

★ ① Difference between Agreement and Contract:-

Agreement 2 [a]	Contract. 2 [h]
① Meaning	
Promise + Consideration	Agreement + Enforceable by law.
② Scope	
Wider term includes legal and social agreement	Narrow term as it is only legally enforceable agreement.
③ Nature	
All agreements are not contracts	All contracts are agreements

1.2 Essentials of a valid Contract

Sec 10 of Indian Contract Act Not given in Sec 10 but considered essential.

Code:- LACK FUN

- ① Lawful Consideration.
- ② Legal Object
- ③ Agreement
- ④ Competency of the parties.
- ⑤ Free consent
- ⑥ Not expressly declared to be void

Code:- FIT PC.

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

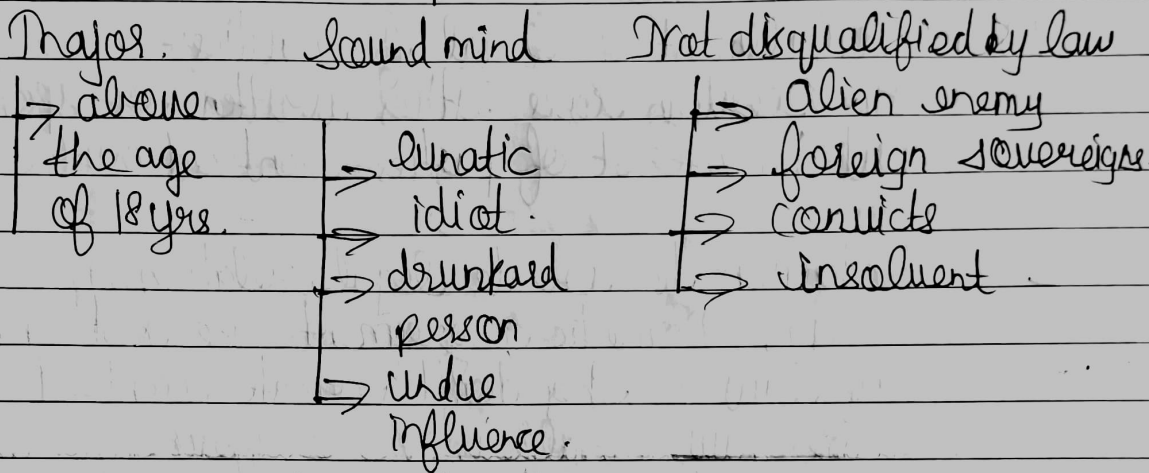
★ Section 10 of Act:-

- All agreements are contracts.
- if they are made with free consent of the parties
- competent to contract
- for a lawful consideration and
- with a lawful object and
- are not expressly declared to be void

★ Essentials of valid contract as per section 10 of Indian Contract Act:-

- ① Lawful consideration:- Quid pro quo ie something in return, consideration must be lawful.
- ② Legal Object:- Object should be lawful ie not prohibited by law, immoral, opposed by public
- ③ Agreement:- An essential element as it is outcome of offer and acceptance for consideration

4) Competency of parties:- i.e. capacity of parties
 legal ability of person to enter in contract.



5) Free consent:- agree upon a same thing.
 consensus ad idem. i.e. identity of minds.

Not coercion.

- by
- undue influence
 - fraud
 - misinterpretation.

6) Not expressly declared to be void:- agreement entered should not be illegal or void.

↓ prohibited by law ↓ no legal effects

Eg:- marriage.

legal proceedings
 Restraint of trade

★ Other essentials of a valid contract not given in section 10:-

- 1) Fulfillment of legal formalities:-
In certain cases either written or spoken but in interest of parties, contract must be written.
- 2) Intention to create legal relationship:-
Social / Domestic agreement are not enforceable by law & they don't create contract.
Case law:- Balfour vs Balfour.
- 3) Two Parties:- At least 2 parties \rightarrow making offer
 \rightarrow accepting offer.
Contract is made by
 - natural person
 - other person by legal existence, i.e. Company, LLP, etc.
 Case law:- State of Gujarat vs. Ramlal S & Co.
- 4) Possibility of performance:-
 - possible / capable to perform.
 - Impossible act can't be enforced.
- 5) Certainty of meaning:- Certain definite but not vague & indefinite.

1.3 Types of Contracts

Types of Contract.

Based on Validity or Enforceability	Based on formation	Based on performance
<p>1) Valid contract - (enforceable agreement)</p> <p>2) Void contract - (cannot be enforceable)</p> <p>3) Voidable contract - (enforceable at option)</p> <p>4) Illegal agreements - (law forbids)</p> <p>5) Unenforceable contract - (contract technical effect)</p>	<p>1) Express contract - (word or written)</p> <p>2) Implied contract - (by conduct / implication)</p> <p>3) Tacit contract - (silent ie without words)</p> <p>4) Quasi contract - (resembles like contract)</p> <p>5) E-Contracts - [E-mail contracts / E-commerce contracts / (using electronic means) / EDI contract / Cyber contract / Mouse click contract]</p>	<p>1) Executed contract - (act is done)</p> <p>2) Executory contract - (consideration in future)</p> <p>a) Unilateral contract - (one party obligation is outstanding)</p> <p>b) Bilateral contract - (two party obligation is outstanding)</p>

cease \Rightarrow do stop

\Rightarrow On the basis of validity:-

a) Valid contract:- (enforceable agreement)
• all essential elements of valid contract are present.

b) Void contract:- (ceases to be enforceable)
Section 2(j)

A contract which ceases to be enforceable by law. becomes void when it ceases to be enforceable.

c) Voidable contract:- (enforceable at option)
Section 2(i)

An agreement which is enforceable by law at option of one or more parties thereto, but not at option of the other or others is a voidable contract.

Situations where contract is voidable:-

- \Rightarrow when consent is not free
- \Rightarrow when a person promises to do something for other, but other person prevents from performing his promise:-
- \Rightarrow when party promises to perform in specified time \Rightarrow fails

rescind \Rightarrow cancelled / fraud.

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\Rightarrow ② Difference between void contract and voidable contract. (code:- MECPR)

void contract
[section 2(j)]

valid contract
voidable [section 2(i)]

① Meaning

Definition according to
[section 2(j)]

Definition according to
[section 2(i)]

② Enforceability

Cannot be enforced at all

enforceable only by the aggrieved party and not at option of other party.

③ Cause

Contract becomes void due to change in law or change in circumstances.

Contract becomes voidable if consent of party is not free.

④ Performance of contract

Cannot be performed.

If aggrieved party within reasonable time does not avoid the contract then any party can sue the other for claiming performance of contract.

⑤ Rights

Doesn't grant any legal remedy to any party

The aggrieved party has the right to rescind contract

within \downarrow avoids within reasonable time
void contract

does not avoid within reasonable time
valid contract

③ Difference Between Void agreement & Void contract

Void agreement	Void Contract
<p>1) Known as void ab initio. It is void from beginning.</p>	<p>Subsequently becomes void/cases to be unenforceable due to various reasons.</p>
<p>2) Eg:- Agreement with minor, unsound mind or disqualified by law, etc.</p>	<p>Eg:- Death of an artist, war is declared, etc.</p>

d) Illegal Contract:- (Law forbids)

- Court will not enforce such a contract as well as connected contracts.
- All illegal contracts are void but all void agreement are not necessarily illegal.

e) Unenforceable Contract:- (Contract technical defects)

- Contract cannot be enforced due to some technical defect. i.e. absence of writing, expiry of period of contract & hence one or both parties cannot sue upon each other.
- If defect is removed, then it becomes enforceable.

Collateral \Rightarrow connected / related agreements.

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\Rightarrow ① Difference between void agreement & illegal agreement.

void agreement

illegal agreement.

① Scope

It is not necessarily illegal. It is always void.

② Nature

Not forbidden by law

Are forbidden by law.

③ Punishment

Parties are not liable for punishment

Parties are liable for punishment.

④ Collateral Agreement

+ \Rightarrow valid

o \Rightarrow void

- \Rightarrow illegal

Main agreement

Collateral

Main agreement

Collateral

o void

either o or +

- illegal

o void.

void or valid

2) On the basis of formation:-

a) Express contract:- (words or writing)
Section 9

↓
If a proposal or acceptance of any promise is made in words

↓
the promise is said to be express.

b) Implied contract:- (by conduct / implication)

- proposal or acceptance other than words.

By conduct:-

i) Tacit contract:- (silent i.e. without words)

- conduct of parties without any spoken word or written.

By Law:-

i) Quasi contract:- (resembles like contract)

- Created by law under certain circumstances
- enforced all legal rights & obligations when no real contract exists.

c) E-contracts:- (using electronic means)

- contract entered by two or more parties using electronic means.
- also known as EDI (Electronic Data Interchange) contract, Cyber contract, E-commerce contracts, and mouse-click contract.

forbearance \Rightarrow not doing activity

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3) on the basis of performance:-

a) Executed Contract:- (act is done)

- Forbearance is brought in record.
- Consideration in a contract can be an act or forbearance.

b) Executory Contract:- (consideration in future)

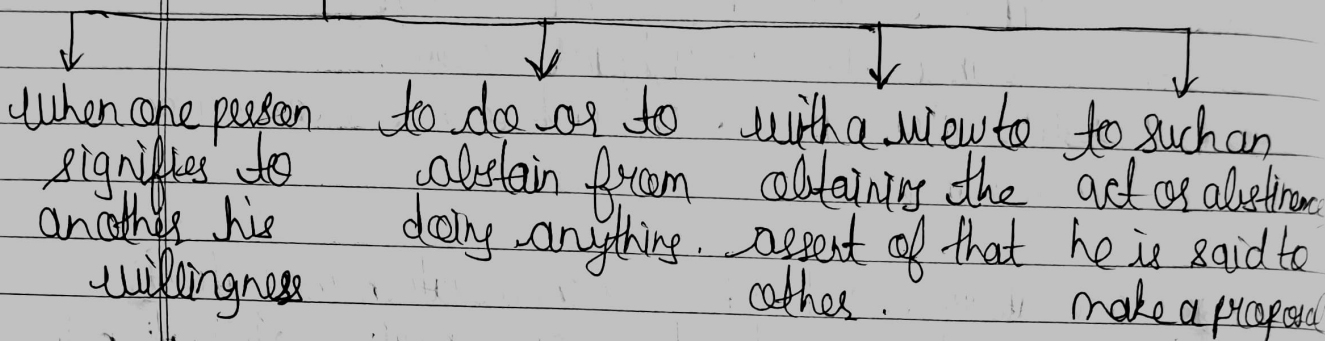
i] Unilateral contract:- (one party obligation is outstanding)

- one sided contract.

ii] Bilateral Contract:- (two / both parties obligation is outstanding)

1.4 Proposal / Offer (Section 2(a) of the Indian Contract Act, [1872])

* Definition:-



* Essentials of a proposal / offer:-

1) The person making the proposal / offer \Rightarrow promisor / offeror
 The person to whom offer is made \Rightarrow offeree
 The person accepting the offer \Rightarrow promisee / acceptor

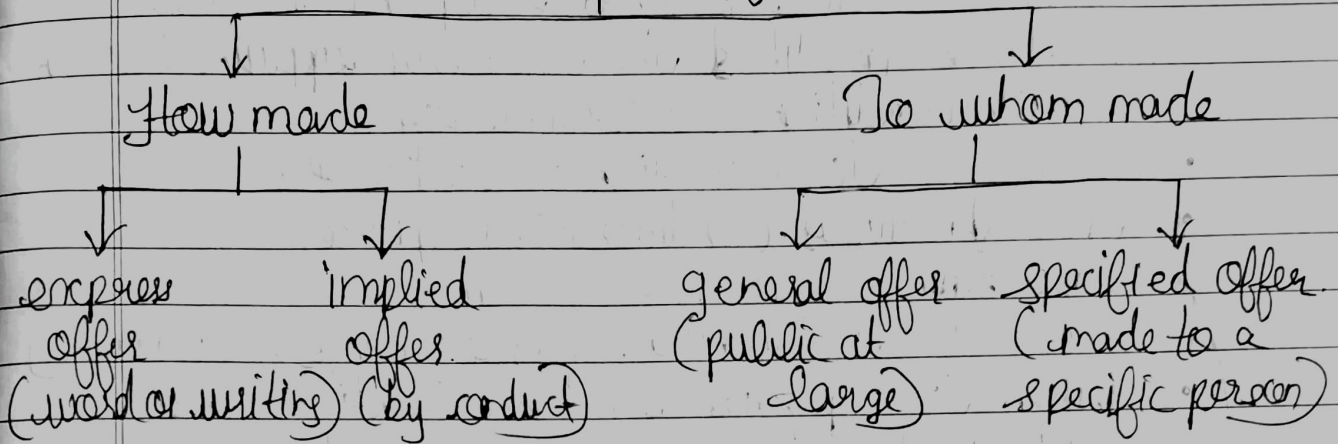
2) For a valid offer, offeror must express his willingness 'to do' or 'not to do' some act

3) Willingness must be expressed with a view to obtain assent of other party to whom offer is made.

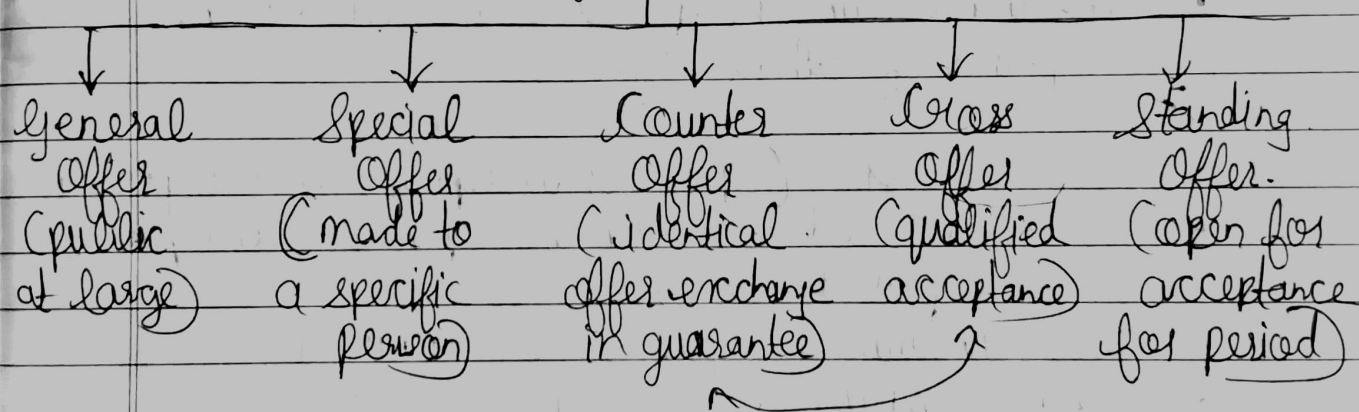
Eg:-
 A desires to marry B \Rightarrow no offer
 A will you marry me B \Rightarrow offer

4) Offer is positive as well as negative
 \downarrow \downarrow
 doing not doing
 Both acts have same effect in eyes of law.

★ Kind of offer.



★ Classification of offer.



① General offer:- (public at large)

- anyone can accept and do desired act.
- until withdrawn → can be accepted by anyone at any time [continuing offer]

Case law:- Carlill v/s Carbolic Smoke Ball Co. (1893)

② Special offer:- (made only to a specific person)

- can be accepted only by ascertained person.

Case law:- Boulton v/s Jones

③ Counter Offer:- (qualified acceptance)

- offerer offers qualified acceptance of offer.
- ie offerer modified the offer by applying certain terms & conditions to original offer.
- It leads to rejection of old offer
- Also known as (conditional acceptance)

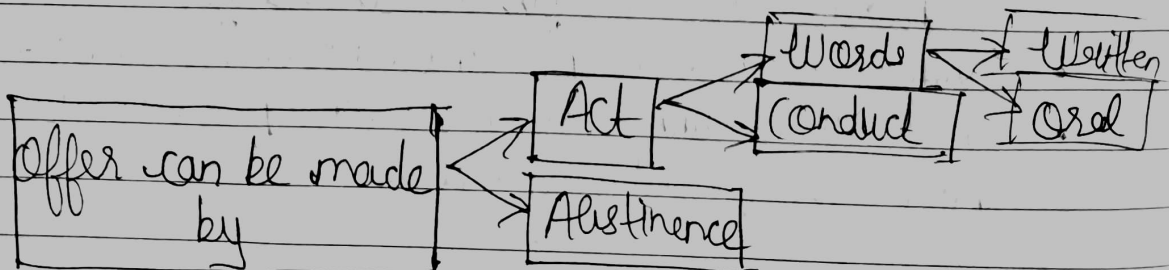
Case law:- Jinn v/s Hoffman

④ Cross offers:- (identical offer exchange in guarantee)

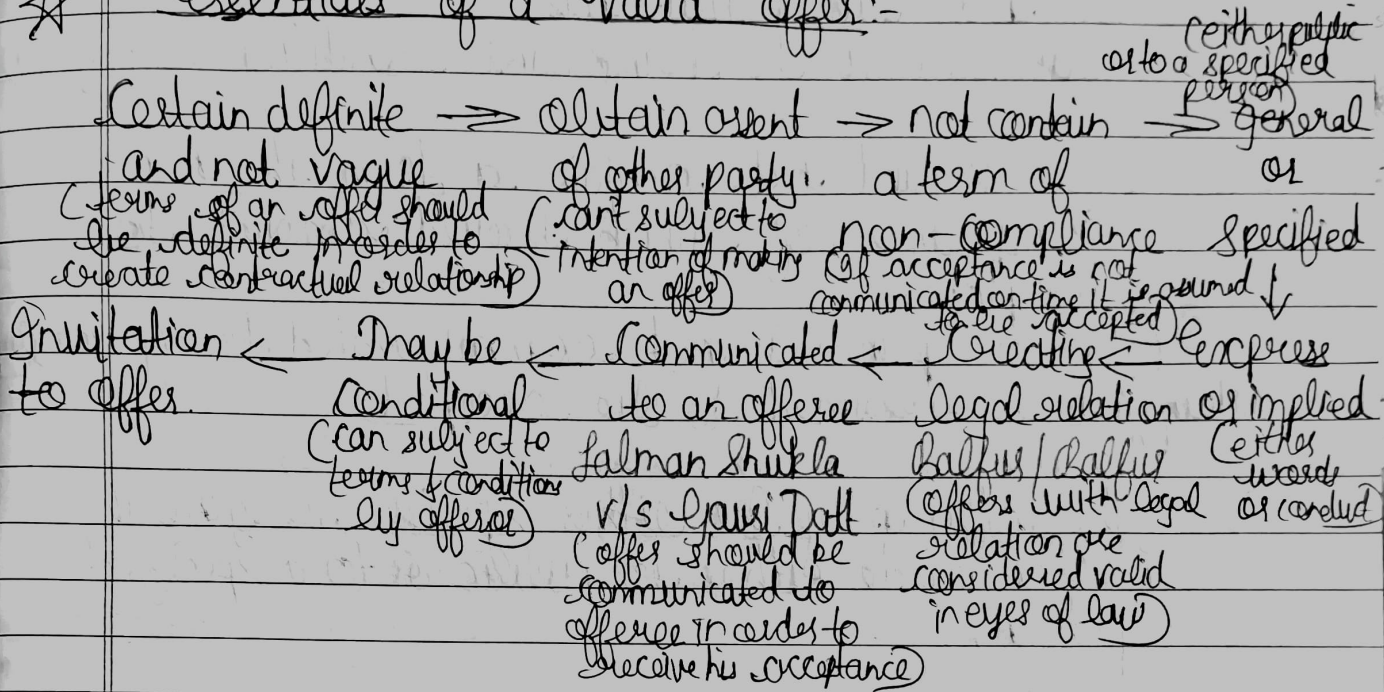
- When two parties exchange identical offers without the knowledge of each other's offer.
- There is no binding contract.
- Offer made by one person can't be assumed as acceptance of other's offer.

⑤ Standing offer:- (open for acceptance for a period)

- offer allowed to remain open for acceptance over a period of time
- also known as open offer / continuing offer.
- Tenders invited for supply of goods.



★ Essentials of a valid offer:-



1) It must be capable of creating legal relations:-
(Offers with legal relation are considered valid in the eyes of law)
Case Law:- Balfus v/s Balfus

2) It must be certain, definite, and not vague:-
(Terms of an offer should be definite in order to create a contractual relationship)

3) It must be communicated to the offeree:-
(Offer should be communicated to offeree in order to receive his acceptance)
Case Law:- Salman Shukla v/s Gauri Dutt

4) It must be made with a view to obtaining the assent of the other party:-
(Offerer must make an offer to offeree with a view to obtain acceptance of offeree)

5) It may be conditional:-
(Can subject to terms and conditions by offeror)

6) Offer should not contain a term the non-compliance of which would amount to acceptance:-

(If acceptance is not communicated to offeror by a certain time, it is assumed to be accepted)

7) The offer may be either specific or general:-
(Offer made either to public or to a specified person)

8) The offer may be express or implied:-
(Offer made either by words or by conduct)

9) Offer is different from a mere statement of intention, an invitation to offer, a mere communication of information, prospectus & advertisement

↓ ↓
~~is mere quotation~~ — ~~is Advertisement~~

offer is different from:-

a) statement of intention

b) statement of price

c) statement of announcement

d) invitation to offer. Harris v/s Brickson [1873]

e) Question to answer. - One law:- Harvey v/s Face [1893]

Note:- Communication of offer is complete when it comes to knowledge of person to whom it is made

2) Advertisements are invitation to offer except it is announced in the form of reward. Then it is considered as general offer.

10) Invitation to offer:-

- It is an act or attempt of getting an offer which is preceded by a definite offer.
- Invitation to offer "doesn't result in contract or offer but it emerges the process of negotiation.
- When a party without expressing his final willingness, propose certain terms and 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.

Examples of invitation to offer:-

- a) Invitation by company to prospectus / public for subscribing its shares.
- b) Display of goods for sale in shop
- c) Advertisement of Auction sales
- d) Price quotation in reply to query of price menu card, price tags, etc.

Case laws- 1) Thac Sherman vs Appanna (1951)

2) Harris vs Trickeron [1873]

★ ⑤ Difference between Offer and Invitation to offer

Offer	Invitation to offer.
① Meaning	
<p>Offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it.</p>	<p>Where a party without proposing 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.</p>
② Intention of the parties.	
<p>Here person who makes a statement has intention to be bound by it as soon as other accepts</p>	<p>Here person has intention of negotiating on terms.</p>
③ Sequence	
<p>Offer can't be an act precedent to invitation of offer.</p>	<p>Invitation to offer is an act precedent to offer.</p>

1.5. Acceptance

★ Section 2(b)

When the person to whom the proposal is made signifies his assent thereto by accepting it, the proposal becomes a promise.

★

Code:- M.T. - CAP.
Legal Rules regarding a valid acceptance

These are the legal rules regarding a valid acceptance:

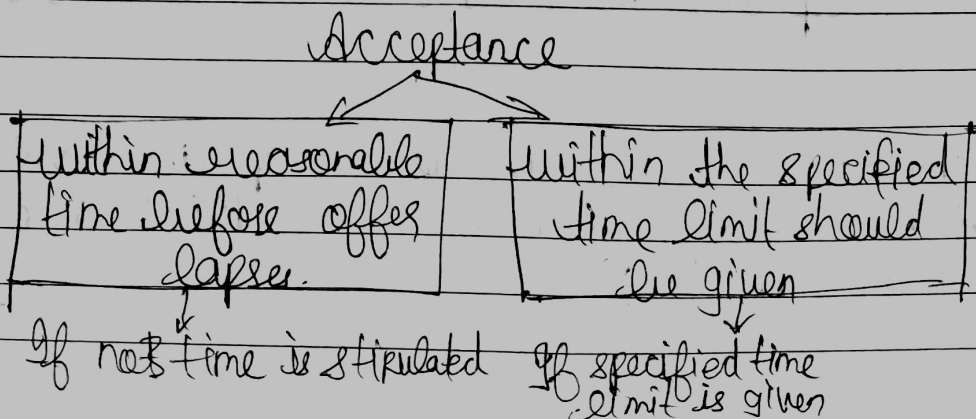
- Time
- Trust
- Conduct/ Implied
- Absolute and Unqualified
- Expressed

is not acceptance

Accepted by person to whom offer is made.

1) These are the legal rules regarding a valid acceptance:-
If acceptance is communicated to the person other than offeror, it will not create any legal relationship / silence does not amount acceptance.
Case law:- Felthouse vs Bindley (1982)

2) Time:-



6) Acceptance can be given only by the person to whom offer is made:-

Cases



Specific offer.

Can be accepted only by the person to whom it is made.

Case law:- Boulton v/s Jones (1857)



General offer

Can be accepted by any person who has knowledge of the offer

Case law:- Carlill vs Carbolic Smoke Ball Co (1893)

7) Acceptance must be in prescribed mode:-



Proposal accepted in prescribed mode

↓
Valid



Proposal not accepted in prescribed mode

↓
Offeror does not object

↓
Valid

↓
Offeror objects

↓
Notice by offeror to offeree to accept in prescribed mode.

If mode is not prescribed then any reasonable mode is allowed.

Example of mode are:- Telegram, e-mail, Messages, Whatsapp, etc.

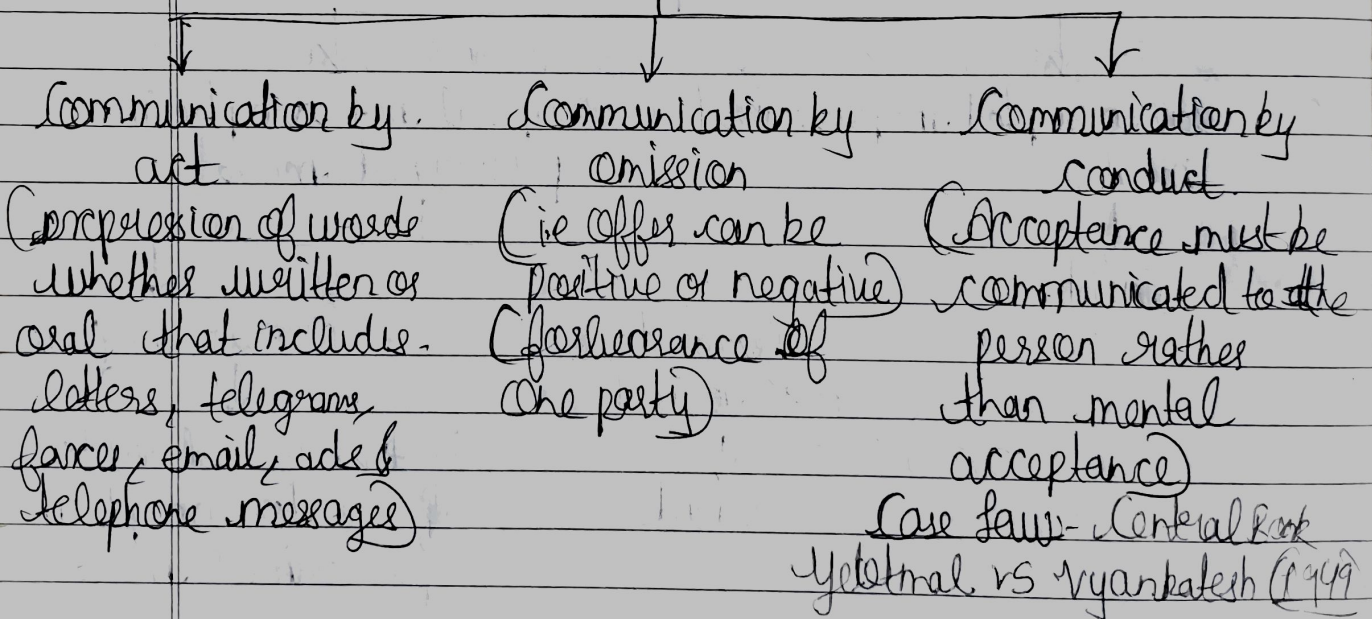
1.6 Communication of offer and Acceptance

★ Communication of offer:-

- Communication of offer is complete when it comes to the knowledge of the person to whom it is made.
- receiving a letter & reading a letter \Rightarrow In case of post

★ Communication of acceptance:-

Modes of acceptance



Communication of acceptance is completed (Section 4)

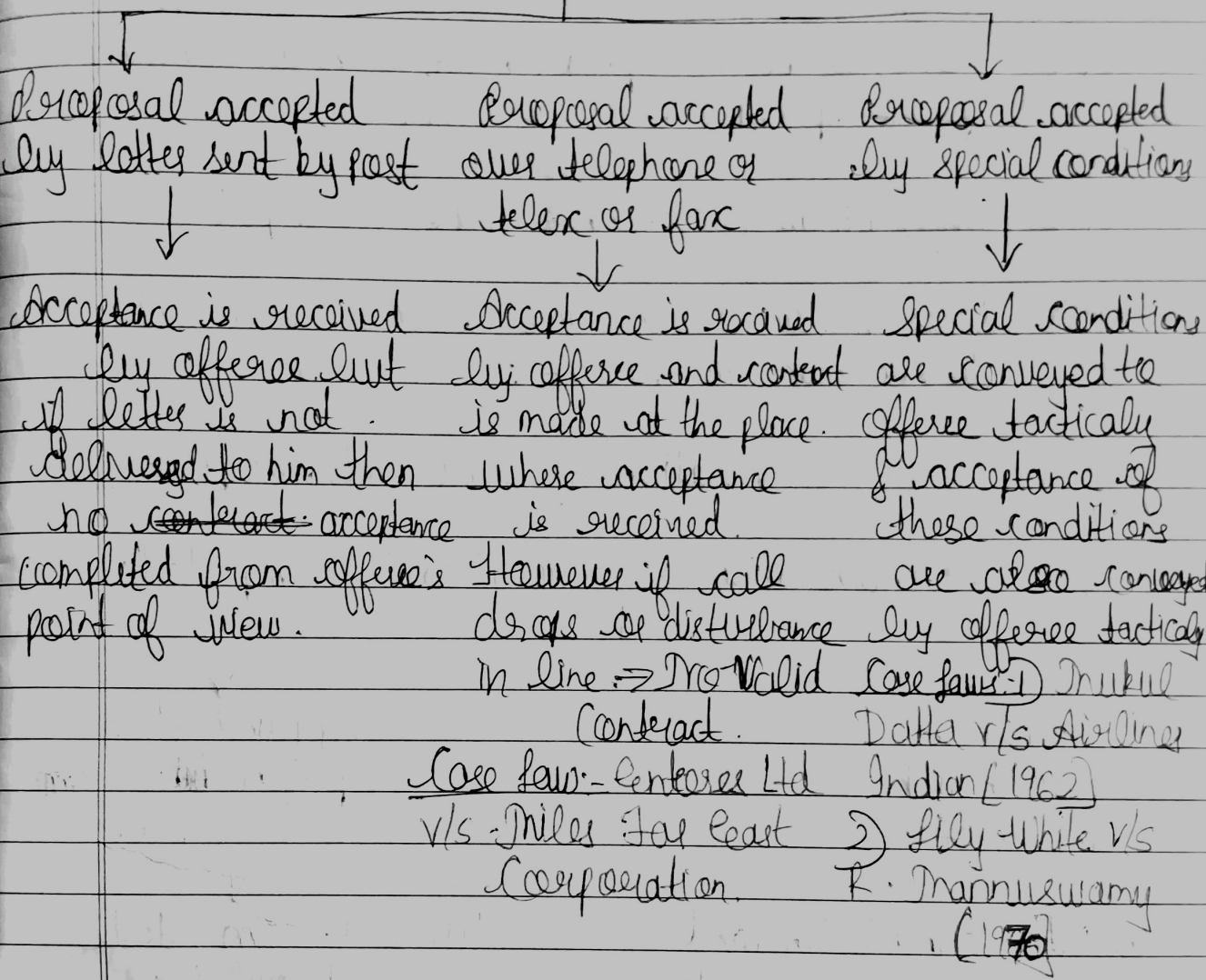
Against the proposer

Against the acceptor

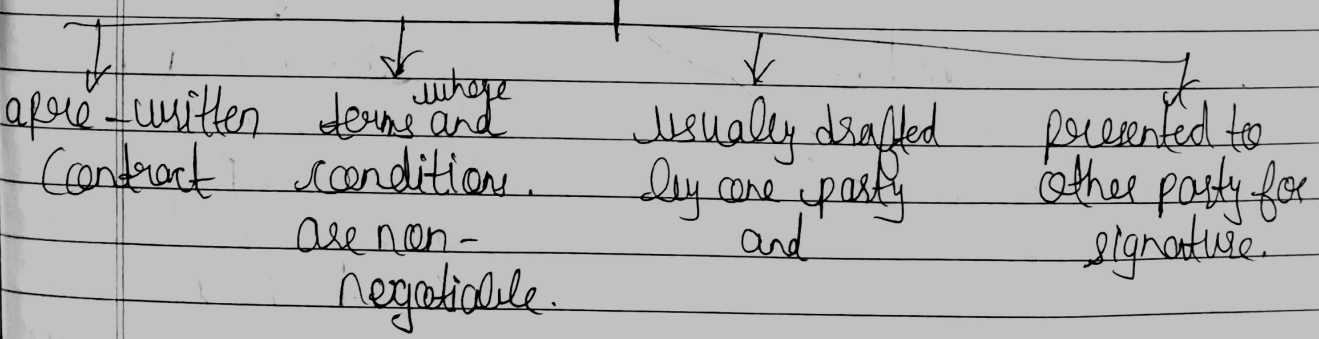
↓
But on transmission and out
of acceptor power to withdraw
the same.

↓
When it comes to knowledge
of proposer.

* Cases of Communication of Acceptance:-



* Standard form of contracts:-



Case law:- Rajpur Transport Co. v/s Ghanshyam (1956)

Revoke → cancel

1.7 Communication of Performance

★ Three important principles are:-

- (i) Offer, to be accepted, must contain ^{definite} ~~specific~~ promise by offeror.
- (ii) Offer, may be either general or specific.
- (iii) Offer made to offeree should be in order to obtain his assent.

1.8 Revocation of offer and acceptance

★ Communication of revocation is completed:-

↓
Against the person who makes it

↓
Out of transmission and out of person power to withdraw.

↓
offeror can revoke the offer before receiving the acceptance from offeree.

↓
Against the person ~~to~~ whom it is made

↓
When it comes to his knowledge.

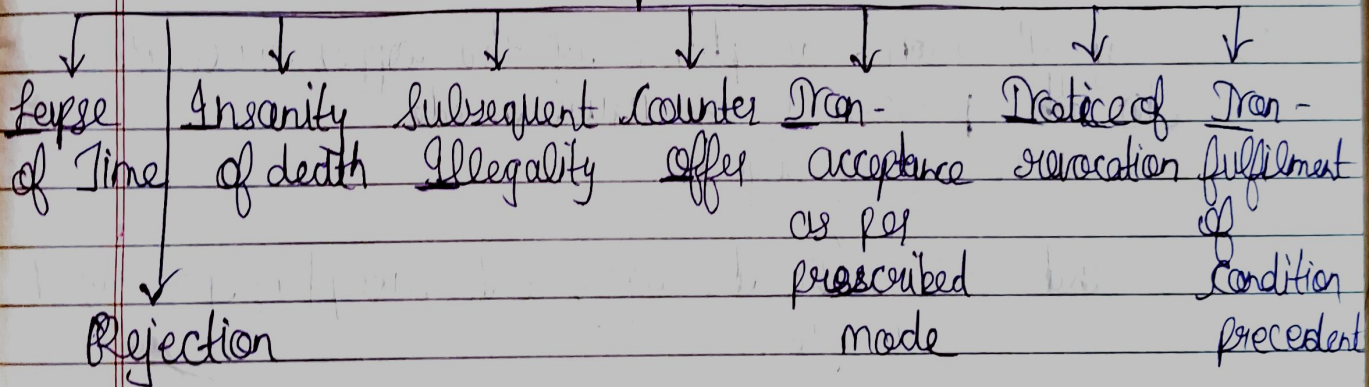
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offeror can't revoke the offer by rejecting the offer. But if offeree accepts the offer then he has no right to revoke the acceptance.

★ According to section [5]:

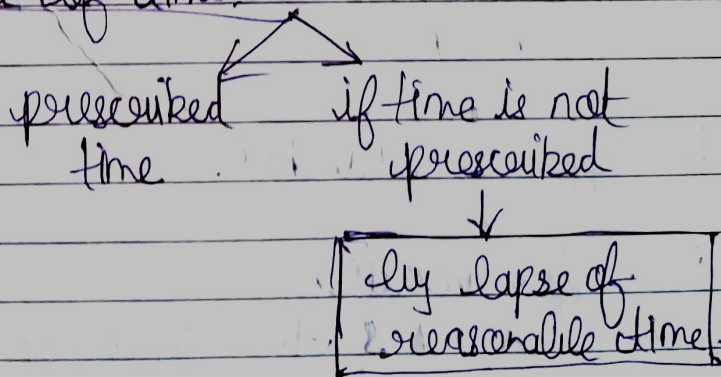
⇒ Proposal can be revoked → any time before → communication of its acceptance is complete → as against proposer/offerer.

⇒ Acceptance may be revoked → any time before → communication of its acceptance is complete → as against acceptor.

★ Modes of Revocation Code:- LION.



1) By lapse of time:-



Case laws:- 1) Ramsgate Victoria Hotel Co vs Montefiore (1866).

2) Indian Co-operative Navigation and Trading Co. Ltd vs Padamsey Bhumji

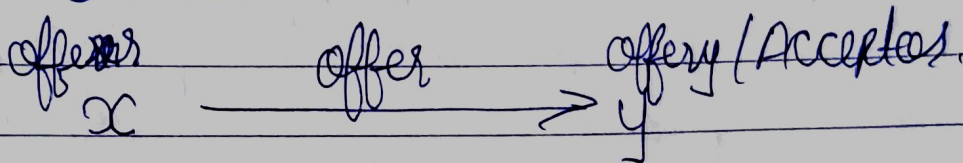
- 2) By death or insanity:-
Death or insanity come to the knowledge of acceptor before acceptance.
- 3) By subsequent illegality:-
After receiving the offer but before acceptance
- 4) By Counter offer:-
~~When~~ The offeree modifies the terms & conditions of the original offer and makes a new offer, the old / original offer is revoked.
- 5) By the non-acceptance of the offer according to the prescribed or usual mode:-
When offeror objects.
↓
and sends notice to offeree to accept in prescribed mode.
↓
but still offeree does'nt accept it prescribed mode
↓
the offer is revoked.
- 6) Notice of revocation:-
offeror ~~revoked~~ the offer by informing offeree before his acceptance.
- 7) Non-fulfillment of condition precedent:-
When acceptor fails to fulfill condition prior before the acceptance, the proposal gets revoked. Failure to ~~proposal~~ satisfy any condition will result in lapse of proposal.

By rejection:-
When offeror rejects the offer made by offeror,
the offer is "revoked".



COMMUNICATION AND REVOCATION:-

• Communication:-



Date

1 \Rightarrow Offer sent by x

7 \Rightarrow Reaches y

10 \Rightarrow Acceptance sent by y

15 \Rightarrow Reaches x .

offer \Rightarrow 7. i.e. when it comes to the knowledge of offeree (ie y)

Acceptance:-

against offeror (x) \Rightarrow 10. i.e. when it is put in the course of transmission and now offeror (x) can't revoke his offer.

against offeree / ^{acceptor} (y) \Rightarrow 15. i.e. when it is communicated to offeror (x) and now acceptor (y) can't revoke his acceptance.

• Revocation:-

If X sends a telegram revoking his offer which reaches Y before 10, offer is revoked.

If Y sends a telegram revoking his acceptance which reaches X before or on 15, acceptance is revoked.

If acceptance letter & revocation letter reaches to X on same date and if he reads the acceptance letter first then ~~the offer~~ he reads the revocation letter then ~~he~~ ^{the} acceptance is revoked.