

UNIT 3

Laws relating to drafting and
conveyance

COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

Proposal has been defined in section 2(a) of the Indian Contract Act, 1872, as under:
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 a proposal

1. There should be at least 2 persons.
2. One person should express his willingness to do or abstain from doing an Act or abstinence.
3. The purpose should be to obtain the assent of the other on the same thing.

Rules governing Offers

A valid offer must comply with the following rules:

(a) must be clear, definite, complete and final.

(b) An offer must be communicated to the offeree.

(c) The communication of an offer may be made by express words-oral or written-or it may be implied by conduct.

(d) The communication of the offer may be general or specific.

How a Proposal or Offer be revoked?

by the communication of notice of revocation by the proposer to the other party

by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance

by the failure of the acceptor to fulfil a condition precedent to acceptance

by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance

Offer and invitation to offer

Invitation to offer is a communication to invite certain person(s) or public for making offer.

An offer that has been communicated properly continues as such until it lapses, or until it is revoked by the offeror, or rejected or accepted by the offeree.

Communication

According to section 3 of the Indian Contract Act, 1872, the communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

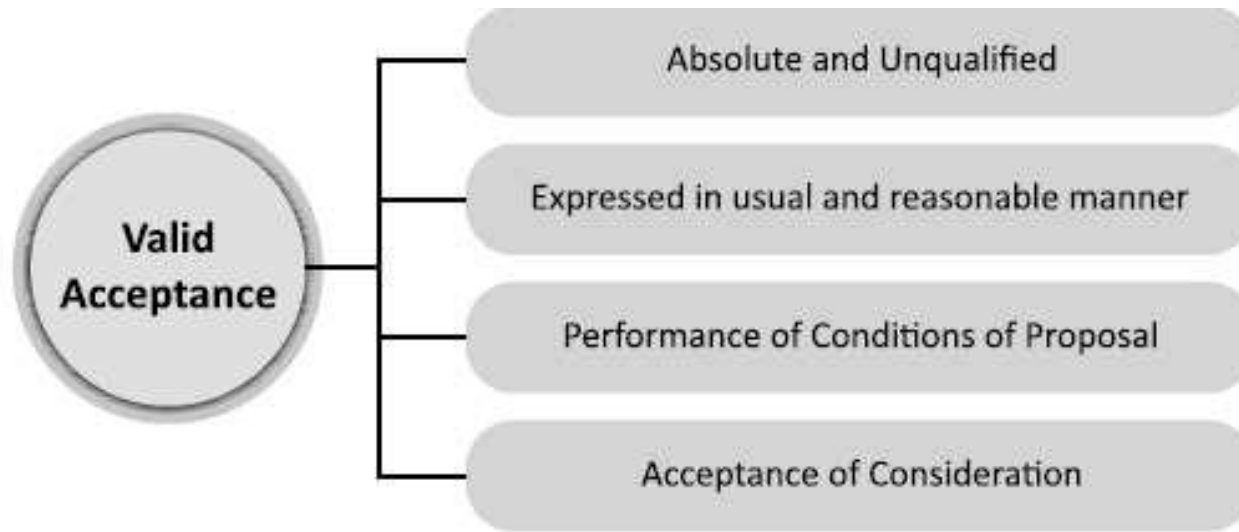
Completion of Communication:

- Proposal
- Acceptance
- Revocation

Acceptance:

A proposal on acceptance becomes a promise. Every promise or set of promises forming consideration for each other become agreement.

What is a valid acceptance?



The essentials of valid contracts are:

- 1) Valid Agreement as per section 2(e) of Indian Contract Act, 1872
- 2) Free Consent of the parties
- 3) Competence of Parties
- 4) Valid Consideration
- 5) Lawful Object
- 6) Agreement not declared Void.

CONTINGENT CONTRACTS

According to section 31 of ICA, a contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

1. Lawful Object

According to section 23 of ICA, the consideration or object of an agreement is lawful, unless:

- 1 it is forbidden by law; or
- 2 is of such a nature that if permitted, it would defeat the provisions of any law;
- 3 is fraudulent; or
- 4 involves or implies injury to the person or property of another; or 5 the Court regards it as immoral, or opposed to public policy.

Agreement not declared Void

- **The following types of agreements are void under Indian Contract Act**

- A) Agreement by or with a minor or a person of unsound mind or a person disqualified to enter into a contract - Section 11.
- B) Agreement made under a mistake of fact, material to the agreement on the part of the both the parties - Section 20.
- C) An agreement of which the consideration or object is unlawful - Section 23.
- D) If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void - Section 24
- E) An agreement made without consideration subject to three exceptions provided to Section 25.
- F) An agreement in restraint of marriage - Section 26.
- G) An agreement in restraint of trade - Section 27.
- H) An agreement in restraint of legal proceedings - Section 28.
- I) Agreements, the meaning of which is not certain, or capable of being made certain - Section 29
- J) Agreement by way of wager- Section 30.
- K) An agreement to enter into an agreement in the future.
- L) An agreement to do an act impossible in itself - Section 56(1).

PART – B: SPECIFIC RELIEF ACT, 19637. Power of sale

- Section 6 provides if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he may, by suit, recover possession.
- However, no suit under section 6 should be brought:
 - A. after the expiry of six months from the date of dispossession;
 - B. or against the Government

• Recovery of specific movable property:

any person having the possession of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases: –

- a. when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
- b. when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
- c. when it would be extremely difficult to ascertain the actual damage caused by its loss;
- d. when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Specific Performance of Contracts

The court may direct the specific performance of a part of a contract only as per the provisions provided under section 12 of SRA which are as follows:

- 1 Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed be a only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.
- 2 Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—
 - A. forms a considerable part of the whole, though admitting of compensation in money; or
 - B. does not admit of compensation in money; he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform
 - C. a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

Rights of purchaser or lessee against person with no title or imperfect title

Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee has the following rights, namely:

- (a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
- (b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;
- (c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also conveyance from the mortgagee;

Exceptions of specific performance:

According to section 14, the following contracts cannot be specifically enforced, namely:

- a. where a party to the contract has obtained substituted performance of contract
- b. a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
- c. a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
- d. a contract which is in its nature determinable.

Who may obtain specific performance

- A. any party thereto;
- B. the representative in interest or the principal (Exception: personal qualifications/creativity)
- C. where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;
- D. where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;
- E. a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;
- F. a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;
- G. when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.
- H. when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

DECLARATORY DECREES (SECTION 34 & 35)

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

REGISTRATION ACT, 1908

COMPULSORY AND OPTIONAL REGISTRATION OF DOCUMENTS

Documents of which registration is compulsory (Section 17)

The following documents shall be registered compulsorily:

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

Exemptions from section 17

- (i) any composition deed; or
- (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (iv) any endorsement upon or transfer of any debenture issued by any such Company; or
- (v) any document other than the documents specified in sub-section 17(1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or
- (vii) any grant of immovable property by Government; or
- (viii) any instrument of partition made by a Revenue-Officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
- (x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or
- (xa) any order made under the Charitable Endowments Act, 1890, vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

Documents of which registration is optional (Section 18)

- (a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;
- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- (c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;
- (cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;
- (d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;
- (e) wills; and
- (f) all other documents not required by section 17 to be registered.

TIME OF REGISTRATION

1. A document other than a will shall be presented to the proper officer within four months from the date of its execution.
2. a copy a of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.
3. If a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from an unauthorized person, and has been registered, any person claiming under such document may, within three months from his first becoming aware that the registration of such document is invalid, present such document for re- registration in the office of the Registrar of the district in which the document was originally registered;
4. In case of delay in registration happens which does not exceed four months (4 + 4), then, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration. A WILL may at any time be presented for registration or deposited.

PLACE OF REGISTRATION

According to section 28

document affects immovable property, and section 18, clauses (a), (b) (c) and (cc), shall be presented for registration in the office of a Sub- Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.

EFFECTS OF REGISTRATION AND NON-REGISTRATION OF DOCUMENTS

No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall:

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

INDIAN STAMP ACT, 1899

INSTRUMENTS CHARGEABLE WITH DUTY (SECTION 3)

- (a) instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;
- (b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and
- (c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Instruments coming within several descriptions in Schedule I (Section 6)

Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. However, nothing in Indian Stamp Act contained can render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

ADJUDICATION OF STAMP DUTY

Adjudication as to proper stamp.(Section 31)

- (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than fifty naye paise) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.
- (2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Instruments not duly stamped inadmissible in evidence, etc. (Section 35)

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Admission of instrument where not to be questioned (Section 36)

Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

How transfer in consideration of debt, or subject to future payment, etc., to be charged (Section 24)

Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty.

Payment of Stamp Duty

The following instruments can be stamped with adhesive stamps:

- (a) instruments chargeable with a duty not exceeding ten naye paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) bills of exchange, and promissory notes drawn or made out of India;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

Procedure for Deposit of original instruments creating Powers-of-Attorney provided under section 4

The procedure for Deposit of original Powers-of-Attorney is provided under Section 4 of the Powers-of-Attorney Act, 1882. It provides that:

- (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument may be.
- (b) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.
- (c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.
- (d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court or District Court.

ILLUSTRATED BY
KRISHNA KULKARNI



Agar shuru karne ki himmat thi toh...
Khatam karne se kyu Ghabra rahe ho?





SOMYA KATARIA (CS, MBA): 9131993373