

CHAPTER -2

OFFER AND ACCEPTANCE

OFFER – MEANING

A person is said to have made the proposal when he signifies to another his **willingness to do or to abstain from doing anything** with a view to obtaining the assent of that offer to such act or abstinence.

The term offer and proposal are used interchangeably. The person making the offer or proposal is called **offeror or proposer** and the person to whom the offer is made is called **offeree or proposee**.

EXAMPLE

X offers to sell his car to Y for Rs 500,000. Here X made an offer so X is an offeror or Proposer and offer was made to Y, hence Y is an offeree or Proposee.

ESSENTIAL ELEMENTS OF OFFER

An offer involves the following elements

- a. It must be **made by one person to another person**. In another words, there can be no proposal by a person to himself.
- b. It must be an expression of readiness or **willingness to do** (i.e. a positive act) or **to abstain from doing** something (i.e. a negative act).

EXAMPLE

1. X offer **to sell** his car to Y for Rs. 1 lakh. It is a positive act on the part of X.
2. X offer **not to** file a suit against Y if Y pays X the outstanding amount of Rs.1,00,000. It is a negative act on the part of X.

- c. It must be made with a view to **obtain the consent** of that other person to proposed act or abstinence.

Example

X jokingly says to Y “I am ready to sell my car for Rs.1,000.” Y, knowingly that X is not serious in making the offer, says “I accept your offer.” In this case, X’s offer was not the real offer as he did not make it with a view to obtain the consent of Y.

TYPES OF OFFER

Offer can be classified into various types as follows

MODE OF EXPRESSION OF OFFER

A. EXPRESS OFFER

An offer made by express communication i.e. word of mouth or by writing is called an express offer.

EXAMPLE

1. X says to Y, “will you purchase my car for Rs.1,00,000?”
2. X writes to Y in a letter, “I want to sell my house for Rs.2,00,000.”
3. X advertises in a newspaper, “I will pay Rs.1,000 to anyone who traces my missing nephew”.

B. IMPLIED OFFER

When the offer is not communicated expressly i.e. the offeror makes an offer by his conduct, it is known as implied offer.

EXAMPLE

A transport company runs buses on different routes to carry passengers. This is an implied offer by the transport company to carry passengers for a certain fare.

TO WHOM OFFER IS MADE**A. SPECIFIC OFFER**

A specific offer is one which is made to a definite person or particular group of persons. A specific offer can be accepted only by that definite person or that particular group of persons to whom it has been made.

EXAMPLE

X offer to buy car from Y for Rs.1.0 lakh. This offer is a specific offer which has been made to a definite person Y. No person other than Y can accept this offer.

B. GENERAL OFFER

A general offer is one which is made to the world to the at large or public in general. A general offer can be accepted by any person by fulfilling the terms of the offer. In case of general offer, the contract is made with person who having the knowledge of the offer comes forward and acts according to the condition of the offer.

EXAMPLE

X advertised in the newspaper that he would pay Rs.5,000 to anyone who traces his missing boy. Y, who knew about the reward traced that boy and sent a telegram to X that he had found his son. It was held that X was entitled to receive the amount of reward.

PERFORMANCE OF OFFER**A. POSITIVE OFFER**

When the offeror makes an offer to do something, it is known as a positive offer.

EXAMPLE

*X offer **to sell** his car to Y for Rs. 1 lakh. It is a positive act on the part of X.*

B. NEGATIVE OFFER

Where the offeror makes an offer not to do something, it is called a negative offer.

EXAMPLE

*X offer **not to** file a suit against Y if Y pays X the outstanding amount of Rs.1,00,000. It is a negative act on the part of X.*

OTHERS**A. COUNTER OFFER**

If a person to whom an offer is made accepts the offer by altering or changing the terms of the offer, it is known as a counter offer. Counter offer is not an acceptance. It amounts to rejection of the original offer. When a person

makes counter offer, he is making a new offer to the original offeror. In case the offeree sends counter offer, it is deemed to be cancelled.

EXAMPLE

A offers to sell his computer for Rs one lakhs. B, the offeree changes the term of the offer and says that he will buy the computer for Rs. Fifty thousand. In this case, B changes the terms of original offer and is said to be making a counter offer. Here the original offer to sell the computer for one lakh is rescinded and B has made a fresh offer.

B. CROSS OFFER

When two offers, similar in all respects, are made by one party to the other, in ignorance of each other's offer, they are cross offers. Such offer are also termed as identical offers. They do not amount to acceptance of one's offer by the other and do not constitute a complete agreement. Hence no contract is formed.

EXAMPLE

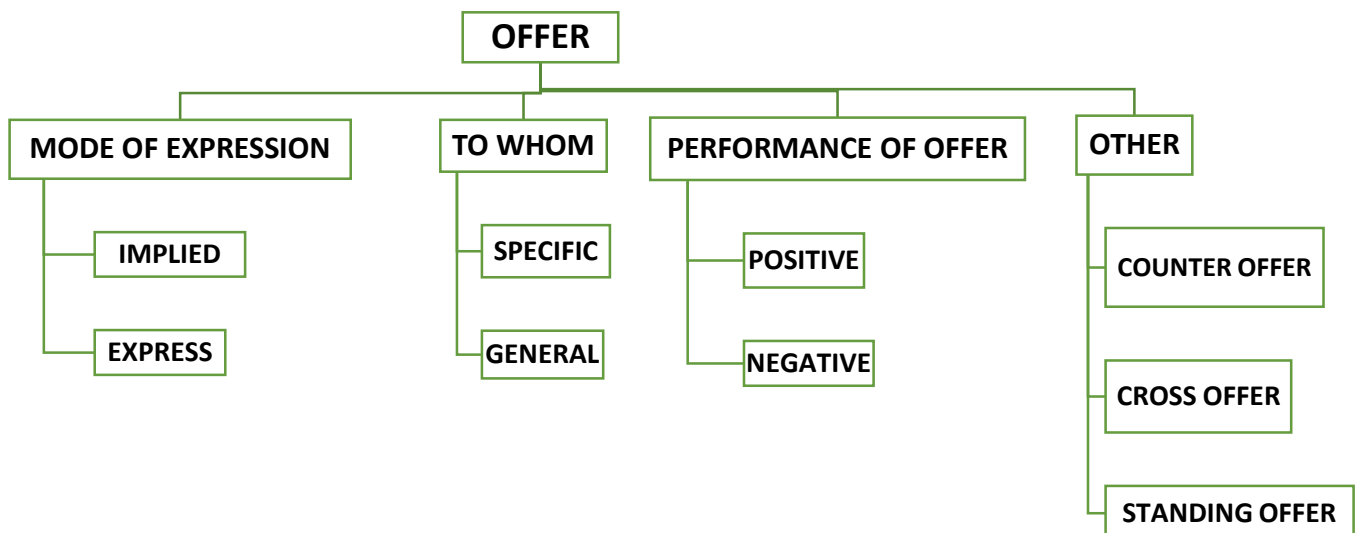
A writes to B that he offers to sell his (A's) land to B for Rs One crore. B, unaware of A's offer, writes to A that he offers to buy A's land for Rs one crore. Here, both parties are making offer only and there is no acceptance.

C. STANDING OFFER OR CONTINUING OFFER

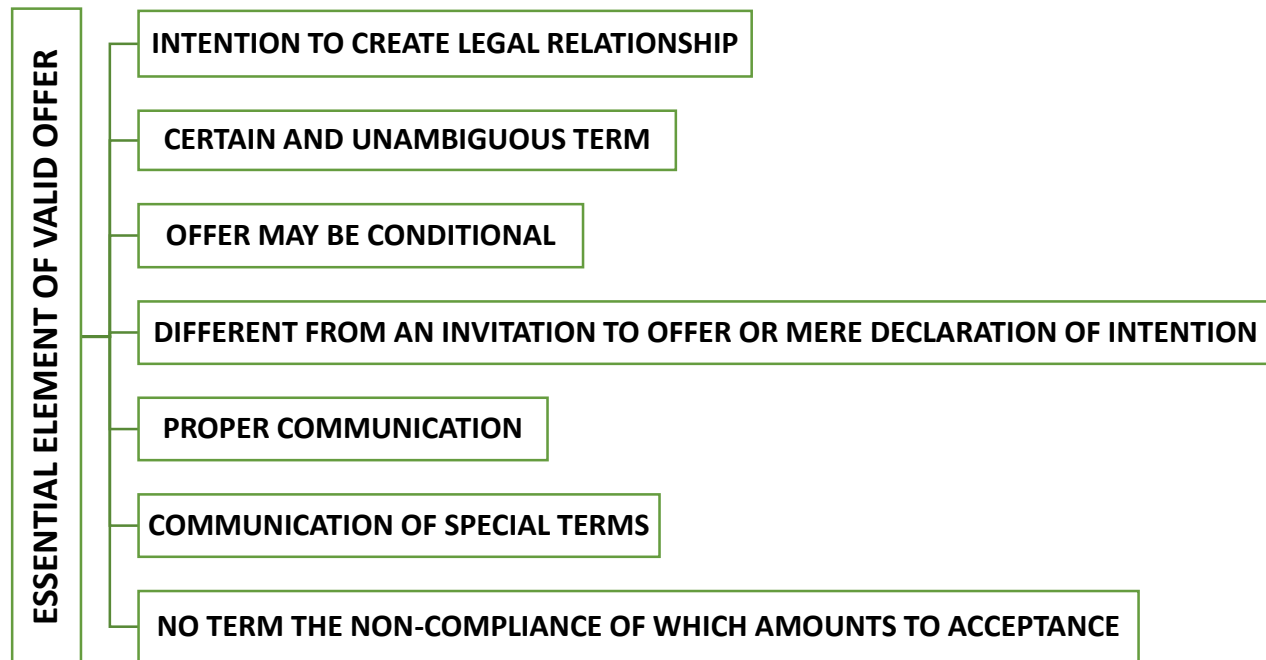
Standing offer is a continuing offer. In this case, the offer is allowed to remain open for acceptance over a period of time. A standing offer is in the nature of tender.

EXAMPLE

X Ltd. requires a large quantity of certain goods during the 12 months period and gives an advertisement inviting tender in the leading newspaper. Z submitted the tender to supply those goods at a specific rate. Z's tender is accepted or approved. Now, Z's tender becomes a standing offer. Each order given by X Ltd. will be an acceptance of the offer.



ESSENTIAL ELEMENTS OF VALID OFFER



A. INTENTION TO CREATE LEGAL RELATIONSHIP

The offeror must intent to create legal relations. If the offer does not intent to give rise to legal consequences and create legal relationship, it is not considered a valid offer in the eye of law. After the acceptance of the offer it amounts to a legal relation.

EXAMPLE

A social party or an invitation to play cards, a promise to buy a saree for wife cannot be a legal relation because there is no intention to create a legal relationship.

B. CERTAIN AND UNAMBIGUOUS TERM

The terms of the offer must be certain and unambiguous and not vague. If the terms of the offer are vague, no contract can be entered into because it is not clear as to what exactly the parties intended to do.

EXAMPLE

- 1. X offers to sell to Y "a 100 tons of oil." If X is a dealer in coconut oil and mustard oil, his offer is not certain because it is not clear whether he wants to sell coconut oil or mustard oil. But if X is a dealer in coconut oil only, it is clear that he wants to sell coconut oil. Hence, the offer is certain.*
- 2. X offers to sell to Y his car for Rs.1,00,000 or Rs.1,50,000. Here X's offer is not certain because it is not clear which of the two prices was to be given by Y.*

C. OFFER MAY BE CONDITIONAL

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

EXAMPLE

A offers to buy B's house provided that the house is inspected by inspection engineer. The offer by A is conditional offer.

D. DIFFERENT FROM INVITATION TO OFFER AND MERE DECLARATION OF INTENTION

The offer must be distinguished from a mere declaration of intention. Such statement or declaration merely indicates that an offer may be made or invited in future.

EXAMPLE

X tells Y "I want to sell my car for Rs.1 lakh." It is a mere statement of intention and not an offer.

An offer must be distinguished from an invitation to offer. In case of an invitation to offer, the person making an invitation invites others to make an offer to him. It is prelude to an offer inviting negotiations or preliminary discussions.

EXAMPLE

Goods were displayed in the shop for sale with price tags attached on each article and self-service system was there. one customer selected the goods but the owner refused to sell. It was held that the display of goods was only an invitation to offer and the selection of the goods was an offer by the customer to buy and refusal by owner was rejection of the offer by the customer to buy and refusal by owner was rejection of the offer and hence there was no contract and customer had no rights to sue the owner.

E. PROPER COMMUNICATION

Offer must be communicated to the offeree. The communication of an offer shall be deemed to be completed when it comes to the knowledge of offeree. Offer can be accepted only when the offeree knows about the offer. Unless the offeree knows about the offer and accepts it, there is no contract.

EXAMPLE

A writes an offer to B for selling his horse. However, he doesn't deliver the offer to B and puts it safely in his cupboard. Here the offer is not communicated to the offeree.

F. COMMUNICATION OF SPECIAL TERM

The special terms of the offer must also be communicated along with the offer. If the special terms of the offer are not communicated, the offeree will not be bound by those terms.

EXAMPLE

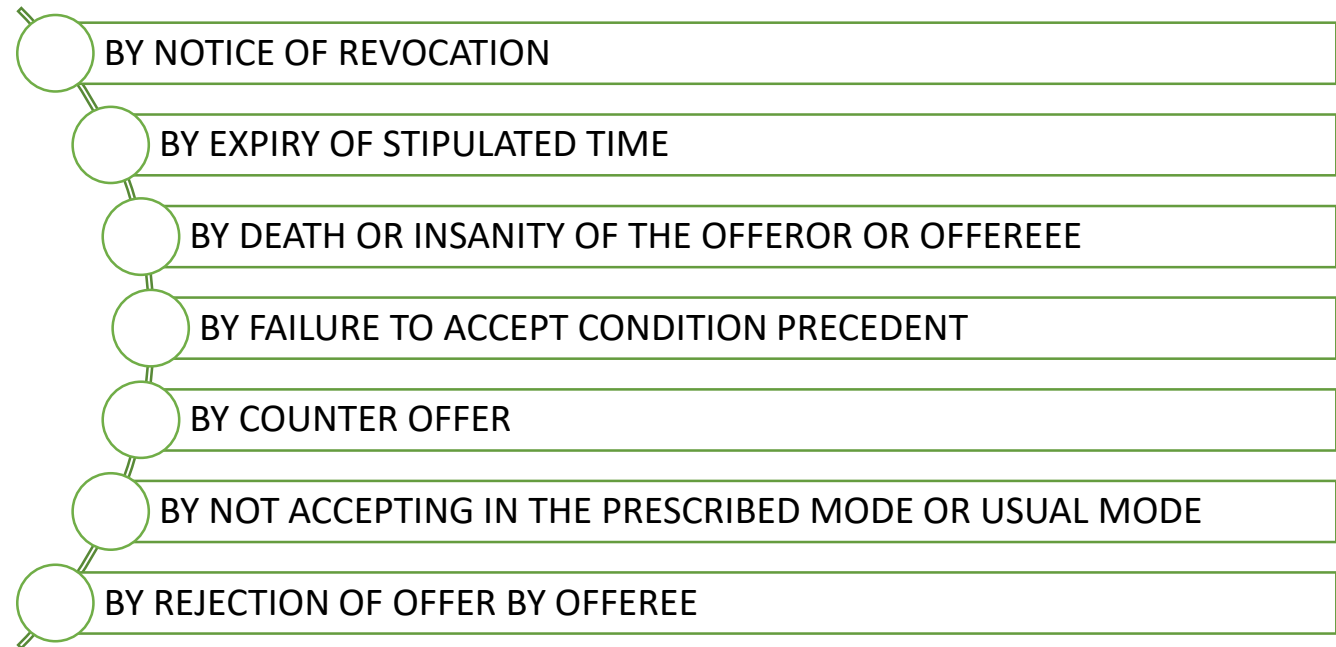
X purchased a steamer ticket for travelling from Chitwan to Biratnagar and on the back of the ticket, certain condition were printed one of which excluded the liability of the company for loss, injury or delay to the passengers or his luggage. X never looked at the back of the ticket and there was nothing to draw his attention to the conditions printed on the back side. His luggage was lost due to negligence of the servants of the shipping company. It was held that X was entitled to claim compensation for the loss of his luggage in spite of the exemption clause because there was no indication on the face of the ticket to draw his attention to the special terms printed on the back of the ticket.

G. NO TERMS THE NON-COMPLIANCE OF WHICH AMOUNTS TO ACCEPTANCE

An offeror cannot state the offer that is not accepted before a certain date, it will be presumed to have been accepted.

EXAMPLE

A offers to B to buy her house with the condition that “if you do not reply within two days, I will assume you to have accepted the offer.” If B doesn’t reply, it doesn’t mean that B has accepted the offer because the offer is void ab initio.

LAPSE OF OFFER

An offer must be accepted before it lapses (i.e. comes to an end). Once the offer is lapsed, it will not exist anymore for acceptance. An offer may come to end any of the following ways:

A. BY NOTICE OF REVOCATION

The proposer may cancel his proposal through a notice. The offeror can revoke the offer before acceptance of the offer by the offeree and not after such acceptance.

EXAMPLE

X of Agra offers by a letter dated 1st January sent by post to sell his car to Y of Delhi for Rs. 100000. Y accepts the offer on 7th January at 1 p.m. by a letter sent by post. Here, X may revoke his offer at any time before 1 p.m. on 7th January but not afterwards.

B. BY EXPIRY OF STIPULATED TIME.

An offer lapses if it is not accepted within the fixed time (if any prescribed in the offer) or within reasonable time (if no time is prescribed in the offer).

EXAMPLE

An offer to buy shares of a company was made in June but the acceptance was communicated in November. It was held that offer to buy shares had lapsed because it was not accepted within a reasonable time.

C. BY DEATH OR INSANITY OF THE OFFEROR OR OFFEREE

An offer lapses if–

- (a) The fact of death or insanity of offeror comes to the knowledge of the acceptor before he makes his acceptance.
- (b) The offeree dies or becomes insane before accepting the offer because an offer can be accepted only by the offeree and not by any other person.

D. BY FAILURE TO ACCEPT CONDITION PRECEDENT

An offer lapses if it is accepted without fulfilling the conditions of the offer.

EXAMPLE

X offered to sell his car to Y for Rs. 100000 subject to the condition that Y should pay an advance of Rs. 20000 before a certain date. Y accepted the offer but did not send an advance of Rs. 20000. In this case, the offer has lapsed because the advance was not paid.

E. BY COUNTER OFFER

An offer lapses if the counter offer is made because a counter offer amounts to rejection of the original offer.

EXAMPLE

X offered to sell his car to Y for Rs.1, 00,000. Y said that he would buy it for Rs.90, 000. X refused to sell for Rs.90, 000. Subsequently, Y offered to buy the car for Rs.1, 00,000. Here, Y's offer to buy Rs.90, 000 is a counter offer which terminates the original offer. Y's second offer to buy for Rs.1, 00,000 is a fresh offer and not an acceptance of the original offer.

F. BY NOT ACCEPTING IN THE PRESCRIBED MODE OR USUAL MODE

An offer if it is not accepted in the specific manner (if any, prescribed in the offer) or in some usual and reasonable manner (if no manner has been prescribed in the offer).

EXAMPLE

X offer to sell his car to Y for Rs.1,00,000 and wrote to Y " Send your acceptance by telegram." Y sent acceptance by an ordinary letter. X can reject such acceptance.

G. BY REJECTION OF OFFER BY OFFEREE

An offer lapses if it is rejected by the offeree and offeree communicates his refusal to the offeror. An offer is said to be rejected if the offeree expressly rejects it or accepts it subject to certain conditions. It may be noted that once an offer is rejected, it cannot be revived subsequently.

H. BY SUBSEQUENTLY ILLEGALITY OR DESTRUCTION OF SUBJECT MATTER OF THE OFFER

An offer lapses if it becomes illegal or the subject matter is destroyed before its acceptance by offeree.

EXAMPLE

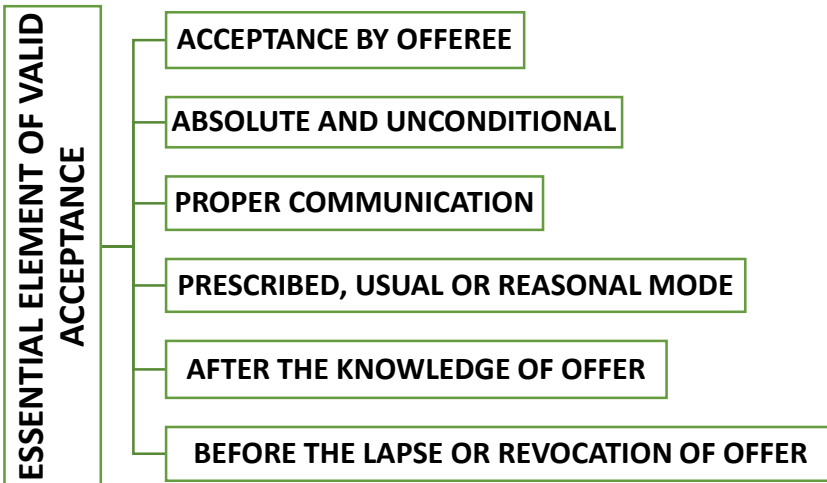
X of Delhi offered supply of 100 tons of sugar to Y at Mumbai on a certain date. Before this offer is accepted by Y, the central Government issued an order prohibiting the inter-state movement of sugar. Here, X's offer has come to an end.

X of Delhi offered to sell his car to Y of Agra for Rs.1,00,000. Before the offer is accepted by Y, the car is destroyed by fire. Here X's offer has come to an end.

ACCEPTANCE

Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer. An offer when accepted becomes a promise.

Essential element of Valid Acceptance



A. ACCEPTANCE BY THE OFFEREE

An offer can be accepted only by the offeree.

- i. If the offer is made to a particular person, he has to accept the offer to make a valid contract.
- ii. If the offer is made to a specific class or group of persons it can be accepted by any individual of the class or group of the persons. And
- iii. If the offer is made to the general public it can be accepted by any person who had knowledge on it.

B. ACCEPTANCE MUST BE ABSOLUTE AND UNCONDITIONAL

An offer must be accepted as it is without any reservation, variation or condition. A qualified and condition acceptance amounts to making of a counter offer which puts an end to the original offer and it cannot be revived by subsequent acceptance.

EXAMPLE

X offered to sell two plots of land to Y at a certain price. Y accepted the offer for one plot. It was held that the acceptance was not valid because it was not for the whole of the offer.

C. ACCEPTANCE MUST BE COMMUNICATED TO THE OFFEROR

Acceptance is complete only when it has been communicated to the offeror. A mere mental determination to accept is no acceptance in the eyes of law unless there is some external manifestation of that determination by words or conduct.

EXAMPLE

X sent letter to Y offering to sell his laptop for Rs 30,000. Y accept it but did not communicate to X. Such acceptance can't be regarded as valid.

D. ACCEPTANCE MUST BE IN THE PRESCRIBED OR USUAL AND REASONABLE MODE.

If the offer contains any specific mode of acceptance, the acceptance must be done in the same mode. If the offer does not contain any specific manner or mode of acceptance, then the acceptance should be done in a reasonable mode. What is the usual and reasonable mode depends upon the circumstance of the case.

EXAMPLE

If X offers to Y to buy his house and says Y to send his acceptance through post and Y sends his acceptance through an email, acceptance is not in the prescribed mode. Hence there is no contract.

E. ACCEPTANCE MUST BE AFTER THE KNOWLEDGE OF OFFER

The acceptor must have knowledge of the offer. Acceptance must be given after the offer, otherwise there is no valid acceptance.

EXAMPLE

X offers to give reward of Rs 5000 to anyone who can find his lost dog. Y found the dog and returned it to its owner X. Y didn't know about the reward. Later he knew about the reward and demanded it from X. It was held that Y's acceptance without the knowledge of offer is not valid, hence X is not liable to pay.

F. ACCEPTANCE MUST BE GIVEN BEFORE THE OFFER LAPSES OR IS REVOKED.

Acceptance must be given before the offer lapses by the expiry of fixed or reasonable period or before it is revoked by the offeror.

EXAMPLE

If A makes an offer to B to accept the proposal within a week and B accepts it after 10 days, such acceptance is not a valid acceptance.

REVOCATION OF ACCEPTANCE

Acceptance can be revoked before the acceptance comes into the knowledge of the offeror but not afterwards. Followings are the cases where an acceptance is lapsed or revoked:

- a. By a notice of revocation of the offeror.
- b. By non-acceptance within the agreed time
- c. By non-communication of acceptance within reasonable time.
- d. By rejection of the offeree.
- e. By death or insanity of offeror party before acceptance.
- f. By subsequent illegality or impossibility.

COMMUNICATION OF OFFER AND ACCEPTANCE

The communication of offer and acceptance must complete so as to bind the concerned parties because as soon as the communication is complete the parties lose the right of withdrawal or revocation. The legal provision relating to the communication of offer and acceptance are as under:

COMMUNICATION OF OFFER

The communication of offer is complete when it comes to the knowledge of the person to whom it is made. In case an offer is made by post, its communication will complete when the letter containing the offer reaches the offeree.

EXAMPLE

X of Kathmandu sends a letter by post to Y of Dang offering to sell his car for Rs.1,00,000. The letter is posted on 1st January and this letter reaches on 7th January. The communication of the offer is complete on 7th January.

COMMUNICATION OF ACCEPTANCE

The communication of acceptance is complete at different times for the proposer and acceptor. The rules regarding the communication of acceptance are as under:

THE COMMUNICATION OF ACCEPTANCE IS COMPLETE	WHEN DOES THE COMMUNICATION OF ACCEPTANCE COMPLETE
(i) AS AGAINST THE PROPOSER	When it is put in a course of transmission to him, so as to be out of the power of the proposer becomes bound by the acceptance as soon as the properly addressed and stamped letter of acceptance is duly posted even if such letter of acceptance is lost or delayed in post.
(ii) AS AGAINST THE ACCEPTOR	When it comes to the knowledge of the proposer. In case of acceptance made by post, the acceptor becomes bound by the acceptance only when the letter of acceptance is actually received by proposer.

NOTE: *The time gap between the date on which the letter of acceptance is posted and the date on which the letter of acceptance is received by the proposer, can be utilized by the acceptor to withdraw his acceptance by a speedier mode of communication so that the revocation notice reaches the proposer before the letter of acceptance.*

EXAMPLE

X of Dhangadi sends a letter by post to Y of Kathmandu offering to sell his car for rs.1,00,000. The letter is posted on 1st January and this letter reaches Y on 7th January. Y send his acceptance by posted on 10th January but X receives this letter is acceptance on 15th January. In this case the legal position relating to the communication of offer and acceptance is as under:

COMMUNICATION	WHEN DOES THE COMMUNICATION COMPLETE	REASON
A. COMMUNICATION OF OFFER	7 th January	The letter containing the offer reaches the offeree on 7 th January
B. COMMUNICATION OF ACCEPTANCE AS AGAINST THE PROPOSER	10 th January	The letter of acceptance is posted on 10 th January
C. COMMUNICATION OF ACCEPTANCE AS AGAINST THE ACCEPTOR	15 th January	The letter of acceptance is received by the proposer on 15 th January

After posting the letter of acceptance on 10th January, Y can withdraw his acceptance by a speedier mode of communication so that the revocation notice reaches the proposer before the letter of acceptance.