
THE INDIAN CONTRACT ACT 1872

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Section 2 (h) defines a contract as “ an agreement enforceable by law” thus to make a contract there must be

1. An agreement
2. The agreement shall be enforceable by law.
3. All agreements are not enforceable by law
4. and therefore, all agreements are not
5. contracts.

Agreement

According to Section 2(e) an agreement is defined as “ every promise and every set of promises forming the consideration for each other”.

A promise is defined as an accepted proposal as Section 2(b) says “ a proposal when accepted becomes a promise “ Therefore it can be said that an agreement is an accepted proposal.

In an agreement there is a promise from both the sides. For example, A promises to deliver his radio to B and in return B promises to pay a sum of Rs. 500 to A , there is said to be an agreement between A and B

An agreement is regarded as a contract when it is enforceable by law.

In other words, an agreement that the law will enforce is a contract.

The conditions of enforceability are stated in Section 10. According to this section “ all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.”

Essentials of a valid contract

1. The **agreement** should be between two parties. An agreement is the result of a **proposal** or offer by one party followed by its **acceptance** by the other.
2. The agreement should be between the **parties who are competent to contract.**
3. There should be a **lawful consideration** and **lawful object** in respect of that agreement.
4. There should be **free consent of the parties**, when they enter into the agreement.
5. The agreement must **not** be one, which has been **declared to be void.**

Proposal of offer

The term proposal has been defined in section 2(a) as follows:

- **“ When one person signifies to another his willingness to do or 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.”**

The willingness to do or abstain from doing something, i.e. the proposal or offer must be made with a view to obtain the assent of the other party thereto. For example, A's willingness to sell his radio set to B for Rs. 500 if B accepts to purchase the same, amounts to proposal by A for the sale of the radio set. But if a statement is made without any intention to obtain the assent of the other party thereto that cannot be termed as proposal.

Offer and invitation to treat distinguished

A proposal or an offer has to be distinguished from an invitation to treat. Sometimes a person may not offer to sell his goods, but may make some statements or give some information with a view to invite others to make offers on that basis. For example, a bookseller sends a catalogue of books indicating prices of various books to many persons. This catalogue is not an offer to sell those books at prices indicated against those books. This is an 'Invitation to treat.' If any person is interested in purchasing those books mentioned in the catalogue he may make an offer. Similarly, inviting persons to an auction where goods, which are to be auctioned, are displayed is not an offer for the sale of goods. The intending buyers, who make the bid make an offer. Such an offer, when accepted, by the fall of hammer or in some other customary way, will result in a contract.

Intention to create legal relationship

- In order that an offer, after acceptance, can result in a valid contract it is necessary that the offer should be made with an intention to create legal relationship. Promise in the case of a social engagements is generally without an intention to create legal relationship, such an agreement cannot be considered to be a contract. Thus an agreement to go for a walk, to go to movie, to play some game, or entertain another person with a dinner, cannot be enforced in a court of law. Sometimes the party may expressly mention that it is not a formal or legal agreement, whereas in some other cases such an intention could be presumed from their agreement.
- The test to know the intention of the parties is objective and not subjective. Merely because the promisor contends that there was no intention to create obligation would not exempt him from liability

In **Rose and Frank Co. Vs. Crompton & Brothers Ltd.** the agreement between the parties provided ;

“ This arrangement is not entered into as a formal or legal jurisdiction in the Law Courts..... that it (the agreement) will be carried through by parties with mutual loyalty and friendly co-operation.”

One of the parties made a breach of this agreement. In an action by the other party to enforce the agreement, it was held that since the agreement had provided that it was not a formal or legal agreement the same was not enforceable..

In the case of **Meritt Vs. Meritt, (1970)** the husband and wife were the joint owners of a building which was subject to a mortgage to a building society. The husband left the matrimonial home to live with another woman. At that time, at the insistence of the wife, the husband signed a note saying that the wife will pay all outstanding amounts in respect of the house and in return **“I will agree to transfer the property into your sole ownership”**. It was held that in this case it was clear that the parties intended to create legal relationship and, therefore, the husband was bound by the contract

Communication of offer

An offer when accepted results in a contract. An offer can be accepted only after the same has come to the knowledge of the offeree. It means that the offer has to be communicated to the offeree in order that the offeree can accept it. According to section 4,

“ the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.”

If an offer has not yet been communicated, even if somebody acts according to the terms of the offer, he cannot be deemed to be the acceptor of the offer. Acting in ignorance of an offer does not amount to the acceptance of the same. This point may be explained by referring to the case of **Lalman Shukla Vs. Gauri Dutt. (1913)**

In this case the defendant's nephew absconded from home. The plaintiff, who was defendant's servant, was sent to search the missing boy. After the plaintiff had left in search of the boy, the defendant issued handbills announcing a reward of Rs. 501 /- to anyone who might find the boy. The plaintiff who was ignorant of this reward, was successful in searching the boy. When he came to know of the reward, which had been announced in his absence, he brought an action against the defendant to claim this reward. It was held that since the plaintiff was ignorant of the offer of reward, his act of bringing the lost boy did not amount to the acceptance of the offer, and therefore, he was not entitled to claim the reward.

If the plaintiff has the knowledge of the offer, his acting in accordance with the terms thereof amounts to the acceptance of the same. In such a case it is immaterial that at the time of accepting the offer the acceptor does not intend to claim the reward mentioned in the offer.

In ***Williams Vs. Carwardine (1833)*** the plaintiff who knew that the reward had been announced to be given to anyone who gave information leading to the conviction of an assailant for murder, gave the necessary information. While giving the information the plaintiff mentioned that she had given the information **‘to ease her conscience’**. At that time she did not intend to claim the reward. It was held that since the offer had been accepted with its knowledge, there was a valid contract and, therefore, she was entitled to claim the reward.

Cross Offers

When the offers made by two persons to each other containing similar terms of bargain cross each other in post they are known as cross offers. For example, on 1st January A offers to sell his radio set to B for Rs. 500/- through a letter sent by post. On the same date B also writes to A making an offer to purchase A's radio set for Rs. 500 /- When A or B send their letters they do not know about the offer which is being made by the other side. In these cross offers, even though both the parties intend the same bargain, there arises no contract. A contract could arise only if either A or B , after having the **knowledge of the offer, had accepted the same.**

In (*Tinn Vs. Hoffmann 1873*), A wrote to B indicating his willingness to sell 800 tons of iron at 69 s. per ton. On the same day B also wrote to A offering to buy 800 tons of iron at the same rate of 69 s. per ton. The two letters crossed each other in post. B brought an action against A for the supply of iron contending that a valid contract had been created between the two parties. It was held that in this case there were only two cross offers and the offer of neither of the parties having been accepted by the other, there was no contract which could be enforced

Specific and General Offers

When the offer is made to a specific or an ascertained person it is known as a **specific offer**, but when the same is not made to any particular person but to the public at large it is known as **general offer**. For instance, an offer to give reward to anybody who finds a lost **dog** is a general offer. This general agreement will be deemed to be accepted by **anyone who actually** finds the lost dog. The person, who accepts this offer, generally by performing the condition of the proposal, can bind the person making the offer. According to Section 8, “Performance of the conditions of a proposal is an acceptance of the proposal.” Thus although a general offer is made to the public at large, the contract is concluded only with that person who acts upon the terms of the offer.

The case of **Carlil Vs. Carbonic Smoke Ball Co. (1893)** is an illustration of a contract arising out of a general offer. The facts of the case are : The defendants advertised their product “Carbonic Smoke Ball”, a preventive remedy against influenza. In the advertisement they offered to pay a sum of 100 pounds as reward to any one who contracted influenza, colds or any disease caused by taking cold, after having used the Smoke Ball three times a day for two weeks, in accordance with the printed directions. They also announced that a sum of 1000 pounds had been deposited with the Alliance Bank to show sincerity in the matter. The plaintiff (Mrs. Carlil) relying on the advertisement purchased a Smoke Ball from a chemist, used the same in accordance with the directions of the defendants, but still caught influenza. She sued the defendants to claim the reward of 100 pounds advertised by them. It was held that this being a general offer addressed to all the world had ripened into a contract with the plaintiff by her act of performance of the required conditions and thus accepting the offer. She was therefore, entitled to claim the reward.

Revocation Of Offer

It is only after the acceptance of an offer that there arises a contract and then both the parties becomes bound by their respective promises. Before the offer has been accepted it can be revoked. After the offer has been accepted it ripens into a contract and then it cannot be revoked. According to Section 5 :

“ A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.”

In case of sale by auction the bids made at the auction are offers, and the highest offer may be accepted by the auctioneer. In such a case the sale is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner ; and , until such announcement is made, any bidder may retract his bid.

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- Submission of a tender to supply or purchase goods at a stated price is making an offer. Person submitting the tender may withdraw his tender before the same has been approved. Even after the tender has been approved that remains only a standing offer, which is capable of being revoked before a contract arises by placing of orders. In **Rajendra Kumar Verma Vs. State of Madhya Pradesh AIR 1972**
 - The respondents advertised for receiving tenders for sale of Tendu Patta (leaves). The petitioner submitted his tender. Before the date of the opening of the tenders the petitioner made an application withdrawing his tender and also requesting that his tender be not opened. One of the conditions in the tender notice was that a tenderer may withdraw his tender before the tender are open provided that there should be at least one other valid tender when the tenders are opened. Petitioner's tender was the only tender submitted. In spite of his request to withdraw the tender the Government accepted his tender. Since the petitioner did not execute the purchaser's agreement, Tendu leaves were sold to somebody else at a lower rate, and then an action was brought against the petitioner to claim compensation for the loss suffered by the Government.

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- The contention of the petitioner was that since he had withdrawn his tender before the same had been opened and accepted, there was no offer in existence which could be accepted. The respondents, however, contended that the offer could not be withdrawn in accordance with the tender notice and, therefore, the petitioner's offer was still alive and had ripened into contract by acceptance.
 - It was held that in spite of the clause in the tender notice against the withdrawal of the offer, the petitioner had a right to withdraw his offer before the same was accepted. In this case there was no offer which could be accepted, there had arisen no contract between the petitioner and the respondents and, as such, the respondents had no right to claim any compensation.

Revocation in contracts by post

We have already seen earlier that as per Section 5, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. In contracts by post it has to be seen, as to what time the communication of acceptance is complete against the offeror, because no revocation is possible after such communication has been completed.

When is the communication of acceptance complete against the offeror (proposer) ?

- According to section 4 : “The communication of an acceptance is complete as against the proposer, when it is put in the course of transmission to him, so as to be out of the power of the acceptor.”
- For instance in response to my offer sent by post to you, you post the letter of acceptance to me. As soon you have posted the letter my power to revoke comes to an end. This may be made further clear by referring to the following illustration ;
- A proposes, by a letter sent by post, to sell his house to B . B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

Revocation how made?

Section 6, mentions the various modes of revocation, which are as under :

A proposal is revoked –

- (1) by the communication of notice of revocation by the proposer to the other party ;
- (2) by the lapse of time prescribed in such proposal for its acceptance or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance :
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance :
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance:

By notice of revocation

1. **An offer ripens into a contract after it is accepted. Before it has been accepted it creates no legal obligation and, therefore, it may be revoked at any time before it is accepted.**

To be effective the notice of revocation has to be communicated by the proposer and not by any body else.

2. **By lapse of time**

A proposal is revoked by the lapse of time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance.

3. **By the failure to fulfil a condition precedent**

When the offer is subject to some condition precedent, such a condition has got to be fulfilled before the acceptance is made. If there is failure of the acceptor to fulfil a condition precedent to acceptance, the offer stands revoked. For example, if the offer requires the deposit of some earnest money, or the execution of some document etc. these conditions must be fulfilled. Failure to fulfil these conditions may make an offer to lapse.

4. **By the death or insanity of the offeror**

An offer is revoked by the death or insanity of the proposer, if the fact of death or insanity comes to the knowledge of the acceptor before acceptance. In India the death or insanity of the offeror does not automatically make the offer to lapse. The offer stands revoked if the fact of death or insanity comes to the knowledge of the acceptor before acceptance. It means that if the fact of death or insanity has not come to the knowledge of the offeree while he accepts the offer, it is valid acceptance giving rise to a contractual obligation.

In England the position is different. There, after the offeree knows about the offeror's death, the offer lapses and cannot be accepted.

Standing, Open or continuing offer

- An offer which is allowed to remain open for acceptance over a period of time is known as a standing, open or a continuing offer. For example, an offer to supply 1,000 bags of wheat from 1st January to 31st December, in accordance with the orders which may be placed from time to time to time, is a standing offer. As and when the orders are placed that amounts to acceptance of the offer to that extent. In the above stated illustration if an order for the supply of 100 bags of wheat is placed on 15th January, there is acceptance of the offer to that extent and the offeror becomes bound to supply those 100 bags of wheat. So far as the remaining quantity is concerned this offer can be revoked just like any other offer.
- Tender for supply of goods is a kind of standing offer. An advertisement inviting tenders is merely invitation for quotations. When the tender is approved it becomes a standing offer.

In Bengal Coal Co. Vs. Homie Wadia & Co., the defendants (Bengal Coal Co.) agreed to supply coal to the plaintiff (Homie Wadia & Co.) up to a certain quantity at an agreed price for a period of 12 months, as may be required by the plaintiffs from time to time. The plaintiffs placed orders for the supply of coal and the same were complied with. Before the expiry of 12 months, the defendants withdrew their offer to supply further coal, and refused to comply with the orders to supply further coal, and refused to comply with the orders placed thereafter. They were sued for breach of contract. There was simply a continuing offer to supply coal. They were bound to supply coal only as regards orders which had already been placed, but were free to revoke their offer for supply of coal thereafter.

ACCEPTANCE

- **A proposal when accepted, results in an agreement.** It is only after the acceptance of the proposal that a contract between the two parties can arise.
- According to Section 2 (b) : “ when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise “
- The person making the proposal does not become bound thereby until acceptance. As soon as his proposal is accepted that is known as promise whereby both the parties become bound.

Effect of Acceptance

A contract is created only after an offer is accepted. Before the acceptance is made neither party is bound thereby. At that stage the offeror is free to revoke or withdraw his offer, and the offeree is free not to accept the offer or reject the same. After the offer has been accepted it becomes a promise which, if other conditions of a valid contract is satisfied, binds both the parties to the promise. After acceptance each party becomes legally bound by the promise made by him through the medium of offer or acceptance of it.

Essentials of a valid acceptance

In order that acceptance of an offer can result in a contract the acceptance must satisfy the following requirements.

1. Acceptance should be communicated by the offeree to the offeror.
2. Acceptance must be made in the prescribed manner, and if no manner is prescribed, in some usual and reasonable manner.
3. Acceptance should be absolute and unqualified.
4. Acceptance should be made while the offer is still subsisting.

1. Acceptance should be communicated

We have seen above that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. It means that the offeree must signify his assent, or communicate the acceptance.

When the parties are face to face, communication could be oral. When they are at a distant place communication could be made by post, by telegram, by a message on phone, through a messenger, or in any other reasonable manner. Sometimes the conduct of a person might indicate his assent. For example, when a passenger boards a bus and travels thereby, he impliedly assents to pay the necessary fare.

Communication must be made by the offeree or his authorised agent

In order that the acceptance can be treated as valid it is necessary that the same must be communicated to the offeror either by the offeree, or by some duly authorised person on his behalf. If the communication is made by an unauthorised person it does not result in a contract. In **Powell Vs. Lee, (1908)** Powell was one of the candidates for the post of head master of a school. The Board of managers passed a resolution selecting him for the post. No communication about this decision was made to Powell by the Board. one of the members of the Board who had not been authorised to communicate this decision, acting in his individual capacity, informed Powell about his selection for the post. Subsequently, the Board of managers met again and decided to cancel the appointment of Powell and appoint another candidate, Parker, in Powell's place. Powell sued Lee, the chairman of the Board of managers for the breach of contract. It was held that since the resolution passed by the Board was not communicated to Powell by the Board, or any authorised person on its behalf, it could not give rise to a contract. Powell's action therefore failed.

When is communication of acceptance complete ?

- As soon as the communication of acceptance is complete that results in a contract whereby both the parties become bound. In case the parties to the contract are present at the same place, one making the offer and the other communicating the acceptance, both parties become bound immediately. The problem arises when the parties are at a distant place and the contract is concluded through post

Acceptance by post

Section 4 of the Act mentions the following rules when the communication of acceptance is made by post :

1. The communication of acceptance is complete as against the proposer, when it is put in the course of transmission to him, so as to be out of the power of the acceptor.
2. The communication of acceptance is complete as against the acceptor, when it comes to the knowledge of the proposer.

Illustration

B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, --

As against A , when the letter is posted ;

As against B, when the letter is received by A.

Offeror bound when letter of acceptance posted to him

It has been noted that the communication of acceptance is complete as against the proposer when the letter of acceptance is posted to him. Once the letter of acceptance is posted the offeror becomes bound. He becomes bound immediately on the posting of the letter to him and it makes no difference that the receipt of the letter is delayed in transit, or even if the letter is lost in the post and the offeror never receives it.

- ***In Dunlop Vs. Higgins (1848)***, Dunlop & Co. offered to sell 200 tons of pig iron at 65 sh. Per ton to Higgins & Co. through their letters dated 22nd and 28th January, Higgins & Co. received the letters on 28th and 30th January and replied on the same indicating their acceptance to purchase the pig iron in accordance with the offer. Due to frosty weather there was disruption in the train services and the letter of acceptance instead of reaching on 31st January reached Dunlop & Co. on 1st February. Dunlop & Co. refused to supply pig iron on the ground that the receipt of the letter of acceptance by them had been delayed. It was held that Dunlop & Co. had become bound by the contract as soon as the letter of acceptance was posted to them.

Communication of acceptance to a wrong person

It has already been seen that the offeror becomes bound as soon as the letter of acceptance is posted to him. If the letter of acceptance is posted at the wrong address or to a wrong person, that will not bind the offeror. In this connection reference may be made to the decision of the court in the case of **Karan Singh Vs. The Collector, Chhatarpur** to explain the point. In that case in an auction of the quarry lease the petitioner's bid of Rs. 1,800 was the highest bid. In accordance with the auction conditions the petitioner deposited the security deposit and earnest money of Rs. 540. The bid was not accepted at the auction. The bid was subsequently accepted by the collector, but instead of sending the communication of acceptance to the petitioner the same was wrongly sent to somebody else. The officer concerned realised the mistake after the expiry of the period of lease. Then a demand notice was sent to the petitioner asking him to pay the lease money. The petitioner, on the other hand, demanded the refund of the security deposit of Rs. 540.

It was held that the petitioner's bid, which was an offer, although accepted on file, did not result in a contract as no intimation was sent to the petitioner which was received by him. The demand notice for recovering the lease money was quashed and the respondents were directed to refund the security deposit.

Acceptor Bound when his letter reaches the offeror

It has been noted above that though the offeror becomes bound when the letter of acceptance is posted to him, the acceptor himself does not become bound thereby. Acceptor becomes bound by his acceptance when his letter of acceptance comes to the knowledge of the offeror.

Revocation of acceptance (India)

In India, since the acceptor does not become bound immediately on posting his letter of acceptance, he is free to revoke the acceptance by adopting speedier mode of communication, whereby his communication of revocation of acceptance may reach earlier than his letter of acceptance. Section 5 expressly permits the revocation of acceptance through the following provision :

“An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.”

Illustration

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation of acceptance (England)

Under the English law, once the letter of acceptance is posted it binds both the parties and there appears to be no scope of revocation of acceptance by sending a telegram or through a phone call. Although there are no English cases on the subject are of the view that the posting of the letter of acceptance once posted cannot be revoked.

Acceptance by Telephone or Telex

- Section 4 and 5, which makes provisions about the communication of offer and acceptance and revocation thereof, do not make a mention whether these provisions relate to communications through letters and telegrams only or they also include communication made with the help of telephone and telex also.
- In **Bhagwandas Vs. Girdhari Lal & Co. (1966)** the **Supreme Court** has held that in case of telephonic conversation the position is the same as in the case where the parties are in the presence of each other, and the rule of contract through post does not apply to such contracts. In case of acceptance sent by post the contract is concluded when the letter of acceptance is posted, whereas in the case of acceptance by phone, the contract is deemed to be complete when the offeror hears the acceptance at his end rather than when the acceptor speaks the words of acceptance.

Communication of acceptance not needed in acceptance by conduct

- It has been noted above that as a general rule no contract can arise unless and until the acceptance has been communicated to the offeror. In exceptional cases the terms of the offer may be such which waive the necessity of communication of acceptance, or a certain kind of conduct on the part of the offeree may be treated sufficient to create a contract. If that is so, the contract could be created even without communication of acceptance. According to Section 8, “Performance of the conditions of the proposal..... Is an acceptance of the proposal.” (case of Mrs. Carlil Vs. Carbonic Smoke Ball Co.)

2. Acceptance should be in the prescribed manner

- If the proposal prescribes any manner of acceptance, the acceptance must be made in that manner. When the manner of acceptance has not been prescribed, it must be made in some usual and reasonable manner.
- Acceptance by post, telegram, telephone or through personal messenger may be considered to be a usual manner of acceptance. If no manner of acceptance is prescribed, acceptance in some usual and reasonable manner will suffice. If, however, the proposal prescribes any particular manner of acceptance, the acceptance must be made in that manner. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, then, according to Section 7 (2), of the Indian Contract Act, “the proposer may, within a reasonable time after acceptance is communicated to him, insist that his proposal shall be accepted in prescribed manner, and not otherwise ; but if he fails to do so, he accepts the acceptance.”

3. Acceptance should be absolute and unqualified:

It lapses by rejection or counter-offer

- Another essential of valid acceptance, which can convert a proposal into a contract, is that the acceptance must be absolute and unqualified. Conditional or qualified acceptance is no acceptance which could result in a contract. By such an acceptance the offer is deemed to be rejected. By such an acceptance the offer is deemed to be rejected. The effect of such a counter-offer in the eyes of law is to destroy the original offer. And an offer once refused is dead and cannot be accepted unless renewed.

4. Acceptance should be made while the offer is still subsisting

We have seen earlier that the offeror is free to withdraw the offer, or the offer is revoked under various circumstances mentioned in section 6. After the offer has been withdrawn or has lapsed there is nothing which can be accepted. It is, therefore, necessary that the acceptance should be made while the offer is still alive and subsisting. Acceptance after the lapse of the offer cannot give rise to a contract. Similarly, the offer is deemed to have ended by rejection of the original offer or a counter offer.