

The Indian Contract Act, 1872

Unit -1 Nature of Contract

Q1: Define Contract. What are the essential elements of a valid Contract?

Ans: A) Introduction:

The term law stands for the rules of conduct, imposed and enforced by state. In the words of Austin, A Law is a rule of conduct, imposed and enforced by the sovereign.

Holland defines law as, rule of external human actions, enforced by sovereign political authority.

The Indian Contract Act occupies the most important place in the commercial law. Without Contract Act, it would have been difficult to carry on trade. It is not only the business community which is concerned with the Contract Act, but it affects everybody.

The objective of the Act is to ensure that rights and obligations arising out of the contract are honoured and that legal remedies are made available to an aggrieved party against the party failing to honour his part of agreement (guilty party). The Indian Contract Act makes it obligatory that this is done and compels the defaulters to honour their commitments.

The Indian Contract Act came into force with effect from 1st September, 1872. The Act is extended to the whole of India except the state of Jammu and Kashmir. The Act is divisible into the following parts:

- Part I (Sections 1-75) deals with the general principles of the law of contract and
- Part II (Sections 124-238) deals with certain special kinds of contract e.g. Contract of Indemnity & guarantee, Bailment and Pledge, Agency, etc.

B) Definition of Contract:

The term contract is defined under section 2(h) of the Indian Contract Act, 1872 as-
 "an agreement enforceable by law is a contract".

Contract = An Agreement + Enforceability by Law

The Two main elements of contracts are -

- i) An agreement between two or more persons.
- ii) Its enforceability by Law.

Agreement:

Section 2 (e) of the Indian Contract Act, 1872 defines an agreement as -
"Every promise and set of promises, forming consideration for each other is an agreement".

Agreement = Offer + Acceptance

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".

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.

Enforceability by law:

An agreement to become a contract must give rise to a legal obligation which means a duly enforceable 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 capable 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.

Example:

Father promises his son to pay him pocket allowance of ₹ 500 every month. But he refuses to pay later. The son cannot recover the same in court of law as this is a social agreement. This is not created with an intention to create legal relationship and hence it is not a contract.

So, Law of Contract deals with only such legal obligation 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, these are status obligations and so out of the scope of the Contract Act.

Essentials of Valid Contract:

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".

Example : Padma 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:**

The performance must not be impossible. The contract must be capable of being performed. Contracts based on impossibility of performance are not valid.

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

6. **Offer and Acceptance:**

For any contract there must be at least two parties one of them making, the offer and the other accepting it. The acceptance must be unconditional and absolute.

7. **Free Consent:**

The contract must have been made with free consent of the parties. The parties must be 'ad-idem' i.e. they must agree upon the same thing in the same sense. It must not have been obtained by coercion, fraud, etc.

8. **Capacity of parties to contract:**

According to Section 10, the parties to an agreement must have the capacity at law to enter into a valid contract. Section 11 states that every person is competent to contract if he is of the age of majority, is of sound mind and is not disqualified from entering into a contract by any law to which he is subject.

9. **Consideration:**

Consideration is referred to as quid pro quo i.e. "something in return". It is a benefit moving from one party to another, it need not always be in cash or kind. It may be an act or promise to do or not to do. It may be past, present or future. It must be real and lawful.

10. **A lawful object:**

The object of the agreement must be lawful i.e. neither fraudulent, forbidden by law, no opposed to any public policy, or ignores injury to the person or his property.

Example: A agrees to sell his house to B against 100 kgs of cocaine (drugs). Such agreement is illegal as the consideration is unlawful.

11. **The agreement not expressly declared to be void:**

The agreements must not have been expressly declared to be void by any law in force in the country. Void agreements are not enforceable by law and they have no legal existence.

Q2: **Explain different types of Contracts.**

OR

Give a broad classification of different types of contracts.

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 contain requirements for an agreement to be enforceable. Thus, in order to create a valid contract, the following elements should be present:

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.

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.

There must be legal obligation:

There must be an intention on the part of the parties to create legal relationship between them. Social or domestic types 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*)

Example: Lekhpal promises to pay ₹ 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.

Other formalities to be complied with in certain cases:

A contract may be written or spoken. As to legal effects, there is no difference between a written contract and contract made by word of mouth. But in the interest of the parties the contract must be written. In case of certain contracts some other formalities have to be complied with to make an agreement legally enforceable.

For 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.

Certainty:

The meaning of the agreement must be certain. In other words, an agreement whose meaning is not certain is not valid.

contract but also not enforce the connected contracts.

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

5. Unenforceable Contract:

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

Example: A bought goods from B in 2015. But no payment was made till 2019. B cannot sue A for the payment in 2019 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.

II. On the basis of formation:

1. Express Contract:

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 Contract:

Implied contracts in contrast come into existence by implication. Most often the implication is by action or conduct of parties or course of dealings between them.

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 Contract:

The word Tacit means silent. It is not a separate form of contract but falls within the scope of implied contracts.

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].

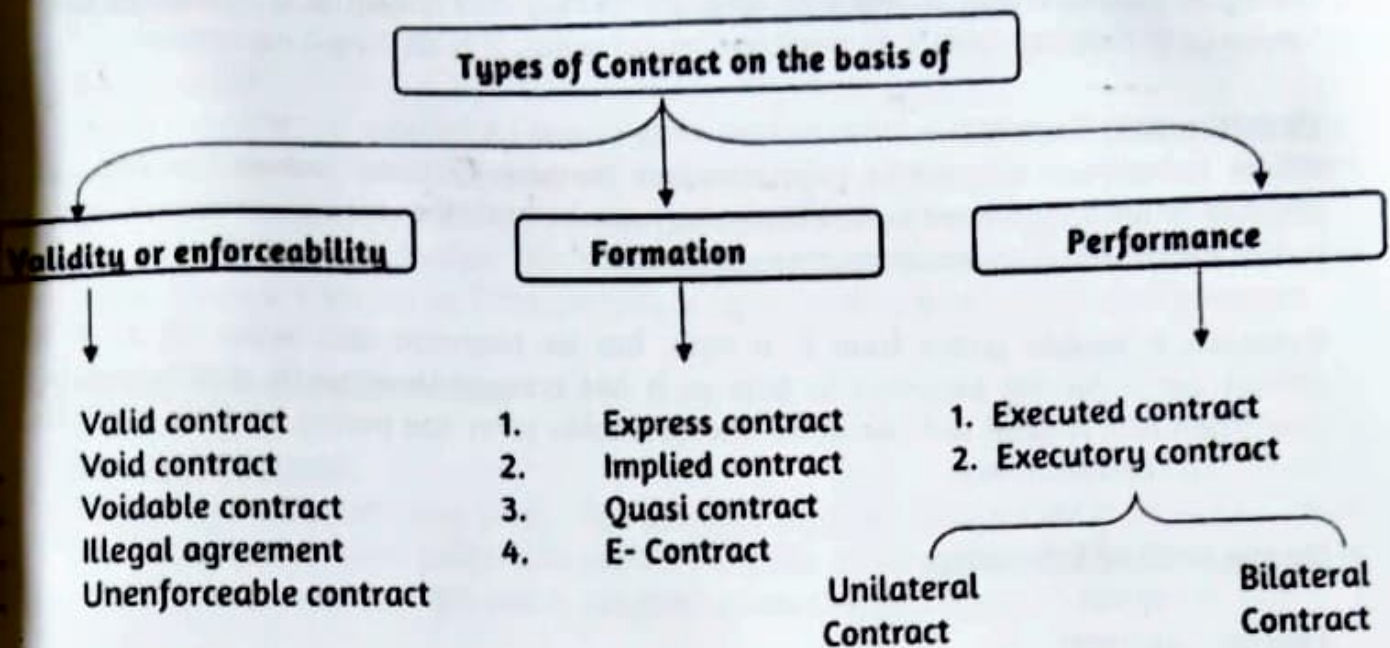
3. Quasi Contract:

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 intention on 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

Types of Contracts

Following are the different types of Contracts:



On the basis of validity or enforceability:

Valid Contract:

An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.

Void Contract:

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. 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 happening becomes void.

Voidable Contract:

"An agreement which is enforceable by law at the option of one or more of the parties there to but not at the option of the other or others, is a voidable contract" A contract is voidable when one of the parties to the contract has not exercised his free consent i.e. free consent, is absent. All voidable contracts are those which are caused by coercion (force), undue influence, fraud or misrepresentation, mistakes, etc.

Example : X promise to sell his scooter to Y for ₹ 1 Lac. However, the consent of X has been procured by Y at a gun point. X is an aggrieved party and the contract is voidable at his option but not on the option of Y. It means if X accepts the contract, the contract becomes a valid contract then Y has no option of cancel the contract.

Illegal Contract:

It is a contract which the law forbids to be made. The court will not enforce such a

liability of person to whom 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.

E-Contracts:

When a contract is entered 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 EDI - 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.

On the basis of performance:

Executed Contract:

'Executed' means which is done. An executed contract means that contract in which both the parties have performed their respective obligations. Example A agrees to supply goods to B for ` 100 and A supplied goods to B and B pays ` 100 for it.

Executory Contract:

An executory contract is one under which neither party has performed his obligation. In other words, both the parties to the contract have yet to perform their respective promises.

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 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 award of ₹ 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 reward to 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, 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.

Q3: Define offer. What are the essentials of valid offer?

OR

Define Proposal. What are essentials of valid Proposal?

Ans; **A) 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 above Definition:

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:
There must be an expression of willingness to do or not to do some act by the offeror. For example: A willing to sell his goods at certain price to B.
3. The willingness must be expressed with a view to obtain the assent of the other party to whom the offer is made.

Example: Where 'A' tells 'B' that he desires to marry by the end of 2022, 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.

4. 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. 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.

B) 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.

Case Law

In *Balfour vs Balfour*, a husband promised to pay maintenance allowance every month to his wife. When he failed to perform his promise, she brought an action to enforce it. As it is an agreement of domestic nature, it was held that it does not contemplate to create any legal action.

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.

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.

Case Law : *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.

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.

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.

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.

Example: A proposes B to purchase his android mobile for ₹ 5,000 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.

The offer may be either specific or general:

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

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 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.

Case Law : Mac Pherson vs Appanna [1951] : 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.

Explain different kinds / types of offer.

Kinds / Types of Offer:

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

General Offer :

It is an offer made to public at large and hence anyone can accept and do the desired act

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 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.

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 as one's offer cannot be constituted as acceptance by other.

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 cannot be treated as

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

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.

9. **Offer must be different from 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 before 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 price.

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

- An invitation by a company to the public to subscribe for its shares;
- Display of goods for sale in shop windows.
- Advertising auction sales and

Case Law: Harvey vs. Facey [1893]

In this case, Privy Council concisely 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.

mutual acceptance. There is no binding contract in such a case.

4. **Counter Offer :**

When the offeree offers to qualified acceptance to 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 will result in the termination of the offer of 'A'. If later on 'B' agrees to buy the plot for ₹ 10 lakhs, 'A' may refuse.

5. **Standing / Continuing / 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.

Q5: Define Acceptance. Explain the legal rules regarding a valid Acceptance.

(Jan 2021)

Ans; A) Definition:

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".

An application for the shares by the company is in the nature of an offer while the allotment of shares by the company is an acceptance resulting into a contract. Without the acceptance of the proposal no agreement can come into existence.

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 ₹ 2,00,000. 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 consent on that 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.

B) 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".

1. 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 cannot move, 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 valid Acceptance:

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 Law: Boulton vs. Jones (1857)

Facts: Boulton bought a business from Brocklehurst. Jones, who was Brocklehurst'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 Boulton for the goods because by entering into the contract with Brocklehurst, 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.

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)*]

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.

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 instalments of £ 50 each. It was held that N could not enforce his acceptance because it was not an unqualified one. [*Neale vs. Merret [1930]*].

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 1968*].

3. **Acceptance must be communicated:**

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.

Case Law: 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. namely, Metropolitan 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.

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.

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. **Acceptance must be within a specific / reasonable 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.

Acceptance can be express or implied:

Acceptance can be express in words or even implied by conduct.

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.

In the cases referred above, the respective documents have been accepted without a protest and hence amounted to implied acceptance. So she is entitled to recover only 15%.

Explain Communication and Revocation of offer and Acceptance.

A) Communication of Offer and Acceptance:

Communication of offer is complete when it comes to the knowledge of offeree:

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. Unless the person to whom the proposal is made has knowledge of the proposal he cannot accept it. Thus when a proposal is made by post, its communication will 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 read the message contained in the letter.

Communication of acceptance:

Communication of acceptance is complete :

As against offeror : When offeree puts the acceptance in a course of transmission and it is beyond his reach to stop it.

As against offeree : When the acceptance comes to the knowledge of proposer.

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,

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 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.

b) **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'.

B) Revocation of Offer and Acceptance:

a) **Revocation of offer is valid before offeree puts the acceptance in course of transmission and it is out of his reach to stop it.**

b) **Revocation of acceptance is valid before acceptance comes to the knowledge of offeror.**

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.

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.

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 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.

Example: A offered by a letter to sell his car to B for ₹ 4,00,000. The letter was posted on 1st Jan which reached B on 4th Jan. B accepted the offer and posted his letter of acceptance on 6th Jan. Here A became bound by the offer on 6th Jan. In this case offer could be revoked by A at any time before 6th Jan.

B accepted the offer and posted his letter of acceptance on 6th Jan which reached A on 9th Jan. Here B becomes bound by his acceptance on 9th Jan. In this case the acceptance could be revoked at any time before 9th Jan.

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 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.

Explain different modes of revocation of offer.

(Nov. 2018)

Modes of Revocation of offer / Lapse of offer:

By Notice of Revocation :

An offer may come to an end by communication of notice of revocation by offeror. An offeror can revoke his offer at any time before he becomes bound.

Example: A offered B to sell goods at ₹ 5,000 through a post but before B could accept the offer A received highest bid for the goods from C. So, A revoked the offer to B by informing B over the telephone and sold goods to C.

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.

By non-fulfilment of condition precedent :

Where the acceptor fails to fulfil 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.

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.

By death or insanity of the offeror / offeree :

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. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valid. This will result in valid contract and representatives of the deceased offeror shall be bound by the contract.

By counter offer by the offeree :

Where a counter offer is made by the offeree, then the original offer automatically comes to an end, as the counter offer amounts to rejection of the original offer.

By rejection of offer by the offeree :

Where the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer he cannot revive the offer subsequently. The rejection of offer may be

expressed or implied.

Q8: All contracts are agreements, but all agreements are not contracts. Comment.

Ans: A) Introduction:

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. If an agreement is incapable of creating a legal obligation, 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.

i) **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.

ii) **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.

Q9: Distinguish between:

1. **Agreement and Contract**

Agreement	Contract
1. Meaning: Every promise and every set of promises, forming the consideration for each other is called agreement. (Offer + Acceptance)	Agreement enforceable by law is contract. (Agreement + Legal enforceability)
2. 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.
3. Legal Obligation: It may not create legal obligation. An agreement does not always grant rights to the parties	Contract creates a legal obligation. A contract always grants certain rights to every party.

4. Nature: All agreement are not contracts.	All contracts are agreements.
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Void Contract and Voidable Contract

Void Contract	Voidable Contract
1. Meaning: A Contract ceases to be enforceable by law becomes void contract.	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. Enforceability: A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of other party.
3. 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.
4. 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.
5. Rights: A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time.

Void Agreement and Illegal Agreement

Void Agreement	Illegal Agreement
1. Meaning: Agreement not enforceable by law is said to be void	An agreement with the illegal objective or consideration is illegal or to do some act which is illegal or immoral or against public policy.
2. Scope: A void agreement is not necessarily illegal.	An illegal agreement is always void.

3. Nature: Void agreements are not forbidden under law.	Illegal agreements are forbidden under law.
4. Punishment: Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment.
5. 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.

4. **Offer and Invitation to offer**

Offer	Invitation to offer
1. Meaning: 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.
2. Intention of the parties: 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.	If a person has the intention of negotiating on terms it is called invitation to offer.
3. Sequence: An offer cannot be an act precedent to invitation to offer.	An invitation to offer is always an act precedent to offer.