



JUDICIAL DISHA

Indian CONTRACT ACT

(9 of 1872)

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Module 5

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PROPOSAL/OFFER

Introduction

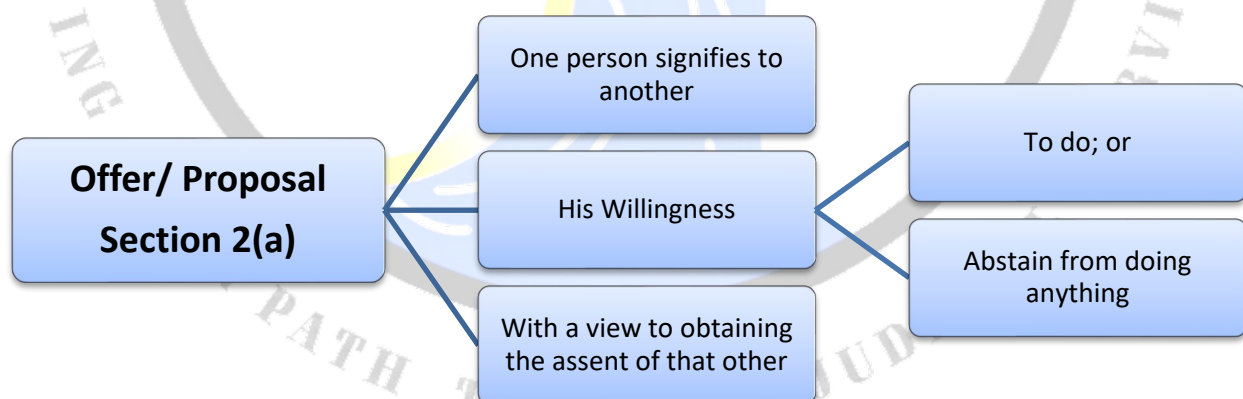
- With the increasing complexities of business environment, innumerable contracts are entered into by the parties in the usual course of carrying on their business. 'Contract' is the most usual method of defining the rights and duties in a business transaction.
- In a significant way, this branch of law differs from other branches of law. It does not contain a long list of rights and obligations that the law will protect or enforce; instead, it contains a set of limiting principles under which the parties may create their own rights and obligations.
- The Indian Contract Act, 1872 codifies the legal principles governing 'contracts.'
- The Act identifies the elements of a legally enforceable valid contract, as well as dealing with specific contractual relationships such as indemnity, guarantee, bailment, pledge, quasi contracts, contingent contracts, and so on.

Proposal/Offer

- The term "Proposal" has been defined in **Section 2 (a)** of the Indian Contract Act, 1872 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 term 'proposal' used in the Indian Contract Act is synonymous with the term 'offer' used in English law. The willingness to do or to abstain from doing something, i.e., the proposal or the offer may be made with a view to obtaining 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 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.

Essential Conditions of a Valid Offer (Proposal)

- As per Section 2 (a), an offer or proposal has the following ingredients:
 - (a) One person signifies to another;
 - (b) His willingness to do or to abstain from doing anything;
 - (c) With a view to obtaining the assent of that other.



Offer and Invitation to Treat (Offer) distinguished

- A proposal or an offer has to be distinguished from an invitation to offer or treat.
- Sometimes, a person may not offer to sell his goods, but makes some statement or gives some information with a view to inviting others to make offers on that basis.
- **For example**, a book seller sends 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 the book or books mentioned in the catalogue, he may make an offer and the person circulating the catalogue has discretion to accept or not to accept the offer.

- Likewise, inviting persons to an auction, where goods to be auctioned are displayed, is not an offer for the sale of goods. The offer is made by the intending buyers in the form of bid. Such an offer (bid), when accepted by the fall of hammer or in some other customary way, will result in a contract.
- In the same way, the advertisement calling for tenders is not a proposal or offer but merely an invitation to the contractors for making an offer.
- It was held in the case of **Executive Engineer, Sundergarh v. M.P. Sahu, A.I.R. 1990 Orissa 26** that the 'submission of a tender' is in the nature of an offer. It will result in a contract only when the tender is accepted. Making of the highest bid will not automatically result in a contract. The contract will arise only when the highest bid is accepted by the competent authority and the said acceptance is communicated to the tenderer.
- Nobody is bound to accept an offer. An auctioneer, therefore, may not accept even the highest bid (offer). An advertisement by the auctioneer to sell goods by an auction being an invitation to treat rather than an offer, he does not incur any liability by not accepting the offer which is in the form of a bid. An auctioneer is even free to cancel an auction sale announced by him.
- In **Harris v. Nickerson, 1873 L.R. 8 Q.B. 286**, the defendant advertised a sale by auction. The plaintiff travelled to the advertised place of auction to find that the defendant had cancelled the auction sale. He brought an action against the defendant to recover the expenses of his travel. It was held that he was not entitled to the same as there was no contract between the two parties at that time, which could make the defendant liable.
- Display of goods either in a show - window or inside the shop and such goods bear price - tags, would not amount to an offer to sell goods at prices mentioned on the price tags. It would be mere invitation to treat.
- In **Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd., 1952 2 Q.B. 795**, It was held that if an intending buyer was willing to purchase the goods at a price mentioned on the tag, he could make an offer to buy the goods. The shopkeeper had the option to accept the offer or reject the same. The contract would arise only when the offer was accepted. No customer can force the shopkeeper to sell the goods at the price mentioned on the tag.

In the instant case, the defendants were having the business of retail sale of drugs. Medicines were displayed on the shelves and their retail prices were also indicated. They had "self - service" system. On entry into the shop a customer was given a wire basket. After selecting the articles needed by a customer, he could put them in the basket and take them to the cash desk. The defendants had put a registered pharmacist near the cash counter, who had been authorized to stop any customer removing any drug from the premises.

It was held that the display of articles, even on a self - service basis was not an offer but was merely an invitation to treat. When the customer selected an article and brought the same to the cash desk that amounted to an offer to buy the goods. The defendants were, therefore, free to accept the offer or not.

The following observations were made by **Lord Goddard, C.J.:**

"I think that it is a well - established principle that the mere exposure of goods for sale by a shopkeeper indicates to the public that he is willing to treat but does not amount to an offer to sell. I do not think I ought to hold that principle is completely reversed merely because there is self - service scheme, such as this, in operation. In my opinion, it comes to no more than that the customer is informed that he may himself pick up an article and bring it to the shopkeeper with a view to buying it, and if, but if, the shopkeeper then expresses his willingness to sell, the contract for sale is completed. In fact, the offer is an offer to buy, and there is no offer to sell; the customer brings the goods to the shopkeeper to see whether he will sell or not. In 99 cases out of a 100 he will sell and, if so, he accepts the customer's offer, but he need not do so. The very fact that the supervising pharmacist is at the place where the money has to be paid is an indication to the purchaser that the shopkeeper may not be willing to complete a contract with anybody who may bring the goods to him."

- **Harvey v. Facey, 1893 A.C. 552**, is an example where the quotation of the price was held not to be offer. The defendants in this case, were the owners of a plot of land known as Bumper Hall Pen.

The plaintiffs being interested in purchasing the same sent a telegram to the defendants, "Will you sell me Bumper Hall Pen? Telegraph lowest cash price."

The defendants in reply telegraphed "Lowest price for Bumper Hall Pen, € 900." The plaintiffs sent another telegram to the defendants saying "We agree to buy Bumper Hall Pen for £ 900 asked by you. Please send us your title deeds."

The defendants refused to sell the land. In a suit, the plaintiffs contended that the second telegram from the defendants quoting lowest price was an offer and the same had been accepted by the plaintiffs, and the contract was complete.

The defendants, on the other hand, contended that quoting the price was not an offer which could be accepted. The Judicial Committee of the Privy Council held that exchange of the above stated telegrams had not resulted in a contract.

It was observed that the first telegram had asked two questions, one regarding willingness to sell, and the other regarding the lowest price. In reply only lowest price was quoted, and this quoting of the price was not an offer.

The third telegram from the plaintiffs saying, "we agree to buy" was only an offer and not the acceptance of an offer. **Since this offer had not been accepted, there was no binding contract between the parties.**

- In **Badri Prasad v. State of Madhya Pradesh, A.I.R. 1970 S.C. 706**, The Divisional Forest Officer wrote to the plaintiff: "Kindly inform whether you are ready to pay further Rs. 17,000 for the contract of big trees which (contract) is under dispute at present. The contract can be given to you on this compromise only. On receipt of your reply the State Government will be informed."

In reply to the above letter the plaintiff wrote back "I am ready to pay Rs. 17,000 provided my claim to have the refund of Rs. 17,000 already paid, from the owner of the Village or any other relief consequential to the judgment of that case remains unaffected. Subject to those conditions shall pay Rs. 17,000 as required in your referred letter."

The Supreme Court held that by those letters no contract had been concluded between the plaintiff and the Government. The letter from the Divisional Forest Officer seemed to be merely invitation to offer rather than offer. The letter in reply from the plaintiff was an offer.

It was further observed that even if the letter from the Divisional Forest Officer to the plaintiff is treated as an offer, there is no unconditional acceptance from the plaintiff and as such there is no contract in any case.

- The case of **Mac Pherson v. Appanna, A.I.R. 1951 S.C. 184**, is another illustration of an invitation to treat.

The plaintiff having already offered to pay Rs. 6,000 to the defendant for his property, again wrote to the defendant's agent asking whether his offer had been accepted and also stating that he was willing to pay even higher price if found reasonable.

The defendant's agent replied that the defendant would not accept less than Rs. 10,000. The plaintiff then wrote that he was willing to pay Rs. 10,000. The plaintiff contended that the offer of Rs. 10,000 had been accepted by him (the plaintiff) and sued for specific performance of the contract.

It was held that in this case the letter from the defendant's agent was not a counter offer but was a mere quotation amounting to invitation to offer. The plaintiff's willingness to pay Rs. 10,000 was an offer and since the same had not yet been accepted, there was no binding contract between the parties.

Intention to Create Legal Relationship

- In order that an offer, after acceptance, can result in valid contract, it is necessary that the offer should be made with an intention to create legal relationship.
- Promise in the case of social engagements is generally without an intention to create legal relationship. Such an agreement, therefore, cannot be considered to be a contract. Thus, an agreement to go for a walk, to go to a movie, to play some game, or entertain another person with a dinner, cannot be enforced in a court of law.
- Sometimes the parties may expressly mention that it is not a formal or legal agreement whereas in some other cases such an intention would 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 legal obligation would not exempt him from liability [**Carlill v. Carbolic Smoke Ball Co., 1893 1 Q.B. 256**].
- In **Rose v. Crompton, 1925 A.C. 445**, the agreement between the parties to the contract provided that: "That arrangement is not entered into as a formal or legal agreement, and shall not be subject to legal jurisdiction in the Law Courts. that it (the agreement) will be carried through by the 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.**

An intention not to create legal relationship may be implied from the circumstances of the case

- In the case of **Balfour v. Balfour, 1919 2 K.B. 571**, the defendant, who was employed on a government job in Ceylon, went to England with his wife on leave. For health reasons the wife was unable to accompany the husband again to Ceylon. The husband promised to pay £ 30 per month to his wife as maintenance for the period she had to live apart. The husband having failed to pay this amount was sued by the wife for the same. **It was held that there being no intention to create legal relationship, the husband was not liable.**
- **Atkin L. J.** observed:
 “It is necessary to remember that there are agreements between parties which do not result in contracts within 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 an acceptance of hospitality. Nobody would suggest in ordinary circumstances that those agreements result in what we know as a contract, one of the most usual forms of agreements which does not constitute contract appears to me to be the arrangements which are made between husband and wife. To my mind those agreements of many of them, do not result in contracts at all. even though there may be what as between other parties would constitute consideration. They are not contracting because the parties did not intend that they should be attended by legal consequences.”
- In case of other close relationships also, e.g., those of parents and their children, the same rules are applicable as are applicable to the husband and wife.
- The case of **Jones v. Padavatton, 1969 All E.R. 616**, is an illustration of the agreement between a mother and her daughter. It was held that there was nothing to indicate that there was an intention to create legal relationship between the parties, as was evident from the fact that neither the agreement was reduced to writing nor the duration for which she was to be maintained had been mentioned. The mother’s action against the daughter for eviction succeeded.

Offer Must 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 something.”
- The emphasis, here, is upon the requirement that the willingness to make a proposal should be “signified”. The term signify means to or communicate to make known. It thus, requires that the offer must be communicated to the other person, i.e., the offeree.

Offer - How Communicated

- The question as to how an offer is communicated is explained in **Section 3 of the Act, 1872.**
- **Section 3. Communication, acceptance and revocation of proposals:** 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.
- It, thus, follows that an offer may be communicated by the offeror - by any act or omission by which the offeror-
 - (a) **Intends to communicate such offer; or**
 - (b) **Which has the effect of communicating the offer.**
- Thus, an offer may be made by words of mouth, or by writing or conducting in a manner, which has the effect of communicating the offer to the offeree.
- An offer may, therefore, be an express offer, i.e., which is made by some positive act on the part of the offeror, or it may be implied offer, which is inferred from the conduct of the offeror.

Express and Implied Offers

- **Section 9 of the Indian Contract Act, 1872** provides that “In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.”
- An offer would be an express offer when it is made by words of mouth or by writing.
- As explained in Section 9 above, an offer made otherwise than in words, is said to be an implied offer. It is an offer inferred from the conduct of the party.

- For example, a bid at an auction is an implied offer. In such a case the conduct may take the place of written or spoken words in the offer and the intention of the party is a matter of inference from his conduct and the inference is more or less easily drawn according to the circumstances of the case.
- Another example, where a tramway company runs trams on a particular route, the company is said to make an offer to carry intending passengers over the route at scheduled fares. The offer of the company is an implied offer.
- Likewise, a person who boards a bus or who hires a taxi, thereby he undertakes to pay the fare to his destination, even though he makes no express promise to do so. Or where a person who puts a coin in an automatic machine enters into a contract with the supplier although no words have been used.
- In **Haji Mohd. Ishaq v. Mohd. Iqbal, 1978 2 S.C.C. 493**, The Apex Court ruled that the defendants by their clear conduct of accepting the goods and never repudiating any of the numerous letters and telegrams of the plaintiff demanding the money from them clearly showed that a direct contract which in law was called an implied contract by conduct was brought about between them.
- In **Upton Rural District Council v. Powell, 1942 1 All ER 220**, fire broke out in the defendant farm. Believing that he was entitled to the free services of the Upton Fire Brigade, summoned it. The Brigade put out the fire and claimed compensation for the services. It then turned out that the defendant's farm was not within the free service zone of the Upton Council, he was held bound to pay. The Court held that "The truth of the matter is that the defendant wanted the services of Upton, he asked for the services of Upton and Upton, in response to that request, provided the services. Hence, the services were rendered on an implied promise to pay for them."

Communication of Offer - When Completes

- As discussed above that for an offer to be valid, it must be communicated. Further, it must be communicated to the person or persons, to whom it is made.
- **Section 4 of the Indian Contract Act, 1872** states that "**the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.**"
- It, thus, follows that an offer cannot be accepted unless and until it has been brought to the knowledge of the person to whom is made.
- To put it otherwise, A cannot be said to make an offer to B unless A brings the offer to the knowledge of B. B cannot be said to have accepted the offer, even if he acts according to the term of the offer. Thus, acting in ignorance of an offer does not amount to acceptance of the offer.
- In **Lalman Shukla v. Gaur Dutt, (1913) 11 All. L.J. 489**, the defendant's nephew absconded from home. The plaintiff, who was defendant's servant, was sent to search for 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 out 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 a person 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 v. Carwardine, 1833 4 B & Ad. 621**, the plaintiff, who knew that 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. She, however, subsequently brought an action to claim the same.
- It was held that since the offer had been accepted with his 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 offered to sell his watch to B for Rs. 2,000 through a letter sent by post. On the same date B also wrote to A making an offer to purchase A's watch for Rs. 2,000. When A or B sent their letters, they did not know about the offer which was being made by the other side. In these cross offers, even though both the parties intended the same bargain, there would arise 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 v. Hoffmann, (1873) 29 L.T. 271**, A wrote to B indicating his willingness to sell 800 tons of iron at 69 sh. per ton. On the same day, B also wrote to A offering, to buy 800 tons of iron at the same rate of 69 sh. 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 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 lost dog, is a general offer. This general offer 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.
- 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, viz., who accepts the offer.
- It is settled that two manifestations of a willingness to make the same bargain do not constitute a contract unless one is made with reference to the other.
- In **Carlill v. Carbolic Smoke Ball Co., (1893) 1 Q.B. 256 at 268**, the defendants advertised their product "Carbolic Smoke Ball", a preventive remedy against influenza. In the advertisement they offered to pay a sum of £ 100 as reward to anyone who contacted influenza, cold 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 £ 100 had been deposited with the Alliance Bank to show their sincerity in the matter. The plaintiff (Mrs. Carlill) 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 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.
- The following observation by **Bowen, L.J.**, may be noted:

"It is an offer made to all the world, and why should not an offer be made to all the world which is to ripen into contract with anybody who comes forward and performs the condition? It is an offer to become liable to anyone who before, it is retracted, performs the conditions, and, although the offer is made to the world, the contract is made with that limited portion of the public who come forward and perform the condition on the faith of the advertisement."

It has been noted above that performance of the conditions of the offer amounts to the acceptance of the offer. It may be further noted here that unless the person performing those conditions has got the knowledge of the offer, there is no question of his act amounting to acceptance.

On the other hand, if the plaintiff knows that the defendant has announced a reward of Rs. 500 to be paid to anyone who finds the defendant's son, the plaintiff can claim this amount when he is successful in finding the defendant's son.

Similarly, if the plaintiff knows that a reward has been announced to be given to anybody giving information leading to the conviction of an assailant for murder, she would be entitled to the reward on supplying the necessary information.

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, 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 bag 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, the offer can be revoked just like any other offer.

- Acceptance of a tender for the supply of goods is a kind of standing offer. An advertisement inviting tenders is merely an invitation for quotations. When the tender is approved, it becomes a standing offer. As and when an order is placed on the basis of the tender that amounts to acceptance of the offer and results in binding contract. Such an offer may be revoked or withdrawn before the order has been placed. Even though the offer is originally made open till a particular time, it may be revoked earlier than that, may revoke it at any time before its acceptance.

- In **Bengal Coal Co. v. Homee Wadia, I.L.R. (1899) 24 Bom. 97**, the defendants (Bengal Coal Co.) agreed to supply coal to the plaintiffs (Homee 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 some coal and the same were complied with. Before the expiry of the said period of 12 months, the defendants withdrew their offer to supply further coal, and refused to comply with the orders placed thereafter.

They were sued for the breach of contract. It was held that there was no contract between the plaintiff and the defendant and, therefore, there could be no liability for the 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 the supply of coal thereafter.

- Where the tender is in the form of a standing offer, the offeree is held not bound accept the same or place orders for the purchase of the goods.
- In **Union of India v. Maddala Thathaiah, A.I.R. 1966 S.C. 1724**, the Dominion of India as the owner of a Railway invited tenders for the supply of 14,000 mounds of cane jaggery to the railway grain shops. Although the dates by which the supplies were to be made had been mentioned, yet orders for the supply had to be made from time to time.

One of the conditions stipulated in the tender form was that the "Administration reserves the right to cancel the contract at any stage during the tenure of the contract without calling up the outstanding on the unexpired portion of the contract."

It was held that the stipulation whereby the appellant could cancel the agreement (revoke the offer in the strict sense) as regards the supplies of jaggery about which no formal order had been placed was a valid one, and the appellants were bound only for the supply of such quantities for which specific orders had already been placed.

- In **Krishnaveni Constructions v. The X.E.N., Panchayat Raj, Darsi, A.I.R. 1995 A.P. 362**, it was held that an offer containing a promise to keep the offer open for a certain period could be withdrawn unless such a promise was supported by consideration. The condition that a tender cannot be withdrawn before it was accepted, is invalid.
- In **Rajendra Kumar Verma v. State of M.P. A.I.R. 1972 M.P. 131**, the respondents (State of MB) invited tenders for the sale of Tendu Patta (leaves), The petitioner (Rajendra Kumar Verma) submitted his tender and also deposited some security. The tender was to be opened on 9th April, 1969. Before that date the petitioner made an application withdrawing his tender and requested that on the stipulated date the tender be not opened. In spite of the petitioner's application his tender was opened, and that being the only tender the same was also accepted. The petitioner refused to execute the agreement to purchase the leaves. The Government sold the leaves to somebody else and then sued the petitioner to recover damages amounting to about Rs. 25,000. One of the contentions of the respondent was that there was a clause in the tender notice according to which the petitioner having submitted his tender was not entitled to withdraw the same. It was held that in spite of such a clause in the tender notice, the tender or any offer could be withdrawn, and therefore in the present case since the offer had been withdrawn, no contract had arisen between the parties, and the petitioner could not be made liable.
- The Madhya Pradesh High Court observed: "A person who makes an offer is entitled to withdraw his offer or tender before its acceptance is intimated to him. The Government by merely providing such a clause in tender notice could not take away that legal right of the petitioner. The fact that the petitioner had applied for withdrawal of the tender is not denied. It is, therefore, quite clear that when the tenders were opened, there was really no offer by the petitioner and, therefore, there could be no contract impliedly or explicitly between the parties."
- Likewise, the Delhi High Court in **Suraj Besan and Rice Mills v. Food Corporation of India, A.I.R. 1988 Delhi 224**, has also held that a person could withdraw or modify his offer or tender before the communication of the acceptance was complete as against him. It was also observed that the Government by merely providing a clause to the contrary in the tender notice could not take away the legal right of a person to revoke the offer.

- In **New Golden Bus Service, Bathinda v. State of Punjab, A.I.R. 2006 P. & H. 141**, The notice inviting tender had no stipulation regarding contract period. Award of contract to respondent who was lowest bidder, for three years, could not be said to be illegal. Mere omission of specifying period of contract in NIT would not render entire tender process vitiated on account of vagueness.

Further, NIT providing that vehicle should not be more than 6 months old. As manufacturing of specified vehicle has been stopped during relevant time, hence permitting respondent to substitute said vehicle with another vehicle having almost same price and category was held not to be arbitrary.

An acceptance with a variation or a condition was not an acceptance. But was merely a counter proposal. In order to convert proposal into a promise, the acceptance must be absolute and unqualified.

Letters of Intent

- A letter of intent is a document outlining the understanding between two or more parties which they intend to formalize in a legally binding agreement.
- A letter of intent simply speaking is a prelude to a contract. It is merely a charter containing the terms and general conditions subject to which a contract would be governed.
- Reaching an agreement and agreeing upon the terms subject to which an offer is to be made and accepted is itself a complicated and a time-consuming process. After these terms and conditions are finalized, a contract is concluded by placing an order or asking a party to perform his part of the contract.
- It is now well settled that a letter of intent **merely indicates a party's intention to enter into a contract with the other party in future**. It is not intended to find either party ultimately to enter into any contract.
- In **Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram, A.I.R. 1954 S.C. 236**, the Supreme Court observed that "The letters merely set out the terms on which the parties were ready to do business with each other if and when orders were placed and executed. As soon as an order was placed and accepted a contract arose. It is true this contract would be governed by the terms set out in the letters but until an order was placed and accepted there was no contract."
- A letter of intent, no doubt, may be construed as a letter of acceptance, if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractors to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter is issued though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties, the Apex Court ruled [**D.R.S.A. v. Bindal Agro Chemicals Ltd, A.I.R. 2006 S.C. 871**].
- The question as to whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. Therefore, the Supreme Court in **D.R.S.A. v. Bindal Agro Chemicals Ltd.**, held that the letter of intent providing that it would be followed by detailed purchase order which had an arbitration clause, was not an order for supply and the arbitration agreement did not come into existence.
- Relying on the observations made in **U.P. Rajkiya Nirman Nigam Ltd. v. Indure Pv. Ltd., A.I.R. 1996 S.C. 1373** that "acquiescence did not confer jurisdiction that the existence or validity of an arbitration agreement shall be decided by the Court alone," the Supreme Court held that at some point of time it had stated that they would appoint an arbitrator, it would not come in the way of their demonstrating that there was no arbitration agreement.

Previous Years Questions (Judicial Services)

Q. No.	Questions	State
1	Write short note on: Proposal and invitation to proposal.	UP 1997

2	X offers to take Z 'land on certain terms. The acceptance of Z is to be given within four weeks. Within that time Z writes to X a letter purporting to accept the offer but, in fact, the letter, contained a material variation of the terms. X then withdraws his offer. Z writes again still within four weeks correcting the error in his first letter and accepting the terms originally proposed by X. State whether a contract has been formed between X and Z, and if Z has any remedy available against X? [B&JJS 1979] 11. "It is contended that in addition to the phenomena of agreement and presence of consideration a third contractual elements is required. What is the third contractual element?	Jharkhand & Bihar 1980
3	Will P succeed in the following case: (a) On January 2, 1986, D sent a letter offering to sell a certain quantity of wool to P. The letter added, 'receiving your answer in course of post'. P received the letter on 5th January and on the very evening wrote to D agreeing to accept the wool. But his letter was received by D on 9th January. Meanwhile, D, having waited for P's acceptance up to 8th January and not having received it, should the wool to other parties. P sues D for breach of contract.	Jharkhand & Bihar 1986
4	What are the essentials of a valid offer?	Haryana 1986
5	What conditions are necessary for converting a proposal into a promise; a promise into an agreement and an agreement into a contract? Illustrate your answer.	Haryana 1996
6	Distinguish an "offer" from an "invitation to offer." A published an advertisement for selling his house at a price of Rs. 15 lakhs. A declined to sell his house to B who was ready to pay Rs. 15 lakhs as price of house of A. A sold his house to C who agreed to pay a price of Rs. 20 lakhs. Whether B can sue A for purchase of house? [DJS 2005] Q. 34. "All contracts are agreements but all agreements are not contracts". Discuss.	Delhi 2008
7	Define the following words: (a) Proposal	Rajasthan 1992
8	How is an offer made, revoked and accepted? What rules apply when an offer made through Post and over the telephone?	Bihar 2006
9	"An offer cannot be accepted unless and until it has been brought to the person whom it is made." What is an offer? When is the communication of an offer completed? Illustrate with judicial decisions. Distinguish between offer and invitation to treat.	Jharkhand & Bihar 2011
10	When communication of a proposal is complete?	Rajasthan 1986
11	The defendant made an offer to the Managing Director of a company who having the authority to do so, accepted it. That gave the company an option to ratify the contract. But the company ratified only after the defendant had withdrawn his offer. The company sued the defendant for specific performance. Decide.	Delhi 1991
12	X sends a letter to Y proposing to sell his house to Y for a certain price. When is the communication of the proposal completed?	Delhi 2008
13	X revokes his proposal to sell his house by a telegram. When complete: (i) as against Y and (ii) as against X.	Delhi 2008
14	Is the normal rule as to postal communications applicable to instantaneous communication such as telex/fax messages?	Delhi 2008
15	Answer the problems with reference to relevant laws: A teaches his parrot to recite an offer and then sends the parrot to 'B. The parrot repeats the recitation. Is this a valid offer? Will it make any difference to your answer if A ties a message containing an offer for "B on the body of the parrot who carries the message to B.	UP 2015