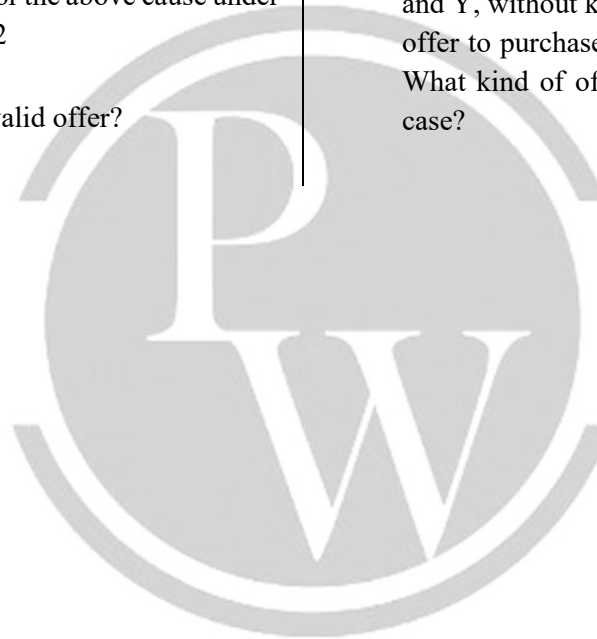


Sampurna (CA-Foundation)

The Indian Contract Act, 1872

DPP - 3

1. A shop-keeper displayed a pair of dress in the show-room and a price tag of Rs. 2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872
2. What are the essentials of a valid offer?
3. Explain all types of offer with examples?
4. X tells Y that he desires to marry by the end of 2022, does it constitute an offer of marriage by X to Y. Does X's desire to marry Y by the end of 2022 constitute an offer of marriage from X to Y?
5. X makes a proposal to Y to sell his car for Rs. 5 lacs and Y, without knowing the proposal of X, makes an offer to purchase the same car at Rs. 5 lacs from X. What kind of offer is being discussed in the above case?



Hints & Solutions

1. (H & S)

The 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 offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. 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 invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. If the shopkeeper does not accept the price, the interested buyer cannot compel him to sell.

2. (H & S)

Essentials of a valid offer/proposal:-

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.
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
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.
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.
8. The offer may be express or implied: An offer may be made either by words or by conduct.
9. Offer is Different from a mere statement of intention, an invitation to offer, a mere communication of information, a prospectus and Advertisement.
 - (i) A statement of intention and announcement.
 - (ii) Offer must be distinguished from an answer to a question.
 - (iii) A statement of price is not an offer: Quoting the price of a product does not constitute it as offer.
 - (iv) 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.
10. A statement of price is not an offer

3. (H & S)

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 Conditional Acceptance. Example: 'X' offers to sell his plot to 'Y' for `16 lakhs. 'Y' agrees to buy it for `14 lakhs. It amounts to counter offer. It will result in the termination of the offer of 'X'. If later on 'Y' agrees to buy the plot for `16 lakhs, 'X' may refuse.

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

person cannot be construed as acceptance of the other's offer. Example: If X makes a proposal to Y to sell his car for 4 lacs and Y, without knowing the proposal of X, makes an offer to purchase the same car at 4 lacs from X, it is not an acceptance, as Y was not aware of the proposal made by X. It is only a cross proposal (cross offer). And when two persons make offer to each other, it cannot be treated as mutual acceptance. There is no binding contract in such a case

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) :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 Ball Co. 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.

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

4. (H & S)

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. The willingness must be expressed with a view to obtain the assent of the other party to whom the offer is made.

In the given case Where 'X' tells 'Y' that he desires to marry by the end of 2022, it does not constitute an offer of marriage by 'X' to 'Y'. Therefore, to constitute a valid offer expression of willingness must be made to obtain the assent (acceptance) of the other.

Hence, If 'X' further adds, 'Will you marry me', it will constitute an offer.

5. (H & S)

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 an offer made by a person cannot be construed as acceptance of the another's offer.

In the given case, X makes a proposal to Y to sell his car for Rs. 5 lacs and Y, without knowing the proposal of X, makes an offer to purchase the same car at Rs. 5 lacs from X, it is not an acceptance, as Y was not aware of proposal made by X. . It is only a cross proposal (cross offer). And when two persons make an offer to each other, it cannot be treated as mutual acceptance. There is no binding contract in such a case.



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