

Indian Contract Act, 1872

⇒ Unit-1 : Nature of Contracts :-

• Before "Indian Contract Act, 1872" :-

- (1) In the ancient and medieval time, there was no specific law for contracts.
- (2) For this purpose, generally, different sources of Hindu law like; Vedas, Dharmshastras, Smritis, Shrutis etc. were referred.
- (3) During the period of Mauryas, contracts were in the form of "bilateral transactions".
- (4) During the Mughal rule in India, contracts were governed by Mohammedan law of contract. Word "Ijab" was used for proposal and "Qabul" was used for acceptance.
- (5) During British period; before the advent of the Indian Contract Act, the English law was applied under the Charter of 1726 issued by King George to the East India Company.

Relevant Sections

Sec. 1 : Applicability of Act.	Sec. 3 : Communication & Revocation of Offer.
Sec. 2(a) : Offer	Sec. 4 : Communication when Complete.
Sec. 2(b) : Acceptance and Proposal.	Sec. 5 : Communication & Revocation.
Sec. 2(c) : Promisor & Promisee.	Sec. 6 : Modes of Revocation.
Sec. 2(e) : Agreement.	Sec. 7 : Acceptance must be Absolute.
Sec. 2(h) : Contract.	Sec. 9 : Express and Implied Promise.
Sec. 2(i) : Voidable Contract.	Sec. 10 : Essentials of Contracts.
Sec. 2(j) : Void Contract.	

Applicability of Act

Sec. 1

⇒ Applicability of "Indian Contract Act, 1872" on the contracts entered on or after 1st September 1872.

⇒ Extends Whole of India including Jammu & Kashmir.

- What is "Contract", "Agreement", "Promise" ?
- Contract [Sec. 2(h)] :-
 - ⇒ The term "Contract" is defined under Section 2(h) of the Indian Contract Act, 1872 as "an agreement enforceable by law".
- Agreement [Sec. 2(e)] :-
 - ⇒ The term "Agreement" is defined under Section 2(e) of the Indian Contract Act, 1872 as "Every promise and every set of promises forming consideration for each other".
- Promise [Sec. 2(b)] :-
 - ⇒ The term "Promise" is defined under Section 2(b) of the Act as "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted, becomes a promise".
- - Promise = offer (Proposal) + Acceptance.
 - Agreement = Promise + ~~Condis~~ Consideration
 - Contract = Agreement + enforceability by law.

Sec. 2(b) = Sec. 2(a) + Sec. 2(b)

Sec. 2(e) = Sec. 2(b) + Sec. 2(d)

Sec. 2(h) = Sec. 2(e) + enforceability by law.

• Difference between Agreement and Contract:-

Basis	Agreement	Contract.
Meaning.	Every promise and every set of promise, forming the consideration for each other. (Promise + Consideration)	Agreement enforceable by law. (Agreement + legal enforceability).
Scope.	It is 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.	Necessarily creates a legal obligation.
Nature.	All agreement are not contracts.	All contracts are agreement.

• Essential Element of A Valid Contract:-

⇒ As per given by Section 10.

1. Agreement.
2. Free Consent.
3. Competency of the parties.
4. Lawful Consideration.
5. Legal object.
6. Not expressly declared to be void
(as per Section 24 to 30 and 56).

⇒ Not given by Section 10 but are also considered essential.

1. Two parties.
2. Intention to create legal relationship.
3. Fulfillments of legal formalities.
4. Certainty of meaning.
5. Possibility of performance.

(1) Two Parties:- A contract involves at least two parties, i.e. one party making the offer and the other party accepting it.

Example 1:- A offers B to sell his watch for Rs. 500. B does not give his acceptance. There is no contract as there is no acceptance.

Example 2:- In State of Gujrat vs. Ramanlal S and Co. when on dissolution of a partnership, the assets of the firm were divided among the partners, the sales tax officers wanted to tax this transaction. It was held that it was not a sale. The partners being joint owners of those assets cannot be both buyers and seller.

2. Intention to create legal relationship:-

⇒ Agreements of a social or domestic nature do not contemplate legal relationship.

Example 3:- 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 relation.

Example - 4:- Mr. L promises to pay Rs. 5 lakhs to his son if the son passes the CA exams. On passing the exams, the son claims the money. Here, the son could not recover as it was a social agreement.

Example 5:- A sold goods to B on a condition that he must pay for the amount of goods within 30 days. Here A intended to create legal relationship with B. Hence, the same is contract. On failure by B for making a payment on due date, A can sue him in the court of law.

3. Legal Formalities:- Whenever a particular type of contract requires by law to be in writing and registered, it must comply with the necessary formalities as to writing, attestation and registration otherwise unenforceable.

Example 6:- Where it requires an agreement to make a gift for natural love and affection, there it must be in writing and registered, to be valid.

Example 7:- Contract of Insurance is not valid except as a written contract.

4. Certainty of meaning: Sec. 29:-

⇒ The agreement must be certain and not vague or indefinite.

Example 8:- A agrees to sell to B two hundred tons of oil. There is nothing certain in order to show what kind of oil was intended for.

Example 9:- XYZ Ltd. agreed to lease the land to Mr. A for indefinite years. The contract is not valid as the period of lease is not mentioned.

5. Possibility of Performance: Sec 56:-

⇒ The terms of agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced.

Example 10:- A agrees with B to put life in his dead wife. The agreement cannot be enforced as it is not possible to be performed.

Example 11:- A agrees with B to discover treasure by magic. The agreement cannot be enforced as it is not possible to be performed.

6. Agreement:- An agreement is the first essential element of a valid contract. An agreement is an outcome of offer and acceptance for consideration.

7. Free Consent: Sec. 13, 14, 15, 16, 17, 18, 19, 19(A), 20, 21, 22. :-

⇒ The consent of the parties must be genuine.

The term 'consent' means parties to a contract must agree upon the same thing in the same sense. i.e. there should be consensus-ad-idem.

Example 12:- A, who owns two cars is selling red car to B. B thinks he is purchasing the Black car. There is no consensus-ad-idem and hence no contract.

⇒ Consent is said to be not free when it is vitiated by coercion, undue influence, fraud, misrepresentation or mistake.

⇒ In such cases, the contract becomes voidable at the option of the party whose consent is not free.

Example 13:- A threatened to shoot B if he (B) does not lend him Rs. 2,000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

8. Competent parties: Sec. 11 & 12:-

⇒ Every person is competent to contract provided,

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

(b) who is of sound mind,

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

9. Consideration: 'Consideration' means an advantage or benefit moving from one party to the other. In simple words, it means 'something in return' (*quid pro quo*). It may be past, present or future. But it must be real and lawful.

Example 14: - A agrees to sell his books to B for Rs. 100. Here Rs. 100 is consideration for A and books for B.

Example 15: - 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.

10. Lawful object: Sec. 23 :-

⇒ Object of the agreement must be lawful. In other words, it means that object must not be

(a) illegal

(b) immoral

(c) opposed to public policy

Example 16:- A agrees to give Rs. 50,000 to B for murder of C. Here object of A is unlawful. Hence there is no contract.

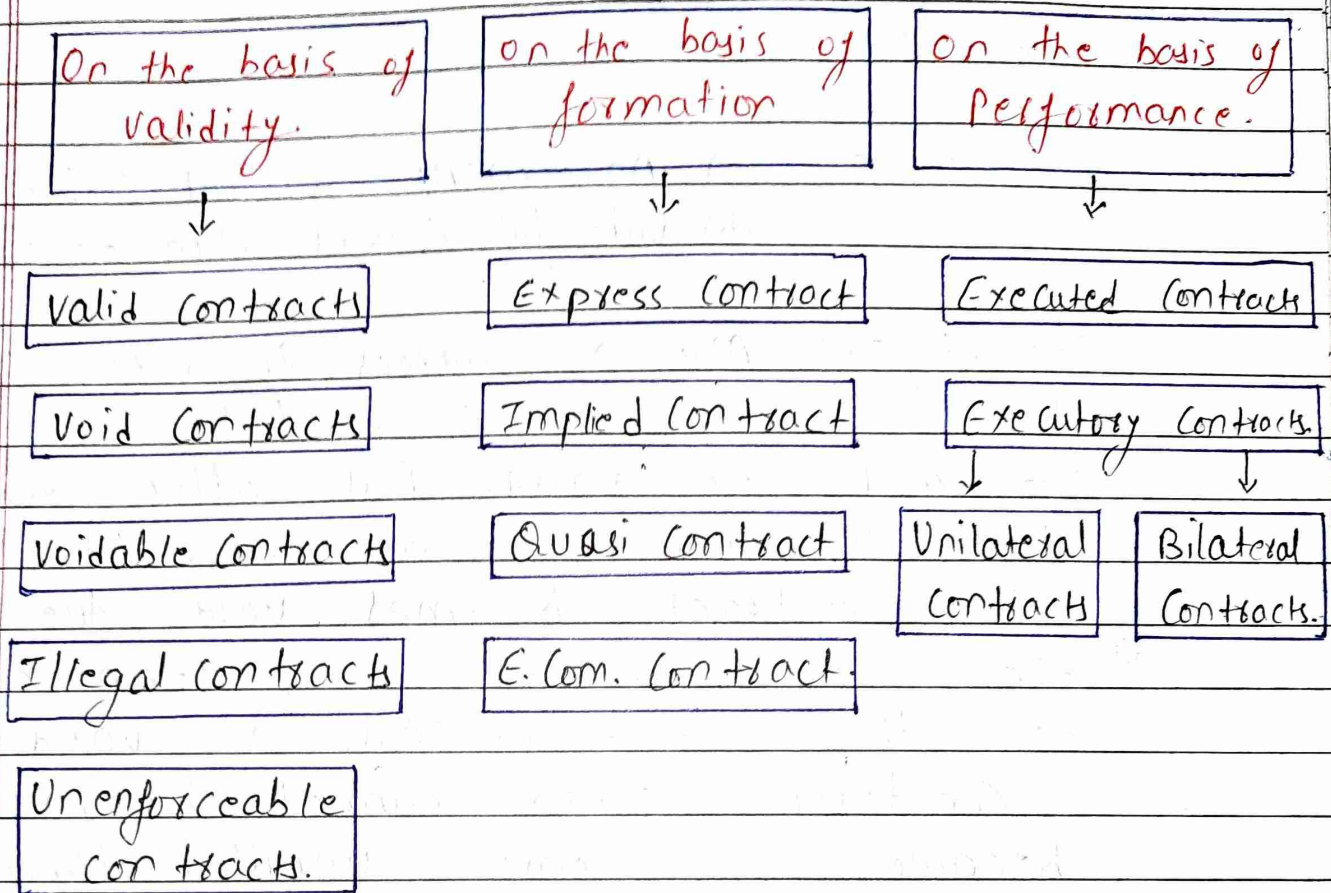
11. The agreement not expressly declared void:-

⇒ The agreement must not be one which the law declares to be either illegal or void.

⇒ Illegal agreement is an agreement expressly or impliedly prohibited by law.

Example 17:- Agreement is restraint of trade, marriage, legal proceedings etc. are void agreements. Those agreements prohibited by the Indian Penal Code. eg. Threats to commit murder or publishing defamatory statements or agreements which are opposed to public policy are illegal in nature.

Classification of Contract



* On the basis of Validity:-

1. Valid Contract :- Contain all the essential elements of a valid contract.

Example 18 :- A ask B if he wants to buy his bike for Rs. 10,000. B agrees to buy bike. It is agreement which is enforceable by law. Hence, it is a valid contract.

2. Void Contract: Sec. 2(j) :- A contract, which ceases to be enforceable by law.

Example 19 :- (a) Agreement without consideration
(b) Unlawful consideration or object

Example 20 :- Mr. X agrees to write a book with a publisher. Such contract is valid. But after few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract. Thus, a valid contract when cannot be performed because of some uncalled happen happening becomes void.

Example 21 :- 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.

3. Voidable Contract: Sec. 2(i) :- An agreement which is enforceable by law at the option of one or more of

the parties thereto, but not at the option of other or others.

A contract may be voidable in the following situations:-

- (i) When the consent of party is not free is caused by coercion, undue influence, misrepresentation or fraud.

Example 22:- A at gun-point asks B to sell his car for Rs. 100. B gives his consent. Here contract is voidable at the option of B.

- (ii) When a person promises to do something for another person but the other person prevents him from performing his promise, the contract becomes voidable at the option of first person.

Example 23:- There is a ~~contra~~ contract between A and B to sell car of A to B for Rs. 200,000. On due date of performance A asks B that he does not want to sell his car. Here contract is voidable at the option of B.

(iii) When a party to a contract promise to perform a work within a specified time, could not perform within that time, the contract is voidable at the option of promisee.

Example 24: A agrees to construct a house for B upto 31-3-2023 but A could not complete the house on that date. Here contract is voidable at the option of B.

- Distinction between Void & Voidable Contract:

Basis	Void Contract	Voidable Contract
<u>Definition.</u>	Contract ceases to be enforceable by law.	Contract is enforceable at the option of the aggrieved party.
<u>Nature</u>	Contract becomes void either because of sudden and unexpected event or of law changes, before the performance becomes due.	Contract becomes voidable when it is caused by coercion, by undue influence, fraud and misrepresentation.
<u>Rights.</u>	Does not provide any legal remedy for the parties to the contract.	The aggrieved gets a right to rescind the contract and to declare it void otherwise it remains valid.

4. Illegal Contracts :- A contract which is forbidden by law.

NOTE :- All illegal agreements are void but all void agreements or contracts are not necessarily illegal.

Example 25 :- Contract that is immoral or opposed to public policy are illegal in nature.

Example 26 :- R agrees with S, to purchase brown sugar, it is an illegal agreement.

Example 27 :- Contract to commit crime.

5. Unenforceable Contracts :- 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.

Example 28 :- Unsigned Cheque.

Example 29 :- A bought goods from B in 2018. But no payment was made till 2022. B cannot sue A for the payment.

in 2022 as it has crossed three years and barred by limitation Act. A good debt becomes unenforceable after the period of three years as barred by limitation Act.

• Distinction between void & illegal Agreement.

Basis	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.
Effects.	void agreements is not void-ab-initio but may subsequently become void.	All illegal agreements are void from the very beginning.

* On the basis of formation

1. Express Contract :- By words spoken or written.

Example 28 :- A tells B on telephone that he offers to sell his house for Rs. 2 lacs and B in reply informs A that he accepts the offer, this is an express contract.

2. Implied Contract or tacit Contract :-

⇒ Where the proposal or acceptance is otherwise than in words. (By action or conduct of parties).

Example 29 :- 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.

Example 30 :- Enters into bus without asking any thing from bus conductor.

Example 31:- Obtaining cash through ATM.

Example 32:- Sale by fall of hammer at an auction sale.

3. Quasi-Contract:- A quasi-contract is not created by words spoken or written or conduct of parties. It is created by law under certain circumstances.

Example 33:- Obligation of finder of lost goods to return them to the true owner or liability of person to whom money is paid under mistake to repay it back cannot be said to arise out of a contract. These are said to be quasi-contracts.

4. E-Contracts:- Contract is entered into by two or more parties using electronics means, such as e-mails. These are known as e-commerce contracts or EDI contracts or cyberspace contracts or mouse click contracts.

* On the basis of Performance.

1. Executed Contracts:- Both the parties have performed their respective obligations.

Example 34:- 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 Contracts:- Both the parties have yet to perform their obligations.

Example 35:- 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 Rs. 1,000 per month, the contract is executory because it is yet to be carried out.

(a) Unilateral or one-sided Contract:- Only one party has fulfilled his obligation.

Example 36:- M advertises payment of award of Rs. 5,000 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 B has performed his share of obligation and it remains for M to pay the amount of ~~ten~~ reward to B.

(b) Bilateral Contract:- Both the parties have to perform.

Example 37:- A promises to sell his plot to B for Rs. 1 Lakh cash down, but B pays only Rs. 25,000 as earnest money and promises to pay the balance on next Sunday. Here both have to perform their duties yet.

Proposal / Offer: Sec. 2(a)

⇒ A person is said to have made a proposal when he signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence.

Example 38:- Mr. X says to Mr. Y, "Will you purchase my car for Rs. 10,000?"
Now Mr. X is making an offer to Mr. Y.

Example 39:- Mr. X desires to sell his car to Mr. Y for Rs. 10,000. There is no contract.

Thus, for a valid offer, the party making it must express his willingness 'to do' or 'not to do' something. But mere expression of willingness does not constitute an offer.

Example 40:- Where 'A' tells 'B' that he desires to marry by the end of 2004, 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 (acceptable) of the offer other.

Further, if in the above example, 'A' further adds, 'will you marry me', it will constitute an offer.

Parties to Contract

- 'Promisor' or 'offeror': The person making the proposal or offer.
- 'offeree': The person to whom the offer is made.
- 'Promisee' or 'acceptor': the person accepting the offer.

Types of Offer

1. **General Offer**:- Offer made to the world at large.

→ It is an offer made to the public in general and hence anyone can accept and do the desired act.

→ **Section 8** of the Indian Contract Act, points out that performance of the conditions of a proposal is an acceptance of the proposal.

Example 41:- Carbolic Smoke Ball Co. advertised that a reward would be given to any person who would suffer from influenza after

using the medicine as per printed instructions. One lady Mrs. Cardil purchased and used the medicine according to the printed directions but suffered from influenza. She claimed for the reward. It was decided by the court that she could recover the reward as she had accepted the offer by complying with the terms of offer. (Cardil vs. Catholic Smoke Ball Co.)

Example 42:- An advertisement given in the newspaper announcing a reward for tracing out a missing person. It can be accepted by any person who trace out the missing person and is entitled to claim the reward.

2. Cross Offer:- When two parties make identical offers to each other.

⇒ Where two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called Cross offers. There is

not binding contract in such a case, as the court will not consider one offer as offer and the other as the acceptance and therefore there is no contract.

Example 43:- If A makes a proposal to B to sell his car for Rs. 2 lacs and B, without knowing the proposal of A, makes an offer to purchase the same car at Rs. 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).

3. Specific offer:- Offer made to a definite person.

⇒ When offer is made to a definite person, it is known as specific offer and such offer can be accepted only by that specified person.

Example 44:- 'Heena' offers to sell his car to 'Michel' at a certain cost. This is a specific offer.

4. Counter Offer :- When offeror imposes conditions which have the effect of modifying or varying the offer.

⇒ When the offeror accepts the offer with 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.

Example 45 :- 'A' offers to sell his plot to 'B' for Rs. 10 lacs. 'B' agrees to buy it for 8 lacs. It amounts to counter offer. It may result in the termination of the offer of 'A'. And if later on 'B' agrees to buy the plot for Rs. 10 lacs, 'A' may refuse.

5. Standing or continue or open offer :-

⇒ Offer to public at large for acceptance for certain period of time.

⇒ An offer is allowed to remain open for acceptance over ~~to~~ a period of time is known as a standing, open or continuing offer.

Example 46:- Tender for supply of goods is a kind of standing offer.

Legal Rules of Offer

(1) The offer must be capable of creating legal relation:-

⇒ A social invitation, even if it is accepted, does not create legal relations.

Example 47:- An invitation to join a friend for dinner is the marriage does not create a legal relationship. It is a social activity.

2. The offer must be certain, definite and not vague:-

⇒ If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.

Example 48:- X says to Y. "I will sell you a car". X has three different cars. Offer is not definite.

Example 49:- A offers to sell B a 100 quintals of oil, there is nothing whatever to show what kind of oil was intended. The offer is not valid as it is not clear.

Example 50:- If in the above example, A is a dealer in coconut oil only, it shall constitute a valid offer.

3. The offer must be communicated:-

→ An offer to be complete, must be communicated to the person to whom it is made. An acceptance of an offer, in ignorance of the offer, is not acceptance and does not create any right on the acceptor.

Example 51:- G (Gausidutt) sent his servant L (Latman) to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain period. 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.
Lalman Shukla vs. Gauri Dutt.

4. The offer must be made with a view to obtaining the consent/assent of the offeree.

5. An offer may be conditional:-

⇒ An offer can be made subject to any terms and conditions by the offeror. The offeree will have to accept all the terms of the offer, otherwise the contract will be treated as invalid.

Example 52:- 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. The offer should not contain a term the non compliance of which would amount to acceptance.

Example 53:- A proposes B to purchase his android mobile for Rs. 500 and if not reply by him in a week, it shall be assumed that B had accepted the proposal. This is not a contract.

7. An offer may be specific or general:-

⇒ Any offer can be made to either public at large or to the any specific person.

8. The offer may be expressed or implied:-

⇒ An offer may be made either by words or by conduct.

Example 54:- A boy starts cleaning the scooter as it stops on the traffic signal without be 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.

9. Offer is different from a mere statement of intention, an invitation to offer, a mere communication of information, A prospectus and Advertisement.

(a) A statement of intention and announcement.

Example 55:- A father wrote his son about his wish of making him the owner of all his property is mere a statement of intention.

Example 56:- An announcement to give Scholarships to children scoring more than 95% in 12th board is not an offer.

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

Example 57:- Case law: Harvey vs. Face (1893)
In the given case, the Harvey through a telegram Face two questions namely (i) Will you sell us Bumper Hall pen? And (ii) Telegraph lowest cash price.

Facie replied through telegram that the "lowest price for Bumper Hall Pen is \$ 900". Harvey sent another telegram stating "We agree to buy Bumper Hall Pen at \$ 900".

However, the facie refused to sell the property at the price. Harvey sued the defendants contending that they had made an offer to sell the property at \$ 900 and therefore they are bound by the offer.

It was decided by the Privy Council that while ~~that~~ Harvey had asked two questions, facie replied only to the second question by quoting the price but reserved their answer with regard to their willingness to sell. Thus, they made no offer at all.

(c). The offer must be distinguished from an invitation to offer :-

⇒ An invitation to offer is different from offer. Quotation catalogues, advertisement in newspaper for sale

are not offer. These are invitations to public to make an offer. Bidding in an auction is also an invitation to offer.

Example 58:- The price lists of goods does not constitute an offer for sale of certain goods on the listed prices. It is an invitation to offer.

Example 59:- An advertisement for sale of goods by auction is an invitation to the offer. It merely invites offers/bids made at the auction.

⇒ Exception for point (c) above:- When advertisement in newspaper is made for reward, it is the general offer to public.

Example 60:- Mr. X lost his car. He gives an advertisement in newspaper that he will reward of Rs. 10,000 who will give the information about the car. Now this is an offer.

Basis	Offer	Invitation to offer.
Meanings.	Sec. 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 choose to accept it.	When 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.
Intention of the Parties.	If a person who makes the statement has the intention to be bound by at it as soon as the other accepts, he is making an offer.	If a person has intention of negotiating on terms it is called invitation to offer.
Sequence.	An offer cannot be an act precedent to invitation to offer.	An invitation to offer is always an act precedent to offer.

Acceptance: Sec. 2(b)

⇒ A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something.

To sum up: Acceptance is the signification of the assent to the offer by the offeree.

* Legal rules regarding a valid acceptance:-

1. Acceptance must be absolute and unqualified:-

⇒ All the terms and conditions must be accepted otherwise there is no acceptance. It is called as counter offer.

Example 61:- A enquires from B, "Will you purchase my car for ₹ 1,00,000?" and B replies, "I shall purchase your car for Rs. 80,000. There is no acceptance."

It is simply a counter proposal. A counter proposal is the offer by the offeree and can result in a contract only if it is accepted by the other party.

2. Acceptance can be given only by the person to whom offer is made.

(3.) Acceptance must be communicated to offeror :-

=> An acceptance must be communicated to the person who made the offer.

Example 62 :- A proposed B to marry him. B informed A's sister that she is ready to marry him. But his sister didn't inform A about the acceptance of proposal. There is no contract as acceptance was not communicated to A.

4. Acceptance must be in the prescribed mode :-

=> If the acceptance is not according to the mode prescribed, or some usual and reasonable mode (when no mode is prescribed)

the offeror may intimate to the offeree within a reasonable time that the acceptance is not according to the mode prescribed and may insist that the offer must be accepted in the prescribed mode only. If he does not inform the offeree, he is deemed to have accepted the acceptance.

Example 63:- If the offeror prescribes acceptance through messenger (peon) 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 limit:- 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 lapse.

Example 64:- A offered to sell B 50 Kgs of bananas at Rs. 500. B communicated the acceptance after four days. Such is not a valid contract as bananas being perishable items could not stay for a period of week. four days is not a reasonable time in this 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.

Example 65:- 'A' subscribed for the weekly magazine for one year. Even after expiry of his subscription the magazine company continued to send 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. Express Acceptance :- Either in writing or by word of mouth.

Example 66 :- A asks B, "Will you purchase my car for Rs. 2,00,000." B says, "yes". It is an express acceptance.

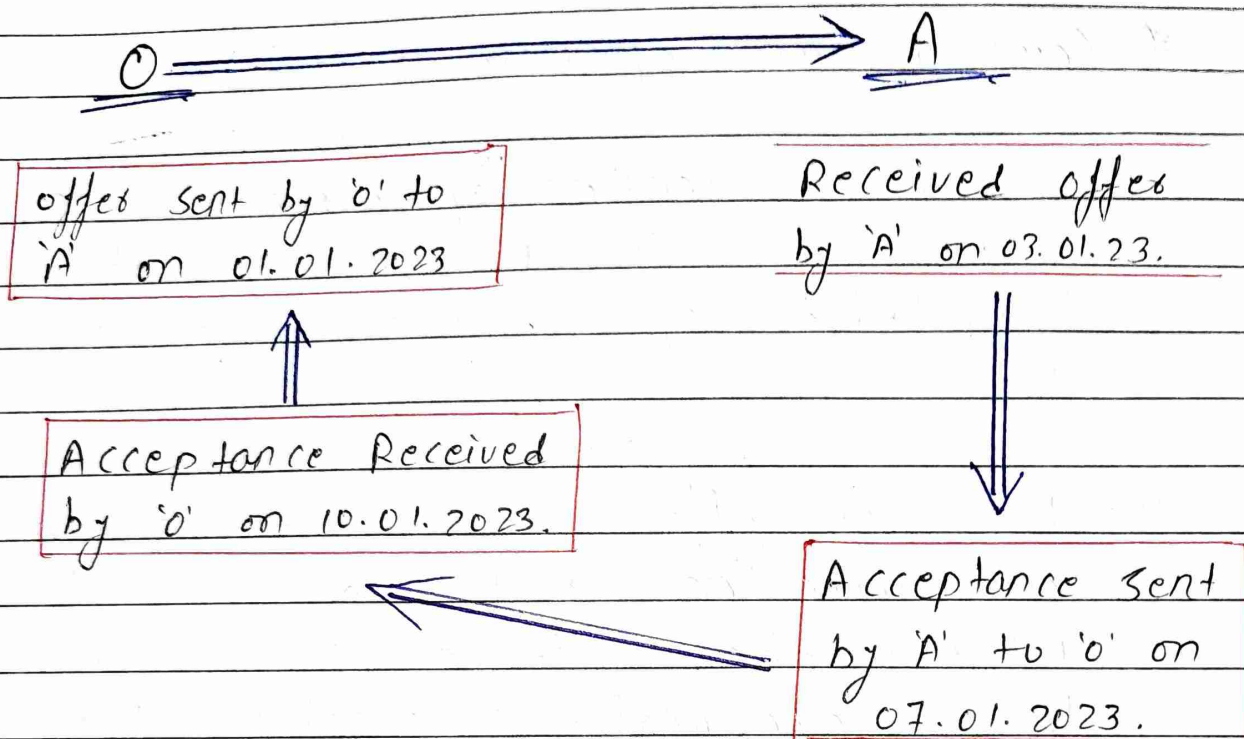
8. Acceptance by Conduct / Implied acceptance.

⇒ By the performance of the act constitutes acceptance.

Example 67 :- A reaches in a coffee house and demands the coffee, waiter brings and keep before A. Here the acceptance implied.

Example 68 :- When a businessman receives an order from a customer and executes the order by sending the goods. It is a case of acceptance by conduct.

Communication of offer and Acceptance



1. Communication of offer will complete on 03.01.2023. When it comes to knowledge of 'A' (offeree).
2. Communication of Acceptance is complete:-
 - (a) Against 'O' (offeror) on 07.01.2023 i.e. when it is put in course of transmission to him.
 - (b) Against 'A' (Accepter) on 10.01.2023, i.e. when it comes to the knowledge of the proposer.
3. 'O' can not withdraw his offer after 07.01.2023.

4. A can not withdraw his acceptance after 10.01.2023.

* Communication of Offer (Sec. 4)

→ The Communication of offer is completed when it comes to the knowledge of person to whom it is made.

→ When an offer is made by post its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

Example 69:- A makes proposal to B to sell his house for Rs. 2 lacs. The letter is posted on 10th March. The letter reaches B on 12th instant. The offer is said to have been communicated on 12th, when B receives the letter.

* Communication of Acceptance (Sec. 4)

⇒ (i) as against the proposer, when it is

put in course of transaction 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.

* Communication by Omission:-

⇒ 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'.

Example 70:- A offers Rs. 50,000 to B if he does not arrive before the court of law as an evidence to the case. B does not arrive on the date of hearing to the court. Here omission of doing an act amounts to acceptance.

* Communication of acceptance by Post:-

⇒ When a proposal is ~~accepted~~ 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.

Example 71:- A makes proposal to B. B sent his acceptance by post on 10th June. Acceptance reaches to A on 13th June. Held. Acceptance is completed on 10th June on the part of A & on 13th June on the part of B.

* Acceptance over Telephone or Telex or Fax:-

=> When an offer is made of instantaneous communication like telex, telephone, fax or through email, 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. vs. Miles Fox East Corporation).

* Communication of Special Conditions:-

=> Special conditions printed on the back of ticket, receipts etc. whether in the knowledge of passenger or not will

be treated as accepted by passenger.

Exceptions:- In the following cases acceptor will not be liable:-

- (a) Conditions are contained in document which is delivered after the contract is complete.
- (b) Conditions limiting the rights of acceptor are not brought to the notice of acceptor.
- (c) Document does not give reasonable notice on its face that it contains certain special conditions.

Example 72: A passenger deposited a bag in the cloakroom at railway station. The acknowledgment receipts given to him carried, on the face of it, the words "see back". One condition limited the liability of railways for any packages to Rs. 100. The bag was lost and the passenger claimed Rs. 2500 being its actual value, pleading that he had not read the conditions. Held the passenger will not succeed whether he read them or not.

If ~~the~~ in the above example, "see back" was not mentioned on the front of document, passenger will succeed.

Revocation of Offer and Acceptance

- > **Time for revocation of proposal** :- A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.
- > **Time for revocation of acceptance** :- An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Modes of Revocation or lapse of offer (Sec. 6.)

1. **By communication of notice of revocation** - by the offeror at any time before its acceptance is complete as against him.

Example 73:- At an auction sale, A makes

the highest bid for B's goods. He withdraws the bid before the fall of the hammer. The offer has been revoked before its acceptance.

2. **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, it lapses by the expiry of a reasonable time.

3. **By non-fulfilment of condition precedent** :-

⇒ Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.

Example 74 :- S, a seller, agrees to sell certain goods subject to the condition that B, the buyer, pays the agreed price before a certain date. If B fails to pay the price by that date, the offer stands revoked.

4. **By death or insanity** :- Death or insanity of the offeror provided the offeree comes to know of it before acceptance.

5. By a counter-offer is made to it.
6. If an offer is not accepted according to the prescribed or usual mode.
7. If the law is changed:- An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal or incapable of performance.