

INDIAN CONTRACT ACT.**MADHYA PRADESH JUDICIAL SERVICES****CHAPTER 1 : MEANING AND NATURE OF CONTRACT INCLUDING E-CONTRACTS****CHAPTER 2 : NATURE OF E-CONTRACTS****CHAPTER 3 : MAKING OF AN AGREEMENT – STARTS WITH OFFER/PROPOSAL****CHAPTER 4 : ACCEPTANCE.****CHAPTER 1 : MEANING AND NATURE OF CONTRACT INCLUDING E-CONTRACTS**

APPLICABILITY: The Indian Contract Act 1872 is the principal statute regulating the law of contracts in India and extends to the whole of India including state of Jammu and Kashmir.

SCOPE OF ICA

ICA merely defines and amends certain aspects of the law relating to contracts and is not exhaustive.

Indian contract act comprise of general provisions applicable to

- all contracts
- special contracts such as
 - ✓ contracts of indemnity and guarantee ,
 - ✓ contracts of bailment and
 - ✓ contracts of agency .

But contracts relating to sale of goods and partnerships are dealt by separate law.

SCOPE OF LAW OF CONTRACTS(LOC) :

- Law of Contracts does not deal with whole law of civil obligations rather with just voluntarily created civil obligations.
- Any civil obligation created by trust law or tort is not voluntary, therefore it would not be within scope of LOC.
- It does not deal with all agreements created, rather it confines itself to those agreements where the parties have intended legal consequences.

DEFINITION OF CONTRACT

WHAT IS A CONTRACT? Section 2(h), Indian Contract Act, 1872, as follows: “*An agreement enforceable by law is a contract*”.

According to Anson: "A Contract consists in an actionable promise or promises. Every such promise involves two parties a promisor and promisee and an expression of a common intention and of expectation as to the act or forbearance promised"

According to Halsbury, "A contract is an agreement between two or more persons which is intended to be enforceable at law and is constituted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act."

BLACKBURN J. "*When a contract is made between two parties, there is a promise by one in consideration of the promise made by the other, there are two assenting minds, the parties agreeing in opinion and one having promises in consideration of the promise made by the other—there is an exchange of promise*"¹

TWO ELEMENTS : Two elements to be satisfied for a contract —(1) an agreement, and (2) the agreement should be enforceable by law.

ELEMENT 1 : Agreement : An "agreement" is defined as "*every promise and every set of promises forming the consideration for each other*", [Section 2(e)]

Define promise. MPJS 2018

Okay. *What is a promise?*

Section 2(b) says: "*A proposal, when accepted, becomes a promise.*" A promise is defined as an accepted proposal OR we can say an agreement is an accepted proposal.

On our ultimate analysis: A contract is an agreement; Agreement is a promise and Promise is an accepted *proposal*.

ELEMENT 2 : Enforceable by Law : An agreement is regarded as a contract when it is enforceable by law. [Section 2(h)]

All agreements are not contracts.

If an agreement is incapable of creating a duty enforceable by law, it is not a contract. Thus, an agreement is a wider term than a contract. "All contracts are agreements but all agreements are not contracts." Agreements of moral, religious or social nature e.g., an agreement to go to see a movie or for a lunch **are** not contracts because they are not likely to create a duty enforceable by law for the simple reason that the parties never intended that they should be attended by legal consequences. In such cases no one can sue the other party in case of default.

¹ Tinn v. Hoffman and Company, (1873) 29 LT 271 at 279.

Okay. *How can we check whether an agreement is enforceable or not?*

Section 10 specifies conditions for enforceability of an agreement. An agreement blooms into a contract when (1) There is some consideration for it. (2) The parties are competent to contract. (3) Their consent is free. (4) Their object is lawful.

Thus, it may be concluded that the Contract Act restricts the use of the word '*contract*' to only those agreements which give rise to legal obligations between the parties.

The law of contract deals only with such legal obligations which spring from agreements. Obligations which are not contractual in nature are outside the purview of the law of contract. For example, obligation to maintain wife and children (status obligation), obligation to observe the laws of the land, and obligation to comply with the orders of a court of law do not fall within the scope of the Contract Act.

Salmond has rightly observed: "*The law of contracts is not the whole law of agreements, nor is it the whole law of obligations. It is the law of those agreements which create obligations, and those obligations, which have their source in agreements.*"

ESSENTIALS OF A VALID CONTRACT

ELEMENT 1 : There must be an offer and its acceptance :

- Offer is the starting point of contract
- **Offer** by one party and **Acceptance** by another party results in an agreement. Without offer and acceptance, there can be no **agreement**.
- Agreement = Set of promises forming consideration for each other and a promise is an *accepted proposal*.
- Offer must be certain and to be communicated to the offeree.
- Acceptance must be absolute and unconditional and to be communicated in prescribed mode.

Section 2(a) defines what is **proposal** or offer.²

Section 2(b) clarifies that proposal, when accepted, becomes a **promise**.³

Section 2(c) explains that person making proposal is called as "**Promisor**" and person accepting such proposal is called as "**Promisee**"

Section 2(e) further explains that - *every promise and every set of promises, forming the consideration for each other is an **agreement**.*

And finally, as per Section 2(h) An agreement enforceable by law is a **contract**.

² Section 2(a) 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.

³ 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;

ELEMENT 2 : The consent of the parties must be *free and genuine*.

Section 13 defines when two or more person are said to “**consent**” when they agree upon the same thing in same sense. And such consent is said to be **free**, *as per section 14*, when it is not affected by coercion, undue influence, fraud, misrepresentation or mistake.

ELEMENT 3 : The parties must intend to create legal relationship.

Agreements of social, moral or religious nature do not contemplate legal relations and therefore they do not give rise to a contract eg, agreement to go to a movie or lunch or picnic etc.⁴

ELEMENT 4 : The parties must be competent to contract.

- Section 11 says that every person is competent to contract – if he is a major/sound mind and is not disqualified from contracting by any law.
- Section 12 clarifies that a person is said to have sound mind – if he is capable of understanding it and of forming a rational judgment as to effect of contract, at the time of making of contract.

ELEMENT 5 : There must be lawful consideration on both sides.

- Each party to an agreement must give and receive something in return. This something in return for the promise is the consideration for the promise. It must have value in the eyes of law. It should not be unlawful (Section 24)
- Section 2(d) clarifies that consideration may consist of *some act or abstinence or a promise to do or abstain from doing something*. It may be past, present or future.
- Section 25 provides that .—An agreement made without consideration is void, except few exceptions.

ELEMENT 6 : There must be lawful object. When an object of agreement is unlawful - it is void. (section 23)⁵

⁴ This element is explain in detailed manner in later part of the document.

⁵ What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— *it is forbidden by law ; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy*. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

ELEMENT 7 : The agreement not declared void or illegal.

- *Section 2(g)* An agreement not enforceable by law is said to be void.
- *Section 2(j)* A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

ELEMENT 8 : The terms of a contract should be clear.

ELEMENT 9 : The performance must not be impossible. ⁶

ELEMENT 10 : Legal formalities, if any.

TYPES OF CONTRACT

BASED ON ENFORCEABILITY

VALID	VOIDABLE	VOID	UNENFORCEABLE	ILLEGAL
Section 2(h) : An agreement enforceable by law is a contract. It should fulfill the conditions under section 10.	Section 2(i) : "An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other, is a voidable contract"	Section 2(j) : "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable"	Some formalities like attestation/stamp is not there. Or there is some technical flaw/defect which makes the contract <i>unenforceable</i> .	If the contract falls within the illegal object or consideration as mentioned in section 23.

BASED ON EXTENT OF EXECUTION

EXECUTED	EXECUTORY	UNILATERAL	BILATERAL
When both the parties have completely performed their respective obligations under the contract, it is said to be executed contract.	When one or both parties are still to perform their obligations, then it an executory contract. Such contracts are future contracts.	When one party has performed his part of the obligation at the time of formation of contract and obligation is pending only against the other.	At the formation of the contract, obligations under the contract are pending/outstanding from both the parties.

BASED ON ENFORCEABILITY

EXPRESS	IMPLIED	QUASI-CONTRACT
Contracts entered into between the parties by words, spoken or	Contracts which are formed by <i>the act or conduct of the</i>	Contract which does not arise by virtue of any agreement between the parties, but due to

⁶ Section 56 deals with Agreement to do impossible act.

written, are known as <i>express contracts</i> .	<i>parties</i> and not by words are termed as <i>implied contracts</i> .	certain special circumstances, law recognises it as a contract.
Refer : Section 68-72 of ICA		

CHAPTER 2 : NATURE OF E-CONTRACTS

CONCEPT OF E-CONTRACT : The concept of e-contract is now an accepted form of entering into contract.⁷ The Internet is a unique marketplace, any computer connected to the Internet can access website and conclude an e-contract. The contractual obligations exist between the offeror and the offeree in an electronic/e-commerce market.

- The electronic contracts are governed by basic principles provided in the Indian Contract Act, 1872. Section 4 of the IT Act gives legal recognition to electronic records.
- Electronic contract is only valid if it meets the requirement of contract. The essentials for a valid contract are that there must be a valid offer and its acceptance, means consensus between the contracting parties.

SECTION 10-A : Under the provisions of the **Information Technology Act, 2000** particularly **Section 10-A**, an electronic contract is valid and enforceable, which states as follows:-

Section 10-A: Validity of contracts formed through electronic means:-

Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."

FORMATION OF E-CONTRACTS

EMAIL : Offers and acceptances can be exchanged entirely by e-mail , or in alternative.	WEBSITE : Seller offering goods and services. Buyer purchase the same by ordering. On accepting the order, seller is bound by the contract.	AGREEMENT : Users need to agree to something for availing of the certain services e.g. clicking on "I accept" while connecting software or clicking on "I
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⁷ M/S Santkripa Trading Co. ... vs Bank Of Baroda, And Another on 11 September, 2013

		agree" while signing up for an email account.
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TYPES OF AGREEMENT

- *Shrink-wrap agreements* are usually the licensed agreement applicable in case of software products buying. It will have the terms and conditions enforced through agreement.
- *Click-wrap agreements* are web based agreements which require the assent or consent of the user by way of clicking "I Agree" or "I Accept" or "Ok" or "I have satisfied with all conditions and I am ready to enter" button on the dialog box.
- An agreement made intended to be binding on two or more parties by the use of website can be called a *browse wrap agreement*.

HOW TO SIGN E-CONTRACT : One has to opt for digital signature. Section 2(p) of IT Act defines *digital signature as an authentication of any electronic record by a subscriber by means of an electronic method or procedure as per section 3 of IT Act*. However, this is not widely prevalent.

FORMATION OF CONTRACT THROUGH EMAIL : E-Contracts can be entered into through modes of communication such as e-mail, internet and fax. The only essential requirement to validate an E-Contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872.

Formation of contracts online via emails has been recognized and given validity to by the Indian courts time and again. In the decision reported in 2010(1) - SCALE - 57 (*Trimex International FZE Limited, Dubai vs. Vendata Aluminium Ltd.*), the parties thoroughly agreed to the terms of the contract via emails.

The Hon'ble Supreme Court upheld the validity of this contract and further held as follows:-

"Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initiated by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initiated."

It has been held that e-mails exchanged between parties regarding mutual obligations constitute a contract. *Section 16 (3)* of Indian Contract Act provides that where a person proposes certain terms to the other and other party accepts the same by clicking on it, it is bound by all terms so proposed by the proposer.

REMEDIES OF BREACH OF E-CONTRACTS : There are no special remedies for e-contract. This is because the e-contracts are treated in par with normal contracts. Therefore same remedies for breach of contract applies for e-contracts also.

CHAPTER 3 : MAKING OF AN AGREEMENT – STARTS WITH OFFER/PROPOSAL

FORMATION OF CONTRACT UNDER INDIAN CONTRACT ACT :

There are 3 steps in formation of contract :

STEP 1 : Making proposal or offer

STEP 2 : Acceptance by the person to whom proposal/offer is made.

STEP 3 : Expression and communication of such acceptance.

PROPOSAL OR OFFER : Proposal and its acceptance, is the beginning point of *making an agreement* and which later, fructifies into a *contract*.

What is a proposal? Section 2(a) defines “proposal” as follows: “*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.*”

Two things involved here :

(1) Ramu says I am ready to do or not to do something. [*the offeror’s willingness to do or to abstain from doing something*]

(2) Ramu says so because so that he can get the approval of the Somu.[*with a view to obtaining the assent of that other to such act or abstinence*]

Parties involved? Proposing person OR person who makes the proposal is known as promisor or “offeror” [ramu] ; Person to whom it is made is called the “offeree” AND when he accepts it, he is called the “promisee”[somu]⁸

ESSENTIAL ELEMENTS OF VALID PROPOSAL

A proposal to be valid must contain the following essential elements which are:-

- (i) There must be two parties;**
- (ii) Every proposal must be communicated;**
- (iii) It must be made with a view to create legal relation;**
- (iv) It must be certain and definite.**

⁸ According to section 2(c).- The person making the proposal is called the promisor and the person accepting the proposal is called the promisee.

ESSENTIAL 1 : THERE MUST BE TWO PARTIES I.E., PROMISOR AND PROMISEE.**ESSENTIAL 2 : PROPOSAL SHOULD BE COMMUNICATED**

Section 2(a) of the Indian Contract Act, 1872 explains that a person is said to make a proposal "*when he signifies to another person his willingness to do or to abstain from doing anything*". As per this definition of "proposal", one has to make it clear by indicating his willingness to make a proposal "signified".

- Signify means to indicate or declare or to make it known. I.e., Proposal is completed by the act of communicating it. **[Section 3]**

SECTION 3 : Section 3 of the ICA lays down the rule that communication may be made by an act or omission, by which the person intends to communicate, or which has the effect of communicating.⁹

How the proposal can be communicated? In any way, but it should have effect of communication. It can be oral, writing or by conduct.

According to Section 9 of Indian Contract Act, a valid proposal may be by "*words (written or spoken)*" or by "*conduct.*" For, example stepping into an auto rickshaw and eating at a hotel, both creates implied promise to pay for the benefits enjoyed.

EXPRESS AND IMPLIED PROPOSALS: When the offer is expressed by words, written or spoken, is called an "express offer".

Illustration: X says to Y, he will sell his house to him for Rs 3 crore. It is an express proposal

whereas if it made by conduct of a person then it is known to be "implied offer". Similarly, acceptance can be made expressly or impliedly. [Section 9]

Illustration: If A sits on a bus. Then it is considered that he has accepted the proposal of the bus's services which was given in an implied way.

EXAMPLES OF IMPLIED CONDUCT : [5 EXAMPLES GIVEN. READ ANY ONE/TWO]

⁹ Section 3 of Indian Contract Act: Communication, acceptance and revocation of proposal.-The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

- When X person steps into a bus for commuting, he created implied offer to pay. [*Wilkie v London Passenger Transport Board, (1947) 1 All ER 258 (CA)*]
- When X eats at a self-service restaurant, he created implied offer to pay.
- When X loaded steel billets, instead of general merchandise, into the ship of Y, X has to pay for the rate of steel billets, which is higher than general merchandise. [*Steven v Bromley & Sons, (1919) 2 KB 722 (CA).*]
- When X mistakenly calls for services of a fire brigade believing to be free, where the same is actually paid one. X has to pay. [*Upton-on-Seven Rural District Council v Powell, (1942) 1 All ER 220 (CA)*]
- When X did not object to compound rate of interest levied by the bank Y, which was usual course of business. It is held that X would have impliedly contracted to pay the compound interest. [*Haridas Ranchordas v Mercantile Bank of India, (1919-20) 47 IA 17*]

COMMUNICATION, WHEN COMPLETE [SECTION 4] : Section 4 provides that the *communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*

Example : A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

An offer cannot be accepted unless and until it has been brought to the knowledge of the person to whom it is made.

IMPORTANCE OF COMMUNICATION OF PROPOSAL.

Lalman Shukla v Gauri Datt, (1913) 11 All LJ 489 : X announced that he will reward 500rs whoever finds nephew Y. Z, who traced the Y, did not know about the offer of reward by X. Since there is no communication of proposal from X to Z, Z cannot claim the reward.

In *Powell v. Lee, (1908) 99 LT 284 (KB)* : A team of managers want to appoint X as headmaster. One of manager indirectly informed this decision to X. However, team of managers changed their decision. X cannot make the managers liable, as there was no authorized communication.

In *R. v. Clarke, (1927) 40 'LR 227*, it was held that if X had once known of the offer but had completely forgotten about it at time of acceptance, X would be like a person who had not heard of the offer at all.

MOTIVE IS IRRELEVANT: Knowledge of the proposal is sufficient. Motives will be immaterial.

Williams v Carwardine, (1833) 2 LJB 101 : Y was murdered. X, wife of Y, informed about the murderers. It was found that she knew about the reward, but that she did not give information specifically to get the reward. It was held that by *Littledale J* that if someone "knows" of an offer, this is sufficient, whatever their motive.

ELEMENT 3 : INTENTION TO CONTRACT [Animus contrabendi]

"The law of contracts is not the whole law of agreements, nor it is the whole law of obligations, but it also deals with the rights and obligations of both."

Elucidate

Above-said statement is given by Salmond. An Obligation is the legal duty to do or not to do certain act. Law of Contract is the law of only those agreements where the parties to the contract have the intention to create legal obligation to do or not to do something.

For example : an agreement to do for a movie or picnic cannot create a contract, and therefore, no rights or obligation are created. Thus, all agreements are not contracts, but all contracts are agreement.

Similarly, *All legal obligation do not result in contract*. For example, a legal obligation not to create nuisance for others will not give rise to contract, rather it is actionable by law under the Law of Torts.

Only those obligations which arise out of agreement are contractual. In other words, only that obligation which directly contemplates to have legal consequences is a contract.

The following types of obligations do not arise out of agreements: (1) Torts or civil wrongs. (2) Quasi contracts. (3) judgements of courts. (4) status obligations—like relationships of husband and wife. All these obligations are not contractual in nature but are enforceable in a court of law. Obligations spring from several sources.

This can be summarized as "The law of contracts is not the whole law of agreements nor is it the whole law of obligations. It is the law of those agreements which create obligations, and those obligations which have their source in agreements".

INTENTION TO CREATE LEGAL RELATIONSHIP : It is a settled principle that "*to create a contract there must be a common intention of the parties to enter into legal obligations*".

1. Joking statements
2. Unilateral declarations,
3. Social engagements,

4. Purely domestic or family arrangements
Cannot constitute to create legal relationship.

GENERALLY : When parties enter into an agreement, which is supported by consideration, the question whether in addition to the above requirements a third contractual element viz., the intention of the parties to create a legal relationship is necessary. There is considerable support for the view that it is essential for the plaintiff. Who wishes to establish the existence of a contract to prove that the creation of a legal relationship was intended. If no such intention can be established, there can be no contract.¹⁰

In the case of "social family or other domestic agreements" the intention can be inferred from the language used by the parties and the circumstances in which they use it.¹¹ On the other hand, the intention is presumed in the case of commercial agreements rebuttable by the parties seeking to deny it.

IMPORTANCE OF INTENTION TO CONTRACT | Balfour v Balfour, (1919) 2 KB 571 (CA).

FACTS OF THE CASE : Mr Balfour worked for the Government as the Director of Irrigation in Ceylon. His wife was living with him. In 1915, they both came back to England during Mr Balfour's leave. At that time, Mrs Balfour had developed *rheumatoid arthritis*, thereafter she did not leave England to Ceylon with her husband. When the boat was about to set sail, and he orally promised her £30 a month until she came back to Ceylon. Later, they were separated. In March 1918, Mrs Balfour sued him to keep up with the monthly £30 payments.

HELD : The Court of Appeal unanimously held that there was no enforceable agreement.

Warrington LJ : *"All I can say is that there is no such contract here. These two people never intended to make a bargain which could be enforced in law"*

Lord Atkin: *"There are agreements between parties which do not result in contract within the meaning of that term in our law. The ordinary example is where two parties agree to take a walk together, or where there is an offer and acceptance of hospitality. Nobody would suggest in ordinary circumstances that these arrangements result in what we know as contracts, and one of the most usual forms of agreement which does not constitute a contract appears ... to be the arrangements which are made between husband and wife."*

HOW CAN WE KNOW THE INTENTION OF THE PARTIES? It can be understood from

- the terms of the agreement and
- the surrounding circumstances.

Generally, one can agree that *social or family arrangements* do not intend legal consequences to follow in contradiction to *matters of business arrangement* where the legal consequences is intended.

¹⁰ Subbammal vs Masanamuthu Thevar And Others 1999 (1) CTC 35, (1999) IMLJ 505. Cited the Cheshire and Fifoot on the Law of Contract (Seventh Edition) pages 94 to 99.

¹¹ Balfour, 1919 (2) K.B. 571, Simpkins v. Pays, 1955 (3) All ER 10 and Backpitt v. Oates, 1968 (1) All ER 1145.

Similar to *balfour* case, in *Jones v Padavatton*, (1969) 1 WLR 328, an agreement by the mother to support her daughter education cannot be enforced, as there was no proof that such agreement was made with intention to bind/enforce.

TEST OF INTENTION : The test of contractual intention is objective, not subjective.

NO INTENTION ON SOCIAL OR FAMILY MATTERS : Such an intention may be negated impliedly by the nature of the agreed promise or promises, as in the case of offer and acceptance of hospitality, or of some agreements made in the course of family life between members of a family as in *Balfour v. Balfour*, [1919] 2 KB 571"

EXCEPTION : *Merritt v Merritt* [1970] 1 WLR 1211 : Mr Merritt and his wife jointly owned a house. Mr Merritt left to live with another woman. They made an agreement (signed) that Mr Merritt would pay Mrs Merritt a £40 monthly sum, and eventually transfer the house to her, if Mrs Merritt kept up the monthly mortgage payments. When the mortgage was paid Mr Merritt refused to transfer the house.

The court observed that the written agreement was intended to create legal relations between the parties because the presumption of fact against such an intention where arrangements were made by a husband and wife living in amity did not apply to arrangements made when they were not living in amity but were separated or about to separate, when it might safely be presumed that they intended to create legal relations.

BUSINESS RELATIONS – INTENTION IS INFERRED : In *Edwards v. Skyways*, [1964] 1 WLR 340 at 355 Megaw J said: "the subject matter of the agreement is business relations, not social or domestic matters. There was a meeting of minds-an intention to agree."

4 CASE LAWS GIVEN – READ ANYONE ONE/TWO.

- In *CWT v Abdul Hussain Mulla Muhammad Ali*, (1988) 3 SCC 562 : An investment made in partnership firm is a matter of commercial nature, therefore the onus is on the party asserting absence of legal obligation to prove that fact.
- In *Carlil v. Carbolic Smoke Ball Co.*, (1893) 1 QB 256, case it was held that merely because it was contended by the promisor that he has no intention to create any legal obligation, he cannot be exempted from his liability.
- In *Rose & Frank Co v J.R. Crompton* (1923) 2 KB 261: 1925 AC 445 : When the intention of the parties clearly indicates that an arrangement between business firms between one American and two English firms dealing with paper tissues is not formal legal agreement. And that they agreed that it will be enforced on basis of honour or self-interest. Then it cannot be enforced in court of law.
- In *Mrs. M.N. Clubwala and another v. Fida Hussain Saheb and others* - AIR 1965 SC 610, wherein it is held "Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement."

UNDER INDIAN CONTRACT ACT : One has to refer to the definition of proposal, which has to be made with with “willingness” to do. Such word “willingness” is indicative that intention to bind is integral part of the concept of agreement.

In *CWT v Abdul Hussain Mulla Muhammad Ali*, (1988) 3 SCC 562 at p 568 : The supreme court expressed its reservations on having “intention to create legal relationship” in the creation of contract, in the following words :

“This proposition, though accepted in English Law, has not passed unchallenged. In Cheshire and Fifoot's Law of Contract, 10th Edn., it is said: ".....the criticism of it made by Professor Williston ...In his opinion, the separate element of intention is foreign to the common law, imported from the continent by academic influences in the nineteenth century and useful only in systems which lack the test of consideration to enable them to determine the boundaries of contract"

ELEMENT 4 : OFFER MUST BE CERTAIN

Section 29: Agreements, the meaning of which is not certain, or capable of being made certain are void.

Illustration:

(a) A agrees to sell 'B' "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A, who is a dealer in Coconut oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of Coconut oil.

TYPES OF OFFERS – GENERAL OR SPECIFIC.

General Offer : An Offer made to the world at large. In such scenario, such contract is made only with that person who comes forward and performs the conditions of the proposal.

Specific Offer : Specific offer is made to specific person and can be accepted only by the person to whom it is made.

IMPORTANCE OF GENERAL OFFER | In *Carlill v Carbolic Smoke Ball Co.* (1893) 1 QB 256

FACTS OF THE CASE : X company offered by advertisement to pay £ 100 to anyone “who contracts the increasing epidemic influenza, colds or any disease caused by taking cold, after having used the ball according to printed directions”. X company further stated that, it had deposited £1000 with the Alliance Bank showing our sincerity in the matter. Y used the smoke ball, but still caught influenza and therefore she sued X company for the promised reward. X company contended that there was no intention to enter

into legal relations as it was simply a puffing advertisement; that the offer was not made to any one person in particular and that the Y had not communicated her intention to accept.

HELD : Bowen LJ : "Was it intended that the £ 100 should, if the conditions were fulfilled, be paid? The advertisement says that £ 1000 is lodged at the bank for the purpose. Therefore, it cannot be said that the statement that £ 100 would be paid was intended to be a mere puff." Therefore, the X company was held liable to pay reward to Y.

This principle is incorporated in Section 8 of the Indian Contract Act.¹² In case of *public offer or advertisements offering a reward*, 'performance of the act raises an inference of acceptance.

NATURE OF GENERAL OFFER : Unless and until the general offer is retracted or carries a closing date, such offer is said to be of continuing nature.

Harbhajan Lal v. Harcharan Lal, AIR 1925 All 539: If the general offer is of continuing nature, it can be said to have opened for acceptance of any number of persons.

OFFER V. INVITATION TO OFFER(TREAT)

UNDERSTAND THE DIFFERENCE : Offer and Invitation to offer is different.

- *Offer* is proposing something and *Invitation to offer* is inviting someone to make a proposal.
- *In offer* - intention to enter into a contract is certain ; whereas in *invitation to offer* - intention is to induce/negotiate the terms of the offer/proposal.

EXAMPLE : In a bookshop, display of books with price tag is INVITATION TO OFFER, you by paying the consideration of amount mentioned in the price tag, you make an OFFER. Similar logic applies for advertisements too.

EXAMPLES OF INVITATION TO OFFER

- Menu card of a restaurant showing the prices of food items.
- Railway timetable on which the train timings and fares are shown.
- Government Tender
- A Company invites application from public to subscribe for its shares.
- Recruitment advertisement inviting application.
- This is the direction in which offers are made in both cases.

¹² Section 8 of Indian Contract Act : Acceptance by performing conditions, or receiving consideration.-Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal

In Anson's Law of Contract, 26th Edn. at p.25 it is stated:

It is sometimes difficult to distinguish statements of intention which cannot, and are not intended to result in any binding obligation from offers which admit of acceptance, and so become binding promises. *A person advertises goods for sale in a newspaper, or announces that he will sell them by tender or by auction; a shopkeeper displays goods in a shop window at a certain price; or a bus company advertises that it will carry passengers from A to Z and will reach Z and other intermediate stops at certain times.* In such cases it may be asked whether the statement made is an offer capable of acceptance or merely an invitation to make offers, and do business. An invitation of this nature, if it is not intended to be binding, is known as an 'invitation to treat'.¹³

Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd., (1952) 2 QB 795: The exposure of goods by a shopowner does not amount to an offer to sell. The customer on picking the goods, makes an offer to buy, and sale is not effected until the buyer's offer price is accepted by the shopkeeper.

No.	OFFER	INVITATION TO OFFER
1.	An offer is defined in section 2 (a) of the Indian Contract Act, 1872.	An invitation to offer is not defined in the Indian Contract Act, 1872.
2.	An offer is the final willingness of the party to create legal relations.	An invitation to offer is not the final willingness but the interest of the party to invite public to offer him.
3.	An offer is an essential element to make an agreement between the parties.	An invitation to offer is not an important element until it becomes an offer.
4.	An offer becomes an agreement when accepted	An invitation to offer becomes an offer
5.	The main objective of making an offer is to enter into the contract	The main objective of an invitation to offer is to negotiate the terms on which the contract can be made.

EXAMPLES DIFFERENTIATING OFFER AND INVITATION TO OFFER (TREAT)

1. A has listed the price of the car 'gama' at ₹ 80,000. B visited his shop to buy the car at ₹ 80,000 but A refused to sell the car at any price below ₹ 1 lakh. B wants to sue A for not selling the car the printed price. A is not liable to sell the car at the listed price as it is only the invitation to treat and not the offer. Price-marked goods on display on the shelves or on windows or shops are normally considered invitations to treat and are not offers. (Fisher v Bell)

¹³ Anson's Law of Contract, 26th Edn. at p.25 cited in Bank Of India & Ors vs O.P. Swarnakar Etc on 17 December, 2002 by Supreme Court of India.

2. A few friends got together to sell off their old books. They the advertisement for the same in the newspaper. This is an invitation to treat. It is an offer to negotiate- offers to receive offers- offer to chaffer. Agreements to negotiate are invitations to treat and do not amount to a binding contract, instead they are regarded as pre-contractual negotiations. (Walford v Miles)
3. The Privy Council decision in Harvey v Facey has the merit of explaining this distinction. The plaintiffs telegraphed to the defendants, writing: "Will you sell us Bumper Hall Pen? Telegraph lowest cash price." The defendants replied, also by a telegram: "Lowest price for Bumper Hall Pen, £ 900." The plaintiffs immediately sent their last telegram stating: "We agree to buy Bumper Hall Pen for £ 900 asked by you." The defendants, however, refused to sell the property at that price. The court pointed out that in their first telegram, the plaintiffs had asked two questions, first, as to the willingness to sell, and second, as to the lowest price. The defendants answered only the second question and gave the lowest price. They reserved their answer as to the willingness to sell. Thus, they had made no offer. The last telegram by the plaintiff was an offer to buy, but that was never accepted by the defendants.

CROSS OFFER: When both the parties involved makes a similar offer to one another without knowing the each other's offer then it is called *Cross offer*. For example, X sends an e-mail to Y to purchase his car for \$200 while at the same time, Y unknowingly is also sending an e- mail to X stating his desire to buy the car at \$200. This is the cross offer made where one party needs to accept the offer of the another.

It must be noted that for constituting a valid contract, there should be an offer made and the same be accepted, but since in a cross offer there is no such acceptance but, only simultaneous offers, therefore, a cross offer will never lead to the formation of a valid contract.

COUNTER OFFER: When a previous offer is accepted by the offeree but with some changes and valid modifications, then such an offer is said to be a *Counter offer*. Thus, a counter offer is the rejection of an old offer and a new offer is placed instead. For example, if 'A' offers 'B' to sell his car for 5 Lakhs and 'B' agrees to buy it for 3 Lakhs only, to which 'A' agrees. Here, the old offer is rejected and a new offer is placed. This offer will be called a counter offer.

REVOCATION OF OFFER | MPJS 2017,2011

"Revocation of proposal is death of the proposal." Explain the statement and mention the manners of revocation.

Proposal, if revoked, results in the end of the offer made by the proposer. This can be signified as the death of the proposal. Death of the proposal ends the proposal put forth by the promisor. Mode of the revocation of proposal is mentioned in section 5.

Section 5 : Revocation of proposals and acceptances

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

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 proposals 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.
- B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Section 6. Revocation how made.— 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; or
(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.

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MODE 1 : NOTICE OF REVOCATION :

- Section 5 provides that “a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards”.
- As against the proposer, the communication of acceptance is complete “when it is put in a course of transmission to him, so as to be out of the power of the acceptor”.

What it conveys is that the communication of revocation to be effective must reach the offeree before he mails his acceptance putting it out of his power.

A revocation becomes effective only when it reaches the offeree.

Henthorn v Fraser

X, secretary of building society, given an offer to sell the property at £ 750 and that offer has to be accepted within 14 days by Y.

On the next day.

- Due to change of mind, X posted a letter revoking the earlier offer around 1p.m to Y.
- Meanwhile, Y, who resided in a different town, sent his letter of about 3.50 p.m.
- Letter of Y reached the X office by 8.30 P.M.
- Letter of revocation of X reached Y around 5.30 PM.

Held : The revocation of X was held to be ineffective.

TIME-BOUND PROPOSALS AND ITS REVOCATION : If an offer is given to Offeree with an option to accept the same within a time-bound period, it can be withdrawn even before expiry of such time specified, unless that offer involves some consideration for keeping it open.

Alfred Schonlank v Muthunayna Chetti

FACTS :

- Y want to sell certain quantity of indigo to X and gave 8 days to accept his offer.
- 4th day : Y revoked his proposal effectively.
- 5th day : X accepted the offer.

Held : Madras HC held that acceptance by X on 5th day is useless. The court further explained that Both on principle and on authority it is clear that in the absence of consideration for the promise to keep the offer open for a time, the promise is mere nudum pactum.

GENERAL PROPOSAL AND ITS REVOCATION: If an offer is of general nature published in newspaper (*such as Carbolic Smoke Ball case*), it can be withdrawn in the same medium. Such withdrawal is said to be effective even against a person who performs the offer in ignorance of such withdrawal.

REVOCATION OF A BID :

In an auction,

- **Assent is signified** - when seller by knocking down the hammer.
- **Assent is revoked** - before the hammer is down.

Union of India v Bhim Sen Walaiti Ram :

- There was an public auction held for the sale of license of liquor shop, Y offered the highest bid which was provisionally accepted “...subject to the confirmation of Chief Commissioner who may reject any bid without assigning any reasons.”
- Since Y failed to deposit the 1/6TH of required amount immediately, Chief Commissioner rejected the bid and initiated re-auction.
- In re-auction, the bid fetched lowered than actual bid of Y.
- Question before the court was that whether Y was liable to pay the difference.

HELD : Section 7 of Contract act clarifies that the acceptance must be absolute and unqualified. And if no contract is formed and such acceptance is conditional, then offer can be withdrawn at any moment till the absolute acceptance has taken place within reasonable time of such offer. The Court held that : The “...contract for sale was not complete till the bid was confirmed by the chief commissioner and till such confirmation; the bidder was entitled to withdraw the bid.”

MODE 2 : LAPSE OF TIME : If a fixed time is given for the offeree to communicate the acceptance, then it shall remain open for acceptance up to a certain date. After the expiry of the fixed time the offer is said to lapse. If no time is fixed, then such offer is to be accepted within reasonable time, which would be determined based on facts and circumstance of each case.

MODE 3. BY FAILURE TO ACCEPT CONDITION PRECEDENT.— Where the offer is subject to a condition precedent, it lapses if it is accepted without fulfilling the condition.

MODE 4. BY DEATH OR INSANITY OF OFFEROR.— An offer lapses on the death or insanity of the offeror, provided that the fact comes to the knowledge of the offeree before he makes his acceptance.

CHAPTER 4 : ACCEPTANCE

What is acceptance? What are the essential terms of valid acceptance? MPJS 2011

WHEN THE PROPOSAL BECOMES ACCEPTANCE ? Section 2(b) defines acceptance as follows: *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.*

- Proposal or offer is converted to *Promise* – when the assent given to a proposal.

HOW THE ASSENT IS GIVEN ?

- Assent should be given by some *external manifestation (overt act) of acceptance.*
- It can be in form of oral or written or conduct.

This principle is summarized by SHAH J : “An agreement does not result from a mere state of mind: intent to accept an offer or even a mental resolve to accept an offer does not give rise to a contract. There must be ... *some external manifestation of that intent by speech, writing or other act*”

Under the Indian Contract Act, 1872, when is a contract deemed to be entered into by the parties? Discuss. UPSC 2017.

It is a well-established principle of law that only when an offer is accepted that the contract is concluded and binds the parties. It is equally well settled that before an offer is accepted, the offeror can withdraw his offer, but if the acceptance is conditional or is not final, then there is no concluded contract.

HOW THE COMMUNICATION SHOULD BE :

PRINCIPLE 1 : SUCH ASSENT SHOULD BE COMMUNICATED TO THE OFFEROR HIMSELF.

Felthouse v Bindley :

- *Paul Felthouse* wanted to buy a horse from his nephew, *John Felthouse*. After a letter from the nephew concerning a discussion about buying the horse, the uncle replied saying "If I hear no more about him, I consider the horse mine at £30.15s."
- The nephew did not reply as he was busy at some other work.
- However, he told the man running the auctions, *William Bindley*, not to sell the horse.
- But by accident, Bindley did. Uncle Felthouse then sued Bindley in the tort of conversion - using someone else's property inconsistently with their rights.

HELD : The offeror, *Paul Felthouse*, cannot say that if no answer is received within a certain time, the offer shall be deemed to have been accepted. Acceptance must be communicated clearly and cannot be imposed due to silence of one of the parties.

PRINCIPLE 2 : SUCH COMMUNICATION OF ACCEPTANCE SHOULD FLOW FROM A PERSON WHO HAS THE AUTHORITY TO ACCEPT.

In *Powell v. Lee*, (1908) 99 LT 284 (KB) : A team of managers want to appoint X as headmaster. One of manager indirectly informed this decision to X. However, team of managers changed their decision. X cannot make the managers liable, as there was no authorized communication.

PRINCIPLE 3 : ACCEPTANCE SHOULD BE IN PRESCRIBED MANNER.

If the offeror has prescribed or indicated modes of acceptance, then if the acceptance is effected by any other manner – then it is **not effective**.

Eliason v. Henshaw, 17 U.S. 225 (1819) : X wanted to buy flour from Y. X requested the letter of acceptance to be sent in wagon. Y thinking post will be swift than wagon, sent such letter via post. It turned out that wagon reached before the post. X was held to not to be bound by the acceptance.

This American rule is not strictly followed in India. Please see., section 7(2). A departure from that prescribed manner of acceptance, does not of itself invalidate the acceptance.

If no manner is prescribed, then it has to be done in “*some usual and reasonable manner*”.

PRINCIPLE 4 : ACCEPTANCE SHOULD BE ABSOLUTE & UNCONDITIONAL.

Section 7 : Acceptance must be absolute.

In order to convert a proposal into a promise, the acceptance must—

- (1) be absolute and unqualified;
- (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

WHEN THE ACCEPTANCE IS SAID TO BE NOT ABSOLUTE?

SITUATION 1 : COUNTER PROPOSAL : An acceptance with a variation is no acceptance; it is simply a counter proposal, which must be accepted by the original promisor before a contract is made.

Hyde V. Wrench : X offered the farm for £ 1200. Y rejected the same. Then X offered the land again for £ 1000. Y asked it for £ 950. X refused. Then Y again asked for £ 1000. X refused. Whether there was conclusion of contract?

HELD : Y's offer to buy for £950 constituted a counter offer; effectively a rejection of the original offer and a new offer. Once rejected, an offer cannot be revived by subsequent acceptance.

SITUATION 2 : PARTIAL ACCEPTANCE : Acceptance cannot be of part of terms of the contract and rejecting another part. This is because, such acceptance amounts to counter-proposal only. Acceptance should be of whole of the offer.

SITUATION 3 : INQUIRY : An inquiry into the terms of a proposal is not the same thing as a counter-proposal.

SITUATION 4 : CONDITION SUBSEQUENT : If an acceptance carries a condition subsequent, it may not have the effect of a counter-proposal.

SITUATION 5 : PROVISIONAL ACCEPTANCE : It is a question of fact in each case whether the parties intend to be bound by the provisional agreement or whether that is only a tentative arrangement. A provisional acceptance does not ordinarily bind either party until the final approval is given i.e., offeror can still reject the offer.

Union of India v S. Narain Singh : Auction terms prescribed that higher bid should be confirmed by Chief Commissioner. Highest bidder who failed to pay the amount cannot be sued. This is because highest bid needs to be confirmed by Commissioner so that a valid contract comes into place. Since commissioner did not accept, offeror is entitled to withdraw his bid.

Point is, a provisional acceptance if subsequently confirmed, it should be notified to the offeror so that he becomes bound by the contract.

SITUATION 6 : Acceptance under protest is not an acceptance.

SITUATION 7 : TENDER/QUOTATION : When quotation/tender is inquired, it is not an offer. It becomes a contract only an order is placed on the basis of the tender.

Bengal Coal Co Ltd v Homee Wadia and Co : X had an agreement with Y for a period of 12 months for the supply of a kind of coal from time to time as required. X supplied certain coal for certain period, but before 12 months, they withdrew the offer.

HELD : There is no contract, but simply a continuing offer, and that each successive order given by the plaintiffs under it was an acceptance of the offer as to the quantity ordered, and that thus the offer of the defendants and each successive order of the plaintiff together constituted a series of contracts. Therefore X always had full power of revocation.

Tenderer has the right to revoke his tender as to future orders and similarly, the acceptor of the tender has the right to refuse to place any orders whatsoever. This is affirmed by Supreme court in **Union of India v Maddala Thathaiah.**

WHEN THE CONTRACT IS SAID TO BE CONCLUDED? The rule in *Adams v Lindsell*, wherein the court held that, complete contract arises on the date when the letter of acceptance is posted in due course. This rule is affirmed by *Household Fire & Accident Insurance Co v Grant*.

MODIFIED RULE IN INDIA :

Section 4 : Communication when complete. —

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

Essence of section 4 is that when a letter of acceptance is posted and is out of the power of the acceptor, the proposer becomes bound. But the *acceptor* will become bound only when the letter is received by the *proposer*.

ENGLAND	INDIA
When a letter of acceptance is posted, both the offeror and the acceptor become irrevocably bound.	The acceptor does not become bound by merely posting his acceptance. He becomes bound only when his acceptance “comes to the knowledge of the proposer”,

REVOCATION OF ACCEPTANCE :

ENGLAND	INDIA
An acceptance once made is irrevocable.	An acceptance is generally revocable

Section 5. *Revocation of proposals and acceptances.* —

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.

Countess of Dunmore v Alexander : X sent an acceptance letter to Y's agent. Agent forwarded the letter to Y. Y was out of town and did not see the letter. Later X sent another letter revoking the acceptance. Agent forwarded revocation letter too. Y came back and saw two letters.

HELD : Revocation is effective and because when the Y admitted that saw two letters together, revocation is complete.