

PROPOSAL OR OFFER AND ACCEPTANCE.

The proposal or offer is the starting point. An offer is a proposal by one party to another to enter into a legally binding agreement with him. Every agreement is the result of a promise or set of promises. A promise is the result of a proposal made by one party and acceptance of the same by the other party. Therefore, it can be said that the first essential element of a valid contract is 'Proposal' and 'Acceptance'. For the term 'Offer' is used in English law 'Proposal' in Indian law.

PROPOSAL OR OFFER:— 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'.

The person making the offer who makes the proposal is generally called the 'offeror', proposer, or promisor and the person to whom it is made is called the offeree or proposee. Thus, for a valid offer, the party making it must express his willingness 'to do' or 'not to do' something.

But mere expression of willingness does not constitute an offer. For instance, where 'A' tells 'B' that he desired to marry by the end of 2019, it does not constitute an offer of marriage by 'A' to 'B'. Therefore, to constitute a valid offer expression of willingness must be made to obtain the assent of the other. Thus, if in the above example, 'A' further adds 'Will you marry me', it will constitute an offer.

Classification of Offer:

- (1). General Offer: It is an offer made to the public in general and hence anyone can accept and do the desired act. Section 8 of the Contract Act points out that performance of the conditions of a proposal is an acceptance of the proposal. Where a general offer is of continuing nature, it will be open for acceptance to any number of persons until it is retracted.
- (2) Special offer: When offer is made to a definite person, it is known as specific offer and such offers can be accepted only by that specified person.
- (3). Cross Offer: When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers.
- (4). Counter offer: When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer.
- (5). 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 continuing offer. Tender for supply of goods is a kind of standing offer.

Rules Relating to Offer:

- 1.Communication of proposal: The proposal should be communicated to the other party.The process of making a proposal is completed by the act of communicating it.The acceptor must have the knowledge of the offer.
- 2.The offer must be capable of creating legal relation.
- 3.The offer must be certain, definite and not vague.
- 4.The offer must be expressed or implied,an offer may be made by words or by conduct .
- 5.The offer must be distinguished from an invitation to offer.
- 6.An offer may be specific or general.
- 7.The offer must be made with a view to obtaining the consent of the offeree.

Communication of offer and acceptance:

The communication of offer and acceptance must complete so as to bind the concerned parties because as soon as the communication is complete the parties loose the right of withdrawal or revocation. The legal provisions relating to the communication of offer is as under:-

Communication of offer:- The communication of offer is complete when it comes to the knowledge of the person to whom it is made.In case an offer is made by post,its communication will complete when the letter containing the offer reaches the offeree.

Example: X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs 1,00,000.The letter is posted on 1st January and this letter reaches on 7th January.

The communication of the offer is complete on 7th January.

In case of Lalman Shukla Vs Gauridutt:-

Gauridutt sent his servant Lalman to trace his lost nephew.When the servant had left G announced a reward to anyone who traces the boy.Lalman found the boy and brought him home.

When Lalman came to know of the reward,he claimed the reward.It was held that Lalman was not entitled to the reward because he didn't know about the offer when he found the missing boy.In modern times,offer and acceptance are often made over teleprinter and telephone.Communiation by means of telephones or telex are virtually instantaneous and stand on a different footing here the contract is complete when the acceptance is received by the offeror and the contract is made at the place where the acceptance is received.

Thus proposal means expression of his desire by one before another to do or not to do something.According to English law of contract,a contract springs from an offer and an

acceptance of that offer and what is known as an offer in English law is called a proposal in the Indian Contract Act,1872.

ACCEPTANCE:

When the person to whom the proposal is made signifies his assent, it is an acceptance of the proposal. An accepted proposal is called a promise or an agreement [section 2(b)]. An acceptance is the consent given to offer. An application for the shares in the company is in the nature of offer while the allotment of the shares by the company is an acceptance resulting into a contract. An acceptance must be communicated to the offer in order to complete the acceptance. Mental acceptance is no acceptance.

Example:- Ram offers to sell his horse to Shyam for Rs7,000. Shyam accepts the offer to purchase the horse for Rs7,000. This is acceptance.

Who may accept?

In general, an offer can be accepted only by the person or persons to whom it is made. It means that the person to whom the offer is made can alone accept it. It cannot be accepted by another without the consent of the person making it. The leading case on the point is:-

Boulton Vs Jones (1857):- D sent an offer to a firm with whom he had accounts. P who had just taken over the said firm got the letter addressed to the old firm, accepted the offer and sent the goods. P sued for the price of the goods. The court held that there was no contract since the order was to the old firm and the acceptance was by the new firm.

Legal Rules as to acceptance:

1. Acceptance must be absolute and unqualified.
2. Acceptance must be communicated to the offeror.
3. Acceptance must be made in a reasonable time.
4. Mere silence is not acceptance
5. Acceptance must succeed the offer.
6. Rejected offers can be accepted only, if renewed.

A contract, as already observed, emerges from the acceptance of an offer. Thus, acceptance is the manifestation by the offeree of his assent to the terms of the offer. The assent means that acceptance has been signified either in writing or by performance of some act.

References: 1. Business law by M.C. Kuchhal, Vikas Publishing House, Noida.,

2. Indian Contract Act, by R.K. Bangia, Allahabad law Agency, Faridabad

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