

Indian Contract Act 1872

Unit - 1

* Proposal / offer

- According to section 2(a) of ICA,
"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."

* Essentials of proposal / offer are:-

- ① Person making the proposal :- Promisor / offeror.
- ② For valid offer, the party must express willingness 'to do' or 'not to do'.
- ③ objective must be to attain assent of other party.
- ④ Offer can be positive / negative.

* Classification of offer.

① General offer:-

- When offer is made to public at large.
- Anyone accept.
- Can be accepted by anyone any time.
- continuing offer.

Case law:- Carlill Vs. Carbolic Smoke Balls Co. (1893)

Facts:- ~~Carlill~~

- ① Carbolic Smoke balls company → advertised £100 reward will be given to who influenza & even after consuming smoke balls.
- ② Carlill consumed but still got influenza.
- ③ Held she could recover the amount as she had accepted offer.

② Specific offer / special offer.

- When offer is made to specified person.
- Only specified person can accept.

Case law:- Boulton Vs Jones

③ Cross offer:-

- When 2 parties exchange identical offers.
- In ignorance of time.

cross offers used only
at the time where less
communication means were
there ex. Postal services.

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- No binding contract.
- Cross offer can't be constructed as acceptance of other.

④ Counter Offer:- (Also called conditional acceptance)

- Offeree offers qualified / conditional acceptance.
- Modifications & variations in original offer.
- Amounts to rejection of previous offer.

⑤ Standing / Continuing / open offer:-

- When offer remain open for acceptance for particular period of time.
- Ex. Govt. Tenders.

* Essentials of valid offer:-

- ① It must be capable of creating legal relationship
- ② It must be certain, definite not vague.
- ③ It must be communicated to offeree:-
 - Offer can be accepted only when it's communicated

Case Law:- Laliman Shukla Vs. Gauridatta.

Facts:- ① G sent L to trace his nephew.

② Then announced reward for it.

③ L traced nephew in ignorance of offer.

④ Held, he was not entitled for reward.

④ Objective must be to obtain assent of other party.

⑤ It may be conditional.

⑥ Offer should not contain a term, non-compliance of which would amount to acceptance.

Ex. A offers Car to B for 100₹ and if no reply is given by B, he will anticipate that offer is ~~accepted~~ accepted. This is not a valid offer.

⑦ Can be specific or general.

⑧ Can be expressed or implied.

** ⑨ Offer is different from mere statement of intention, an invitation to offer, a mere communication, prospectus or advertisement.

i) A statement of intention and announcement
Ex. A father's will to donate all his property to his son.

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

Case Law:- Harvey VS. Face (1893)

Facts:-

① It asked F via telegram that:

a) Will you sell us Bumper hall pen.

b) Telegraph lowest cash price.

- ② F replied that "lowest price is ₹ 900."
③ H sent telegram in which he agreed to buy pen at 900.
④ F refused to sell got sued by H.

Held:- While plaintiff asked 2 questions, defendant only responded to one. Thus they made no offer at all. Mere statement of lowest price doesn't make it implied offer.

Case Law :- Mac Pherson Vs Appanna (1951)

Facts:- ① Owner stated that he would not accept < ₹ 6000/- for a property.
Above decision was followed in this case.

iii) Statement of price is not an offer.
(Harvey vs. Facey.)

iv) An invitation to make an offer or do business:-
In this case, when the goods are sold in auction, auctioneer doesn't contract with bidder.
(Harris Vs Nickerson)

⑩ Statement of price is not an offer.

* Invitation to offer.

- Act precedent to making an offer.
- Circulation of offer.
- Invitation to next party to make an offer or to start negotiation.
- Invitation to offer is made with intention of negotiation or to receive offers.

* Difference

Basis	Offer	ITO
Meaning	Definition under 2(a)	Where party is calling for negotiation / inviting to make an offer it's called as ITO.
Intention	Intention is to be bound by it.	Intention is to negotiate.
Binding	Binding on offerer (and offeree if accepted)	Not binding on anyone.
Sequence	Can't be an act precedent to ITO.	Always precedent to offer.
Ex.		

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* Acceptance :-

- Section 2(b) of the act;
"When a person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted." Proposal when accepted becomes promise.
- Acceptance is to offer is like lighted match to a train of gunpowder.
- Sir William Anson.

* Rules for valid acceptance.

- ① Only the offeree can accept the offer.

Case law :- Boulton vs. Jones (1857)

- Facts :-
- Boulton purchased business from Brocklehurst.
 - Jones is creditor.
 - Placed an order to Brocklehurst.
 - Boulton supplied goods.
 - Jones refused to pay for goods as offer was for Brocklehurst.

Held :- Offer was not for Boulton hence there is no contract between Boulton & Jones.

- ② Acceptance must be absolute & unqualified.

- As per section 7, acceptance is valid only if it's absolute & unqualified & accepted in manner prescribed.

③ The acceptance must be communicated.

- Case Law :- Brogden (B) vs. Metropolitan Railway Co.

- Facts :- B sent draft agreement to M for supply of coal.
- Manager wrote approved on it and put in drawer for further procedure.
 - Manager forgot about agreement.

held :- There was no contract as acceptance was not communicated.

- Cross offer cannot be deemed as acceptance.
(Bhagwandas vs Girdharilal)

- Mere variation in language not involving difference in meaning can be considered as acceptance. (Heyworth vs Knight)

④ Acceptance must be in prescribed form :-

- If mode of acceptance is prescribed in offer, it must be accepted in that manner.

⑤ Time :-

- If time is mentioned in the offer it must be followed.

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⑥ Mere Silence is not an acceptance :-

Case law :- Felthhouse (F) vs. Bindley (1862) (B)

Facts :- F offered his nephew to buy his horse for £30. He said to his nephew that if he hears no more about horse he will consider the acceptance.

- He told B to keep that horse reserved.
- B sold the horse.

held :- F cannot succeed as his nephew had not communicated acceptance to him.

⑦ Acceptance by conduct / implied acceptance :-

As per section 8;

- When the conditions to the proposal are fulfilled or consideration is accepted; proposal is said to be accepted.
- It is called acceptance by conduct.

* Communication of offer & acceptance.

- "Communication of offer is complete when it comes to the knowledge of the person to whom it is made"
→ Section 4

- If offer is made by post → communication is completed when letter is reached to offeree.

Provided that :- Offeree must read a letter to constitute as communication.

* communication of acceptance.

As per section 3;

2 modes of communication

a) By any act and;

b) By omission / conduct

a) By act :- Expression of words whether oral or written.

b) By omission :- Such omission is conveyed by conduct.
- Silence is not omission.

c) By conduct :- When acceptance is conveyed by conduct.

- Mere unilateral mental assent in one's own mind would not amount to communication.

Resolution was passed by bank to sell his land to A remained uncommunicated to A. Held, there was no communication (Central bank of yermol vs vyankatesh (1949))]

~~IMP~~ * communication of acceptance is completed when as per section 4 :-

a) As against the proposer :- when it's put in course of transmission.

b) As against the acceptor :- when it comes to knowledge of proposer.

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* Acceptance over telephone / telex / fax :-

- When offer is made on such instantaneous devices, contract is complete when it's received by an offeree.
(Entores Ltd. Vs Miles Far East Corporation)
- In case of disturbance / call drops $\Rightarrow$ can't be a valid contract.

* communication of special conditions:

- Where special conditions were conveyed tacitly.
- Acceptance is also conveyed tacitly without realising. Ex. Conditions behind ticket.
- 'Mukul Dutta Vs Indian Airlines' it was held that the passenger travelling by airline is deemed to have read the conditions.
Provided that;
Such conditions must be reasonable.

* Case law :- Lilly White Vs. Munnuswamy (1970)
(L) (M)

Facts:- L delivered some cloths to drycleaner.

- Receipts mentioned that in case of loss, customers can claim upto 15% of value.

- L lost her sari.

Held :- The terms were unreasonable & L can claim full amount.

Any time before communication of acceptance is made as against the proposer.

* ~~communication of performance.~~

~~* Revocation of acceptance / offer.~~

~~As per section 5 of the act;~~

~~- acceptance & proposal can be revoked any time~~

* Revocation of acceptance / offer.

As per section 5 of the act;

Offeror can revoke offer anytime before its accepted.

As per section 5 of the act;

- Acceptance can be revoked any time before the communication of acceptance is made as against the acceptor.

Modes of revocation

① By notice of revocation.

② By lapse of time

- If acceptance is not conveyed in specified time period / reasonable time, offer can be revoked.

③ By non-fulfillment of condition precedent

- As section 6;

where acceptor fails to fulfill a condition precedent to acceptance; offer can be revoked

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④ By death / insanity :-
- death / insanity of proposer would result in revocation.

Provided that ; such fact of death / insanity should come to knowledge of acceptor.

⑤ By counter offer.

⑥ By non acceptance in prescribed mode.

⑦ By subsequent illegality.

* Introduction to Contract :

- Total section - 238 $\left\{ \begin{array}{l} \text{General Principles (1-75)} \\ \text{Special Contracts (124-238)} \end{array} \right.$

- Date of commencement $\Rightarrow$ September 1, 1872

* Agreement

- As per section 2(c) of the act ;
"Every promise or set of promises, forming the consideration for each other".

Agreement = Offer + Acceptance + consideration

* Contract

As per section 2(h);

"An agreement enforceable by law"

Contract = Agreement + Enforceability by law.

Difference

Meaning	Agreement	Contract
Meaning	definition	definition
Scope	Wider Term	Narrow Term
Includes	social & legal agreements	Only enforceable contracts
Legal obligation	May / May not create legal obligation	legally binding
Nature	All agreements are not contracts	All contracts are agreements

* Essentials of valid contracts.

- ① Agreement
- ② Free Consent
- ③ Competency of parties
- ④ Lawful object
- ⑤ — consideration
- ⑥ Not expressly declared to be void.

AS per section 10

- ⑦ Two parties
- ⑧ Intention to create legal obligation / relation
- ⑨ Fulfillment of legal formalities.
- ⑩ Certainty of meaning
- ⑪ Possibility of performance.

Not mentioned in section 10 but considered as essential

VERY IMPORTANT
* Section 10

As per section 10 of the act:
"All agreements are contracts if they are made with free consent of the parties competent to contract, for lawful consideration & with lawful object and are not expressly declared to be void."

* Essential elements not mentioned in section 10.

① Two parties :-

- At least 2 parties are required
provided :- Identity of parties must be ascertainable.

② Parties must intend to create legal obligation

- There must be intention.
- Social / domestic agreements are non-enforceable hence can't be contracts.

* contract of insurance is not valid except as written

③ Full fulfillment of legal formalities

- Contract can be written / spoken
- In interest of parties $\Rightarrow$ It should be written.
- Where any statutory requirements provide it to be written; must be complied.

④ Certainty of meaning

- Agreement must be certain not indefinite.

⑤ Agreement must be possible to perform

* Essential elements as per section 10

① Offer & acceptance / agreement. [2(a), 2(b), 2(c)]

② Free consent which is ad idem. (Section 13)

③ Capacity of parties. (Section 11)

④ consideration. (Section 2(d)) (Quid pro quo)

⑤ Lawful consideration & object. (Section 23)

⑥ Not expressly declared to be void

- If agreement is declared void / illegal by law it's called as illegal / void agreement.

ad idem $\Rightarrow$ Agreeing on same thing in same sense.
Quid pro quo $\Rightarrow$ Something in return

* Types of contracts.

a) On the basis of validity.

1) Valid Contracts

- Agreement enforceable by law.

2) Void contracts.

- Section 2(j) states that;

"A contract which ceases to be enforceable becomes void when it ceases to be ~~if~~ enforceable."

- Can't be enforceable by court.

3) Voidable Contracts.

- Section 2(i) states that;

"An agreement which is enforceable by law at the option of one ^{more} party parties thereto but not at the option of other / others parties is a voidable contract."

- In following situations, contract becomes voidable.

i) When consent is not free.

ii) When the offeree prevents offeror from performing his promise, the contract is voidable at option of offeror.

iii) When the contract is barred by time.

* Difference b/w void & voidable.

① Meaning

② Enforceability.

③ Cause.

④ Performance of contract.

⑤ Rights.

4) Illegal Contract.

- Contract which law forbids to be made.
- All illegal agreements are void but all void agreements aren't illegal.
- Both are void.
- According to section 2(g):
"Agreement not enforceable by law is void"

* Difference b/w void agreements & illegal agreements

- ① Scope
- ② Nature
- ③ Punishment
- ④ Collateral Agreement.

5) Unenforceable Contract.

- Contract is good in ~~writing~~ substance but non-enforceable becoz of technical defects such as absence in writing, barred by limitation act etc.

b) On the basis of formation of contract.

① Express Contracts:-

- If its expressed by words / writing.
- As per section 9; If proposal / acceptance is made in words; its called express contracts.

② Implied Contracts:-

- These contracts are come into existence by implication
↳ Tacit contracts:- Tacit contracts are those which are inferred through conduct of parties without any words spoken / written.

③ Quasi Contracts:-

- Refer unit 5.

④ E-contracts:-

- When contract is entered by 2 or more parties ~~contract~~ using electronic means.

c) On basis of performance of contract:

① Executed Contract:-

- When act is done then its called executed contract.

② Executory Contract

- When act is not done ; its called as executory.

↳ a) Unilateral Contract :- When act is ^{not} done by one party.

b) Bilateral Contract :- When act is ^{not} done by both parties.

Section	Provision
2(a)	Offer
2(b)	Promise / acceptance
2(c)	Consideration
2(e)	Agreement
2(g)	Void agreements
2(h)	contract
2(j)	Void contract
2(i)	Voidable contracts
7	Acceptance is valid only if it's absolute
8	Acceptance by conduct
4	Communication of offer & acceptance
3	Modes of communication
5	Revocation
6	Non-fulfillment of the condition precedent
10	Essential elements of contract
9	Express contracts