

LAW OF CONTRACT LESSON ONE INTRODUCTION Contractual obligations are voluntarily undertaken by the contracting parties. 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 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 instance 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 conferring rights and duties. Law of contract lays down the legal rules pertaining to promises, their formation, their 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 eg A offers to sell his house for Rs

Telegraphed: We agree to buy Bumper Hall Pen for 900 pounds asked by you

A claimed that the exchange of the telegrams constituted a valid contract. 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, price marked. At the counter there was a registered pharmacist who was authorized if necessary to stop a customer 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. 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.

e.g. 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 fact of this nature is known as an invitation to treat.

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

Auction sale

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

Payne» Caro 1798

The defendant bid USD 40 for goods which were being auctioned but before fall of the hammer the defendant withdrew the bid 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) Eg A self. service station

Re Cargo Card Service (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

It is different 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 offer to sell The contract is concluded as soon as the highest offer to buy or the lowest to sell is communicated Eg 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 Guthing v Lynn 1931 ~ If the horse is lucky an additional 5 pounds would be paid was held to be vague

1. To whom shall an offer be made. Carlill v Carbolic Smoke Ball Co. 1892 The defendant company advertised offering to pay 100 pounds to any person who contracted 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 group of persons or to the whole world

3 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

Quenerduaine v Cole 1883 The defendant made an offer through B the plaintiff's agent to buy a cargo of potatoes from the plaintiff B telegraphed the offer to the plaintiff on 30 December The plaintiff had answered the telegram by letter dated 30 December which arrived after the withdrawal of the offer on 31 December Defendant refused to accept the delivery of the cargo of potatoes and the plaintiff brought action Court held

and as such, acceptance was not proper since it was by a letter

4 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 Very often, 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 promisee 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 promisee whether he has read them or not *Henderson v Stevenson* 1913 The plaintiff bought a steamer ticket On the back of the ticket, certain special terms were printed excluding liability for loss, injury or delay to passenger or to his luggage Plaintiff never looked at the back of the ticket and no one told him to do so, and the front of the ticket bore no reference to the back Plaintiff's luggage was lost in a shipwreck caused by the fault of the company's servants Court held that 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

5 Offeror cannot unilaterally impose terms that silence shall be deemed to be assent

Felthouse v Bindley 1863 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

6 Offer can be revoked at any time before acceptance Dickinson + Dodds 1876
Defendant made an offer to the plaintiff by a letter stating on

i 10% June 1874 This offer to be left open until Friday 9 am. 12% June 1874 On the following afternoon, plaintiff was informed by one of his friends that the defendant had been offering or agreeing to sell the house to another Plaintiff then immediately went to

AMIE OLLCT Agree W OF Kept GPC LUT @ UCM PELIO Tidy OC TES OKEG Cx eT) UCLURE CK

expiry period, unless there is some consideration for keeping it open.

7 Revocation of the offer must be communicated to the offeree Byrne & Co \ Leon Van Tienhoven & Co 1880 Defendant wrote to sell some goods to the plaintiff on 11.10.1879 The letter was received by the plaintiff on 11 10 1879 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 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

8% Offer is revocable after acceptance Great Northern Railway Co Witham 1873 The railway Co advertised for the supply of iron required between 1 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 following ways. a By lapse b By rejection c By revocation of the offer before acceptance d By failure of a condition.

a Lapse An offer may lapse before acceptance in the following ways 1 Death of either party 2 Destruction of subject matter 3 Lapse of time 4 Insanity 5 Change of status of the offeror 6 Supervening illegality

© Death of offeror before acceptance. If an offer is not accepted within the lifetime of the offeror it cannot be accepted by his representative. A simple offer to contract is regarded as a personal matter

© Destruction of the subject matter Continued existence of the subject matter of the offer is an implied condition. Destruction of the subject matter of the proposed contract after offer and before acceptance would undermine the foundation of the offer

© Lapse of time - Where the offeror fixes a time during which the offer remains open, it must be accepted within the time given. If not stated, lapses. Where there is no fixed time it is left to the court to determine what the reasonable time is within which the offer should be accepted

Ramsgate Victoria Hotel Co. v Montefiore 1868 Defendant had applied in June for shares in the plaintiff Co and had paid deposit into the co. He received no communication from the plaintiff until the end of November the same year. When he was informed that the shares had been allotted to him and that he should pay the balance due the defendant refused and the court held that the refusal to take the shares was justified as the offer should have been accepted within a reasonable time

© Insanity *Drew v Vunn* 1879 If a man becomes so far insane as to have no mind, he ought to be considered dead for the purpose of contracting

© Change of status - An offer of a bankrupt lapses in relation to his property. Upon bankruptcy his property would vest in his trustee, and it is not thereafter possible for the offeror to dispose of it

© Supervening illegality - If a contract becomes illegal after the offer and before acceptance the offer ought to terminate by operation of law. Supervening illegality may arise in various ways such as by legislation.

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

⌀ Revocation — an offer may be withdrawn at anytime before acceptance unless the offeror has by the terms of the offer or by his own conduct, precluded himself from doing so *Adams v Lindsell* 1818 A by letter dated Sep 2nd offered goods to B recieving answer in course of post The letter was misdirected and did not reach B until the 5th Sep, and the offer was immediately accepted Acceptance reached A on 9 Sep but on 8 A sold the goods to X Court held that there was a valid contract between A and B because the offer was immediately accepted on its receipt by B

4 Failure of condition renders offer incapable of acceptance an offer 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

Adams v Lindsell 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 immaterial *Household Fire Insurance Co v Grant* 1879

Application for shares of the plaintiff co was handed by the defendant to the agent of the co and 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 held if an offer is made by a letter which expressly or impliedly authorises the sending of an acceptance of such offer by post, if a letter of acceptance properly addressed is 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 addressee 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 Thus 1s observed under two heads

a. The fact of acceptance

b The communication of acceptance Acceptance of an offer 1s 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 signifies 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»

Metropolitan Rl Co 188? Bogdan had supplied the defendant co coal without a formal agreement The parties decided to regularize their relations contract The Company's agent sent a draft of the agreement to Brogden. B_ inserted the name of the arbitrator in a space for this purpose signed it and returned

it marked approved 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 B contended that there was a binding contract 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 1 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, offer cannot be revoked

Dickinson » Dodds 1876 The defendant delivered a written offer on Wednesday to sell a house Thus offer 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 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

2 Acceptance must be absolute and unqualified Only an absolute and unqualified assent to all terms of the offer constituted 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 + 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 instalments of 50 pounds Court held that the acceptance was qualified and therefore no contract

3 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 Fyde 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 at 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 offer

4 Remaining in silence is not acceptance Silence of action by the offeree will not amount to acceptance Eg Felthouse + Bindley