

**CHAPTER - 1**  
**THE INDIAN CONTRACT ACT, 1872**  
**Unit : 1 - Nature of Contract**

**LAW : INDIAN CONTRACT ACT, 1872**

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### SELF STUDY QUESTIONS

1. Comment on the following:

Offer is lighted match while acceptance is a train of gunpowder.

(5 marks)

**Ans.** It is a cardinal rule as regards to acceptance that once the acceptance has been made to an offer the contract is complete. According to "Sir William Anson" Acceptance is to offer what a lighted match is to a train of gunpowder". The effect is that the acceptance produces something which cannot be recalled or undone. But the man who led the train may remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptance. Acceptance converts the offer into promise and then it is too late to revoke it. This means that as soon as a lighted match is brought in contact with a train of gunpowder, the gun powder explodes. Offer is compared to gun powder and acceptance to a lighted match. Gun powder (i.e. the offer) by itself is inert, it is the lighted match i.e. the acceptance which causes then gunpowder to explode. The meaning is that an offer by itself cannot create legal relations between the parties, but as soon as it is accepted by the offeree, legal relationship is established between the parties, Once an offer is accepted it becomes a promise and cannot be revoked or withdrawn.

2. When the revocation of a proposal may be made otherwise than by communication?

**Ans. Revocation of proposal otherwise than by communication:** A proposal may be revoked not only by the communication of the notice of revocation by the proposer or by his authorised agent to the other party but also:

- (i) **By lapse of time [Section 6(2)]:** Proposer is not bound to keep his proposal open indefinitely the reason being that it would amount to a promise without consideration, and such a promise is unenforceable (*Ramsgate Victoria Hotel Co. V. Montefiore 1866*).
- (ii) **By non-fulfilment by the offeree of a condition precedent to acceptance [Section 6(3)]:** A proposal is also revoked by the failure of the acceptor to fulfil condition precedent to the acceptance. A condition precedent is a condition which prevents an obligation to come into existence until the condition is satisfied. An offeror may impose condition such as executing a certain document, or deposition of certain amount as earnest money. Failure to satisfy any such condition shall make a proposal lapse.
- (iii) **By the death or insanity of the proposer:** Death or insanity of the proposer, under the Indian law, operates as the revocation of the proposal, only if the fact to the death or insanity has come to the knowledge of the acceptor. If the acceptor accepts an offer in ignorance of the death or insanity of the offeror, the acceptance is valid.
- (iv) **If a counter offer is made to it:** The counter offer lapses the offer made by the offeror.
- (v) If an offer is not accepted according to the prescribed or usual mode, provided the offeror gives notice to the offeree within a reasonable time that the acceptance is not according to the prescribed or usual mode. If the offeror keeps quiet, he is deemed to have accepted the acceptance [Section 7(2)].

**An offer can, however, be revoked subject to the following rules:**

- (i) It can be revoked at any time before its acceptance is complete as against the offeror.
- (ii) Revocation takes effect only when it is communicated to the offeree.
- (iii) If the offeror has agreed to keep his offer open for a certain period, he can revoke it before the expiration of the period only.
  - (a) if the offer has in the meantime not been accepted or
  - (b) if there is no consideration for keeping the offer open.

3. Comment on the following:

An acceptance must be made before the proposal lapses.

**Ans.** Under Section 5 of the Indian Contract Act, 1872, a proposal may be revoked at time, before the communication of its acceptance is complete as against the proposer but not afterwards. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor but not afterwards. Therefore an acceptance must be made before the offer lapses or is revoked.



4. What are implied contracts? State the various implied contracts.

**Ans.** Under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are termed as "Quasi-Contracts" or Implied Contracts. A quasi contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another.

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**Sections 68 to 72 of the Indian Contract Act, 1872** have prescribed the following relationships creating quasi-contractual relationship:

1. **Supply of necessaries:** Under Section 68, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his conditions in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
2. **Payment by an interested person:** It has been laid down in Section 69 of the Indian Contract Act that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
3. **Obligation to pay for non-gratuitous Act:** Section 70 of the Indian Contract Act states that where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation in respect of or to restore, the things so done or delivered.
4. **Responsibility of finder of goods:** Under Section 71 of the Act, a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.
5. **Case where money is paid by mistake or under coercion:** Finally, Section 72 of the Indian Contract Act provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. Thus, quasi-contractual right is always a right to money and generally, though not always to a liquidated sum of money. It does not arise from any agreement between the parties concerned, but is imposed by the law. It is a right which is not available against whole world but against a particular person or persons only. There is no contract between the parties in cases of quasi contracts, yet they are put in the same position as if there were a contract between them.

5. State the rules relating to acceptance of a Contract.

**Ans. Rules Relating to Acceptance of a Contract:** The Indian Contract Act, 1872 specifies the following rules relating to the acceptance of a contract. It means that a valid contract can be made only by adhering to the following rules relating to the acceptance of an offer. These are:

1. **Acceptance must be absolute and unqualified:** Acceptance shall be valid only when it is absolute and unqualified and is expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted.



2. **Acceptance must be communicated to the offeror:** Acceptance must be brought to the knowledge of the offeror. Unless the offeror knows about the acceptance, he cannot be bound by the acceptance given by the offeree. Mere silence is no acceptance.
  3. **Acceptance must be in the mode prescribed:** Where the mode of acceptance has been prescribed in the proposal, it must be accepted in the manner prescribed, otherwise it shall not bind the offeror. However, the offeror may later on waive this condition and bound himself from the acceptance not given in the prescribed mode.
  4. **Time:** Acceptance must be given within the prescribed time and where no time is prescribed, within the time which is reasonable and does not allow the offer to lapse.
  5. Acceptance may be expressed i.e. words of mouth or in writing, or even implied i.e. by conduct of the party concerned.
  6. **Acceptance must be made by the person to whom the offer is made:** Acceptance given by some other person or even on behalf of the person to whom the offer is made, is not valid acceptance.
  7. It cannot precede an offer. If it does, it is not a valid acceptance and does not result in a contract.
  8. It must show an intention on the part of the acceptor to fulfil the terms of offer.
  9. It must be given before the offer lapses or before the offer is withdrawn.
6. When does an offer come to an end?

**Ans.** An offer may come to an end by revocation or lapse or rejection. According to Section 6 and 7 of the Indian Contract Act, 1872, an offer comes to an end in the following cases:

1. If the offeror revokes his offer before it has been accepted by the offeree, the offer comes to an end.
2. The offer comes to an end if it is not accepted within the time fixed in the offer or within a reasonable time as the case may be. What is a reasonable time is a question of fact.
3. If there is a condition mentioned in the proposal, before the fulfilment of which the acceptor can not accept the proposal, the offer will automatically be revoked if the acceptor fails to fulfil that condition precedent.
4. If the fact of the death or insanity of the proposer comes to the knowledge of the acceptor before acceptance, the offer of proposal is revoked. (Section 6)
5. Sometimes, the mode of acceptance is specifically prescribed in the offer. In such a case, if the proposal is not accepted in the prescribed form or method, it stands revoked. [Section 7(2)]
6. An offer comes to an end as soon as it is rejected by the offeree.
7. An offer lapses if it becomes illegal before it is accepted.

7. Comment on the following:

All contracts are agreements, but all agreements are not contracts.

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

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

**All contracts are agreements:** For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus existence of an agreement is a pre-requisite for 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.



8. Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.

**Ans.** The modes of revocation of an offer as per the Indian Contract Act, 1872 are:

- (i) By notice of revocation
- (ii) By lapse of time : The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely.
- (iii) 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 offer or for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money.
- (iv) By death or insanity
- (v) By counter offer
- (vi) By the non-acceptance of the offer according to the prescribed or usual mode
- (vii) By subsequent illegality.



9. Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance.

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**Ans. Definition of Acceptance:**

In terms of Section 2(b) of the Indian Contract Act, "the term acceptance" is defined as follows:

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

**Analysis of the above definition**

1. When the person to whom proposal is made - **for example** if A offers to sell his car to B for Rs. 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.

**Legal Rules regarding a valid acceptance**

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

**Facts:** Boulton bought a business from Brocklehurst. Jones, who was 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))

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

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] W. N. 189].

A offers to sell his house to B for Rs. 1,00,000/-. B replied that, "I can pay Rs. 80,000 for the house. The offer of "A" is invited by "B" as the acceptance is not unqualified. B however



changes his mind and is prepared to pay Rs. 1,00,000/-. This is also treated as a counter offer and it is upto A whether to accept it or not. [Union of India v. Bahulal AIR 1968 Bombay 294].

**Example:** "A" enquires from "B", "Will you purchase my car for Rs. 2 lakhs?" If "B" replies "I" shall purchase your car for Rs. 2 lakhs, if you buy my motorcycle for Rs. 50,000/-, here "B" cannot be considered to have accepted the proposal. If on the other hand "B" agrees to purchase the car from "A" as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition.

Therefore, the acceptance in this case is unconditional.

- (3) **The acceptance must be communicated:** To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. The above points will be clearer from the following examples: *Brogden vs. Metropolitan Railway Co.* (1877)

**Facts:** B a supplier, sent a draft agreement relating to the Supply of Coal to the Manager of Railway Co. viz, 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 oversight the draft agreement remained in drawer. Held, that there was no contract as the manager had not communicated his acceptance to the supplier, B.

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

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

**Example:** 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:** 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