Law of Contract

Lesson One: Introduction

Contractual obligations are voluntarily undertaken by the contracting parties, based on the duty reason why one has to go to work in the morning is that I have given an undertaking to my employer to do so and thus undertaking to pay me.

A contract consists of an actionable promise between two parties, the promisor and the promisee. Not all agreements are contracts, but an agreement is a necessary aspect for contractual obligations to arise. A contract is a promise mutually agreed, setting up against the promisor duties of performance. Which the law will recognize or enforce at the moment or for the benefit of the promisee or of a third party intended to be benefitted. - Justice Weeramanthry

It is important to ascertain whether an agreement has been reached because it is the forerunner of a contract. Agreement could be by writing, by word of mouth, or implication. Absence of a document makes it difficult to ascertain whether a contract is created by the parties. Agreement is not a mental state but an act. Parties are to be judged not by what is in their minds but what they have said, written, or done.

Contracts started in the simple transactions of the primitive society and practice hardened them into a set of forms confirming rights and duties. The law of contract lays down the legal rules pertaining to promises, their formation, the performance, and their enforceability.

In Sri Lanka, the law of contract is governed by the Roman Dutch Law.

To be a valid contract, there are seven essential elements and one optional element:

- Offer
- Acceptance
- Consideration causa
- Contractual capacity
- Legal intent (intention)
- Legality

- Consensus ad idem

Lesson Two: Offer

To determine whether an agreement has actually reached, it is necessary to inquire whether in the negotiations which have taken place between the parties, there had been a definite offer by one party and an equally definite acceptance of that offer by the other party.

For example, A offers to sell his house for Rs

A telegraphed to B, "Will vou sell us Bumper Hall Pen?" Here A asks for the lowest price, and B replied by telegram _Lowest price for Bumper Hall Pen 900 pounds. A telegraphed: We agree to buy Bumper Hall Pen for 900 pounds asked by vou. A claimed that the exchange of the telegrams constituted a valid contract. However, the court held that B, in stating the lowest price, did not make an offer but supplied information. Therefore, there was no valid contract.

Invitation to Offer (Invitation to Treat)

In Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd 1952, the defendant ran a self-service shop, and the customer was given a basket on entering the shop. He is required to select goods. At the counter, there was a registered pharmacist who could authorize if necessary to stop a customer from removing any drug from the shop. Plaintiff argued that the price marked was an offer and accepted when the customer put them into the basket. However, the court held that taking of articles from the shelves constitutes an offer by the customer to buy and not an acceptance by the chemist to sell. The sale was not completed until the customer's offer to buy had been accepted by the defendant.

For example, a person advertising goods for sale in a newspaper or announces that they will be sold by tender or auction. A shopkeeper displays goods in a shop window at a certain price or a bus company advertises that it will carry passengers from A-Z. A statement of act of this nature is known as an invitation to treat.

In the case of an invitation to offer, the person sending out the invitation does not make an offer. His aim is merely to circulate the information that he is willing to deal with anyone who, on such information, will be willing to open negotiations with him.

Auction sale

The auctioneer's request for bids at the auction is only an attempt to set the ball rolling, and the bidder's bid is the offer, which the auctioneer is at liberty to accept or reject.

Payne v. Caro 1798

The defendant bid USD 40 for goods which were being auctioned, but before the fall of the hammer, the defendant withdrew the bid. The court held that at an auction, a bid can be withdrawn before it is accepted by the auctioneer by the fall of the hammer.

When transactions are done through machines, different considerations apply. For example, a self-service station.

Re Cargo Card Services Ltd 1989)_, An open offer to sell at pump prices was held to have been accepted by a motorist putting petrol in the tank.

Tenders

An announcement inviting tenders is not normally an offer unless accompanied by words indicating that the highest or the lowest tender will be accepted.

There is a difference when the person inviting the tender states that in the invitation that he binds himself to accept the highest offer to buy or the lowest offfer to sell. The contract is concluded as soon as the highest offer to buy or the lowest to sell is communicated. For example, Harvela Investments Ltd v. Royal Trust of Canada.

Rules governing a valid offer

1. Offer should be definite

The offer should contain definite terms of performance. A vague and indefinite offer cannot by its acceptance give rise to a contract. If the agreement is vague, a court cannot say what was actually sought to be enforced. - Guthrie v. Lym 1931. If the horse is lucky, and an additional 5 pounds would be paid was held to be vague.

1. To whom an offer should be made.

Cari v. Carbolic Smoke Ball Co. 1892. The defendant company advertised offering to pay 100 pounds to any person who contracts influenza after having used their

Smoke Ball three times daily for two weeks, according to the printed directions. Mrs. Carlill, who bought and used the balls as per directions, subsequently suffered from influenza. She sued the company, but the company argued that there was no valid offer as it is an advertisement made to the whole world. Dismissing this argument, the court held that, an offer could be addressed to a specific person, a group of persons, or to the whole world.

1. Offeror can attach any number of conditions to the offer

An offer may consist of certain conditions. The offeror may even prescribe the mode of acceptance. Offeree must agree to all conditions in the offer to make it a valid acceptance. If an offeror asks for acceptance by telegram, acceptance by letter may amount to non-acceptance of the offer.

Quenerduame v. Cole 1883. The defendant made an offer through B, the plaintiff's agent, to buy a cargo of potatoes from the plaintiff. The plaintiff had answered the telegram by letter dated 30% December, which arrived after the withdrawal of the offer on 31% December. The defendant refused to accept the delivery of the cargo of potatoes, and the plaintiff brought action. The court held that acceptance was not proper since it was by a letter. As such, the acceptance was not proper since it was by a letter.

Conditions in the Offer

All conditions in the offer must be communicated to the offeree.

- If all the conditions are not communicated to the offeree, there is no agreement of mind between the parties.
- The conditions in a ticket do not draw the attention of passengers since sometimes the conditions are printed at the back of the ticket. However, if the pronuse had the knowledge because a reasonably sufficient notice had been given to him by suitable words on the document, of the special terms, before or at the time of the contract, the terms are binding upon the promuse whether he has read them or not.

Case: Henderson v Stevenson (1913)

- The plaintiff bought a steamer ticket. On the back of the jacket, certain special terms were printed excluding liability for loss, injury, or delay to passenger or to his luggage.
- The plaintiff never looked at the back of the ticket and no one told him to do so. The front of the ticket bore no reference to the back.
- The plaintiff's luggage was lost in a shipwreck caused by the fault of the company's servants.
- Court held that the plaintiff was entitled to recover his loss from the company as there was no sufficient communication of the terms and conditions contained in the back of the ticket.

Offeror Cannot Unilaterally Impose Terms

- The offeror cannot unilaterally impose terms that silence shall be deemed to be assent.

Case: Felthouse v Bindley (1863)

- The plaintiff offered by a letter to buy his nephew's horse, adding "If I hear no more about him, I shall consider the horse is mine."
- The nephew did not reply to the letter but told Bindley his auctioneer to keep the horse out of the sale. Bindley sold the horse by mistake and the plaintiff sued him for conversion of his property.
- Court held that there was no communication of acceptance to the plaintiff before the auction sale took place and there was no contract.

Offer Can Be Revoked at Any Time Before Acceptance

- An offer can be revoked at any time before acceptance.

Case: Dickinson v Dodds (1876)

- The defendant made an offer to the plaintiff by a letter stating, "On 10% June 1874, this offer to be left open until Friday, 9 am. 12% June 1874. On the following afternoon, the plaintiff was informed by one of his friends that the defendant had been offering or agreeing to sell the house to another. The plaintiff then immediately went to the defendant's office and agreed to buy the house.
- The defendant had revoked the offer on 8 10.1874, and the letter reached the plaintiff on 20:10-1879.
- The plaintiff brought action for non-delivery of goods. Court held that the withdrawal was not effective as it did not reach the plaintiff until after 11 10 1879 on which date the offer was accepted, resulting in a binding contract.

Revocation of the Offer Must Be Communicated to the Offeree

Case: Byrne & Co v Leon Van Tienhoven & Co (1880)

- The defendant wrote to sell some goods to the plaintiff on 110.1879. The letter was received by the plaintiff on 11 10 1879.
- The plaintiff immediately accepted the offer by a telegram. A letter was also posted after the telegram.
- The defendant had revoked the offer on 8 10.1879, and the letter reached the plaintiff on 20:10-1879.
- The plaintiff brought action for non-delivery of goods. Court held that, the withdrawal was not effective as it did not reach the plaintiff until after 11 10 1879 on which date the offer was accepted, resulting in a binding contract.

Offer's Revocable After Acceptance

- An offer is revocable after acceptance.

Case: Great Northern Railway Co v Witham (1873)

- The railway company advertised for the supply of timber required between 11 1871 to 31 10. 1872.
- Witham sent in a tender to supply them as the company might order from time to time. His tender was accepted by the company. Orders were given and executed some time on terms of the tender but finally, Witham was given an order which was refused to execute.
- Court held that Witham was liable for breach of contract.

Termination of an Offer

An offer may be terminated by the following ways:

- By lapse
- By rejection
- By revocation of the offer before acceptance
- By failure of a condition.

a. Lapse

- An offer may lapse before acceptance in the following ways:
    - Death of either party
    - Destruction of the subject matter
    - Lapse of time
    - Insanity
    - Change of status
    - Supervening illegality

b. Rejection

- An offer comes to an end when the offeree rejects the offer. The offeree thereafter does not have the right to accept the offer. The offer being dead. The party who has rejected the offer cannot afterwards at his own option convert the same offer into an agreement by acceptance without

renewed offer from the other party. An offer may be rejected expressly or by conduct from which the offeror can justify in inferring that the offeree intends not to accept the offer.

¢ Revocation

- An offer may be revoked at any time before acceptance unless the offeror has by the terms of the offer or by his own conduct, precluded himself from doing so.

4. Failure of Condition

- If a contract is made subject to an essential condition, and the condition is not satisfied, the offer will not be capable of acceptance. In case of an offer to sell timber on the land, the timber should not be felled before acceptance is an implied condition.

Contracts by Correspondence

- There is no physical meeting between the parties.

Case: Adams v Lindsell (1818)

- As a result of delay in acceptance resulting from misdirection of the letter of offer, the offeror had sold the goods to another buyer between the posting and the receipt of the letter of acceptance.
- We have to see when the contract of sale came into being. Was it the moment of posting or of receipt of the letter of acceptance? Court held that the contract was complete at the moment the letter of acceptance was put in the post. Misdirection of the letter of acceptance was unmaterial.

Household Fire Insurance Co v Grand (1879)

- The question was whether the contract of insurance came into being at the moment of posting or of receipt of the letter of acceptance. Court held that the contract was complete at the moment the letter of acceptance

was put in the post. Misdirection of the letter of acceptance was unmaterial.

Educational Note

Offer and Acceptance

An application for shares of the plaintiff co was handed by the defendant to the agent of the co. The co accepted the offer by a letter posted which never reached the defendant. The co went into liquidation and the liquidator sued the defendant for the amount due on shares.

Court's Decision

> If an offer is made by a letter which expressly or impliedly authorizes the sending of an acceptance of such offer by post, if a letter of acceptance properly addressed and posted in due time, a complete contract is made at the time when the letter of acceptance is posted. Though there may be delay in delivery.

This principle also applies when the letter of acceptance wholly failed to reach its intended recipient. If the ordinary postal services are interrupted or suspended, this rule does not apply.

Acceptance

Proof of an offer to enter into a contract on definite terms must be followed by the production of evidence from which courts may understand that the offeree had an intention to accept the offer. This is observed under two heads:

The fact of acceptance

The communication of acceptance

Acceptance of an offer is the expression by word or conduct of assent to the offer in the manner indicated by the offeror. As per Indian Contract Law, when the person to whom the proposal is made signsifies his assent thereto, the proposal is said to be accepted. To become a valid acceptance, the offeree should accept all

the conditions of the offer. Any change or alteration of a condition in the offer does not give rise to a valid acceptance. Whether there had been a valid acceptance by one party of an offer made to him by the other party may be collected from the words or documents that have passed between them or may be inferred from their conduct.

- Brogden v Metropolitan Ri Co 1887 Bogdan had supplied the defendant co with coal without a formal agreement. The parties decided to regularize their relations by contract. The Company's agent sent a draft of the agreement to Brogden. Brogden inserted the name of the arbitrator in a space for that purpose, signed it, and returned it marked "approved". The co's agent put it on his desk and nothing further was done to complete its execution. Both parties acted according to the terms of the agreement until a dispute arose. The Court held that a contract came into existence either when the co ordered its first load of coal from B upon the terms, or at least when B supplied the first load of coal. This is acceptance by conduct.

Rules relating to valid acceptance

1. Acceptance must be done while the offer is still in force. Acceptance is possible before the offer has lapsed, revoked, or rejected. Once the offer is accepted, the offer cannot be revoked.

    - Dickinson v Dodds 1876 The defendant delivered a written offer on Wednesday to sell a house. The offer was to be left over until Friday 9am Thursday afternoon. The plaintiff was informed that the defendant was going to sell the house to another person. The plaintiff left a formal letter of acceptance at the house of the defendant and it had never been delivered. The plaintiff had sent his agent with a copy of the letter of acceptance. This house had been sold on the previous day. Court held that there must be an offer continued up to the time of acceptance. If there was no such continuing offer, then the acceptance means nothing.

1. Acceptance must be absolute and unqualified. Only an absolute and unqualified assent to all terms of the offer constitutes an effective and valid acceptance. If the offer requires an act to be done, the precise act and

nothing else must be done. If the offeree varies the terms of the offer, it is a counter offer and not acceptance of the original offer.

- Neate v Merret 1930 M offered a land to N at 280 pounds. N replied accepting and enclosing 80 pounds with a promise to pay the balance by monthly installments of 50 pounds. Court held that the acceptance was qualified and therefore no contract.

1. Counter offer is no acceptance. Sometimes when an offer is made, the offeree wants to accept but tries to bargain and make a counter offer.

    - Fiyde v Wrench 1840 A offers to sell his farm to B for 1000 pounds. B offered to buy at for 950 pounds. A refused to sell the farm for 950 pounds to B. B then wrote and informed A that he was willing to buy the land for the previous price. It was turned down by A. B sued A for specific performance. Court held that B's offer to buy the land for 950 pounds was a counter offer which operated as a rejection of the original offer.

1. Remaining silent is not acceptance. Silence or inaction by the offeree will not amount to acceptance. Eg Felthouse v Bindley.