

Acceptance

Meaning and definition:

The Indian Contract Act 1872 defines acceptance in section 2(b) as "When the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted." Thus, the proposal when accepted becomes a promise. An offer can be revoked before it is accepted.

As specified in the definition, if the offer is accepted unconditionally by the offeree to whom the request is made, it will amount to acceptance.

Eg.: A offer to buy B's house for Rs. 40 lacs and B accepts such an offer. Now, it has became a promise. and it also becomes irrevocable.

Mode of Acceptance:

a) Prescribed by offeror

If the offeror has prescribed the mode of acceptance in the contract, the offeree is generally expected to use that mode.

b) Acceptance by conduct

These situations are more difficult to interpret than written words or speech. Consequently, this is an area in which courts have been and tend to be very creative and look at the conduct as a whole in order to decide whether there has been a contract.

c) Acceptance by silence

A mere mental assent to the agreement's terms would not have been enough but having acted on the terms have made it so.

Acceptance usually cannot be silent. General rule established in *Felt house v/s Bindley* (1862) is that silence cannot constitute an acceptance.

Exception in *Vitol v/s Norcliff* (1996); Lord Steyn noted that silence could constitute acceptance in exceptional circumstances. He cited the court of Appeal in *Rust v/s Abbey Life* (1979). Where a woman in action over seven months was thought to be sufficient to establish her acceptance of an investment policy taken out on her behalf.

Consider a further related situation where the offeree takes the benefit of offered services when he has reasonable opportunity to reject them and reason to know that they were offered with the exception expectation of compensation.

An **Example** of this situation might be where a person washes car in his neighbourhood thinking that someone might pay him. So, he washes my car & I do not stop. Perhaps the obligation for one to pay should arise from unjust enrichment. I have been enriched or benifited at the car cleaner's expense by his efforts and the remaining question is whether it was unjust.

Essentials / Characteristics of Acceptance

a) Acceptance must be absolute and unqualified:

Section 7 of the ICA requires that the acceptance must be absolute and unqualified. It must correspond with all the terms of the offer. Conditional acceptance is no acceptance. If there is a variation in its terms, it is not an acceptance, then it constitutes a counter-offer, which the original proposer may not accept. A counter-offer, destroys the original offer. Thereafter the offeree cannot revert to the original offer and purport (अभिप्राप्ति) to accept it.

Example: A offers to sell his car to B for Rs. two lakhs. B accepts the offer and promises to pay the price in five equal installments. In this case, there is a variation in the terms of the offer. Thus original offer is rejected and cease to exist. Actually, it is counter offer by B.

b) Acceptance must be communicated:

Mere mental acceptance is no acceptance. It must be communicated to the offeror with a proper mode of communication. There is no requirement of its communication of the general offer. Similarly, for the offer to be acted upon, no communication to the offer is necessary.

Brogden v/s Metropolitan Railway (1877)

c) Acceptance must be in the prescribed mode:

The general rule says that the proposal must be accepted as per the manner prescribed by the offeror (according to its terms). If no mode is prescribed in which it can be accepted, then it must be in some usual and reasonable manner.

If the proposal lays down a mode of acceptance, then it must be according to the mode prescribed. If it is not given in the mode prescribed, the proposer may reject it and intimate the offeree within a reasonable time. But if he does not inform the offeree, he is deemed to have accepted it.

For Example Deepak wants the acceptance made orally in person, but Ravi accepts Deepak's offer and posts his acceptance to him. This shall not be considered as a valid acceptance.

d) Acceptance must be given within a reasonable amount of time:

If the offer prescribes the time limit, it must be accepted within the specified time. If the offer does not prescribe the time limit, it must be accepted within a reasonable time. Further, acceptance must be given before the offer lapses or before it is withdrawn.

Example: A applied (offered) for shares in a company in early June. The allotment (Acceptance) was made in late November. A refused to take the shares. The Court held that A is entitled to do so as the reasonable time for acceptance had elapsed.

e) Merely silence is not acceptance:
The offeror can prescribe the mode of acceptance but not the mode of rejection. The offeror cannot frame his offer in such a way as to make the silence or inaction of the offeree to operate as acceptance.

Example: A offers to B to buy his house for Rs. 5 lakhs and writes "If I hear no more about it within a week, I shall presume the house is mine for Rs. 5 lakhs." B does not respond. Here, no contract is concluded between A and B because there is no communication of acceptance.

Felthouse v/s Bindley (1862)

f) No acceptance before the communication of the offer:

Acceptance cannot precede (in advance) an offer. A person who has no knowledge of an offer cannot be said to have accepted it merely because he happened to act just by chance in the manner prescribed by the offer.

Lalman Shukla v/s Gauri Datt (1918)

g) Acceptance and its communication must be made by the offeree or his authorized agent:

If not done so it will not be a contract.

Powell v/s Lee (1908)

Who can give Acceptance?

When an offer is made to a particular person or to a group of persons, it can be accepted only by that person or member of the group. If it is accepted by any other persons, there is no valid acceptance.

Example: In case of *Boulton v/s Jones* (1857); Jones sent a written order for goods to Brocklehurst and which was addressed to his name. Boulton (a new business owner) fulfilled the order and delivered to Jones without notifying him that he had taken over the business. Jones received a invoice from Boulton and he refused to pay. It was held that Jones was not liable for the price, as there was no contract.

"The rule of law is that if you promise to make a contract with A, then B cannot substitute himself for A without your consent and to your disadvantage, securing to himself all the benefits of the contract."

When an offer is made generally to the public at large, any person or persons who have the notice of the offer, may come forward and accept the offer. By doing what is required to be done under the offer, the offer is said to be accepted and there will be a valid contract.

Carlill v/s Carbolic Smoke Ball (1893)

Agreement to agree in future. If the parties have failed to agree upon the terms of the contract

but have made an agreement to agree in the future, there is no contract.

Example: An actress was engaged by a theatrical company for a certain period. One of the terms of the agreement was that if the party was, shown in London, she would be engaged at a salary to be mutually agreed upon.

Held there was no contract. (*Luftus v/s Roberts* (1902) 18 T.L.R. 532).

Communication of acceptance

In case of communication of acceptance, there are two factors to consider, the mode of acceptance and the timing of acceptance.

Rules related to the communication of acceptance should be studied from the point of view of offeror as well as of offeree because the communication of acceptance will be done from both sides; offeror and offeree at different time.

1. Acceptance can be done in two ways:

a) Communication of acceptance by an act: This would include communication through words, whether oral or written.

e.g., communication through a phone call, letter email etc.

b) Communication of acceptance by conduct: Offeree may also give its acceptance through its action, or by its conduct.

e.g., when you board a bus, you are accepting the bus fare through your conduct.

2. Acceptance time : It has two parts:

a) Against the proposer: For the proposer, the communication of acceptance is complete when he gives such acceptance during transmission. After this the cancellation of such acceptance is out of his hands, so his communication will then be completed.

Therefore, for example, A accepts B's proposal through a letter. He posts the letter on 10th July and the letter arrives on the 14th for B (proposer). Communication of acceptance is completed only on the 10th of July from the side of acceptor.

b) Against the acceptor: In the case of the acceptor, the communication is complete when the proposer acquire knowledge of such acceptance. Therefore, in above example, A's communication will be complete on 14th July, when B receives approval.

When communication is complete?

Communication of acceptance (section 4), is complete when it is put in the course of transmission to him as to be out of the power of the acceptance to withdraw the same and when it comes to the knowledge of the proposer.

Revocation of acceptance

When the contract is created through the post, according to the section 4, by the posting of the letter of acceptance, the offeror will become bound when the letter of acceptance is posted to him and the acceptor will become bound when the letter of acceptance comes to the knowledge of the offeror.

Since the acceptor does not become bound immediately on posting his letter of acceptance, he is free to revoke the acceptance by adopting the speedier mode of communication, but his communication of revocation of acceptance must reach earlier than his letter of acceptance.

Section 5 expressly permits the revocation of acceptance:- An acceptance can be revoked at any time before the communication of the acceptance is complete against the acceptor, but not afterwards.

Illustration: A proposed a letter to sell his house to B and sent it by post, to B. B also accepts the proposal and made the acceptance through a letter sent by post. Here, B can revoke his acceptance at any time before the acceptance letter comes to the notice of A, but not afterwards.