

CA Foundation
Paper 2 - Business Law

Chapter 2 - ICA
The Indian Contract Act, 1872

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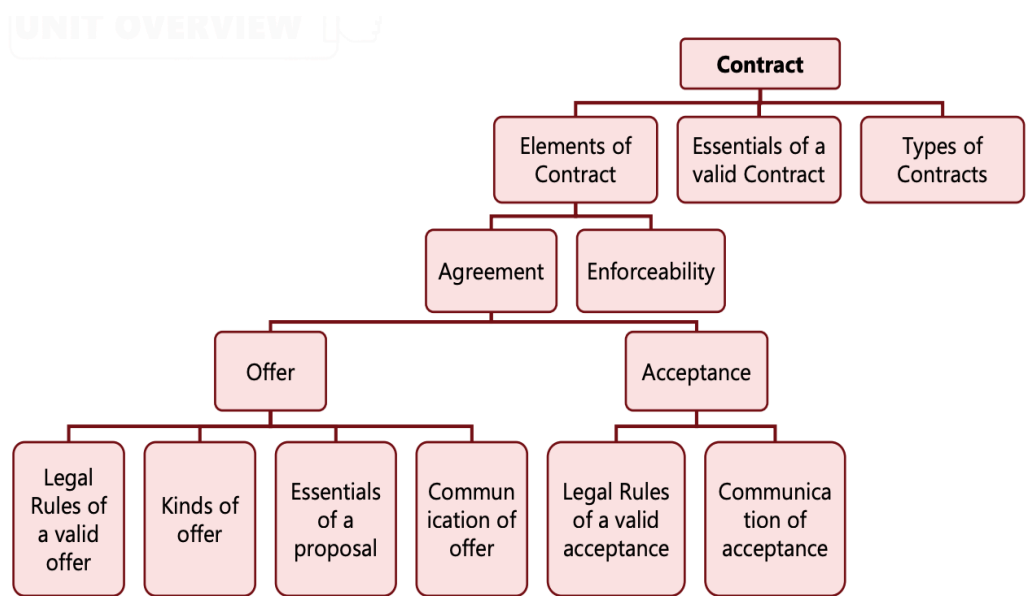
The Indian Contract Act, 1872

Unit 1 - Nature of Contract

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Unit 1 - Nature of Contract



‘Contract’ is the most usual method of defining the rights and duties in a business transaction.

- The Act basically identifies the ingredients of a -
 - legally enforceable valid contract
 - in addition to dealing with certain special types of contractual relationships like indemnity and guarantee
 - Bailment and pledge,
 - contingent and quasi contracts etc.

All agreements are not covered under the Indian Contract Act, 1872, as some of those are not contracts. Only those agreements, which are enforceable by law, are contracts.

WHAT IS A CONTRACT?

Section 2(h) - “an agreement enforceable by law”.

The contract consists of two essential elements:

1. An agreement, and

2.1 ► Nature of Contract

2. Its enforceability by law.

1. Agreement - Section 2(e) -

- Every promise and every set of promises,
- forming the consideration for each other".

Promise - Section 2 (b)

- "when the person to whom the proposal is made
- signifies his assent there to,
- the proposal is said to be accepted.
- Proposal when accepted, becomes a promise".

The following points emerge from the above definition :

1. when the person to whom the **proposal** is made
2. signifies his **assent** on that proposal which is made to him
3. the proposal becomes **accepted**
4. **accepted** proposal **becomes promise**

Thus we say that an agreement is the result of the proposal made by one party to the other party and that other party gives his acceptance thereto of course for mutual consideration.

Agreement = Offer/Proposal + Acceptance

I. Enforceability by law

An agreement to become a contract must give rise to a legal obligation which means a duly enforceable by law.

Thus from above definitions it can be concluded that –

Contract = Accepted proposal/Agreement + Enforceability by law

On elaborating the above two concepts, it is obvious that a contract comprises an agreement which is a promise or a set of reciprocal promises, that a promise is the acceptance of a proposal giving rise to a binding contract. Further, section

2(h) requires an agreement to be worthy of being enforceable by law before it is called 'Contract'. Where parties have made a binding contract, they created rights and obligations between themselves.

Example 1: A agrees with B to sell car for Rs. 2 lacs to B. Here A is under an obligation to give car to B and B has the right to receive the car on payment of Rs. 2 lacs and also B is under an obligation to pay Rs. 2 lacs to A and A has a right to receive Rs. 2 lacs.

Example 2: Father promises his son to pay him pocket allowance of Rs. 500 every month. But he refuses to pay later. The son cannot recover the same in court of law as this is a social agreement. This is not created with an intention to create legal relationship and hence it is not a contract.

Difference between Agreement and Contract

Basis of differences	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. (Promise + Consideration)	Agreement enforceable by law. (Agreement + Legal enforceability)
Scope	It's a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always grant rights to the parties	Necessarily creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreement are not contracts.	All contracts are agreements.

ESSENTIALS OF A VALID CONTRACT

2.1 ► Nature of Contract

	As given by Section 10 of Indian Contract Act, 1872		Not given by Section 10 but are also considered essential
1	Agreement	1	Two parties
2	Free consent	2	Intention to create legal relationship
3	Competency of the parties	3	Fulfilments of legal formalities
4	Lawful consideration	4	Certainty of meaning
5	Legal object	5	Possibility of performance
6	Not expressly declared to be void [as per Section 24 to 30 and 56]	6	-

Section 10 -

All agreements are contracts if -

- they are made by the 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".

Since section 10 is not complete and exhaustive, there are certain other sections which also contain requirements for an agreement to be enforceable.

Thus, in order to create a valid contract, the following elements should be present:

1. Two Parties:

- One cannot contract with himself.
- A contract involves at least two parties- one party making the offer and the other party accepting it.
- A contract may be made by natural persons and
- by other persons having legal existence e.g. companies, universities etc.
- It is necessary to remember that the identity of the parties be ascertainable.

Example 4: To constitute a contract of sale, there must be two parties- seller and buyer. The seller and buyer must be two different persons, because a person cannot buy his own goods.

2. Parties must intend to create legal obligations:

- There must be an intention on the part of the parties to create a legal relationship between them.
- Social or domestic types of agreements are not enforceable in court of law and hence they do not result in contracts.

Example 5: A husband agreed to pay to his wife certain amount as maintenance every month while he was abroad. Husband failed to pay the promised amount. Wife sued him for the recovery of the amount. Here, in this case, wife could not recover as it was a social agreement and the parties did not intend to create any legal relations. (Balfour

v. Balfour)

Example 6: Mr. Lekhpal promises to pay ` 5 lakhs to his son if the son passes the CA exams. On passing the exams, the son claims the money. Here, the son could not recover as it was a social agreement.

Example 7: A sold goods to B on a condition that he must pay for the amount of goods within 30 days. Here A intended to create legal relationship with B. Hence the same is contract. On failure by B for making a payment on due date, A can sue him in the court of law.

3. Other Formalities to be complied with in certain cases:

- In case of certain contracts, the contracts must be in writing,
- e.g. Contract of Insurance is not valid except as a written contract.
- Further, in case of certain contracts, registration of contract under the laws which was in force at the time, is essential for it to be valid,
- e.g. in the case of immovable property.

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4. Certainty of meaning:

- The agreement must be certain and not vague or indefinite.

Example 8: A agrees to sell to B a hundred tons of oil. There is nothing certain in order to show what kind of oil was intended for.

Example 9: XYZ Ltd. agreed to lease the land to Mr. A for indefinite years. The contract is not valid as the period of lease is not mentioned.

5. Possibility of performance of an agreement:

- The terms of agreement should be capable of performance.
- An agreement to do an act impossible in itself cannot be enforced.

Example 10: A agrees with B to discover treasure by magic. The agreement cannot be enforced as it is not possible to be performed.

Essential elements of a valid contract

According to Section 10 of the Indian Contract Act, 1872, the following are the essential elements of a Valid Contract:

1. Offer and Acceptance or an agreement:

- An agreement is the first essential element of a valid contract. According to Section 2(e) of the Indian Contract Act, 1872, “Every promise and every set of promises, forming consideration for each other, is an agreement” and according to Section 2(b) “A proposal when accepted, becomes a promise”. An agreement is an outcome of offer and acceptance.

2. Free Consent:

- Two or more persons are said to consent when they agree upon the same thing in the same sense. This can also be understood as the identity of minds in understanding the terms viz consensus ad idem.
- Further such a consent must be free. Consent would be considered as free consent if it is not caused by coercion, undue influence, fraud or,

misrepresentation or mistake.

Example 11: A, who owns two cars is selling red car to B. B thinks he is purchasing the black car. There is no consensus ad idem and hence no contract.

- To determine 'consensus ad idem' the language of the contract should be clearly drafted. Thus, if A says B "Will you buy my red car for Rs. 3,00,000?". B says "yes" to it. There is said to be consensus ad idem i.e. the meaning is taken in same sense by both the parties.

Example 12: A threatened to shoot B if he (B) does not lend him Rs. 2,00,000 and B agreed to it. Here the agreement is entered into under coercion and hence not a valid contract.

3. Capacity of the parties:

Capacity to contract means the legal ability of a person to enter into a valid contract. Section 11 of the Indian Contract Act specifies that every person is competent to contract who

1. is of the age of majority according to the law to which he is subject and
2. is of sound mind and
3. is not otherwise disqualified from contracting by any law to which he is subject.

A person competent to contract must fulfil all the above three qualifications.

- **Qualification (a) - AGE**
 - Age of the contracting person i.e. the person entering into contract must be of 18 years of age.
 - Persons below 18 years of age are considered minor, therefore, incompetent to contract
- **Qualification (b) - SOUND MIND**
 - requires a person to be of sound mind i.e. he should be in his senses

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- so that he understands the implications of the contract at the time of entering into a contract.
- A lunatic, an idiot, a drunken person or under the influence of some intoxicant is not supposed to be a person of sound mind.
- **Qualification (c) - NOT BE DIQUALIFIED**
 - A person entering into a contract should not be disqualified by his status, in entering into such contracts.
 - Such persons are: an alien enemy, foreign sovereigns, convicts etc.
 - They are disqualified unless they fulfil certain formalities required by law.

Contracts entered by persons not competent to contract are not valid.

4. Consideration:

- It is referred to as 'quid pro quo' i.e. 'something in return'.
- A valuable consideration in the sense of law may consist either in
 - some right, interest, profit, or benefit accruing to one party, or
 - some forbearance, detriment, loss or
 - responsibility given, surrendered or undertaken by the other.

Example 13: A agrees to sell his books to B for Rs. 100.

B's promise to pay Rs. 100 is the consideration for A's promise to sell his books. A's promise to sell the books is the consideration for B's promise to pay Rs. 100.

5. Lawful Consideration and Object:

- The consideration and object of the agreement must be lawful.
- **Section 23 -**
 - Consideration or object is not lawful
 - it is prohibited by law, or
 - it is such as would defeat the provisions of law,
 - it is fraudulent or involves injury to the person or property of another or

- court regards it as immoral or opposed to public policy.

Example 14: 'A' promises to drop prosecution instituted against 'B' for robbery and 'B' promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

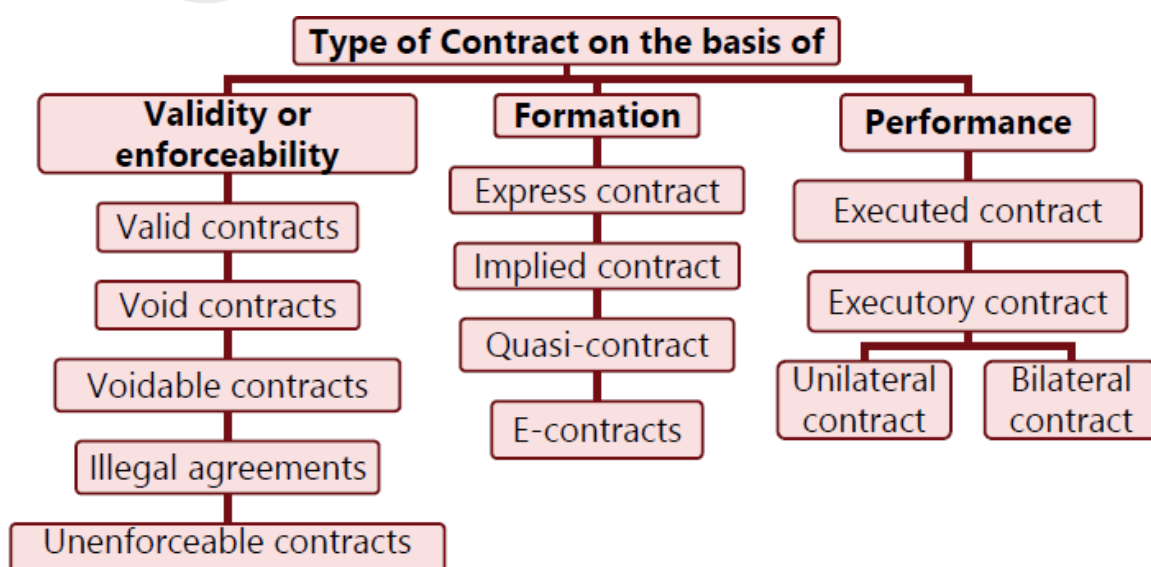
Example 15: A agrees to sell his house to B against 100 kgs of cocaine (drugs). Such agreement is illegal as the consideration is unlawful.

6. Not expressly declared to be void:

- The agreement entered into must not be which
- the law declares to be either illegal or void.
- An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

Example 16: Threat to commit murder or making/publishing defamatory statements or entering into agreements which are opposed to public policy are illegal in nature. Similarly, any agreement in restraint of trade, marriage, legal proceedings, etc. are classic examples of void agreements.

TYPES OF CONTRACTS



2.1 ► Nature of Contract

I. On the basis of the validity

1. Valid Contract:

- An agreement which is binding and enforceable is a valid contract.
- It contains all the essential elements of a valid contract.

Example 17: A ask B if he wants to buy his bike for ` 50,000. B agrees to buy bike. It is agreement which is enforceable by law. Hence, it is a valid contract.

2. Void Contract: Section 2 (j)

- A contract which ceases to be enforceable by law becomes void
- when it ceases to be enforceable”.
- Thus a void contract is one which cannot be enforced by a court of law.

Example 18: Mr. X agrees to write a book with a publisher. Such contract is valid. But after few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract. Thus, a valid contract when cannot be performed because of some uncalled happening becomes void.

Example 19: A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed. Here the contract becomes void.

When a contract is void, it is not a contract at all but for the purpose of identifying it, it has to be called a Void contract.

3. Voidable Contract: Section 2(i)

- An agreement which is enforceable by law
 - at the option of one or more parties thereto,
 - but not at the option of the other or others is a voidable contract
-
- Means where one of the parties to the agreement is in a position or
 - is legally entitled or authorised to
 - avoid performing his part,
 - then the agreement is treated and becomes voidable.

Following are the situations where a contract is voidable:

SITUATION WHERE CONTRACT IS VOIDABLE		
Situation	Explanation	Example
Consent Not Free	Contract is voidable if consent is obtained by coercion, undue influence, misrepresentation, or fraud.	X is forced by Y at gunpoint to sell his scooter for ₹1 lac. X can void the contract, but Y cannot.
Prevention of Performance	If one party prevents the other from fulfilling their promise, the contract becomes voidable.	A agrees to sell a car to B for ₹2,00,000. On the due date, A refuses to sell. B can void the contract.
Failure to Perform on Time	If a party fails to perform within the specified time, the contract is voidable at the promisee's option.	A agrees to build a house for B by 31-03-2022 but fails. B can void the contract.

Difference between a Void Contract and a Voidable Contract can be summarised as under:

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S. No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2	Enforceability	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of other party.
3	Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.

4	Performance of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
5	Rights	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time. If so rescinded, it becomes a void contract. If it is not rescinded it becomes a valid contract.

4. Illegal Contract : Section 2(g) -

- It is a contract which the law forbids to be made.
- The court will not enforce such a contract but also the connected contracts.
- All illegal agreements are void but all void agreements are not necessarily illegal.

Example 23: Contract that is immoral or opposed to public policy are illegal in nature. Similarly, if R agrees with S, to purchase brown sugar, it is an illegal agreement.

- An agreement not enforceable by law is void".
- The Act has specified various factors due to which an agreement may be considered as void agreement.
- One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void.

Difference between Void Agreement and Illegal Agreement can be summarised as:

2.1 ► Nature of Contract

Basis	Void Agreement	Illegal Agreement
Definition	An agreement that is not enforceable by law from the beginning.	An agreement that is prohibited by law and involves unlawful acts.
Legality	Not necessarily illegal but cannot be enforced by law.	Illegal by nature and involves actions prohibited by law.
Effect on Collateral Agreements	Collateral agreements may still be valid.	Collateral agreements are also void and unenforceable.
Punishment	No punishment is imposed for entering into a void agreement.	Parties may face legal penalties or criminal charges for entering into an illegal agreement.
Example	An agreement to do an impossible act.	An agreement to commit a crime.

5. Unenforceable Contract:

- Where a contract is good in substance but
- because of some technical defect
- i.e. absence in writing, barred by limitation etc.
- one or both the parties cannot sue upon it,
- it is described as an unenforceable contract.

Example 24: A bought goods from B in 2018. But no payment was made till 2022. B cannot sue A for the payment in 2022 as it has crossed three years and barred by Limitation Act. A good debt becomes unenforceable after the period of three years as barred by Limitation Act.

II. On the basis of the formation of contract

1. Express Contracts:

- A contract would be an express contract if the **terms are expressed by words or in writing**.
- Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words the promise is said to be express.

Example 25: A tells B on telephone that he offers to sell his house for Rs. 20 lacs and B in reply informs A that he accepts the offer, this is an express contract.

2. Implied Contracts:

- **Implied contracts in contrast come into existence by implication.**
- Most often the implication is by law and or by action.
- Section 9 of the Act -
- Implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words,
- the promise is said to be implied.

Example 26: Where a coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so, it is an implied contract and A must pay for the services of the coolie detailed by him.

Example 27: A drinks a coffee in restaurant. There is an implied contract that he should pay for the price of coffee.

Tacit Contracts:

- The word Tacit means silent.
- **Tacit contracts are those that are inferred through the conduct of parties**
- **without any words spoken or written.**
- A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM].
- Another example of tacit contract is where a contract is assumed to have been entered -
- when a sale is given effect to at the fall of hammer in an auction sale.

2.1 ► Nature of Contract

- It is not a separate form of contract but falls within the scope of implied contracts.

3. Quasi-Contract:

- A quasi-contract is not an actual contract
- but it resembles a contract.
- It is created by law under certain circumstances.
- The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts.
- In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

Example 28: Obligation of finder of lost goods to return them to the true owner or liability of person to whom money is paid under mistake to repay it back cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

Example 29: T, a tradesman, leaves goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods.

4. E-Contracts:

- When a contract is entered into by two or more parties
- using electronic means, such as e-mails,
- it is known as e-commerce contracts.
- In electronic commerce, different parties/persons create networks
- which are linked to other networks through EDI - Electronic Data Interchange.
- This helps in doing business transactions using electronic mode.
- These are known as EDI contracts or Cyber contracts or mouse click contracts.

III. On the basis of the performance of the contract

1. Executed Contract:

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

Example 30: When a grocer sells a sugar on cash payment it is an executed contract because both the parties have done what they were to do under the contract.

2. Executory Contract:

1. In an executory contract the consideration is reciprocal promise or obligation.

Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.

Example 31: Where G agrees to take the tuition of H, a pre-engineering student, from the next month and H in consideration promises to pay G Rs. 1,000 per month, the contract is executory because it is yet to be carried out.

2. Unilateral or Bilateral are kinds of Executory Contracts and are not separate kinds.

a. Unilateral Contract:

- Unilateral contract is a one-sided contract in which one party has performed his duty or obligation and the other party's obligation is outstanding.

Example 32: M advertises payment of award of Rs. 50,000 to any one who finds his missing boy and brings him. As soon as B traces the boy, there comes into existence an executed contract

2.1 ► Nature of Contract

because B has performed his share of obligation and it remains for M to pay the amount of reward to B. This type of Executory contract is also called unilateral contract.

b. Bilateral Contract:

- A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

Example 33: A promises to sell his plot to B for `10 lacs cash down, but B pays only ` 2,50,000 as earnest money and promises to pay the balance on next Sunday. On the other hand, A gives the possession of plot to B and promises to execute a sale deed on the receipt of the whole amount. The contract between the A and B is executory because there remains something to be done on both sides. Such Executory contracts are also known as Bilateral contracts.

PROPOSAL / OFFER

I. Essentials of a proposal/offer are -

1. The person making the proposal or offer is called the 'promisor' or 'offeror':
 - The person to whom the offer is made is called the 'offeree' and
 - the person accepting the offer is called the 'promisee' or 'acceptor'.
2. For a valid offer, the party making it must express his willingness 'to do' or 'not to do' something.

Mere expression of willingness does not constitute an offer.

Example 34: A willing to sell his good at certain price to B.

Example 35: A is willing to not to dance in a competition if B pays him

certain sum of money.

3. The willingness must be expressed with a view to obtain the assent of the other party to whom the offer is made.

Example 36: Where 'A' tells 'B' that he desires to marry by the end of 2022, it does not constitute an offer of marriage by 'A' to 'B'. Therefore, to constitute a valid offer expression of willingness must be made to obtain the assent (acceptance) of the other. Thus, if in the above example, 'A' further adds, 'Will you marry me', it will constitute an offer.

4. An offer can be positive as well as negative:

Thus "doing" is a positive act and "not doing", or "abstinence" is a negative act; nonetheless both these acts have the same effect in the eyes of law.

Example 37: A offers to sell his car to B for Rs. 3 lacs is an act of doing. So in this case, A is making an offer to B.

Example 38: When A ask B after his car meets with an accident with B's scooter not to go to Court and he will pay the repair charges to B for the damage to B's scooter; it is an act of not doing or abstinence.

CLASSIFICATION OF OFFER



2.1 ► Nature of Contract

1. General offer - Carlill v. Carbolic Smoke Ball Co.

- It is an offer made to the public at large and hence anyone can accept and do the desired act
- In terms of Section 8 of the Act,
- anyone performing the conditions of the offer can be considered to have accepted the offer.
- Until the general offer is retracted or withdrawn,
- it can be accepted by anyone at any time as it is a continuing offer.

2. Special/specific offer: - [Boulton v. Jones]

- When the offer is made to a specific or an ascertained person,
- Specific offer can be accepted only by that specified person to whom the offer has been made.

Example 39: 'A' offers to sell his car to 'B' at a certain cost. This is a specific offer.

3. Cross offer:

- When two parties exchange identical offers
- in ignorance at the time of each other's offer
- There is no binding contract in such a case because
- an offer made by a person cannot be construed as acceptance of the other's offer.

Example 40: If A makes a proposal to B to sell his car for Rs. 2 lacs and B, without knowing the proposal of A, makes an offer to purchase the same car at Rs. 2 lacs from A, it is not an acceptance, as B was not aware of proposal made by A. It is only cross proposal (cross offer). And when two persons make offer to each other, it cannot be treated as mutual acceptance. There is no binding contract in such a case.

4. Counter offer:

- When the offeree offers qualified acceptance of the offer
- subject to modifications and variations in the terms of original offer,
- he is said to have made a counter offer.
- Counter-offer amounts to rejection of the original offer.
- It is also called *Conditional Acceptance*.

Example 41: 'A' offers to sell his plot to 'B' for Rs. 10 lakhs. 'B' agrees to buy it for Rs. 8 lakhs. It amounts to counter offer. It will result in the termination of the offer of 'A'. If later on 'B' agrees to buy the plot for Rs. 10 lakhs, 'A' may refuse.

5. Standing or continuing or open offer:

- An offer which is allowed to remain open for acceptance
- over a period of time is known as
- standing or continuing or open offer.
- Tenders that are invited for supply of goods is a kind of standing offer.

ESSENTIALS OF A VALID OFFER

1. It must be capable of creating legal relations:

- Offer must be such as in law is capable of being accepted and giving rise to legal relationship. If the offer does not intend to give rise to legal consequences and create legal relations, it is not considered as a valid offer in the eyes of law. A social invitation, even if it is accepted, does not create legal relations because it is not so intended.

Example 42: A invited B on his birthday party. B accepted the proposal but when B reached the venue, he (B) found that A was not there. He filed the suit against A for recovery of travelling expenses incurred by him to join the birthday party. Held, such an invitation did not create a legal relationship. It is a social activity. Hence, B could not succeed.

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

- If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.

Example 43: A offers to sell B 100 quintals of oil, there is nothing whatever to show what kind of oil was intended. The offer is not capable of being accepted for want of certainty.

3. It must be communicated to the offeree:

- An offer, to be complete, must be communicated to the person to whom it is made, otherwise there can be no acceptance of it. Unless an offer is communicated, there can be no acceptance by it. An acceptance of an offer, in ignorance of the offer, is not acceptance and does not confer any right on the acceptor.

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

- Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.

5. It may be conditional:

- An offer can be made subject to any terms and conditions by the offeror.

Example 44: Offeror may ask for payment by RTGS, NEFT etc. The offeree will have to accept all the terms of the offer otherwise the contract will be treated as invalid.

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

- Thus, one cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.

7. The offer may be either specific or general:

- Any offer can be made to either the public at large or to any specific person. (Already explained in the heading - Types of the Offer)

8. The offer may be express or implied:

- An offer can be made either by words or by conduct

Example 46: A boy starts cleaning the car as it stops on the traffic signal without being asked to do so, in such circumstances any reasonable man could guess that he expects to be paid for this, here boy makes an implied offer.

9. Offer is Different from -

- a mere statement of intention,
 - an invitation to offer,
 - a mere communication of information,
 - Casual Equity,
 - A prospectus and
 - Advertisement.
- A statement of intention and announcement.

Example 47: A father wrote his son about his wish of making him the owner of all his property is mere a statement of intention.

Example 48: An announcement to give scholarships to children scoring more than 95% in 12th board is not an offer.

- Offer must be distinguished from an answer to a question.

Case Law: Harvey vs. Facey [1893] AC 552

Facts:

The plaintiffs sent a telegram asking if the defendants would

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sell Bumper Hall Pen and to state the lowest cash price. The defendants replied with the lowest price of £900. The plaintiffs then agreed to buy at that price, but the defendants refused to sell.

Issue:

Whether the defendants' reply was an offer to sell.

Decision: The Privy Council held that the defendants' reply was not an offer but merely a statement of the lowest price, which is an invitation to offer. There was no binding contract as the defendants had not expressed a willingness to sell.

Follow-Up Case:

In *Mac Pherson vs Appanna* [1951], a similar ruling was made where a statement of the minimum price was deemed an invitation to offer, not an actual offer.

Key Point:

Stating a price or minimum price is an invitation to offer, not an offer itself

c. A statement of price is not an offer

- Quoting the price of a product does not constitute it as offer. (refer case of *Harvey Vs. Face* as discussed above.

Example 49: The price list of goods does not constitute an offer for sale of certain goods on the listed prices. It is an invitation to offer.

d. An invitation to make an offer or do business.

- The person making the invitation does not make an offer
- rather invites the other party to make an offer.

- His objective is to send out the invitation that he is willing to deal with any person who,
- on the basis of such invitation,
- is ready to enter into contract with him subject to final terms and conditions.

Example 50: 'An advertisement for sale of goods by auction is an invitation to the offer. It merely invites offers/bids made at the auction.'

- Similarly when goods are sold through auction,
- the auctioneer does not contract with any one who attends the sale.
- The auction is only an advertisement to sell
- but the items are not put for sale
- though persons who have come to the auction may have the intention to purchase.
- *Similar decision was given in the case of Harris vs. Nickerson (1873).*

10. A statement of price is not an Offer

What is an invitation to offer?

- An invitation to an offer is only a circulation of an offer,
- it is an attempt to induce offers and precedes a definite offer

Difference between offer and invitation to make an offer:

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<i>Difference between Offer and Invitation to Offer</i>		
Basis	Offer	Invitation to Offer
Definition	A definite proposal that, if accepted, creates a binding contract.	A preliminary statement that seeks to induce offers.
Intention	The offeror intends to be bound by the terms of the offer upon acceptance.	The intention is to invite others to make offers or proposals.
Nature of Statement	Final expression of willingness to enter into a contract.	An attempt to start negotiations or receive offers.
Effect of Acceptance	Acceptance of the offer results in a contract.	Acceptance does not create a contract; it leads to further negotiation.
Examples	A specific proposal to sell a product at a particular price.	An advertisement of books for sale or houses to let.
Legal Position	Creates a legal obligation upon acceptance.	Does not create a legal obligation; it only leads to a request for offers.
Test for Determination	Whether the person making the statement intends to be bound immediately upon acceptance.	Whether the statement is meant to induce negotiation rather than bind immediately.
Acceptance Impact	Directly results in the formation of a contract.	Leads to negotiation; no contract is formed by mere acceptance.

Examples of invitation to offer to buy or sell:

1. A **Prospectus by a company to the public** to subscribe for its shares.
2. **Display of goods** for sale in shop windows.
3. **Advertising** auction sales and
4. **Quotation of prices sent** in reply to a query regarding price

ACCEPTANCE

I. Definition of Acceptance:

- In terms of **Section 2(b)** of the Act, 'the term acceptance' is defined as follows:

- “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. The proposal, when accepted, becomes a promise”.

Example -

Proposal Made:

A offers to sell his car to B for Rs. 2,00,000. Here, A is making a proposal to B.

Acceptance:

B agrees to A's offer. When B shows he agrees to the proposal, he is accepting it.

Acceptance Turned into Promise:

Once B accepts A's offer, the proposal is accepted and becomes a promise.

In summary:

A makes a proposal, B accepts it, and the accepted proposal becomes a promise.

II. Relationship between offer and acceptance:

- Sir William Anson

“Acceptance is to offer what a lighted match is to a train of gunpowder”.

- The effect of this observation is that what acceptance triggers cannot be recalled or undone.
- But there is a choice to the person who had the train to remove it before the match is applied.
- It in effect means that the offer can be withdrawn just before it is accepted.
- Acceptance converts the offer into a promise and then it is too late to revoke it.
- This means as soon as the train of gunpowder is lighted it would explode.
- The significance of this is an offer in itself cannot create any legal

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relationship but it is the acceptance by the offeree which creates a legal relationship.

Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked.

An offer remains an offer so long as it is not accepted but becomes a contract as soon as it is accepted.

LEGAL RULES REGARDING A VALID ACCEPTANCE

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

- In case of a specific offer, it can be accepted only by the person to whom it is made. [Boulton vs. Jones (1857)]

Case Law: Boulton v. Jones (1857)

- Involves a dispute where Boulton, who had taken over a store,
- filled an order from Jones who was unaware of the change in ownership.
- Jones refused to pay, arguing that he had contracted with the previous owner, not Boulton.
- The court ruled that Boulton could not enforce the contract because there was no mutual agreement between him and Jones.
- The case emphasizes that a contract requires mutual assent between the actual parties involved.

2. Acceptance must be absolute and unqualified:

- As per section 7 of the Act,
 - Acceptance is valid only when it is absolute and unqualified and
 - is also expressed in some usual and reasonable manner
 - unless the proposal prescribes the manner in which it must be accepted.
-
- If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

Example 51: 'A' enquires from 'B', "Will you purchase my car for Rs. 2 lakhs?" If 'B' replies "I shall purchase your car for Rs. 2 lakhs, if you buy my motorcycle for 50,000/-, here 'B' cannot be considered to have accepted the proposal. If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition. Therefore, the acceptance in this case is unconditional.

3. The acceptance must be communicated:

- To conclude a contract between the parties,
- the acceptance must be communicated in some perceptible form.
- *Conditional acceptance* = NO ACCEPTANCE
- As it is acceptance with varying or too deviant conditions
- It is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialise into a contract.
- Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him.
- If he does not have the knowledge, there can be no acceptance.
- The acceptance must relate specifically to the offer made. Then only it can materialise into a contract. The above points will be clearer from the following examples:

Brogden vs. Metropolitan Railway Co. (1877)

Facts:

- B (a supplier) sent a draft agreement for the supply of coal to the Metropolitan Railway Co.
- The manager of the railway company wrote "Approved" on the

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draft and put it in a drawer, intending to send it for formalization.

- Due to an oversight, the draft remained in the drawer and was never sent to the company's solicitors.

Issue:

- Whether a contract was formed between B and the Metropolitan Railway Co. despite the manager's approval not being communicated.

Decision:

- The court held that no contract was formed because the manager's acceptance was not communicated to B.

Key Point:

- For a contract to be valid, acceptance must be communicated to the offeror.

(Bhagwandas v. Girdharilal)

Facts:

- Bhagwandas sent a letter to Girdharilal offering to sell goods at a certain price.
- Girdharilal responded with a letter expressing acceptance but did not send the letter of acceptance back immediately.
- Bhagwandas, before receiving Girdharilal's acceptance, sold the goods to a third party

Issue:

- Whether a binding contract was formed between Bhagwandas and Girdharilal despite Bhagwandas selling the goods to someone else before receiving the acceptance.

Decision:

- The court ruled that no contract was formed because acceptance must be communicated to the offeror.
- Bhagwandas was justified in selling the goods to a third party as the acceptance was not communicated in time.

Key Point:

- For a contract to be valid, acceptance must be communicated to the offeror before the offer is revoked or the offeror undertakes a different action.

Heyworth v. Knight [1864]

Facts:

- Heyworth made an offer to sell goods to Knight.
- Knight accepted the offer and intended to communicate his acceptance.
- Before Knight could send his acceptance, Heyworth sold the goods to someone else.

Issue:

- Whether a binding contract was formed between Heyworth and Knight despite Heyworth selling the goods before receiving Knight's acceptance.

Decision:

- The court held that no contract was formed because the acceptance was not communicated to Heyworth before the offer was revoked.

Key Point:

- Acceptance must be communicated to the offeror to create a binding contract. If the offeror revokes the offer before receiving the acceptance, no contract is formed.

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Example 52: 'A proposed B to marry him. B informed A's sister that she is ready to marry him. But his sister didn't inform A about the acceptance of proposal. There is no contract as acceptance was not communicated to A.

4. Acceptance must be in the prescribed mode:

- Where the mode of acceptance is prescribed in the proposal,
- it must be accepted in that manner.
- But if the proposer does not insist on the proposal being accepted in the manner prescribed
- after it has been accepted otherwise, i.e.,
- not in the pre- scribed manner,
- the proposer is presumed to have consented to the acceptance.

Example 53: 'If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

5. Time:

- Acceptance must be given within the specified time limit, if any, and
- if no time is stipulated,
- acceptance must be given within the reasonable time and
- before the offer lapses.
- *What is reasonable time is nowhere defined in the law and thus would depend on facts and circumstances of the particular case.*

Example 54: 'A offered to sell B 50 kgs of bananas at Rs. 500. B communicated the acceptance after four days. Such is not a valid contract as bananas being perishable items could not stay for a period of week. Four days is not a reasonable time in this case.

Example 55: A offers B to sell his house at Rs. 20,00,000. B accepted the offer and communicated to A after 4 days. Held the contract is valid as four days can be considered as reasonable time in case of sell of house.

6. Mere silence is not acceptance:

- The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer,
- unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

Felthouse vs. Bindley (1862)

Facts:

- Felthouse offered to buy a horse from Bindley and stated that if he did not hear from Bindley, he would consider the horse as sold.
- Bindley did not explicitly accept or reject the offer but acted as if the horse was sold.
- Felthouse did not receive a direct acceptance from Bindley and later attempted to enforce the contract.

Issue:

- Whether a contract was formed when Bindley did not explicitly communicate acceptance of Felthouse's offer.

Decision:

- The court ruled that no contract was formed because silence or inaction cannot constitute acceptance.
- A contract requires clear and unequivocal communication of

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acceptance.

Key Point:

- Acceptance must be explicitly communicated to the offeror. Silence or failure to respond does not constitute acceptance.

Example 56: 'A' subscribed for the weekly magazine for one year. Even after expiry of his subscription, the magazine company continued to send him magazine for five years. And also 'A' continued to use the magazine but denied to pay the bills sent to him. 'A' would be liable to pay as his continued use of the magazine was his acceptance of the offer.

7. Acceptance by conduct/Implied Acceptance:

- Section 8 of the Act -
- The performance of the conditions of a proposal, or
- the acceptance of any consideration for a reciprocal promise
- which may be offered with a proposal, constitutes an acceptance of the proposal.
- This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.
- When a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

Example 57: When a tradesman receives an order from a customer and executes the order by sending the goods, the customer's order for goods constitutes the offer, which has been accepted by the tradesman subsequently by sending the goods. It is a case of

acceptance by conduct.

COMMUNICATION OF OFFER AND ACCEPTANCE

- Both 'offer' and 'acceptance' is their effective communication.
- Effective and proper communication prevents avoidable revocation and misunderstanding between parties.
- When face-to-face, instantaneous communication of offer and acceptance takes place. But when at a distance - problem occurs
- In such cases, it is very much relevant for us to know the exact time when the offer or acceptance is made or complete.

1. Communication of offer:

- In terms of Section 4 of the Act -

The communication of offer is complete when it comes to the knowledge of the person to whom it is made

Example 58: 'Where 'A' makes a proposal to 'B' by post to sell his house for ` 5 lakhs and if the letter containing the offer is posted on 10th March and if that letter reaches 'B' on 12th

March the offer is said to have been communicated on 12th March when B received the letter

- When a proposal is made by post, its communication -
 - will be complete when the letter containing the proposal reaches the person to whom it is made.

Mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

- He receives the letter on 12th March, but he reads it on 15th of March. In this case the offer is communicated on 15th of March, and not 12th of March.

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2. Communication of acceptance: Two issues -

- The modes of acceptance and
- When is acceptance complete?

Let us first consider the **modes of acceptance**.

- Section 3 - Two modes of communication namely,
 1. **By any act and**
 2. **By omission,**
- **Communication by Act**
 1. **Expression of Words:** This includes written words (letters, telegrams, faxes, emails, advertisements) and oral words (telephone messages).
 2. **Conduct:** Positive acts or signs intended to convey a message. For example, delivering goods to a buyer signifies acceptance of the offer.
- **Communication by Omission**
 1. **Forbearance:** Failure to act or convey willingness can communicate acceptance, but mere silence is not considered communication by omission.

Example 59: 'A offers Rs. 50,000 to B if he does not arrive before the court of law as an evidence to the case. B does not arrive on the date of hearing to the court. Here omission of doing an act amounts to acceptance.

- **Communication of acceptance by conduct.**

Examples:

1. Boarding a bus signifies acceptance of the offer to transport passengers.
2. Dropping a coin in a weighing machine signifies acceptance of the service offer.

- **Effectiveness of Communication**
 1. Indirect Communication: Actions or omissions must effectively communicate acceptance. Mere internal assent or thought does not constitute communication.
 2. Case Example: In Central Bank Yeotmal vs Vyankatesh (1949), a resolution to sell land was not communicated, so no contract was formed.
- **Completion of Communication of Acceptance**
 1. As Against the Proposer
 - Completion: Communication is complete when the acceptance is put in the course of transmission and out of the acceptor's control (e.g., when a letter is posted).
 2. As Against the Acceptor
 - Completion: Communication is complete when the acceptance comes to the proposer's knowledge (e.g., when the letter reaches the proposer).
 3. Postal Acceptance Rule
 - Proposer: Bound when the letter is posted, even if delayed or lost in transit.
 - Acceptor: Bound only when the letter of acceptance reaches the proposer.
 4. Practical Implications
 - Proposer's Responsibility: Must ensure the letter is correctly addressed, stamped, and posted.
 - Acceptor's Responsibility: Must ensure the letter reaches the proposer to be bound by the contract.
 4. Acceptance over telephone or telex or fax:
 - When an offer is made of instantaneous communication like telex, telephone, fax or through email,

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- the contract is only complete when the acceptance is received by the offeree, and
- the contract is made at the place where the acceptance is received

Entores Ltd. v. Miles Far East Corporation

Facts:

- Entores Ltd., a company based in London, sent an offer by telex to Miles Far East Corporation in Amsterdam.
- Miles Far East Corporation sent an acceptance by telex in response.
- A dispute arose regarding the validity of the acceptance, particularly the exact moment when the acceptance was communicated.

Issue:

- When is the communication of acceptance complete in a contract involving instantaneous communication methods, such as telex?

Decision:

- The court ruled that for instantaneous communication methods like telex, the acceptance is complete when it is received by the offeror.
- In this case, the acceptance was not complete until it was received by Entores Ltd. in London.

Key Point:

- For instantaneous communication (e.g., telex, telephone), acceptance is effective when it is received by the offeror, not when it is sent by the acceptor.
- However, in case of call drops and disturbances in the line, there may not be a valid contract.

3. Communication of special conditions:

- Sometimes special conditions are conveyed tacitly and
- the acceptance of these conditions are also conveyed by the offeree again tacitly or
- without him even realising it.

Example 60: For instance when a passenger undertakes a travel, the conditions of travel are printed at the back of the tickets, sometimes these special conditions are brought to the notice of the passenger, sometimes not. In any event, the passenger is treated as having accepted the special condition the moment he bought his ticket.

Mukul Datta vs. Indian Airlines [1962] AIR Cal. 314

Facts:

- The plaintiff, Mukul Datta, traveled from Delhi to Kolkata by air. The air ticket had special conditions printed in fine print on the back.

Issue:

- Whether these conditions, which were not prominently displayed, could still be considered communicated to and accepted by the passengers.

Decision:

- The court ruled that such conditions, even if printed in fine print or posted on a notice board, can be considered communicated to passengers. Passengers are deemed to have accepted these terms if they do not object to them.

Key Point:

- The terms and conditions must be reasonable to be enforceable.

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Example 61: Where a launderer gives his customer a receipt for clothes received for washing. The receipt carries special conditions and are to be treated as having been duly communicated to the customer and therein a tacit acceptance of these conditions is implied by the customer's acceptance of the receipt [Lily White vs. R. Mannuswamy [1966] A. Mad. 13].

Lilly White vs. Mannuswamy (1970)

Facts:

- Lilly White, the plaintiff, and Mannuswamy, the defendant, were involved in a contract dispute.
- Mannuswamy claimed that certain terms were included in the contract but were not communicated or agreed upon by Lilly White.
- The terms in question were included in a document not seen or acknowledged by Lilly White

Issue:

- Whether terms included in a document not seen or acknowledged by one party can be considered part of the contract.

Decision:

- The court ruled that for terms to be enforceable, they must be communicated and agreed upon by all parties involved.
- Terms included in a document that was not seen or acknowledged by Lilly White could not be enforced as part of the contract.

Key Point:

- For terms to be binding, all parties must be aware of and agree

to them. Terms hidden in documents not presented or acknowledged by one party are not enforceable.

COMMUNICATION OF PERFORMANCE

- Section 4 of the Act -
- Communication of a proposal is complete
- when it comes to the knowledge of the person to whom it is meant.
- As regards acceptance of the proposal, the same would be viewed from two angles. These are:
 1. From the viewpoint of proposer and
 2. The other from the viewpoint of acceptor himself
- From the viewpoint of the proposer, when the acceptance is put into a course of transmission, when it would be out of the power of the acceptor. From the viewpoint of the acceptor, it would be complete when it comes to the knowledge of the proposer.
- At times the offeree may be required to communicate the performance (or act) by way of acceptance. In this case it is not enough if the offeree merely performs the act but he should also communicate his performance unless the offer includes a term that a mere performance will constitute acceptance.

Carlill v. Carbolic Smoke Ball Co.

Facts:

- The Carbolic Smoke Ball Co., a sole proprietorship, manufactured a medicine known as the "carbolic smoke ball" intended to cure influenza, colds, and related ailments.
- The company issued an advertisement offering a reward of \$100 to anyone who contracted influenza after using the smoke ball as directed.
- Mrs. Carlill purchased the smoke balls and used them

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according to the instructions but still contracted influenza.

Issue:

- Whether Mrs. Carlill was entitled to the \$100 reward despite not communicating her compliance with the terms of the advertisement.

Decision:

- The court ruled in favor of Mrs. Carlill, holding that she was entitled to the \$100 reward.
- It was determined that Mrs. Carlill had fulfilled the condition specified in the advertisement by contracting influenza after using the smoke balls.
- The advertisement did not require any formal communication of compliance, so it was not necessary for Mrs. Carlill to notify the company of her use of the product.

Key Point:

- In unilateral contracts (like reward offers), the performance of the condition constitutes acceptance, and formal communication of compliance is not always required.

- The court thus in the process laid down the following three important principles -
 1. An offer, to be capable of acceptance, must contain a definite promise by the offeror that he would be bound provided the terms specified by him are accepted;
 2. An offer may be made either to a particular person or to the public at large, and
 3. If an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer

REVOCATION OF OFFER AND ACCEPTANCE

- **Section 4** - Communication of revocation (of the proposal or its acceptance)

is complete when - .

1. as against the person who makes it when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it, and
2. as against the person to whom it is made, when it comes to his knowledge.

The above law can be illustrated as follows:

Revocation of Proposal:

- A proposal (offer) can be revoked by the offeror at any time before it is accepted.
- Completion: The revocation is complete for the offeror when the telegram (or communication) is dispatched. For the offeree, it is complete only when they receive the revocation.

Revocation of Acceptance:

- The offeree can revoke their acceptance of an offer by telegram.
- Completion: The revocation of acceptance is complete for the offeree when they dispatch the telegram, and for the offeror when they receive it.

Key Point:

- A proposal can be revoked at any time before acceptance. Once revoked, the offeree cannot create a contract by accepting the revoked offer.

Example 62: The bidder at an auction sale may withdraw (revoke) his bid (offer) before it is accepted by the auctioneer by fall of hammer.

- An offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.

Example 63: X offered to sell 50 bales of cotton at a certain price and promised to keep it open for acceptance by Y till 6 pm of that day.

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Before that time X sold them to Z. Y accepted before 6 p.m., but after the revocation by X. In this case it was held that the offer was already revoked.

- In terms of Section 5 of the Act a proposal can be revoked -
- at any time before the communication of its acceptance is complete
- as against the proposer.
- An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor.

Example 64: A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards. Whereas B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

- An acceptance to an offer must be made before that offer lapses or is revoked.

The law relating to the revocation of offer is the same in India as in England, but the law relating to the revocation of acceptance is different.

- English Law:
 - A contract is concluded and acceptance becomes irrevocable the moment it is communicated, whether orally or by post.
- Indian Law:
 - Contract Through Post:
 - Acceptance cannot be revoked once the letter is properly posted.
 - However, in Indian law, an acceptor can revoke their acceptance any time before the letter reaches the offeror.
 - If a revocation telegram arrives before or at the same time as the acceptance letter, the revocation is valid.

- Contract Over Telephone:
 - Contracts can be made over the phone.
 - The rules for offer and acceptance are the same as for face-to-face meetings.
 - The contract is formed when acceptance is communicated, but the offeree must ensure that the acceptance is received by the offeror.
 - If the telephone line disconnects during the conversation, the acceptor should confirm that their acceptance was heard by the offeror.
- Revocation of Proposal:
 - An offer can be revoked before it is accepted.
 - Revocation can occur through communication or by lapse of time

I. Modes of revocation of offer

1. By notice of revocation

Example 65: A offered B to sell goods at Rs. 5,000 through a post but before B could accept the offer A received highest bid for the goods from C. So, A revoked the offer to B by informing B over the telephone and sold goods to C.

2. By lapse of time:

Time for Acceptance:

- Acceptance must occur within the specified time or, if no time is specified, within a reasonable time.
- The proposer should not be made to wait indefinitely.

Case Law:

- Ramsgate Victoria Hotel Co. v. Montefiore (1866): An application for shares made in June was not binding when an allotment was made in November, due to the lapse of time.
- Indian Case: India Cooperative Navigation and Trading Co. Ltd. v. Padamsey Premji followed the same principle.

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Current Relevance:

- These decisions are less relevant now due to the Companies Act, 2013, which has specific provisions for share allotment.

3. By non fulfilment of condition precedent:

Principle:

- Under Section 6 of the Act, a proposal can be revoked if the acceptor fails to fulfill a condition precedent to acceptance.
- A condition precedent is a requirement that must be satisfied before the acceptance and the contract become binding.

Examples:

- The offeror may impose conditions such as signing a document or depositing earnest money.
- If the condition is not met, the proposal lapses and is considered revoked.
- If A offers to sell his house to B for ₹5 lakhs on the condition that B leases his land to A, and B refuses to lease the land, A's offer is automatically revoked due to the unmet condition.

4. By death or insanity:

Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

5. By counter offer

6. By the non acceptance of the offer according to the prescribed or usual mode

7. By subsequent illegality

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“ PROBLEM KYA HAI ? - Unit 1 ”

Question Bank

ICA

*This section is complied with questions and suggested answers
for the chapter - ICA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

A sends an offer to B to sell his second-car for 7 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition?

(Module)

Answer 1

Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. So, klthe given problem, if B remains silent, it does not amount to acceptance. The acceptance must be made within the time limit prescribed by the offer.

The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract.

Question 2

State whether there is any contract in following cases:

- (a) A engages B to do certain work and remuneration to be paid as fixed by C.
- (b) A and B promise to pay for the studies of their maid's son
- (c) A takes a seat in public bus. (d)

A, a chartered accountant promises to help his friend to file his return.

(Module)

Answer 2

- a. It is a valid express contract
- b. It is not a contract as it is a social agreement
- c. It is an implied contract. A is bound to pay for the bus fare.

Question Bank —> Chap 2 (Unit 1) - ICA, 1872

- d. It is a social agreement without any intention to create a legal relationship.

Question 3

Miss Shakuntala puts an application to be a teacher in the school. She was appointed by the trust of the school. Her friend who works in the same school informs her about her appointment informally. But later due to some internal reasons her appointment was cancelled. Can Miss Shakuntala claim for damages?

(Module)

Answer 3

No, Miss Shakuntala cannot claim damages. As per Section 4, communication of acceptance is complete as against proposer when it is put in the course of transmission to him. In the present case, school authorities have not put any offer letter in transmission. Her information from a third person will not form part of contract.

Question 1

State which of the following agreements are valid contract under the Indian Contract Act, 1872?

- a. A, who owns two cars is selling red car to B. B thinks he is purchasing the black car.
- b. A threatened to shoot B if he (B) does not lend him 72,00,000 and B agreed to it.
- c. A agrees to sell his house to B against 100 kgs of cocaine (drugs).
- d. A ask B if he wants to buy his bike for \$ 50,000. B agrees to buy bike.
- e. Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident.

(RTP May 23)

Answer 1

- a. A, who owns two cars is selling red car to B. B thinks he is purchasing the black car. There is no consensus ad idem and hence not a valid contract!

Question Bank —> Chap 2 (Unit 1) - ICA, 1872

- b. A threatened to shoot B if he (B) does not lend him 72,00,000 and B agreed to it. Here the agreement is entered into under coercion and hence not a valid contract.
- c. A agrees to sell his house to B against 100 kgs of cocaine (drugs). Such agreement is illegal as the consideration is unlawful.
- d. A ask B if he wants to buy his bike for & 50,000. B agrees to buy bike. It is agreement which is enforceable by law. Hence, it is a valid contract.
- e. Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

Question 2

Mr. Parth applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Parth that he was appointed but official communication was not given by the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Parth filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Parth be successful in suit filed against school under the Indian Contract Act, 1872?

(RTP Jun' 24, Nov 21)

Answer 2

As per the rules of acceptance, the acceptance should be communicated to offer or by offeree himself or by his authorized agent. Communication of acceptance by third person cannot be concluded as valid acceptance. In the instant case, Mr. Parth applied for a job as principal of a school and one member of the school management committee privately informed Mr. Parth that he was appointed. Later, the management of the school appointed someone else as a principal. On the basis of the above provisions and facts, communication of appointment of Mr. Parth should be made by the school management committee or by any authorised agent. Communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Parth and the school and Mr. Parth cannot file a suit against the school for cancellation of his appointment.

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Question 3

Mr. Joy owns two flats in a building. He wanted to sell flat no.101 to Mr. Roy. Mr. Joy offered to sell his flat no. 101 to Mr. Roy, but Mr. Roy thought that Mr. Joy wanted to sell flat no. 102 and said yes for the agreement. Considering the provisions of Indian Contract Act, 1872, discuss the validity of such a contract.

(MTP Jun'22 4 Marks)

Answer 3

Section 10 of Indian Contract Act, 1872 laid down the essential elements of a valid contract. One of the essential elements of valid contract is free consent. Consent is an express willingness or giving voluntary permission or agreeing to something. Section 13 further clarifies "two or more persons are said to consent when they agree upon the same thing in the same sense". In the present case, both the parties have given a free consent but they are not consenting for the same thing in the same sense. Mr. Joy wants to sell flat no. 101 and Mr. Roy has agreed the contract thinking that it's flat no. 102. Hence, the agreement would be invalidated at the inception (beginning) stage itself because both the parties did not agree about a thing (sale of flat) in the same sense. Hence, both the parties did not have mutual consent for the contract; therefore it is not a valid contract.

Question 4

"All contracts are agreements, but all agreements are not contracts". Comment.

(MTP Jun' 22 4 Marks) (SM) (MTP 4 Marks, Nov'21)

Answer 4

An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract, an agreement must give rise to a legal obligation i.e. duly enforceable by law. If an agreement is incapable of creating a duly enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements. All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not

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a contract. All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law.

Thus, existence of an agreement is a prerequisite existence of a contract. Therefore, it is true to say that all contracts are agreements. Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

Question 5

Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

- a. A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.
- b. Obligation of finder of lost goods to return them to the true owner.
- c. A contract with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is affected, the fire caught in the factory, and everything was destroyed.

(MTP Nov'22 4 Marks)(SM)

Answer 5

- a. It is an implied contract and A must pay for the services of the coolie detailed by him.

Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

- b. Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which

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there is no intention on part of either party to make a contract, but law imposes a contract upon the parties.

c. The above contract is a void contract.

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

Question 6

Ashwin goes to super market to buy a Air Conditioner. He selects a branded Air Conditioner having a price tag of Rs. 40,000 after a discount of Rs. 3000. Ashwin reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was up-to yesterday. There is no discount from today. Hence you have to pay Rs. 43,000." Ashwin got angry and insists for Rs. 40,000. State with reasons whether under indian Contract Act, 1872, Ashwin can enforce the cashier to sell at discounted price i.e. Rs. 40,000.

(MTP Apr'23 4 Marks) RTP May'22 (PYP Dec'23 3 Marks) (MTP 4 Marks, Oct'21)

Answer 6

An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation. In the instant case, Ashwin reaches to super market and selects a Air Conditioner with a discounted price tag of 7 40,000 but cashier denied to sell at discounted price by saying that discount is closed from today and request to make full payment.

But Ashwin insists to purchase at discounted price. On the basis of above provisions and facts, the price tag with Air Conditioner was not offer. It is merely an invitation to offer. Hence, it is the Ashwin who is making the offer not the super market. Cashier has right to reject the Ashwin's offer. Therefore, Ashwin cannot enforce cashier to sell at discounted price.

Question 7

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Mr. Ayush is the principal in Modern Public School. He needs 2000 packets of Biscuits to be distributed to students in his school on the occasion of Republic Day celebration. For this purpose, he contracted with Yograj Biscuit Company. Mr. Ayush visited the workshop of Yograj Biscuit Company and was very much satisfied with the quality of biscuits. He also found that a large number of varieties of biscuits are manufactured in the workshop. He ordered 2000 packs of biscuits and gave the token money but did not specify the category of biscuits, he needed. Yograj Biscuit Company did not supply the biscuits on the due date. Mr. Ayush filed the suit against Yograj Biscuit Company for compensation. State with reasons, whether Yograj Biscuit Company is liable under Indian Contract Act, 1872?

(MTP Nov'23 4 Marks)

Answer 7

According to the Indian Contract Act 1872, the meaning of agreement must be certain and not vague or indefinite. If the meaning of agreement is not certain, the agreement is not enforceable by law. In the instant case, Mr. Ayush is being principal in Modern Public School ordered 2000 packs of biscuits to Yograj Biscuit Company for the purpose of distribution on Republic Day among students.

He also gave the token money but did not specify the category of biscuits. Yograj Biscuit Company did not supply the biscuits on the due date and Mr. Ayush filed the suit for compensation. On the basis of above provisions and facts, it can be said that the agreement was not enforceable for want of certainty of meaning as Mr. Ayush did not specify the category of biscuits. Hence, Yograj Biscuit Company is not liable to pay any compensation to Mr. Ayush.

Question 8

Mr. Nikhil has decided to get interior work for his new office. For this purpose, he entered into a contract with M/s Sherry Fine Interiors. It was agreed that M/s Sherry Fine Interiors will complete the interior work latest by 31st January, 2023. On 31st January, 2023, Mr. Nikhil observed that only 20% to 30% work has been completed. He decided to cancel the contract with M/s Sherry Fine Interiors.

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On cancellation of the contract, M/s Sherry Fine Interiors filed a suit against Mr. Nikhil for recovery of the cost which it has incurred on the interior work. Mr. Nikhil argued that M/s Sherry Fine Interiors did not complete the work within the time as per contract and further the work done till 31st January, 2023 by M/s Sherry Fine Interiors was of no use for him as he has to appoint a new interior designer.

Explain, whether Mr. Nikhil is liable to pay the cost of work done by M/s Sherry Fine Interiors under the provisions of Indian Contract Act, 1872?

(MTP Dec'23 4 Marks)

Answer 8

Section 2(i) of Indian Contract Act, 1872 provides that an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract.

Further, when a party to a contract promise to perform a work within a specified time, could not perform within that time, the contract is voidable at the option of the promisee. If promisee has received any benefit, he must return to promisor. In the given problem, the contract is voidable at the option of Mr.

Nikhil as work is not completed within the time agreed in the contract. Further, Mr. Nikhil is not liable to pay the cost incurred by M/s Sherry Fine Interiors as that cost did not provide any benefit to him and he has to appoint a new interior designer.

Question 9 (Includes concepts of 2.3- Other essential elements of a contract)

X agrees to pay Y Rs. 1,00,000/-, if Y kills Z. To pay Y, X borrows Rs. 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.

1. Between X and Y.
2. Between X and W

(PYP Nov'22 4 Marks)

Answer 9

Illegal Agreement: It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful /

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contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.

In the present case,

1. X agrees to give Rs. 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.
2. X borrows Rs. 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

Question 10

Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited Rs. 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872. Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha?

(PYP Jun'23 4 Marks)

Answer 10

As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts. In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship. If the said party organised by Radha had been a "Contributory 2023 New year celebration party", then Radha could have sued her three friends for the loss incurred in the said party as the agreement between her and her friends would have legal backing; on the basis of which

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Radha deposited the advance amount and the parties here intended to create legal relationship.

Question 11

Distinguish between Void Contract and Voidable Contract according to the Indian Contract Act, 1872.

(PYP Jun 23 5 Marks)

Answer 11

The differences between void contract and voidable contract are as follows:

Question 12

Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

1. X promise to sell his scooter to Y for Rs. 1 Lac. However, the consent of X has been procured by Y at a gun point.
2. A bought goods from B in 2015. But no payment was made till 2019.
3. G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G Rs. 5,000 per month.

(RTP May' 21)

Answer 12

1. In the instant case, X is an aggrieved party and the contract is voidable at his option but not at the option of Y. It means if X accepts the contract, the contract becomes a valid contract then Y has no option of rescinding the contract.
2. B cannot sue A for the payment in 2019 as it has crossed three years and barred by Limitation Act. A good debt becomes unenforceable after the period of three years as barred by Limitation Act.
3. Where, G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G \$ 5,000 per month, the contract is executory because it is yet to be carried out.

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Question 13

Mr. S aged 58 years was employed in a Government Department. He was going to retire after two years.

Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of Rs. 10 Lakhs as consideration to Mr. S in order to induce him to retire. Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office. Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872.

(PYP 4 Marks, Jan' 21)

Answer 13

Section 10 of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto.

Section 23 of the said Act also states that every agreement of which the object or consideration is unlawful is void. The given problem talks about entering into an agreement for traffic relating to public office, which is opposed to public policy. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful. In the given case, Mr. S, who was going to be retired after two years was proposed by Mr. D, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that Mr. D offered Mr. S a sum of Rs. 10 lakh as consideration. Mr. S refused initially but later accepted the said offer to receive money to retire from his office. Here, Mr. S's promise of sale for Mr. D, an employment in the public services is the consideration for Mr. D's promise to pay Rs. 10 lakh. Therefore, in terms of the above provisions of the Indian Contract Act, the said agreement is not valid. It is void, as the consideration being opposed to public policy, is unlawful.

Question 14

Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance.

Answer 14

Definition of Acceptance: In terms of Section 2(b) of the Indian Contract Act, 1872 the term acceptance is defined as "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 a valid acceptance

1. Acceptance can be given only by the person to whom offer is made. In case of a specific offer, it can be accepted only by the person to whom it is made. In case of a general offer, it can be accepted by any person who has the knowledge of the offer.
2. Acceptance must be absolute and unqualified: As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly
3. The acceptance must be communicated: To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract.
4. Acceptance must be in the prescribed mode: Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.
5. Time: Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.
6. Mere silence is not acceptance: The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.
7. Acceptance by conduct/ Implied Acceptance: Section 8 of the Act lays down that "the performance of the conditions of a proposal, or the acceptance of any

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consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

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

Question 15

Mr. B makes a proposal to Mr. S by post to sell his house for 7 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020. Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

Examine with reference to the Indian Contract Act, 1872:

1. On which date, the offer made by Mr. B will complete?
2. Discuss the validity of acceptance.
3. What would be validity of acceptance if letter of revocation and letter of acceptance reached together?

(PYP 6 Marks, Jan'21)

Answer 15

1. According to Section 4 of the Indian Contract Act, 1872, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made" When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made. Further, mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

In the given question, Mr. B makes a proposal by post to Mr. S to sell his house. The letter was posted on 10th April 2020 and the letter reaches to Mr. Son 12th April 2020 but he reads the letter on 13th April 2020.

Thus, the offer made by Mr. B will complete on the day when Mr. S reads the letter, i.e. 13th April 2020.

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2. When communication of acceptance is complete: Where a proposal is accepted by a letter sent by the post, in terms of Section 4 of the Act, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.

Revocation of Acceptance: The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute. In the given question, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020. Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

The telegram for revocation of acceptance reached Mr. B on 19th April 2020 i.e. before the letter of acceptance of offer (20th April 2020). Hence, the revocation is absolute. Therefore, acceptance to an offer is invalid.

3. It will not make any difference even if the telegram of revocation and letter of acceptance would have reached on the same day, i.e. the revocation then also would have been absolute. As per law, acceptance can be revoked anytime before the communication of acceptance is complete. Since revocation was made before the communication of acceptance was complete and communication can be considered as complete only when the letter of acceptance reaches the proposer i.e. Mr. B

Question 16

State with reason(s) whether the following agreements are valid or void:

1. A clause in a contract provided that no action should be brought upon in case of breach.
2. Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.
3. X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.

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4. X, a physician and surgeon, employs Y as an assistant on a salary of ₹ 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

(PYP 4 Marks, Jul'21)

Answer 16

1. The given agreement is void.

Reason: As per Section 28 of the Indian Contract Act, 1872, this clause is in restraint of legal proceedings because it restricts both the parties from enforcing their legal rights.

Note: Alternatively, as per Section 23 of the Indian Contract Act, 1872, this clause in the agreement defeats the provision of law and therefore, being unlawful, is treated as void.

2. The given agreement is valid.

Reason: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court. A contract of this nature is void. However, in the given statement, no absolute restriction is marked on parties on filing of suit. As per the agreement suit may be filed in one of the courts having jurisdiction.

3. The said agreement is void.

Reason: This agreement is void as the two parties are thinking about different subject matters so that there is no real consent and the agreement may be treated as void because of mistake of fact as well as absence of consensus.

4. The said agreement is valid

Reason: An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But, as an exception, agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

Question 17

Question Bank —> Chap 2 (Unit 1) - ICA, 1872

Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash?

Decide as per the provisions of the Indian Contract Act, 1872.

(MTP 4 Marks, Apr'21) (SM) (MTP 3 Marks, Nov'21)

Answer 17

Invitation to offer: The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it.

Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms.

This is the basic distinction between offer and invitation to offer. The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell.

Question 18

Mr. Shekhar wants to sell his car. For this purpose, he appoints Mr. Nadan, a minor as his agent. Mr.

Shekhar instructs Mr. Nadan that car should not be sold at price less than Rs. 1,00,000. Mr. Nadan ignores the instruction of Mr. Shekhar and sells the car to Mr. Masoom for Rs. 80,000. Explain the legal position of contract under the Indian Contract Act, 1872 whether:

1. Mr. Shekhar can recover the loss of Rs. 20,000 from Mr. Nadan?
2. Mr. Shekhar can recover his car from Mr. Masoom?

(MTP 4 Marks, Nov'21)

Answer 18

Question Bank —> Chap 2 (Unit 1) - ICA, 1872

According to the provisions of Section 11 of the Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio but minor can act as an agent. But he will not be liable to his principal for his acts.

In the instant case, Mr. Shekhar appoints Mr. Nadan, a minor as his agent to sale his car. Mr. Shekhar clearly instructed to Mr. Nadan that the minimum sale price of the car should be Rs. 1,00,000 yet Mr.

Nadan sold the car to Mr. Masoom for Rs. 80,000.

1. Considering the facts, although the contract between Mr. Shekhar and Mr. Nadan is valid, Mr. Nadan will not be liable to his principal for his acts. Hence, Mr. Shekhar cannot recover the loss of Rs. 20,000.
2. Further, Mr. Masoom purchased the car from agent of Mr. Shekhar, he got good title. Hence, Mr. Shekhar cannot recover his car from Mr. Masoom.

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