

Offer and Acceptance Under Contract Act, 1872

Proposal or offer:

- The entire process of entering into a contract begins with the proposal or an offer made by one party to another. The proposal must be accepted to enter into an agreement.
- According to the Contract Act 1872, proposal is defined in Section 2(a) as “when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer.”

Characteristics of a proposal: The person making the offer/proposal is referred to as the “promiser” or the “offeror”. And the person who accepts an offer is referred to as “promisee” or the “acceptor”.

>The proposer must intend to create legal relations and as such expressed willingness(which in turn is going to be an offer) must be capable of creating legal relations.

Balfour v Balfour [1919] 2KB 571

Facts of the Case

A couple named Mr. Balfour and Mrs. Balfour lived in Ceylon (Sri Lanka) and in 1915 they went to England for Vacation. During their vacation, Mrs. Balfour fell ill and she was in urgent need of medical treatment. Then, both of them decided that Mrs. Balfour will stay in England and get back to Mr. Balfour when she recovers from her sickness. Also, Mr. Balfour mentioned that he will pay maintenance of 30 pounds on monthly basis until she recovers from illness and gets back to Ceylon. With time, the relationship between Mr. Balfour and Mrs. Balfour deteriorates and he stops paying monthly maintenance to her. Mrs. Balfour decided to file the suit for the enforcement of the agreement and she went to the Court.

Mr. Balfour wrote to his wife, suggesting that the separation be made permanent. And at a later date, they legally separated by divorce.

Mrs. Balfour had sued in court in 1918 for failing to make outstanding payments.

The Appellate Court held that agreement between the parties is not enforceable as there was no intention of establishing a legal relationship, so, this is not a Contract. In this case, Justice Atkin also mentioned that the agreement between married couples, spouses are social or domestic agreements and cannot be enforceable in the courts.

Hence, there was no contract exists between Mr. and Mrs. Balfour.

> Mere expression of intention is not sufficient to constitute an offer, rather that must be the final decision of his thought which is made with a definite purpose. **Montreal Gas Co. Vs. Vasey [A.C. 595]**

> A offer must be definite i.e any vague or ambiguous statement is incapable to give birth to a proposal.

> An offer may be made to a specific person or specific class of persons or even to the world at large generally.

> Offer may expressed or implied.

> Willingness may be positive or negative.

> Offer may be conditional or unconditional.

> There must be a clear intention of entering into a binding contract.

Classification of offer:

Some types of offers can be based on the design, timing, purpose, etc. Let us look at the offer's classification.

Express Offer

An offer may be made by express words, spoken or written. This is known as Express offer.

Example

When 'A' says to 'B', "will you purchase my car for Rs 2,00,000"?

Implied Offer

An offer may be derived from the actions or circumstances of the parties. This is known as Implied offer.

Example

There is an implied offer by the transport company to carry passengers for a certain fare when a transport company operates a bus on a particular route.

General Offer

A general offer is not made by any specified party. It is one that is made by the public at large. Any member of the public can, therefore, accept the offer and have the right to the rewards/consideration.

Example

‘A’ advertises in the newspaper that whosoever finds his missing son would be rewarded with 2 lakh. ‘B’ reads it and after finding the boy, he calls ‘A’ to inform about his missing son. Now ‘A’ is entitled to pay 2 lakh to ‘B’ for his reward.

Specific Offer

It is the offer made to a specific person or group of persons and can be accepted by the same, not anyone else.

Example

'A' offers to sell his house to 'B'. Thus, a specific offer is made to a specific person, and only 'B' can accept the offer.

Cross offer

Two parties make a cross-offer under certain circumstances. It means that both make the same offer at the exact time to each other. However, in either case, the cross-offer will not amount to accepting the offer.

Example

'A' and 'B' both send letters to each other offering to sell and buy B's house at the same time. This is the cross offer made where one party needs to accept the offer of another.

Counter-offer

A counter-offer is an answer given to an initial offer. A counter-offer means that the original offer has been refused and replaced by another. The counteroffer offers three choices to the original offerer; accept, refuse, or make another offer.

An example of this would be if A offers B a car for 10 Lakhs, B agrees to buy for 8 Lakhs, this amounts to a counter offer and it would mean a rejection of the original offer. Later on, if B agrees to buy for 10 Lakhs, A may refuse.

Sir Jenkins CJ in **Haji Mohd Haji Jiva v. Spinner**, held that any departure from original offer vitiates acceptance. In other words, an acceptance with a variation is not acceptance, it is simply a counter proposal which must be accepted by the original offeror, for it to formulate into a contract.

The Bombay High court gave this decision based upon the landmark judgement of Hyde v. Wrench, in which an offer to sell a farm for 1000 Pounds was rejected by the Plaintiff, who offered 950 for it. Subsequently the Plaintiff gave an acceptance to the original offer. Holding that the Defendant was not bound by a contract, the court said that the Plaintiff accepted the original offer of buying the farm at the price of 1000 pounds, it would have been a completely valid contract , however he gave a counter proposal to it, thus rejecting the original offer.

Legal Consequences of counter offer

1. It rejects the original offer
2. It becomes a new offer