

Learning + writing Practice

Revision →
times

Unit-1. (Nature of Contract)

• Agreement:- In terms of Section 2(e) of Indian contract act, "every promise and every set of promises forming a consideration for each other".

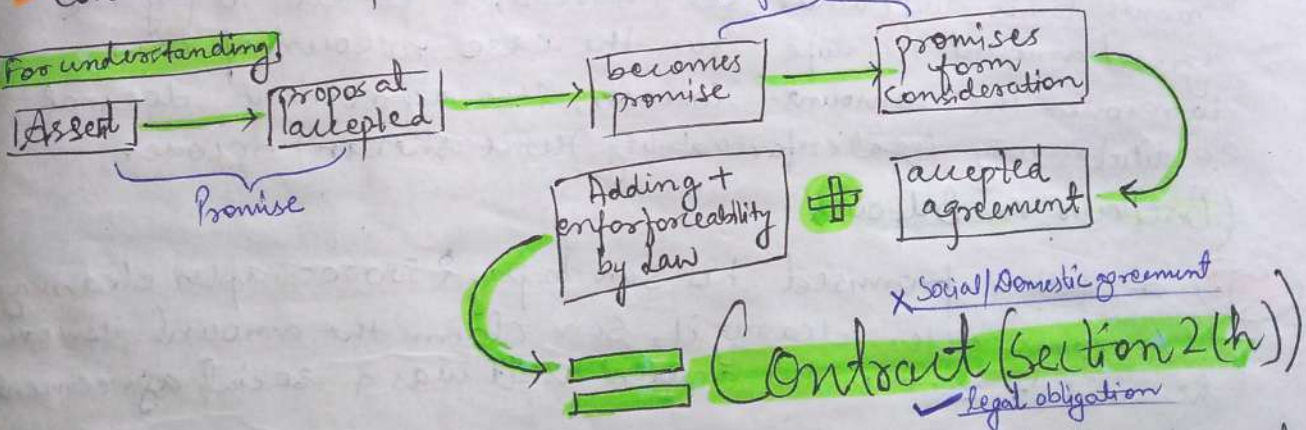
• Promise:- In terms of Section 2(b), "When the person to whom proposal is made signifies his assent thereto the proposal is said to be accepted. Such acceptance or proposal when accepted, becomes a promise".

(Section 2(h))
• Contract → an agreement enforceable by law forms a contract
• An agreement to become a contract must give rise to legal obligation - that is duly enforceable by law

• Agreement = offer/proposal + Acceptance

• Contract = Accepted offer/agreement/proposal + enforceability by law

For understanding:



• In terms of Section 10 of Indian contract act, "all agreements are contract if they are made of free consent of the parties ^{capacity} competent to contract, ~~law~~ for a lawful consideration and lawful object and are not expressly declared to be void".

2. There are some elements which are not including in section 10 (Khud ko Smjha ke phir wording me likhna) # Learning technique

1. Two parties:- A contract must involve two parties. One must be a seller and one must be a buyer. One cannot contract with himself. Parties can be natural person and or constitutes artificial person. It must be clear that identity of party should be ascertainable.

example:- One party cannot become both buyer and seller. So both should be different.

In the case of Gujarat vs Ramanlal & Sandco., when the dissolution of the firm the assets are divided among partners. The sales tax officer tax the transaction. He considered it as sale. However the partners are the joint owner of asset. Therefore buyer and seller are same and they cannot buy their own goods.

2. Parties must intended to create a legal obligation:- To form a contract, parties must have intention to create legal obligation. The social and domestic nature of agreement are not enforceable in court of law and hence do not result as a contract.

(eg1) A husband promised to pay a maintenance every month to his wife while from abroad, he failed to pay the agreed amount. His wife sue the case in court of law to recover the amount. However, this agreement does not constitutes any legal enforceability. Hence she can't recover (Balfour vs. Balfour)

(eg2) A father promised his son to pay ₹50000 after clearing CA exams. After clearing it, son claims the amount. However, he didn't recover the amount as it was a social agreement.

(eg3) A promised B to sell goods. A sold goods to B on a condition to repay within 30 days. B failed to repay the amount on the due date. A can sue case in court of law as it amounts to a legal obligation.

3. Other formalities has to be complied with:- A contract may be written or oral. As to the legal effects, a contract is accepted whether it is written or spoke of words by mouth. As interest of parties contract must be written. In case of certain ~~laws~~ contracts other formalities has to be complied with to make an agreement enforceable.

(eg) In contract of Insurance is not valid except written contract.
Thus, in any statutory requirement other formalities such as writing contract made in written or presence of witnesses or any legal documents required has to be complied with.

(4) Certainty of meaning - A contract must be certain and not vague or indefinite.

(eg) A agreed ~~to~~ to ~~sell~~ lease his shop^{to B} for definite years. This contract is not valid as it doesn't mention the period of years.

(5) Possibility of performance - A contract should be capable of performance. In agreement to do an impossible in itself cannot be enforced.

(eg) B promised and agreed with A to discover treasure by magic. It is itself impossible and hence can't be enforced.

Date 1/07/23

Essentials as per section 10

(1) Offer and acceptance or agreement - In the terms of section 2(b), every promise and every set of promise creates consideration for each other. As per section 2(b), a proposal when accepted becomes promise. Agreement is very essential since it is very first step and of it is outcome of offer and acceptance.

(2) Free consent - As per the essentials of section 10, free consent is known when both the parties agree in the same sense upon the same thing. The consent must be free. Agreeing upon the same thing can be understood as identity of minds in terms of viz Consensus ad idem. The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

(eg) A, who owns 2 cars is selling red car to B. B wants to purchase black car. Hence there is no consensus ad idem.

To determine consensus ad idem there would be meeting of minds in the same sense of both the parties.

If A says B, 'Will you buy my red car?' B in reply says 'Yes'.

There is said to be consensus ad idem.

(Consent is an willingness or giving voluntary permission or agreeing to something.)

4 Date - 02/07/23

(eg) A threatened ~~to~~ to shoot B if he does not lend him ₹ 2,00,000 and B agreed to it.
Hence, here ~~the~~ agreement is entered into under coercion and undue influence
hence not a valid contract.

(3) Capacity of parties - means legal ability of a person of entering into contract.

As per Section 11, it specifies that every person is competent to contract who

- is of the age of majority according to ~~law~~ ^{law} to which he is subject
- is of sound mind
- is not disqualified by law to which he is subject

~~As~~ requires a person who is ~~the age of contracting person~~ i.e. the person entering the contract should be 18 or above. ~~18~~ ^{below 18 yrs} person is minor and hence not

qualification (a) requires age of contracting person i.e. person entering into contract ~~should~~ ^{must be} age of 18 years. Person below 18 is considered as minor. Therefore he is incompetent to enter into contract.

qualification (b) requires a person is of sound mind, i.e. he is in senses that he understands the implications of contract at the time of entering into contract. A lunatic, an idiot, a drunken person or under influence of intoxicant is not supposed to be a person of sound mind.

qualification (c) - that the person who is entering into contract should not be disqualified by his status by law. Such persons are alien ~~enemy~~ ^{enemy}, foreign sovereign ~~sovereigns~~, ^{contracts} are disqualified unless they fulfill certain formalities by law.

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④ Consideration:- refers in terms of viz 'quid pro quo' which means something in return. A valuable consideration in terms of law consist either in right, interest, profit or benefit to one party, or some forbearance, detriment, loss or responsibility suffered given, or suffered or undertaken by other.

Eg. A agreed to sell the books to B for ₹100
B's promise to pay 100 rupees is consideration for A
A's promise to sell books is consideration for B's promise.

⑤ Lawful consideration and object:- must be lawful

In the terms of Section 23 of Indian Contract Act 1872, consideration and object is not lawful if it is prohibited by law, or if it as would defeat provision of law, if it is fraudulent or involves injury to person or property of another or law/court regards it as immoral or opposed to public policy.

Example: ① A drops prosecution institutes against B for robbery and B promises to restore value of things taken (Void agreement, as its object is unlawful)

② A agrees to sell the house to B against 100kg of cocaine (drugs). It is illegal and consideration is unlawful

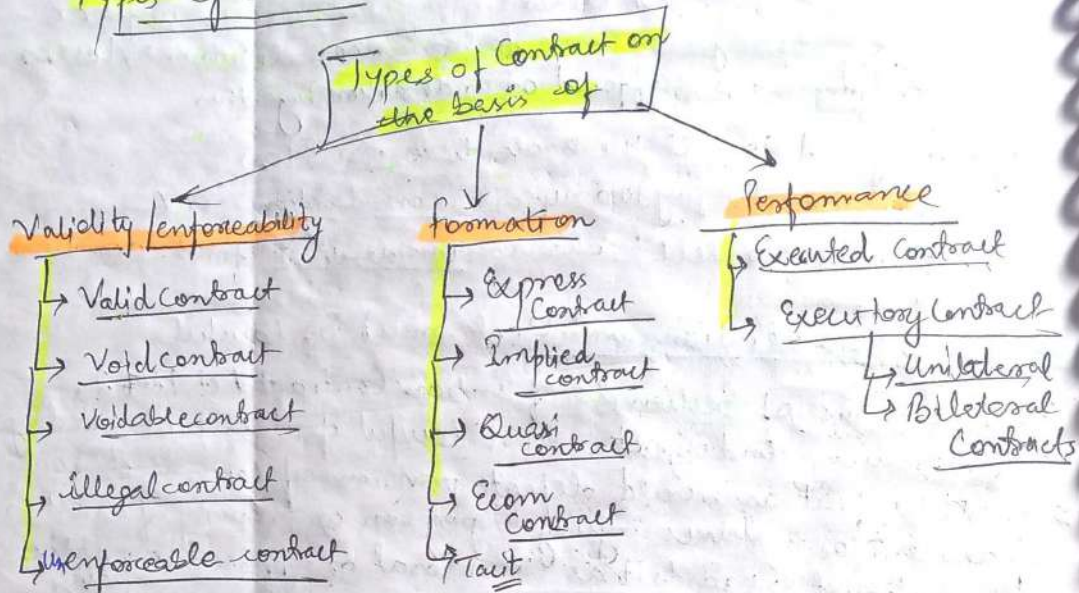
⑥ Not expressly declared to be void:- The agreement entered must not be which the law declares to be illegal or void. An illegal agreement is expressly or impliedly prohibited by law. A void is one without legal effects.

(eg 15)

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Types of Contract



On the basis of validity

① Valid Contract: An agreement which is binding and enforceable by law is a valid contract. It constitutes all the essentials of a valid contract.

(eg) - A asks B if he wants to buy his bike for ₹1,00,000. B agrees to buy it. It is an agreement enforceable by law. Hence, it is a valid contract.

② Void Contract: Section 2(g) states as follows, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable." Thus, void contract is one which cannot be enforced by a court of law.

(eg) A contracts with B to sell the shop to B. However, before the registration is effected, the fire caught in the shop and the shop was destroyed. Hence prior to fire caught contract was said to be valid. But after the fire caught the contract becomes void.

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- (eg) Mr. X agrees with Mr. Y to be the partner of firm for the period of 12 months. Such contract is valid. But after some days Mr. X dies in accident. Here the contract becomes void due to impossibility of performance of contract.
Thus, a valid contract when cannot be performed due to some unaltered happening becomes void.

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(3) Voidable contract:- (Imp) I forgot again

Section 2(i) states that, an agreement which is enforceable by law at the option of one party or more more parties there to, but not at the option of other or others, is a voidable contract."

- This in fact means where one of the parties to the agreement is in the position, or legally entitled or authorised to perform his ^{part} then contract is treated as voidable.
- Such a right may arise from the fact that contract may have brought up about by one of the party by Coercion, undue influence, fraud or misrepresentation. Thus the other the party have right to treat it as a voidable contract.

Example

X promised to Y to sell his scooter for ₹50,000. The consent of X procured by Y at gunpoint. Now X is an aggrieved party and he is at the option of not performing his part of contract but Y is not at the option.
If X accepts the contract, the contract becomes valid.
Hence, Y has no option of rescinding the contract.

(4) Illegal Contract:- It is an agreement which laws or forbids its to be made. It is not enforceable in the court of laws and in the connected agreements.

Also, all ~~agreed~~ illegal agreements are void but all void are not illegal in some object. Illegal objects are immoral, opposed to public policy. The unlawful object of contract is not enforceable in court of law.

Eg if A agrees ^{with} B, to purchase Brown sugar, it is an illegal agreement.
According to section 2(g), an agreement not enforceable by law is void."

⑤ Unenforceable contract - It is an agreement which was earlier enforceable but because of some technical defect becomes unenforceable by law eg. barred by limitation, hence, ~~either~~ ^{both} party cannot sue in court of law.

eg - A bought goods from B. He didn't make payment till 2019. Now B cannot sue for the recovery as it has crossed 3 years and barred by limitation.
→ A's good debt becomes unenforceable when it crosses 3 years as barred by limitation act.

On the basis of Performance Formation

① Express contract - A contract would be an implied contract if it is express in words or in writing.
Section 9 of ICA provides that if proposal or acceptance of promise is made in words, the promise is said to be express.

eg - If A tells B on telephone that he offers to sell his phone. B in reply accepts the offer.
It is expressed in words. Date - 05/07/23

② Implied Contract - Implied contract is laid by implication, conduct of parties or course of dealing between them.
As per the terms of Section 9 of Indian Contract Act 1872, it contemplates that such implied contract when it lays down it is so far as proposal or acceptance is made, other than in words, such promise is said to be implied.

eg - When a coolie in uniform picks the luggage in railway station, ^{and} being asked by A and A doesn't stop him to do so. The contract is said to be implied and A has to pay for the services ~~or~~ ^{as} detailed by coolie.

③ Quasi contract - It is not a real/actual contract but law resembles it as a contract. It is created by law under some certain circumstances. The law creates and enforces legal rights & obligations when no real contract exists. There is no intention of parties on part of either party to create a contract but law imposes it on person.

(eg) It is the obligation of finder of lost goods to return them to the true owner or liability of person to whom money is paid by mistake to repay it back. Cannot be arise out of a contract, as there is neither offer and acceptance or no consent.

(4) Tacit Contract - are those contract which are silent. A contract is said to be tacit ~~when it~~ without any words spoken or written which is inferred through the conduct of parties. Example of Tacit Contract is where a customer has withdrawn the amount from bank from ATM.

Another example is where a contract is assumed to have been entered when it given effect to fall of hammer in auction sale. Such contracts are tacit but fall of hammer is also a action i.e. Implied.

(5) E-Contract - When a contract is entered by two or more parties by using electronic modes such as emails, is e-commerce contract. In E-commerce different parties create links to other networks in the world through EDI - Electronic Data Interchange. This helps in business transaction using electronic mode. Such contract also known as cyber / EDI / mouse click contract.

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On the basis of Performance:-

- ① Executed contract. The consideration is given could be a can act or some forbearance. When the contract is done or executed or forbearance is brought on record, then the contract is an executed contract.

eg- When a grocer sells sugar on cash payment. It is an executed contract because both the parties have done what they were to do under the contract.

- ② Executed ^{or} contract. In an executory contract, the consideration is ~~not~~ reciprocal promise obligation. It means the consideration is to be carried out in future only. Therefore, these contracts are known as executed ^{or} contract.

eg Where G agrees to take tuition classes of H. In consideration G pays ₹1000 p/month and classes will be starting from next month. It means the consideration of H is yet to be performed.

Unilateral contract

Bilateral contract

- ① Unilateral contract. It is a type of executory contract where one party has performed his course of action or obligation. However, other party's obligation is outstanding.

(came into existence) eg A advertises reward of ₹1000 to whom who will find his lost boy. As soon as B trace his boy and has performed his obligation and also entered in a ~~unilateral~~ unilateral contract. Now it is the obligation of Mr A to pay the reward to B.

- ② Bilateral contract. It is a contract where both the parties has to performed their obligation since their promises to each other is outstanding.

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- e.g. A agrees to sell his house for ₹ 10,00,000 to B. B pays ₹ 2,00,000 as earnest money and promises to pay rest money amount on next month. A also gives possession of his house and promises to execute a sale deed on receipt of whole amount.
Here, in this example both the parties have some obligations remaining to be done.

Proposal / offer:-

Definition

As per the section 2(a) of Indian contract act 1872, when a person signifies his willingness to do or abstain from doing anything with a view to obtaining the assent of other to such act or abstinence, he is said to make a proposal.

Essentials:-

1. The person making the offer/proposal is called offeror/promisor. The person to whom offer is made is known as 'offeree' and the person who accepts it known as promisee/acceptor.

e.g. A offers to sell his scooter to B for ₹ 50,000

2. For valid offer, the party must express his willingness 'to do' or 'not to do' something.

e.g. A willingness to sell his car to B for ₹ 5,00,000

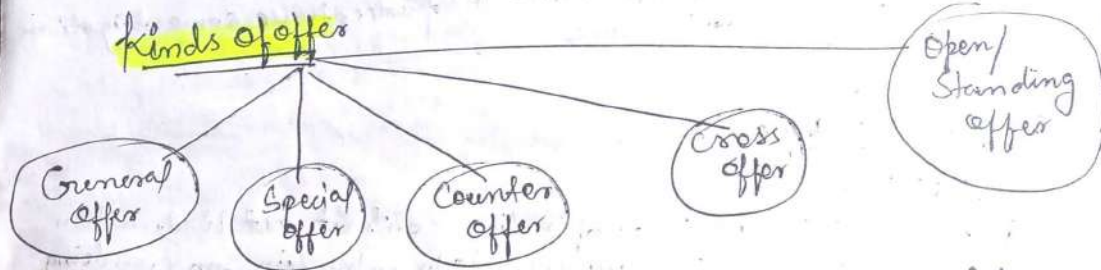
3. The willingness must be expressed with a view of obtaining the assent of other party.

e.g. A tells B to marry by the end of year. It doesn't constitute any 'offer'. For a valid offer A must express his willingness of marrying to her. A further adds, "Will you marry me". B replies and says yes. (To constitute a valid offer expression of willingness must be made to obtain assent)

4. A valid offer is ^{positive} as well as negative. The offer 'to do something' is a positive offer and 'not to do or abstinence' is a negative offer. (Nonetheless, both are valid in eyes of law)

e.g. A offers to sell his watch to B. It is an act of doing. A offers 'to not to dance' in program to B. It is an act of not doing or abstinence. A promises to give 10,000 to B if he denies to dance.

When
 (eg) A asks B after his car meets with accident with B's scooter to not go to court and he will pay for the repair charges for the damage (Act of not doing)



1 General offer: It is the general offer made to public at large and hence anyone can accept it by performing the act. Acceptance of general offer is considered when the person has performed the following instructions of the offer and by performing the terms and conditions he is considered to have accepted the offer. Until the offeror, rescind the offer, anyone can accept it at any time as it is a continuing offer.
 Case law (Carlill vs. Carbolic Smoke Ball Co.)

2 Special offer: It is a special offer made to a particular or certain or ascertained person. Acceptance is only made by the person to whom offer is made.

eg A offers to sell his shop for £10,00,000 to C.
 Only C can accept the offer (Boltan vs. Jones)

3 Cross offer: When 2 parties exchange identical offer in the ignorance of each other's offer, the offers are called Cross offer. There is no such binding contract as it cannot be because made by a person cannot be construed as the acceptance of another's offer.

(eg) A makes a proposal to sell his house to B and B without knowing the proposal, makes an offer to purchase house of A, is not a acceptance, as B was not aware of the offer. They both made the offer in ignorance of each other's offer. Offer made by A ~~is~~ ^{can} not be considered as acceptance of B's offer. There is no such binding contract.

④ Counter offer:- When the offeree offers to qualified acceptance subject to modifications and variations in original offer. It will result in lapse or rejection of the original offer. It is also called a conditional acceptance.

(eg) A offer to sell his car to B for 1,00,000. B agrees to pay ₹ 80,000, it is said to termination of original offer. Later, B accepts to purchase car at ₹ 1,00,000. However A may reject as the original offer already lapsed.

⑤ Standing / open / continuing offer:- An offer which is allowed to remain open for a over a period of time. Tenders are ~~invited~~ invited for the sale of goods is kind of standing offer. The fall of hammer gives effects to the sale of goods.

Essentials of valid offer

① Offer must be capable of legal relationship:- Offer must be capable of creating legal relationships because social kinds of offers are not enforceable in court of law. Parties should have intention to create legal obligation and rise to legal consequences.

② Offer must be certain, definite and not vague:- In the terms of indefinite and vague, there is no contractual acceptance in court of law. For a legal acceptance in law it must be definite. Thus, when A offers to sell 100 quintals of oil, it is not definite what kind of oil and is not capable of being accepted.

③ It must be communicated to offeree:- For the acceptance of a valid offer, it must be communicated and to come to knowledge of both parties. Mere silence is not acceptance of a contract. The acceptance of a valid offer in ignorance of the offer is not considered as valid acceptance and does not confer any right to acceptor.

Case law (Gulam Shukla vs Gauridatt)

④ Offer must be made with a view to obtaining the assent of other party:- Offeror not merely express his intention / disclosing his intention. He must make the offer must be made to obtain the approval or acceptance of offeree.

⑥ It may be conditional:- offeror may subject to any terms and conditions and offeree must have to accept all terms and conditions, otherwise it will remain invalid

eg- offeror may ask for payment by NEFT.

⑦ Offer should not contain a term non-compliance of which would amount to acceptance:- It should not be considered that if offer is not communicated it would be an acceptance.

eg- A asks B to purchase his iPhone 25,000. B didn't reply him week, it would be considered that offer is accepted. This would not arise any contract.

⑧ Offer may be specific/general:- offer to public at large is general offer and anyone who has performed it, considered as acceptance. (Castles vs. Carobolic Smoke Ball Co.)

Specific offer is given to a particular person only ~~he can~~ the person can accept it to whom offer is made.

⑨ Offer may be implied/express:- Offer may be made by implication action, or ~~use~~ in words or orally. To the legal effects it ~~can~~ be written or oral. But as interest of parties, it must be written.

eg- A boy starting cleaning the car stopped in traffic signal without being asked to do and the offeree will be paid for this. Boy made an implied offer.

⑩ Offer is different from a mere invitation:- statement of intention, an invitation to offer, a mere communication, a prospectus and advertisement.

⑪ A mere statement of intention:- When a person expresses his intention or wish of doing something, he is not making an offer. For acceptance it is not merely supposed to show intention.

eg- An announcement to give scholarship to children scoring more than 95% in 10th class is not an offer.

* father wrote his wish of making his son the owner of the property is not an offer.

(2) A statement of price is not an offer: Quoting the price tags in certain goods in the ~~the~~ Malls does not constitute any offer.

eg - The price of goods does not constitute/amounts to ~~an~~ offer of sale of goods ~~at~~ on listed prices. It is an invitation to an offer.

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(3) An invitation to make ~~an~~ offer: In case of an invitation to make an offer, the person making the invitation does not make an offer rather than inviting other persons to make an offer. His objective is to send the out the invitation that he is willing to deal with anyone who on the basis of such invitation, is ready to enter into contract with subject to any terms and conditions.

(eg) - An advertisement for sale of goods by ~~an~~ auction is an invitation to an offer. It merely invites offers/bids made at the auction.

When goods are sold in auction sale, the auctioneer does not contract personally with anyone. The ~~an~~ auction of sale of goods is only an invitation to offer. Generally people make bidding and the higher bidder offer gives effect to fall of hammer.

eg Red herring prospectus is issued by company, is only an invitation to the public to make an offer to subscribe securities of company.

* Difference between offer and invitation to offer.

Basis	offer	Invitation to offer
Invitation Intention Opposites	Acc to Section 2(a), it is the final expression of willingness to make an offer by the offeror to be bound by the offer should the other party chooses to accept it.	It is the, when the person/party without expressing his willingness proposes certain terms & conditions on which he is willing to negotiate. He does not make an offer, he only invites other party to make an offer.
Sequence	An offer cannot be precedent to invitation to offer	It is always an act precedent to offer

Acceptance is per Section 2(b)

"When the person to whom contract is made signifies his assent thereto, proposal is said to be accepted."

The proposal, when accepted, becomes a promise."

- According to Sir William Anson, "Acceptance is to offer what a lighted match to a train of gun powder"
- The effect of this observation is what acceptance triggers cannot be retracted or undone. It means an offer when it is accepted it cannot be revoked or withdrawn.
- The offer itself cannot create any legal relationship but it is the acceptance by the offeree which creates legal relationship

Legal rules regarding ^{valid} acceptance

- ① Acceptance is given only by the person to whom offer is made
- ② Acceptance must be absolute and unqualified
- ③ Acceptance must be communicated
- ④ Acceptance must be in time
- ⑤ It must be in prescribed mode
- ⑥ Mere silence is not acceptance
- ⑦ Acceptance by conduct / Implied Acceptance

1. Acceptance is given only by the person to whom offer is made.
In specific offer, it is made to certain person and it would be only accepted by the person to whom it is made
(Boulton vs Jones) (page 1)

In general offer, it can be accepted by anyone who has the knowledge of offer and has performed the given instructions.

(Carlill vs. Smoke Ball Co.) (page 1)

- ② Acceptance must be absolute and unqualified. As per Section 7, acceptance is valid when it is absolute and unqualified and also it is expressed in usual and reasonable manner unless the proposal prescribes ~~the~~ the manner in which must be accepted

Neale vs Merrett (Page 2)

(Union of India vs Bahadur AIR Bombay) Page 2

E.g. A enquires from B, "Will you purchase my car for 2 Lakhs?"
B replied - "Yes, I shall purchase it if you buy my motor cycle for 250,000. (It is conditional)"

On the other hand, if B accepts the proposal made by A
subject to availability of Registration certificate for car.
This is valid acceptance because RC is not a condition.

③ Acceptance must be communicated - To conclude the contract between the parties, the ^{acceptance} must be communicated between the parties. Any conditional acceptance or variation in acceptance is not a valid acceptance. Such conditional acceptance would amount to counter proposal. Further, when a proposal is accepted, the offeree must have the knowledge of contract offer made to him. Then only can it be materialised into contract. Also, acceptance in ignorance of offer / have knowledge of offer will be regarded as invalid acceptance.

Brogden vs Metropolitan Railway (Page 2)

Hayworth vs Knight

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(Eg) - A wants to marry B. He informed A's sister about his proposal but she forgot to tell to A about the ^{acceptance} proposal of B. Hence, the acceptance of proposal is not communicated to B.

④ Acceptance must be in prescribed mode - If the acceptance of proposal is in prescribed mode, then it must be accepted in that manner only. If the proposer does not insist the acceptance of proposal in prescribed mode, it has been accepted otherwise or not in the prescribed mode.

(Eg) If A has prescribed acceptance of proposal through messenger but acceptor sends his acceptance through SMS. Then it is not valid. If acceptor fails to do so, then it will be considered as ^{valid} acceptance and hence a valid acceptance contract.

⑤ Time - Acceptance of a proposal must be accepted in a specified time and if no time is specified, the acceptance would be within ~~specifi~~ reasonable time before offer lapses. It would be depend upon the conditions and circumstance of proposals.

(eg) If A offers B to purchase 50kg of Bananas £500. After 4 days B gives his acceptance. However, in this case banana is a perishable item it ~~will~~ not stay ~~for~~ ^{could} for four days. (Invalid contract)

(eg) If B offers to ~~sell~~ ^{purchase} his house to C for £10,00,000. C accepts it and communicated to B. It is a reasonable time period in the case of purchase of a house. (Valid contract)

⑥ Mere silence is not acceptance - The acceptance of the offer cannot be implied from the silence of offeree or his failure to answer. If in any previous conduct he indicated that his silence would be considered as acceptance, then only it is a valid acceptance.

A subscribed weekly magazine from XYZ Ltd. company. After the expiry of the subscription XYZ co. continued to send magazines weekly and A also continued to use magazines but didn't to pay. The bills ~~not~~ sent to him. A is liable to pay as his used of magazines regard as the acceptance of offer.

Case law - Feld house vs. Bindley (Case 03)(1.20)

⑦ Acceptance by implied/Conduct Acceptance - Section 8 of the Act lays down that the performance of the conditions of a proposal, or acceptance of any reciprocal promise which may be offered with proposal, constitutes an acceptance. Section provides the acceptance of proposal by conduct as against other modes i.e. oral or written.

1. when a ~~and~~ the person performs the act intended by proposer as a ~~acceptance~~ consideration for promise offered by him, performance of acts constitutes acceptance.

when the person performs the act intended by proposer as the consideration offered by him, the performance of proposal constitutes acceptance.

eg- When a tradesman receives an order from customer and executes order by sending goods, customer's order for goods constitutes offer, which has been accepted by tradesman by sending goods. (Acceptance by conduct)

eg- When a cobbler sits with a brush & polish, a person giving his shoes for polishing constitutes as acceptance by conduct.

→ Communication of offer

As per section 4 of ICA states, the communication of offer is complete when it comes to the knowledge of person to whom it is made,

eg- 54 → Where A ^{makes} sends the offer by post on 10th Oct to B to sell his house for 15,00,000, if the letter containing in post reaches B on 12th Oct, the offer is said to have been communicated on 12 Oct.

Thus it can be summed up the communication is complete when letter reaches the person to whom it is made.

→ Mere receiving of letter is not sufficient, the person to whom it is made must read it. Suppose if he reads on 15th Oct, then the offer is communicated on 15th Oct.

→ Communication of Acceptance (Modes)

There are two ways communication by Act or and communication of acceptance by omission to do something.

① Communication by Act: It would be expression of words either written or oral. Written words includes faxes, letters, telegams, emails & even advertisements. Oral includes telephone messages. It would be includes also by conduct intended to communicate like positive acts or signs so that the person

understands what the person acting or making signs means to convey or say.

② Communication of Acceptance by 'omission' to do something - such omission is conveyed by conduct or forbearance at the part of one party to express willingness or assent. Here 'silence' would not be considered as 'Omission to do something'.

eg A offers £10,000 to B if he does not come before the court of law as an evidence. B didn't come on the date of hearing of court. Here Omission of doing acts as acceptance.

→ Communication of acceptance by Conduct:- when a seller delivers the goods to a willing buyer conveys communication of acceptance. Similarly, when one travels in public transport bus as entering into bus is regarded as acceptance of acceptance. Use of weighing machine is also considered as C.O.A. Entering into public transport bus is conduct of acceptance by passenger offered by public transport authority. Use of weighing machine kept by vending machine is also an offer.

→ When communication is complete? (Section 4)

1. As against the proposer:- when it is put in course of transmission to him so as to be out of the power of acceptor to withdraw the same.

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

→ Communication of acceptance by a letter sent by post

A (proposer) will be bound by B's acceptance, even the letter sent by post is delayed. The Cridden rule is proposer becomes bound by contract. Letter is correctly addressed, adequately stamped & duly posted. The loss of letter in transit, wrong delivery, non-delivery will not affect the validity.

→ Acceptance over telephone or fax or telex - when an offer is made instantaneous communication like emails & text the acceptance is complete when communication is received. Contract is made in the place where the communication is received. The disturbances, call drops or in telephone may not amount to a valid acceptance.

→ Communication of special conditions: There are some contracts with special conditions. These conditions are conveyed tacitly and the acceptance of these conditions conveyed by the offeree tacitly even without realising it.

eg 56 where a passenger travels from airway or roadway, there is ~~printed~~ small information printed back in the ticket and in small letters. The passenger is treated as having accepted the special conditions the moment he bought the ticket. However, it is also clear the conditions should be reasonable as stated in Case Law (Mukul Datta vs Indian Airlines) Page 3

→ special conditions are to be treated as having been duly communicated to the customer and discharge a tacit acceptance of these conditions is implied by customer's acceptance of Receipt.

Case Law Billy White vs. Mannuswamy (Page 4)

Communication of Performance

As same in Section 5, Communication of performance is complete

i) from viewpoint of proposer, when the acceptance is put into course of transmission when it would be put to the power of acceptor.

ii, from viewpoint of acceptor, when the letter comes to the knowledge of proposer.

Revocation of Offer And Acceptance

Communication of Revocation is also same under Section 5

→ The offeror can revoke his offer before it is accepted. Then acceptor would not be able to create a contract by accepting revoked offer.

As per the Section 5 of the Act a proposal can be revoked at any time before the communication of its acceptance as against proposer.

→ An acceptance can be revoked ^{at any time} before communication of acceptance is ~~not~~ complete as against acceptor.