

CA Foundation law Notes
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①

what is contract?

sec 2(h) : An Agreement Enforceable by law.

sec 2(e) : Agreement is defined as Every promise and set of promises forming consideration for each other.

sec 2(b) : when the person to whom proposal is made signifies his assent thereto proposal is said to be accepted. proposal when accepted becomes promise

Enforceability of law:

It means contract should create legal obligation between parties which can be duly enforceable.

Difference between contract & Agreement - Book

Essentials of valid contract

NOT given in section 10 : -

①. Two parties :

- At least 2 parties are involved in making contract - one party making offer and other accepting it
- A contract may be made by natural person or artificial jurisdictional person.

case law: state of Gujarat vs Ramanlal S and co.

②. Parties must intend to create legal obligation

- There must be intention to create legal obligation among parties
- Social Agreement are NOT enforceable by law

case law: Balfour vs Balfour.

③. other Formalities to be complied in certain cases:

- A contract may be oral or written
- In some cases contract has to be in written format.
- Also some other formalities need to be complied in certain cases.

Eg: Insurance contract must be in writing or
Immovable property must be registered.

④. certainty of meaning

- must not be vague or indefinite

⑤. Possibility of performance of an agreement

- capable of performance

Given in sec 10

① offer and Acceptance

② Free consent :

- Two or more parties are said to be in consent when they agree upon same thing in same sense.
- There must be consensus ad idem (meeting of minds)
- consent is NOT Free when they are caused by coercion or F.M. or mistake.

③ capacity of parties

- It means legal ability of person to enter into contract
- Every person is competent who -
 - major
 - sound mind
 - NOT disqualified

④. consideration

- It is Refund to ad quid Pro quo. - something in Return.
- It can be some Right interest Profit or benefit accruing to one party and some for balance, Document loss undertaken by other.

⑤ lawful consideration and object

⑥ Not Expressly as void

Types of contract

I on Basis of validity

①. valid contract :

- Binding and Enforceable
- contains Essential Elements of contract.

②. void contract

A contract which cease to be Enforceable by law becomes void when it

Ceased to be Enforceable.



③ Voidable contract

An agreement enforceable by law at option of one or more parties but not at option of other is voidable contract.

Difference between void and voidable - **BOOK**
Pg NO:

④ Illegal contract :

- contract which law forbids to be made
- court can't enforce contract and also connected contracts are void
- All Illegal agreement are void but all void agreement are NOT Illegal.

Difference - void Agreement | Illegal Agreement
Pg NO _____

⑤ Unenforceable contract

- cannot be Enforced due to some technical defect - absence in writing, barred by limitation.

On the Basis of Formation of contract

① Express contract

- Express by words or writing

② Implied contract

- comes into Force by Implication
- Implication is by action or conduct of parties
- when proposal or acceptance is made otherwise than in words he is said to make Implied contract

Tact contract :

It means silent contract which are
Inferred through conduct of parties
without any words spoken or written

③. Quasi contract

- Not an actual contract but resembles as a contract
- It creates rights and obligation when no real contract exist. such rights and obligation are created by law

④ E contracts

- Entered by two or more person by Electronic means
- known as EDI contract or cyber contract

On the Basis of Performance

①. Executed contract -

When obligation of both the parties are fulfilled then such contract are known as Executed contract

②. Executory contract

→ Unilateral Executory contract -

When obligation of 1 party has been fulfilled and other's parties obligation is pending then it is unilateral Executory contract

→ Bilateral Executory contract

When obligation of both the parties are pending then it is B.E.C.

Proposal | offer

section 2 (a) : when one person signifies another his willingness to do or to abstain from doing anything with a view to obtain assent of that other to such act or abstinence he is said to make proposal.

Kinds of offer

- ①. General offer - offer made to public at large and any one can accept it by performing desired act

case law - Carlill vs Carbolic smoke Ball Co.

- ②. specific / special offer.

- made to specific person or an ascertained person and can be accepted by that person only.

case law - Boulton vs Jones

③. Cross offer -

When two parties Exchange **Identical** offer in ignorance of Each other's offer all known as cross offer.

There is no acceptance of offer.

④. Counter offer

When offeror gives qualified acceptance of offer i.e. makes modification and variation in terms of offer then he is said to make counter offer

⑤. **standing offer**

offer which is allowed to remain open for specified period of time is known as standing offer

Essential of offer

①. It **must** be capable of creating legal Relation

- offer must give rise to legal Relation
- If legal Relation do not Exist then not a valid offer
- social Relation are not Enforceable

②. It **must** be certain, definite and not vague :

- Terms of offer - should not be vague

③. It **must** be communicated to offeree

①. offer should be communicated to person to whom it is made.

②. unless acceptance of offer cannot be Accepted.

③. An acceptance of offer in ignorance of it cannot be termed as acceptance.

case law - Lalman Shukla vs Gauri Datt

④. It must be made with a view to obtain assent of the other party

→ It must be made with a view to obtain assent and not just merely disclosing Intention of offer

⑤. It may be conditional

- can be made subject to terms and condition

⑥. offer should not contain term the non compliance of which would amount to acceptance.

⑦. offer — specific
— general

8. offer — Express
— Implied

9. offer is different from

a). Statement of Intention and announcement

b) Answer to question

Case law - Harvey vs Face

c) statement of price



d) An Invitation to make an offer to do business

• Person making Invitation does not make offer Rather Invites other person to make offer

• His Intention is to Enter into contract with other person if other person makes Justifiable offer.

⑩ A statement of price is not offer

Invitation to offer

①. when party without Expressing final willingness proposes certain terms on which he is willing to negotiate he does not make an offer rather invites other person to make offer.

②. ITO is act precedent to offer

Acceptance

"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".

Legal Rules Regarding Acceptance:

①. Acceptance can be given only by person to whom offer is made.

offer

specific

can be accepted only
by specific person

Boulton vs Jones

general

Any person who
performs condition

Carrill vs Carbolic
Smoke Ball Co

② Acceptance must be absolute and unqualified

Sec 7

- Acceptance must be as per terms of offer, It should not be changed.
- If terms of offer are changed then it amounts to counter offer.

③ Acceptance must be communicated

① To conclude contract between parties offer must be communicated to offeree.
in some permissible form

②. It means while accepting offer offeree should have knowledge of offer

case law: Brogden vs Metropolitan Co.

④ Acceptance **Must** be in Prescribed mode

→ when made in Prescribed it must be Expressed in that manner

→ If not in prescribed manner and proposer does not insist on it then it can be **presume** that he has **assented** to it.

⑤. Time

Acceptance should be given

Prescribed time

If no time stipulated

(**Reasonable time**)

⑥. **mere silence is not acceptance**

① offer can't be treated as acceptance from mere silence

② **if by previous conduct silence amounts to acceptance then mere silence will be acceptance**

Case law:

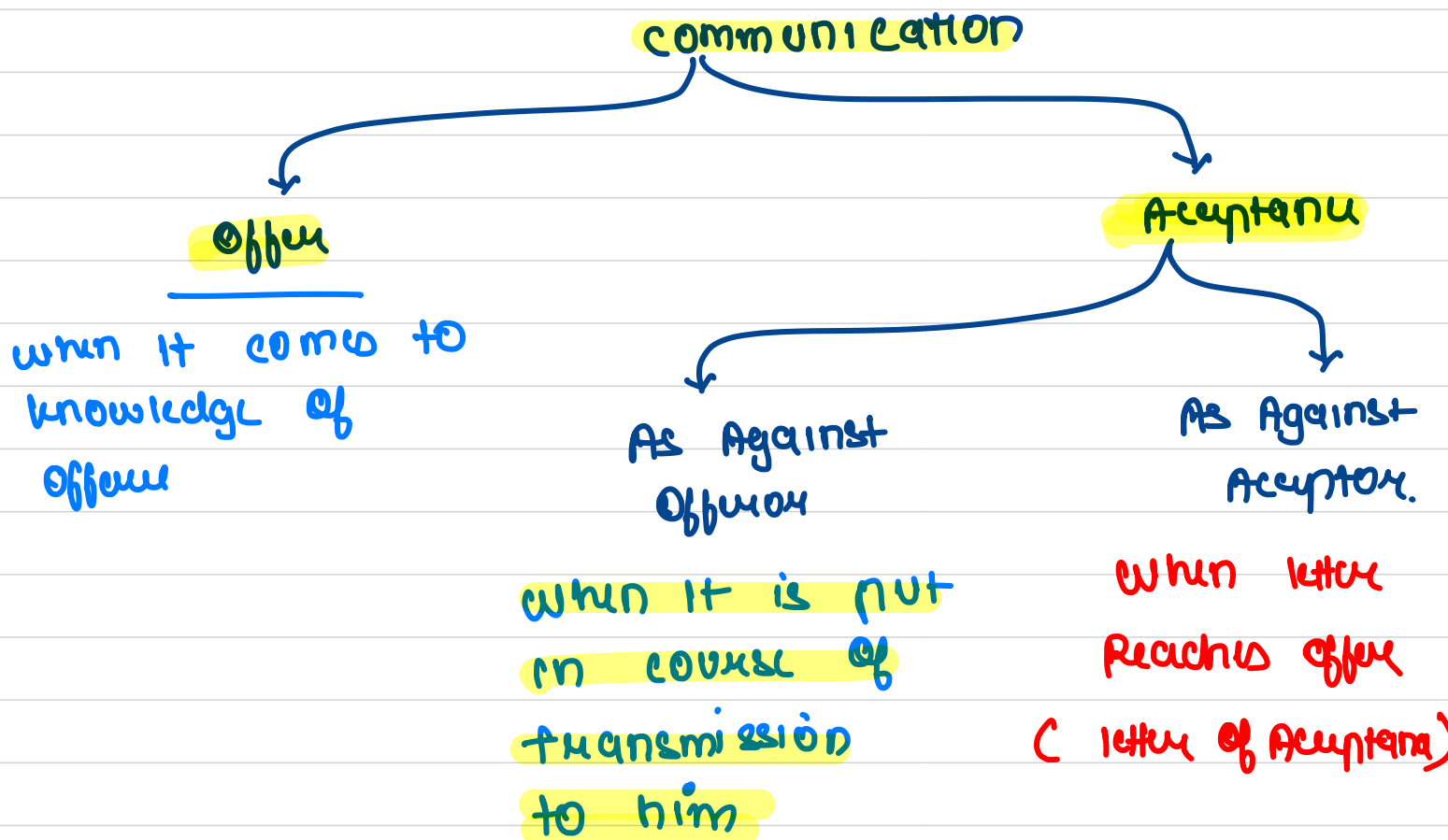
Fethouse

vs

Binaly

⑦ Acceptance by conduct and Implied Acceptance

① Performance of condition of proposal or Acceptance of consideration for Reciprocal promise shall be treated as Acceptance



Mode of Acceptance

Act

Includes
Expression
of words
whether oral
or written

- Also Includes
Positive Act
↓
Person acting
or making sign

Omission

Forbearance on
part of one
person to
convey his
willingness.

Conduct

↓
how person
behaves can
act as
communication
by acceptance.

Acceptance

Telephone / Telex

- contract is made
Instantaneously
- If call drop / disturbance
↓
then Ask for Acceptance
Again

Special Circumstances

↓
If condition
reasonable
↓
Valid

Unreasonable
↓
Void

case law:

lilly white vs

Mannuswamy

communication of performance

Proposer



when acceptance is put in course of transmission

Acceptor



when comes to knowledge of proposer

Revocation

Offer



Before commⁿ of acceptance as against proposer is complete

(Before letter of acceptance is posted)

Acceptance



Before commⁿ of acceptance is complete as against

Acceptor

[letter of acceptance is reached to offeror]

modes of Revocation :

①. By Notice :

②. By lapse of time :

① If time is stated then it should be within time

② If NO time then reasonable time

case law: Ramsgate Victoria Hotel vs Montefiore

③ By Non Fulfillment of condition precedent :

→ If condition precedent to acceptance of the proposal is not accepted by the acceptor then proposal gets Revoked

④ By Death | Insanity -

It would automatically cancel the offer provided other person has knowledge about Insanity.

⑤ By counter offer

⑥ NON Acceptance of offer

⑦ Subsequent Illegality