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 he has undertaken 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 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 can 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 5m. If B accepts the offer, A is bound to perform the promise. Otherwise, there will be a breach of contract which may give rise to termination of the contract and pay damages to the offeree. An offer is an intimation to words or conduct of a willingness to enter into a legally binding contract. A casual inquiry, "Do you intend to sell your car?" is not an offer.

In the case of Harvey v. Facey (1893), A telegraphed to B, "Will you sell us Bumper Hall Pen?" Here, A 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 removing any drug from the shop. The 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.

For example, a person advertising goods for sale in a newspaper or announces that they will be sold by tender or auction is 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 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. 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 (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 offer 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. The 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.
2. To whom shall an offer be made. The Carbolic Smoke Ball Co. v. Cari (1892) case held that an offer could be addressed to a specific person, a group of persons, or to the whole world.

3. The 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 telegraphed the offer to the plaintiff on 1st December. The plaintiff had answered the telegram by letter dated 30th December, which arrived after the withdrawal of the offer on 31st December. The defendant refused to accept the delivery of the cargo of potatoes and the plaintiff brought action. Court held that as such, acceptance was not proper since it was by a letter and not in time.

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## 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 agreeme

- Example: Henderson v Stevenson (1913)
  - The plaintiff bought a steamer ticket. On the back of the jacket, certain
  - The plaintiff never looked at the back of the ticket and no one told him t
  - The plaintiff's luggage was lost in a shipwreck caused by the fault of the
  - Court held that the plaintiff was entitled to recover his loss from the co

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

- Example: Felthouse v Bindley (1863)
  - The plaintiff offered by a letter to buy his nephew's horse, adding "If I
  - The nephew did not reply to the letter but told Bindley his auctioneer to
  - Bindley sold the horse by mistake and the plaintiff sued him for conversio
  - Court held that there was no communication of acceptance to the plaintiff

## 6 Offer can be revoked at any time before acceptance

- Example: Dickinson v Dodds (1876)
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  - The defendant made an offer to the plaintiff by a letter stating, "On 10%
  - AMIE OLLCT Agree W OF Kept GPC LUT @ UCM PELIO Tidy OC TES OKEG Cx eT) UCL
  - The offer was revoked unless there is some consideration for keeping it op

7 Revocation of the offer must be communicated to the offeree

- Example: Byrne & Co v Leon Van Tienhoven & Co (1880)
  - The defendant wrote to sell some goods to the plaintiff on 11th October 18
  - The plaintiff immediately accepted the offer by a telegram. A letter was a
  - The defendant had revoked the offer on 8th October 1879 and the letter rea
  - The plaintiff brought action for non-delivery of goods. Court held that, t

8 Offer's revocability after acceptance

- Not covered in the provided text.

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.

Termination by lapse

- Death of either party
- Destruction of the subject matter
- Lapse of time
- Insanity
- Change of status of the offeror
- Supervening illegality

Termination by rejection

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- An offer comes to an end when the offeree rejects the offer. The offeree the

## Termination by revocation

- An offer may be revoked at any time before acceptance unless the offeror has

## Example: Adams v Lindsell (1818)
- A offered goods to B, receiving an answer in course of post. The letter was

## Termination by failure of condition

- If an offer is made subject to an essential condition, and the condition is

## Contracts by correspondence

- There is no physical meeting between the parties.

- Example: Adams v Lindsell (1818)
  - As a result of delay in acceptance resulting from misdirection of the lett

- Example: Household Fire Insurance Co v Grand (1879)
  - We have to see when the contract of sale came into being. Was it the momer
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Application for Shares and Acceptance

Case: Unspecified

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

Court Ruling

- If an offer is made by a letter which explicitly or implicitly 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. 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 signs to indicate his assent, 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.

Cases

- Brogden v Metropolitan Ri Co (1887)
- Bogdan had supplied the defendant company 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 Bogden. Bogden inserted the name of the arbitrator in a space for that purpose, signed it, and returned it, marked "approved." The Company'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 company ordered its first load of coal from Bogden, upon the terms, or at least when Bogden supplied the 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, been revoked, or rejected. Once the offer is accepted, the offer cannot be revoked.
2. 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.
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.
    - Fiyde v Wrench (1840)
4. Remaining silent is not acceptance.
    - Silence or inaction by the offeree will not amount to acceptance. Eg. Felthouse v Bindley