

## Proposal [offer]

- The first step in formation of a contract is making of proposal.

According to section 2(a) of ICA 1872. the proposal is :

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

5 main essentials elements according to definition:

- Offerer - A person who makes proposal.
- Offeree - to whom proposal is made.
- View to obtain assent of offeree.
- Willingness to do or to abstain

Along with above points we should also consider following points :

- General & Specific offers.
- Offer & Invitation of offer.
- Standing offer.

## Essentials of valid proposal :

- ▷ Every proposal must be communicated : →
- The definition in sec 2(a) begins with words: "When one person signifies to another..." That is to say, a proposal must be communicated.
- Communication need not always be express and not always be expressed in words.
- proposal or acceptance of any promise is made in words, the promise is said to be express.
- Proposal or acceptance is made otherwise than in words, the promise is said to be implied.

### Express offer

- face to face or via telephonic
- written format - text message, advertisements, letter or e-mail.

### Implied Offer

- by conduct or by the circumstances.

[At bus stop stand if a bus stops which is going to the same place where we want to go; means ~~this~~ it is an offer.

We enter in the bus and pay the fare is acceptance of the offer.  
So, both offer & acceptance happened by conduct are implied.]

- A proposal can be accepted only when it comes to the knowledge of the person to whom it is intended to be made.

Sec 4: therefore, provides that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Lalman Shukla v/s Gauri Datt (1918) 11 All L.J. 489

Powell v/s Lee (1908) 24 T.L.R. 606

2) View to create legal relations :→

- It is not sufficient that proposal is communicated.
- It is also essential that it must be made with a view to create legal relations.
- An offer in order to give rise to contract must be intended to create and be capable of creating legal relations.
- A social relation (moral or matrimonial or religious or friendly) do not create legal relations.

Example 1: 'A' invited 'B' to dinner and 'B' accepted the invitation. It is a mere (मत्र) social invitation. And 'A' will not be liable if he fails to provide dinner to 'B'.

Example 2: If a father while going out of station promises to his daughter to bring a camera for her, it cannot be said to be a valid proposal because he does not intend to bind himself legally nor does he make it with a view to obtain the (अनुमति) assent of his daughter.

A valid proposal is that which is made with a view to obtaining the assent of another and is made with a view to create legal relations.

Balfour v/s Balfour (1919 2 K.B. 571)

Merritt v/s Merritt (1970)

3) The proposal must be certain and definite :→

- A proposal must also be certain and definite.
- Its terms should not be so vague (~~312-402~~) so as to prevent a contract being formed.
- There must be no confusion about the terms used in an offer.
- Both offeror and offeree should understand one and the same thing from the offer.

According to Section 29 of Indian Contract Act, 1872

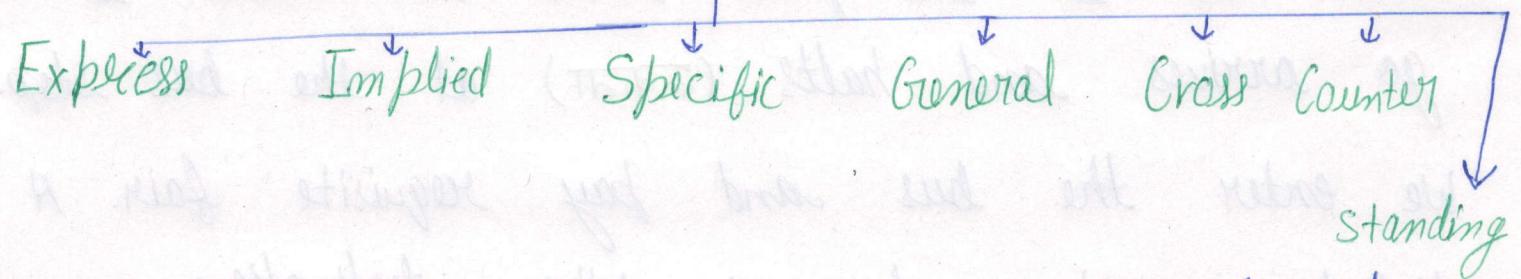
Agreements, the meaning of which is uncertain, or capable of being made certain, are void.

Examples: (1) 'A' agrees to sell to 'B' "a hundred tons of oil". We can see that the offer is not specifying which type of oil [groundnut or sesame or sunflower etc.] Thus, the offer is vague, ambiguous and uncertain. Hence it is not an offer.

(2) 'A' agrees to sell to 'B' "all the grain in my granary at Ramnagar". There is no uncertainty here to make the agreement void.

(3) 'A' agrees to sell to 'B' "my white horse for rupees five hundred or rupees one thousand". There is nothing to show which of the two prices was to be given. The agreement is void.

## Types of an Offer



1. Express Offer: When the offer is made by express communication then the offer is said to be an express offer. The express offer can be made face to face or via telephone. The express offer in written format can be made via text messages, advertisements, letters or email.

A written application by a candidate for a post of manager in a written form is an express offer. Confirmation of his appointment with the explanation of terms of employment by the vice president of a company who is authorized to do so by telephone is also an express offer.

2. Implied Offer: When the offer is not communicated expressly but communicated by conduct or by the circumstances of the case, then offer is called an implied offer.

When we are waiting for a bus to go

to a certain place, the bus which can take us to the place where we desire to go arrives and halts (~~reaches~~) at the bus stop. We enter the bus and pay requisite fare. A ticket is given to us. When destination comes we board down the bus. The bus halts at the stop. By this conduct, he is giving an offer to us. By entering the bus we accept the offer. Thus acceptance is also by conduct. Such offers are implied offers.

3. Special Offer: It means an offer made to

- (a) a particular person or
- (b) a group of persons.

It can be accepted only by that person to whom it is made. Communication of acceptance is necessary in case of a specific offer.

'A' offers to buy a car from 'B' for Rs. 10 Lakh. Thus, a specific offer is made to a specific person, and only 'B' can accept the offer.

Communication from 'B' for acceptance or rejection is necessary.

4. General Offer: It means an offer which is made to the public in general.

A general offer can be accepted by anyone.

If offeree fulfills the terms and conditions which are given in offer then offer is accepted.

Communication of acceptance is not necessary in case of a general offer.

Carlill v/s Carbolic Smoke Ball Co. (1893) 1 Q.B. 256.

According to the Section 8 of Indian Contract Act, 1872

Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal (~~प्राप्ति की~~) promise which may be offered with a proposal, is an acceptance of the proposal.

5. Cross Offer: When two parties exchange identical offers in ignorance at the time of each other's offer the offer's are called cross offer. Two cross does not constitute a contract. In the cross offer, the offers are made by the same parties to one another, each party not knowing about the offer made by the other party. The terms and conditions contained in cross offers are the same.

Note that in this case, both are offeror and some time offeree. There is no specific acceptance. Hence it cannot become an agreement. In such cases, a contract comes into existence when any of the parties accept the cross offer made by the other party.

Example: 'A' offers by a letter to sell 100 cycles at Rs. 1000 per cycle, on the same day, 'B' also writes to 'A' offering to buy 100 cycles at Rs 1000 per cycle. In both the cases offer is there by another main ingredient acceptance of the agreement agreement is missing. If 'A' accepts offer of 'B' then it leads to a contract.

6. Counter Offer: When the offeree gives a qualified acceptance of the offer subject to modified and variations in the terms of the original offer, then the offer made by the original offeree is called counter offer. The counter offer amounts to the rejection of the original offer.

By counter offer following legal effects come into existence:

- (a) Rejection of original offer,
- (b) The original offer lapses, and
- (c) A counter offer result is a new offer.

Example : A offered to sell his old car to B for Rs. 100000. B replied, "I am ready to pay Rs. 90,000". On A's refusal to sell at this price, B agreed to pay Rs. 100000. Now A is not bound to sell his car to B at Rs. 100000. Initial offer to sell the car for Rs. 100000 was made by A. B rejected the offer by giving a counter-offer to buy the car at Rs. 90,000. A refused this counter offer. Now again B is giving a new offer to A to buy the car at Rs. 100000. Thus as offeree, he has the right to accept or reject the new offer by B. Note that a counter-offer amounts to a rejection of the original offer.

Harvey v/s Facey, 1893 A.C. 552

7. Standing or Open or Continuous Offer:- An offer is allowed to remain open for acceptance over a period of time is known as standing, open or continually offer.

Example : A contract for the supply of goods for a big canteen is a kind of standing offer. In such a case we specify terms, goods to be supplied, the

the quantity of each good, the period of supply of goods in contract once. Then we do not repeat our offer daily and the supplier supplies the goods to us periodically. Such types of offer are called Standing Offer. They are open for a period of the contract.

## Invitation to Offer

An offer must be distinguished from an invitation to offer (Invitation to treat by English Law). An invitation to offer is an action inviting other parties to make an offer to form a contract. These actions may sometimes appear to be offers themselves, and sometimes it is very difficult to distinguish between the two.

The distinction is important because accepting an offer creates a binding contract while "accepting" an invitation to offer is actually making an offer.

Examples : (1) Advertisements on media are usually invitation to offer, which allows sellers to refuse to sell products at prices mistakenly marked in the advertisement. Any word showing intention to make a contract may make the advertisement to be an offer.

(Offer)

(2) Auctions are invitations to offer which allows the seller to accept bids and choose which to accept. However, if the seller states that there is no reserve price or the reserve price has been met,

the auction will be considered an offer accepted by the highest bidder.

(3) The 'exhibition of goods for sale' can be confused as an offer when really it is an invitation to offer. When goods are displayed in a store this constitutes (ग्राहन करना) an invitation to customers to make offers to purchase the items. Only when the customer indicates that they will pay for the goods at the quoted price has an offer been made.

Harvey v/s Facey [(1893) A.C. 552]

- Invitation to offer.

Philip & Co. v/s Knoblanch [(1907) S.C. 994]

- It was an actual offer.

Carlill v/s Carbolic Smoke Ball Co., 1893

- The general offer is not an invitation to offer.

## Tenders:

- bodies who requires a large quantity of material; invites tenders. eg. Govt., Railways etc.

## Invitation for tenders:

- request for tender is a formal, structured invitation to suppliers to submit a bid.
- the person who invites tenders for the purchase of goods does not make an offer.
- The person who submit tender makes an offer.
- It depends on person who invites the tender to accept or not.

## Tender as Definitive Offer

- If a tender has been submitted for goods or services in specified quantities it is formed as a definitive offer.
- A binding contract comes into existence as soon as the tender is accepted.

Example: A invites tenders for the supply of 100 tons of wheat. Three persons say X, Y, and Z submit the tenders. A accepts Z's tender. Then there is a binding between A and Z.

## Auctions: (~~Offer~~)

- public sale of goods or property.
- sold to the highest bidder.
- Advt. for auction is an example of an invitation to offer.
- the offer proceeds from the bidders.
- Auctioneer to accept.
- the acceptance of the offer is signified by the fall of the hammer.
- Offer can be revoked before such acceptance.

Payne v/s Cave (1789) 3 TR 148

## Proposals for Insurance:

- A person submits a proposal form to the insurance company, it is an invitation to offer.
- Insurance company gives the offer which is accepted by the person after paying the premium.
- After paying the premium the contract is concluded.
- Once the premium is paid, it is immaterial (~~whether~~) that the insurance company has issued the policy or not.

Canning v/s Farquhar, (1998) 16 Q.B.D. 727

Mohamed Sultan v/s Clive Insurance Co. 56 All. 726

# Distinguishing Between Offer and Invitation to Offer

## An Offer

An offer is the final willingness of the party to create legal relations.

An offer is defined in Sec 2(a) of the Indian Contract Act, 1872.

An offer is an essential element to make an agreement between the parties.

An offer becomes an agreement when accepted.

The main objective of making an offer is to enter into the contract.

## An Invitation to Offer

An invitation to offer is not the final willingness but the interest of the party to invite the public to offer him.

An invitation to offer is not defined in the Indian Contract Act, 1872.

An invitation to offer is not an important element until it becomes an offer.

An invitation to offer becomes an offer when the public responds to it.

The main objectives of an invitation to offer is to negotiate the terms on which the contract can be made.

Lapses and revocation of an offer:

- An offer lapses after a defined or reasonable time.
- An offer lapses by not being accepted in the specified mode.
- An offer lapses by rejection.
- An offer lapses by the offeror or the offeror's death or insanity until acceptance.
- An offer offer lapses before acceptance.
- An offer lapses by subsequent illegality or destruction of the subject matter.

When communication is complete?

- Communication of offer (sec 4)

The communication of the offer is complete when it comes to the knowledge of the person to whom it is made.

Time of revocation of an offer

- Revocation of the offer (sec 5)

A proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterward.

## Revocation of the offer by the offeror:

The offeror can withdraw his offer before it is accepted "the bidder can withdraw (revoke) his offer at an auction sale before being accepted by and any auctioneer using any of the customary methods."

Eg.:

A agreed to sell the property to B by a written document which stated "this offer to be left over until Friday 9 AM." On Thursday A made a contract to sell the property to C. B heard this from X, And on Friday 7 AM he delivered to A acceptance of his offer.

Held 'B' could not accept A's offer after he knew it has been revoked by the sale of the property to C.

Dickinson v/s Dodds (1876)