

# OFFER AND ACCEPTANCE

## Proposal or Offer

---

The whole process of entering into a contract starts with a proposal or an offer made by one party to another. To enter into an agreement such a proposal must be accepted.

## Proposal or Offer

According to the Indian 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.”

Let us look at some features or essentials of such an offer

- The person making the offer/proposal is known as the “promisor” or the “offeror”. And the person who may accept such an offer will be the “promisee” or the “acceptor”.
- The offeror will have to express his willingness to do or abstain from doing an act. Only willingness is not enough. Or simply a desire to do/not do something will not constitute an offer.
- An offer can be positive or negative. It can be a promise to do some act, and can also be a promise to abstain (not do) some act/service. Both are valid offers.

## Classification of Offer

There can be many types of offers based on their nature, timing, intention, etc. Let us take a look at the classifications of offers.

### General Offer

A general offer is one that is made to the public at large. It is not made any specified parties. So any member of the public can accept the offer and be entitled to the rewards/consideration. Say for example you put out a reward for solving a puzzle. So if any member of the public can accept the offer and be entitled to the reward if he finishes the act (solves the puzzle.)

### Specific Offer

A specific offer, on the other hand, is only made to specific parties, and so only they can accept the said offer or proposal. They are also sometimes known as special offers. Like for example, A offers to sell his horse to B for Rs 5000/-. Then only B can accept such an offer because it is specific to him.

### Cross Offer

In certain circumstances, two parties can make a cross offer. This means both make an identical offer to each other at the exact same time. However, such a cross offer will not amount to acceptance of the offer in either case.

For example, both A and B send letters to each other offering to sell and buy A's horse for Rs 5000/-. This is a cross offer, but it will be considered as acceptable for either of them.

### **Counter Offer**

There may be times when a promise will only accept parts of an offer, and change certain terms of the offer. This will be a qualified acceptance. He will want changes or modifications in the terms of the original offer. This is known as a counteroffer. A counteroffer amounts to a rejection of the original offer.

### **Essentials of a Valid Offer**

Here are some of the few essentials that make the offer valid.

#### **1] Offer must create Legal Relations**

The offer must lead to a contract that creates legal relations and legal consequences in case of non-performance. So a social contract which does not create legal relations will not be a valid offer. Say for example a dinner invitation extended by A to B is not a valid offer.

#### **2] Offer must be Clear, not Vague**

The terms of the offer or proposal should be very clear and definite. If the terms are vague or unclear, it will not amount to a valid offer. Take for example the following offer – A offers to sell B fruits worth Rs 5000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.

#### **3] Offer must be Communicated to the Offeree**

For a proposal to be completed it must be clearly communicated to the offeree. No offeree can accept the proposal without knowledge of the offer. The famous case study regarding this is Lalman Shukla v. Gauri Dutt. It makes clear that acceptance in ignorance of the proposal does not amount to acceptance.

#### **4] Offer may be Conditional**

While acceptance cannot be conditional, an offer might be conditional. The offeror can make the offer subject to any terms or conditions he deems necessary. So A can offer to sell goods to B if he makes half the payment in advance. Now B can accept these conditions or make a counteroffer.

#### **5] Offer cannot contain a Negative Condition**

The non-compliance of any terms of the offer cannot lead to automatic acceptance of the offer. Hence it cannot say that if acceptance is not communicated by a certain time it will be considered as accepted. Example: A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday it will be considered as accepted. This is not a valid offer.

#### **6] Offer can be Specific or General**

As we saw earlier the offer can be to one or more specific parties. Or the offer could be to the public in general.

## 7] Offer may be Expressed or Implied

The offeror can make an offer through words or even by his conduct. An offer which is made via words, whether such words are written or spoken (oral contract) we call it an express contract. And when an offer is made through the conduct and the actions of the offeror it is an implied contract.

## Acceptance

---

It is often said that acceptance is to an offer what a lighted match is to a barrel of gunpowder. For a successful [contract](#), there must be a valid offer followed by the offer being accepted.

## Acceptance

The [Indian Contract Act 1872](#) defines acceptance in Section 2 (b) as “When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise.”

So as the definition states, when the offeree to whom the [proposal](#) is made, unconditionally accepts the offer it will amount to acceptance. After such an offer is accepted the offer becomes a promise.

Say for example A offers to buy B’s car for rupees two lakhs and B accepts such an offer. Now, this has become a promise.

When the proposal is accepted and it becomes a proposal it also becomes irrevocable. An offer does not create any legal obligations, but after the offer is accepted it becomes a promise. And a promise is irrevocable because it creates legal obligations between parties. An offer can be revoked before it is accepted. But once acceptance is communicated it cannot be revoked or withdrawn.

## Rules regarding Valid Acceptance

### 1] Acceptance can only be given to whom the offer was made

In the case of a specific proposal or offer, it can only be accepted by the person it was made to. No third person without the knowledge of the offeree can accept the offer.

Let us take the example of the case study of Boulton v. Jones. Boulton bought Brocklehurst’s [business](#) but Brocklehurst did not inform all his creditors about the same. Jones, a creditor of Brocklehurst placed an order with him. Boulton accepted and supplied the goods. Jones refused to pay since he had debts to settle with Brocklehurst. It was held that since the offer was never made to Boulton, he cannot accept the offer and there is no contract.

When the proposal is a general offer, then anyone with knowledge of the offer can accept it.

## **2] It has to be absolute and unqualified**

Acceptance must be unconditional and absolute. There cannot be conditional acceptance, that would amount to a counteroffer which nullifies the original offer. Let us see an example. A offers to sell his cycle to B for 2000/-. B says he accepts if A will sell it for 1500/-. This does not amount to the offer being accepted, it will count as a counteroffer.

Also, it must be expressed in a prescribed manner. If no such prescribed manner is described then it must be expressed in the normal and reasonable manner, i.e. as it would be in the normal course of business. Implied acceptance can also be given through some conduct, act, etc.

However, the [law](#) does not allow silence to be a form of acceptance. So the offeror cannot say if no answer is received the offer will be deemed as accepted.

## **3] Acceptance must be communicated**

For a proposal to become a contract, the acceptance of such a proposal must be communicated to the promisor. The [communication](#) must occur in the prescribed form, or any such form in the normal course of business if no specific form has been prescribed.

Further, when the offeree accepts the proposal, he must have known that an offer was made. He cannot communicate acceptance without knowledge of the offer.

So when A offers to supply B with goods, and B is agreeable to all the terms. He writes a letter to accept the offer but forgets to post the [letter](#). So since the acceptance is not communicated, it is not valid.

## **4] It must be in the prescribed mode**

Acceptance of the offer must be in the prescribed manner that is [demanded](#) by the offeror. If no such manner is prescribed, it must be in a reasonable manner that would be employed in the normal course of business.

But if the offeror does not insist on the manner after the offer has been accepted in another manner, it will be presumed he has consented to such acceptance.

So A offers to sell his farm to B for ten lakhs. He asks B to communicate his answer via post. B [e-mails](#) A accepting his offer. Now A can ask B to send the answer through the prescribed manner. But if A fails to do so, it means he has accepted the acceptance of B and a promise is made.

## **5] Implied Acceptance**

Section 8 of the [Indian](#) Contract Act 1872, provides that acceptance by conduct or actions of the promisee is acceptable. So if a person performs certain actions that communicate that he has accepted the offer, such implied acceptance is permissible. So if A agrees to buy from B 100 bales of hay for 1000/- and B sends over the goods, his actions will imply he has accepted the offer.

