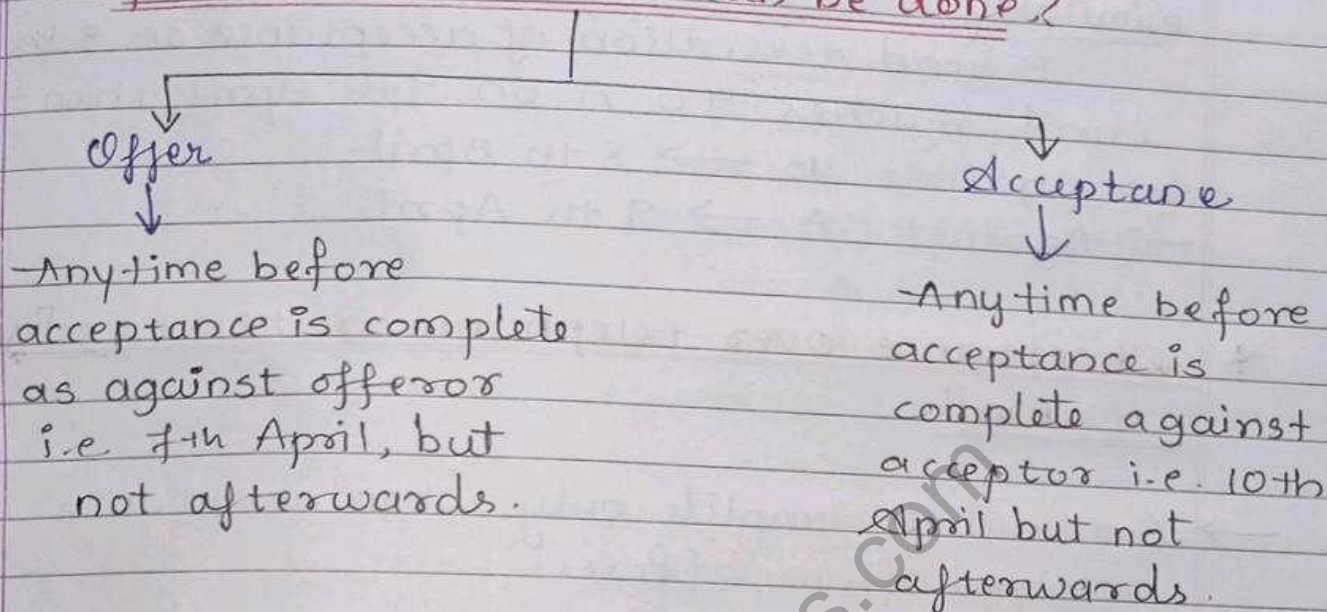
i.e. 7th April.
as out of power of offeror

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Against offeree

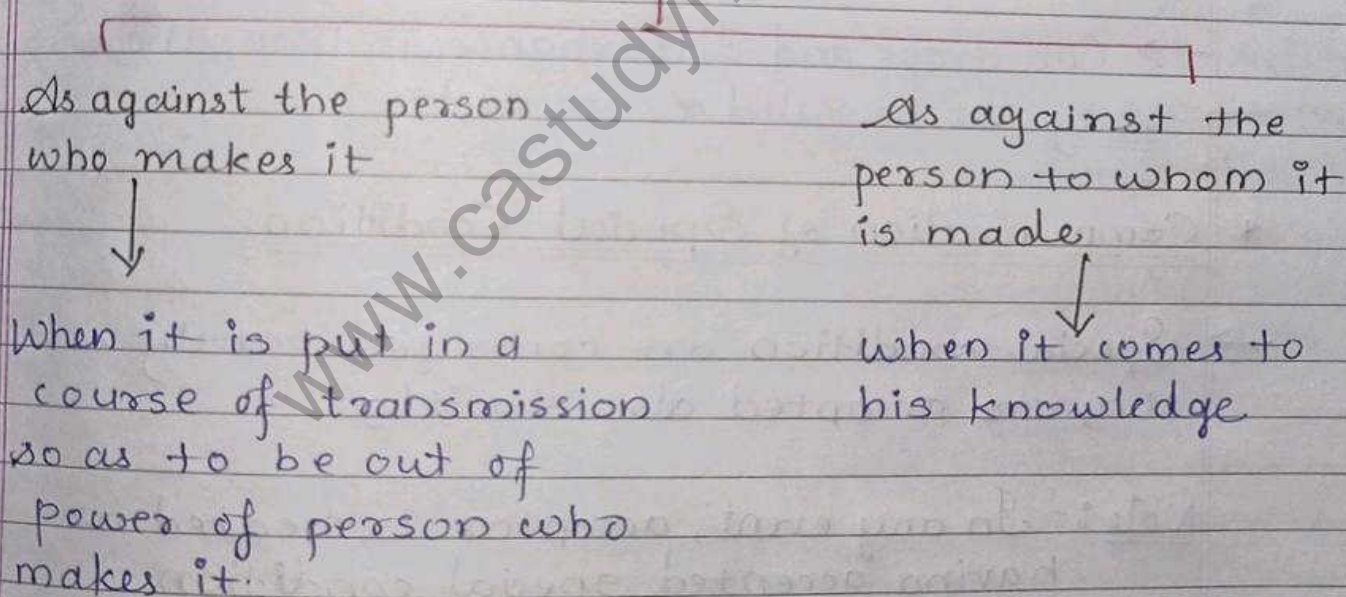
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When it comes to the knowledge of Proposer
i.e. 10th April



* Upto when Revocation can be done?



* When communication of Revocation is completed.



- Examples: → If Mr. A revokes his offer on 4th April and it reaches B on 6th April.
 → Then, Mr. A communication of revocation is complete on 4th April
 → Against B → 6th April

Similarly,

B send revocation of acceptance on 8th April, reaches to A on 9th April, then—
 → Against B → 8th April
 → Against A → 9th April.

* Acceptance over telephone or telax or fax or email.

→ Contract is complete only when acceptance received from offeree.

Note:- [Entores Ltd vs Miles Far East Co.]

→ Call drops and disturbance in line, there may not be valid contract.

* Communication of Special Condition.

→ Special condition are conveyed tacitly and they are accepted also tacitly.

Note:- In any event, acceptor is treated as having accepted special condition.

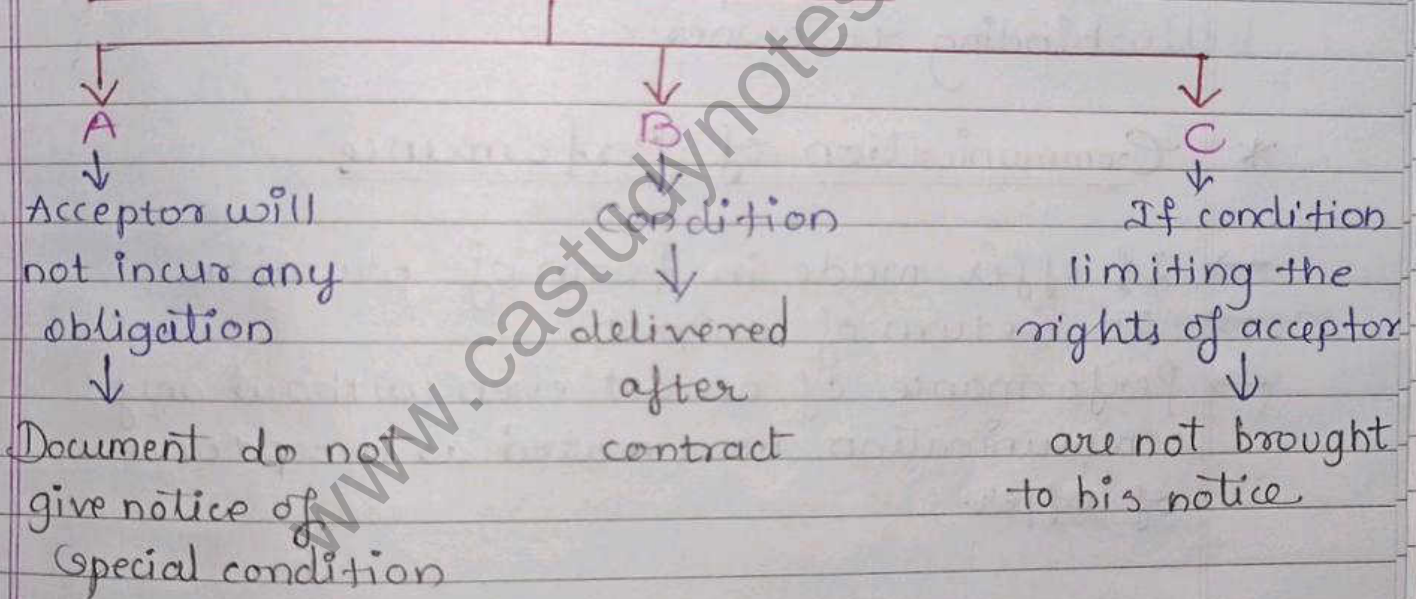
Case law: Mukul Datta vs Indian Airlines

Ticket conditions:-

- ① Self responsible for any damage
- ② If delay, we are not responsible

Case law: [Lily White vs. R Mannuswamy]Notice of condition mandatory

- Words like see back for conditions, please turn over, subject to terms and conditions are indicative of reasonable notice.
- Conditions are binding, even if the acceptor could not understand it.

No notice - Acceptor not bound

Case Law:- [Raipur transport Co. vs. Ghanshyam A. Nag.]

Facts:-

- Transport carrier accepted goods without conditions.
- subsequently issued circular to owner limiting his liability

Decision:- Since special condition not communicated prior to contract, not binding to owner.

* Communication of Performance.

- If offer made in form of promise
- In return of an act
- Performance of an act even without any communication be treated as acceptance of offer