




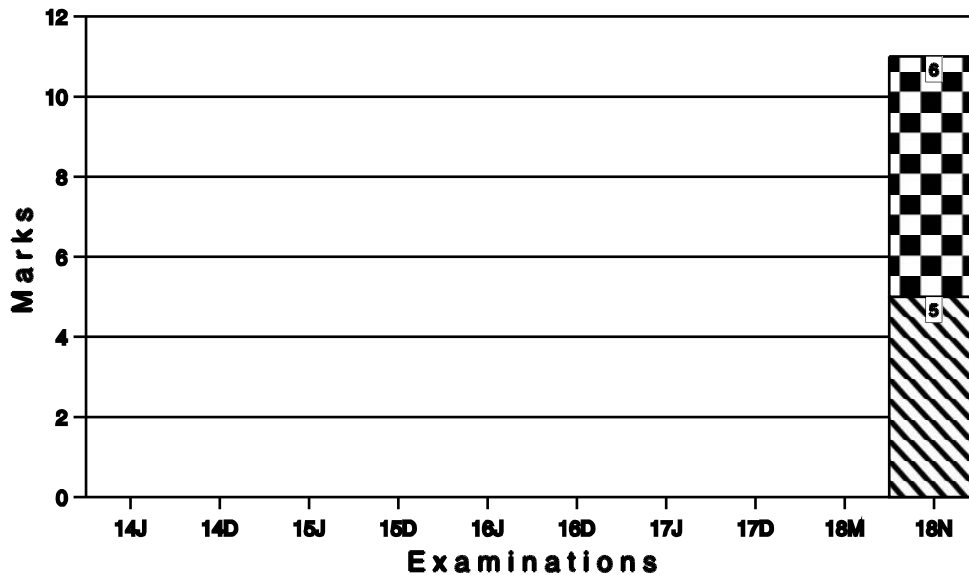


CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<h1>1</h1>	
Unit: 1	Nature of Contract

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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LAW : INDIAN CONTRACT ACT, 1872

- Section 1** : Short Title
- Section 2** : Interpretation Clause
- Section 3** : Communication, acceptance and revocation of proposals
- Section 4** : A proposal is accepted from the date its acceptance is sent by the post
- Section 5** : A proposal can be revoke at any time before the communication of its acceptance
- Section 6** : Revocation how made
- Section 7** : Acceptance must be absolute
- Section 8** : Acceptance by performing conditions, or receiving consideration
- Section 9** : Promises, express or implied
- Section 10** : Defines the essential elements of a contract, Defines "Consideration"
- Section 11** : Defines requirements for competency for competency of parties to the contract
- Section 12** : What is a sound mind for the purposes of contracting.
- Section 13** : "Consent" defined
- Section 14** : "Free Consent" defined
- Section 15** : "Coercion" defined
- Section 16** : Undue influence" defined
- Section 17** : "Fraud" defined
- Section 18** : Misrepresentation" defined
- Section 19** : "Void ability of agreements without free consent"
- Section 19 A:** Power to set aside contract induced by undue influence
- Section 20** : Agreement void where both parties are under mistake of fact
- Section 21** : Effect of mistakes as to law
- Section 22** : Contract caused by mistake of one party as to matter of fact
- Section 23** : What consideration and objects are lawful, and what not
- Section 24** : Agreements void, if consideration and objects unlawful in part

- Section 25 :** Agreements without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done
- Section 26 :** Agreement in restraint of marriage void
- Section 27 :** Agreement in restraint of trade void
- Section 28 :** Agreements in restraint of legal proceedings void
- Section 29 :** Agreement void for uncertainty
- Section 30 :** Agreement by way of wager, void
- Section 31 :** “Contingent contract” defined
- Section 32 :** Enforcement of contracts contingent on an event happening.
- Section 33 :** Enforcement of contracts contingent on an event not happening
- Section 34 :** When event of which contract is contingent to be deemed impossible, if it is the future conduct of a living person
- Section 35 :** When contracts become void, which are contingent on happening of specified event within fixed time
- Section 36 :** Agreements contingent on impossible events, void
- Section 37 :** Obligation of parties to contracts
- Section 38 :** Effect of refusal to accept offer of performance
- Section 39 :** Effect of refusal of party to perform promise wholly
- Section 40 :** Person by whom promise is to be performed
- Section 41 :** Effect of accepting performance from third person
- Section 42 :** Devolution of joint liability
- Section 43 :** Any one of joint promisors may be compelled to perform
- Section 44 :** Effect of release of one joint promisor
- Section 45 :** Devolution of joint right
- Section 46 :** Time for performance of promise, where no application is to be made and no time is specified
- Section 47 :** Time and place for performance of promise, where time is specified and no application to be made
- Section 48 :** Application for performance on certain day to be at proper time and place
- Section 49 :** Place for performance of promise, where no application to be made and no place fixed for performance

- Section 50 :** Performance in manner or at time prescribed or sanctioned by promisee
- Section 51 :** Promisor not bound to perform unless reciprocal promisee ready and willing to perform
- Section 52 :** Order of performance of reciprocal promisee
- Section 53 :** Liability of party preventing event on which contract is to take effect
- Section 54 :** Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises
- Section 55 :** Effect of failure to perform at fixed time, in contract in which time is essential
- Section 56 :** Agreement to do impossible act
- Section 57 :** Reciprocal promise to do things legal and also other things illegal
- Section 58 :** Alternative promise, one breach being illegal
- Section 59 :** Application of payment where debt to be discharged is indicated
- Section 60 :** Application of payment where debt to be discharged is not indicated
- Section 61 :** Application of payment neither party appropriates
- Section 62 :** Effect of novation, rescission and alteration of contract
- Section 63 :** Promisee may dispense with or remit performance of promise
- Section 64 :** Consequence of rescission of voidable contract
- Section 65 :** Obligation of person who has received advantage under void agreement, or contract that becomes void
- Section 66 :** Mode of communicating or revoking rescission of voidable contract
- Section 67 :** Effect of neglect of promisee to afford promisor reasonable facilities for performance
- Section 68 :** Claim for necessaries supplied to person incapable of contracting, or on his account
- Section 69 :** Reimbursement of person paying money due by another, in payment of which he is interested

- Section 70 :** Obligation of person enjoying benefit of non - gratuitous act
- Section 71 :** Responsibility of finder of goods
- Section 72 :** Liability of person to whom money is paid, or thing delivered, by mistake or under coercion
- Section 73 :** Compensation for loss or damage caused by breach of contract
- Section 74 :** Compensation for breach of contract where penalty stipulated for
- Section 75 :** Party rightfully rescinding contract entitled to compensation.

SELF STUDY QUESTIONS

Q.1: What is a Contract?

Answer:

- Section 2(h) of Indian Contract Act defines contract as:
“An agreement enforceable by law.”
Contract = Agreement + Enforceability by law
- Contract is made by acceptance of one party of an offer made to him by the other party, to do or abstain from doing some act.
Contract = Agreement + Obligation
- **Agreement :** Section 2 (e) of Indian Contract Act defines it as,
“Every promise or every set of promise forming the consideration for each other”
It has two characteristics:
 - (i) Two or more persons are required to make an agreement
 - (ii) Both parties must agree to same thing in same sense at the same time.
- Section 2(b) of Indian Contract Act defines promise as –
“A proposal (offer) when accepted becomes a promise”
Agreement = Promise
= Accepted Proposal
= Offer + Acceptance

Q.2: Distinguish between Agreement and Contract?**Answer:**

Basis	Agreement	Contract
Definition	As per Section 2(e) "every promise and every set of promises, forming consideration for each other.	As per Section 2(h) contract is "an agreement enforceable by law"
Meaning	Offer/Proposal + Acceptance	Accepted proposal/ Agreement + Enforceability by law.
Inter-relation	All agreement are not contracts	All contracts are agreement
Binding Nature	No legal obligation	It creates a legal obligation
Scape	Is a wider term i.e. includes both legal and social agreements	It only includes agreement enforceable by law.

Q.3: What are the Elements of a Valid Contract?**Answer:**

- Section 10 of Indian Contract Act states, "All agreements are contracts if they are made –
 - (i) by free consent of parties, competent to contract.
 - (ii) for a lawful consideration.
 - (iii) with a lawful object, and
 - (iv) not hereby expressly declared to be "void"

Elements includes:

- (a) **Two Parties:** There should be atleast two parties to make a contract. One cannot contract with himself/herself.

Case law: *Gujarat v/s Ramanlal S & Co.* Property distributed at the time of dissolution of partnership firm to its partners is not sale as one cannot be both buyer as well as seller and partner and partnership are same persons.

(b) **Intention to Create Legal Relationship:**

- Agreements relation to social matters; and
- Domestic arrangements between husband and wife, agreement between family members are not contracts due to absence of legal obligation.

Case Law: *Balfour v/s Balfour*

Facts : Mr. A promised to pay his wife ₹ 30 per month as house hold allowance, later, husband failed to pay the amount.

Decision: Held, the wife could not claim as there was no intention to create legal obligation and thus, it is not enforceable by law.

(c) **Other Formalities to be Complied with in Certain Cases:**

- It must be in writing.
- It must be registered under the law in force.

(d) **Certainty of Meaning:**

- Agreement must not be vague or indefinite.
- It must be certain.

(e) **Possibility of Performance of an Agreement :**

- Agreement which are to do any impossible act cannot be enforced.

Essential elements of valid contract includes –

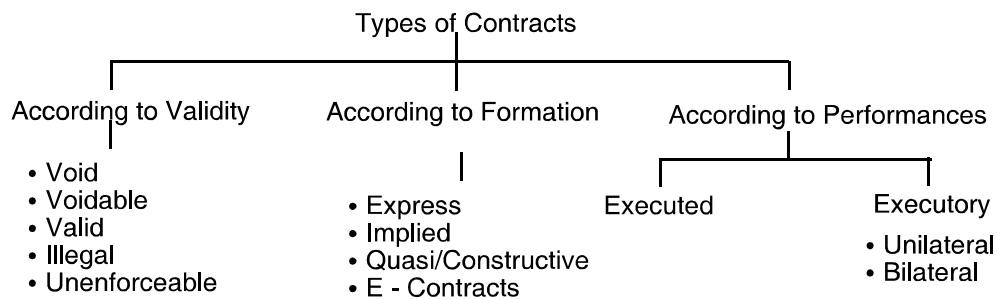
- (i) **Offer and Acceptance:** An agreement is the result of offer and acceptance.
- (ii) **Free Consent:** Consent must be free, i.e. it must not be obtained through coercion, undue, influence, fraud, misrepresentation or fraud.
- (iii) **Capacity of the Parties:** Persons competent to contract is who :
 - is of the age of majority i.e. 18 year or above
 - is of sound mind i.e. not a lunatic, drunken
 - is not disqualified from contracting i.e. should not be foreign sovereign, alien enemy, convicted, etc.
- (iv) **Consideration:**
 - It means some thing in return i.e. *quid pro quo*.
 - It can be either any right or interest or profit, etc.

(v) **Lawful Consideration and Object:**

- It should not be prohibited by law i.e. it should not defeat the provisions of law in force.

(vi) **Not Expressly Declared to Void:**

- Void agreement are not enforceable as they are without any legal effects.
- Agreement must not be illegal

Q.4: What are the various Types of Contracts?**Answer:****Q.5: What is the Definition of Void Contract?****Answer:**

- It is not a contract at all as it is without legal effect.
- Section 2(j) of Indian Contract Act, 1872 defines it as:
“A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”.

Voidable Contracts:

- It is an agreement which is binding and enforceable but due to lack of one or more essentials of a valid contract, it may be repudiated.
- Section 2(i) of the Indian Contract Act, 1872 defines it as –
“All agreements which are enforceable by law at the option of any one of the parties, and other party has no such option, are known as voidable contracts”.

Q.6: Distinguish between Void and Voidable Contracts.**Answer:**

Void Contracts	Voidable Contracts
1. Section 2(j): Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	1. Section 2(i): It may be repudiated at the will of one or more parties but not at the will of other or others.
2. Not enforceable by any party.	2. Enforceable at the desire of the affected party.
3. It is void from beginning to end	3. It is valid in the beginning but is subsequently declared void.
4. Agreement is void only if it is made with the person having no contractual capacity, without consideration etc.	4. Agreement is voidable when its consent is based on coercion, fraud, etc.
5. Here the contract cannot be executed due to change in circumstances or in law the agreement is void	5. The contract can be executed if it is declared valid by the affected party.

Valid Contract = Agreement + Enforceable by law.

Q.7: What are Quasi Contracts and E-Contracts?**Answer:****Quasi Contract:**

- An obligation imposed by law upon a person for the benefit of another even in the absence of a contract.
- It is based on principles of equity, justice and good conscience.

E-Contracts:

- Contracts entered into through electronic mode including e-mails.
- These contracts are also called as Cyber Contracts, mouse click contracts, electronic data interchange (EDI) contracts.

Q.8: What is the Definition of Offer/Proposal Under the Indian Contract Act, 1872 ?

Answer:

Proposal/Offer [Section 2(a) of the Indian Contract Act, 1872]:

- It refers to a “proposal” by one party to another to enter into a legally binding agreement with him.
- Section 2(a) defines it as –
“When one party signifies to another his willingness to do or abstain from doing something, with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal”.

Q.9: Describe the Essentials of Proposal/ Offer.

Answer:

- Person making promise is called ‘promisor’ and to whom it is made i.e. who accept the promise is called ‘acceptor’ or ‘promisee’.
- For entering a valid contract expression of willingness must be made to obtain the acceptance of the other.
- An offer can be for ‘doing’ something i.e. (positive) or ‘not doing’ some thing i.e. (negative)

Q.10: Describe the Essentials of a Valid Offer.

Answer:

- It must be capable of creating legal relations.
- It must be certain definite and not vague.
- It must be expressed or implied.
- It must be distinguished from an invitation to offer.
- It may be specific or general.
- It must be communicated to the offeree [Case Law: *Lalman Shukla v/s Gauri Dutt*].
- It must be made with a view to obtain the consent of the offeree.
- It may be conditional
- It should not contain such terms, the non compliance of which would amount to acceptance.
- A statement of price is not an offer.

Q.11: Distinguish between offer and invitation to make an offer.

Answer:

- Offer is made to get the consent of other party.
- Invitation to offer is made to initiate the offer according to the invitation.
- Offer is made with an object to make a contract.
- Invitation to offer does not result in any contract formation.
- **Example of invitation to offer.**
 - (i) display of goods in a shop window with prices marked upon them
 - (ii) Price catalogues, etc.
- Offer is different from mere statement of intention. Example - Announcement of a coming auction sales.

Relevant Case Law:

Harris v/s Nickerson

- When particular goods are advertised, for sale by auction, the auctioneer does not contract with anyone who attends the sale and is intending to purchase those goods when they are actually put up for sale.
- Offer is different from mere communication of information in the course of negotiation.

Example - Price statement considering negotiation.

Relevant Case Law:

Harvey V/s Facey

- Only a statement of lowest price at which the vendor would sell, contains no implied contract to sell at that price to the person making the inquiry.

Q.12: Define the term of Acceptance and Discuss the Legal Provisions relating to communication of Acceptance.

Answer:

- It means consent to the offer.
- Section 2(b) of the Contract Act, defines it as “A proposal is said to be accepted, when the person to whom the proposal (offer) is made signifies his assent thereto”.

Relationship between Offer and Acceptance:

“Acceptance is to offer what a lighted match is to a train of gun powder”.

– **Sir William Anson**

- It means once acceptance is done, the same cannot be undone, i.e. it cannot be revoked.
- Offer remains offer until accepted, after acceptance it becomes a contract.

Q.13: When is the Communication of an offer and Acceptance through Post Completed.

Answer:

Communication of Offer and Acceptance:**1. Communication of offer:**

- It is complete when it comes to the knowledge of the person to whom it is made.
- It may be communicated either by words spoken or written or may be inferred from conduct of parties.
- If made by post, it will be completed, when the letter containing offer reached the intended person.

2. Communication of Acceptance:**• It is complete:**

As against the proposer: When it is put in the course of transmission to him so as to be out of power of the acceptor to withdraw the same.

As against the acceptor: When it comes to the knowledge of the proposer.

• If sent by post, it is complete:

As against the proposer: When the letter of acceptance is posted.

As against the acceptor: When the letter reaches the proposer.

Q.14: Write the short note of Modes of Acceptance.

Answer:

1. **By act** i.e., by any expression of words whether written or oral.

2. **By omission to do something** which is conveyed by conduct or by forbearance on part of one party to convey his/her willingness.
3. **By conduct** i.e. conveying acceptance by his/her conduct.
Example - Act of boarding a bus, etc., it must be noted that merely mental unilateral assent in one's own thoughts do not amount to communication.

Q.15: Describe the Special Condition of Communication.

Answer:

- Situation where agreement entered having special conditions which are conveyed and accepted tacitly or without even realising it.
- If a passenger receives a railway ticket with the words printed, "this ticket is issued subject to the notices, regulations and conditions in the current time tables of the railway". He is bound to accept the terms and conditions whether he has read them or not. [**Case Laws:** *Mukul Dutta v/s Indian Airlines; Lily white v/s R Mannuswamy*]
- If no reasonable notice on the face of document contains special conditions, then acceptor will not incur any contractual obligation. [**Case Law:** *Raipur transport co. v/s Ghanshyam*]

Q.16: Write Short Note on Communication of Performance.

Answer:

Acceptance of the proposal from view point of

(a) Proposer: When acceptance is put in the course of transmission, out of the power of acceptor.

(b) Acceptor: When it comes to the knowledge of the proposer.

If sent by post, it is complete

As against the proposer : When the letter of acceptance is posted.

As against the Acceptor: When the letter reaches the proposer.

Q.17: What do you understand by Revocation of offer and Acceptance? Describe the Condition of Communication of Revocation ?

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Answer:

Revocation of Offer:

- It means withdrawal or taking back of an offer.
- It can be revoked anytime before its acceptance.

Revocation of Acceptance:

- It means withdrawal or taking back of acceptance by the acceptor.
- It may be revoked at any time before its communication is completed as against the acceptor, but not afterwards.

Communication of Revocation:

- It is complete –
As against the person who makes it: When it is put into a course of transmission to the person to whom it is made so as to be out of power of the person who makes it.
- **By Post : Communication of offer when complete :** When offer comes into the knowledge of offeree.
- **Communication of acceptance when complete:** When offeree or acceptor post the letter of acceptance and it becomes out of power of acceptor to withdraw it.
As against the person to whom it is made: When it comes to his knowledge.

Q.18: What do you mean by Lapse of Offer and which ways there can be Lapse of Offer ?

Answer:

- It means end of an offer.
- Offer should be accepted before it lapses.
- **Offer may lapse in following ways:**
 - (a) By communication of notice of revocation
 - (b) By lapse of time [Case Law : *Ramsgate victoria Hotel v/s Montifiore*]
 - (c) By failure to accept condition precedent
 - (d) By death or insanity of the offeror
 - (e) By counter offer by the offeree

- (f) By not accepting the offer in prescribed mode
- (g) By rejection of offer by the offeree
- (h) By change in law or circumstances.

SHORT PRACTICE QUESTIONS

1. What do you understand by 'contract'. Enumerate its elements.
2. Write short notes on the following:
 - (a) Voidable contract
 - (b) Implied Contract
 - (c) Cross offer
 - (d) Agreement
 - (e) Revocation to offer and acceptance.
3. Differentiate between :
 - (a) Offer and Invitation to offer
 - (b) Void and Voidable contract.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reasons whether the following statement is True or False:

- (i) A proposal may be revoked by the proposer before the posting of the letter of acceptance by the acceptor. (2 marks)

Answer:

Correct:

The proposer can withdraw the offer before the posting of the letter by the acceptor but not afterwards Sec. 5 of the Indian Contract Act, states that a

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proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. Acceptance of the proposal is complete only after the letter of acceptance is put in the letter box and not before.

1995 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (i) If an offer is made in the form of a promise in return for an act, the performance of that act even without any communication thereof, is to be treated as an acceptance of the offer.
- (iv) Counter offer to an offer does not make the original offer lapse.

(2 marks each)

Answer:

(i) Correct:

As per the provisions of the Indian Contract Act, as contained in Section 8, when the performance of the conditions of a proposal takes place, or some required act is done, it shall constitute an acceptance to the proposal.

(iv) Incorrect:

In order to make a binding contract, there must be an absolute and unconditional acceptance of terms of the offer. A counter offer is a rejection of the original offer and constitute a new offer. Therefore, the original offer shall lapse on making a counter offer by the other party.

1995 - Nov [1] State with reasons whether the following statement is True or False:

- (i) Acceptance can be made even without the knowledge of the offer.

(2 marks)

Answer:

Incorrect:

In order to constitute a contract, offeree must have the knowledge of the offer, and there can be no acceptance without it. (Lalman v. Gauri Dutt, 1913.)

1996 - May [1] State with reasons whether the following statement is True or False:

- (i) An agreement with intention to create legal liability is not enforceable in law. (2 marks)

Answer:

Incorrect:

Section 2(h) of the Indian Contract Act, 1872 requires an agreement to be worthy of being enforceable by law. The parties to a contract must have the intention to impose a legal duty on the promisor to fulfill the promise and bestow a legal right on the promisee to claim its fulfillment. An agreement without intention to create legal obligation is no contract.

1997 - May [1] State with reasons whether the following statement is True or False:

- (i) If the offeree does not accept the offer according to the mode prescribed by the offeror, the offer does not lapse automatically. (2 marks)

Answer:

Correct:

An offer must be accepted in the manner prescribed by the offeror. Where it is not so made, the offeror can treat it as lapsed, but he should inform the offeree about his decision. If he does not inform the offeree about his rejection, the offer does not stand lapsed. (*Felthouse v. Bindley*, 1862).

1998 - May [1] State with reasons whether the following statement is correct or incorrect:

- (i) All kinds of obligations created between the parties form part of the contracts.
(iii) A contract to purchase a black horse, which was dead at the time of bargain, is voidable. (2 marks each)

Answer:

(i) Incorrect:

An agreement should give rise to a legal obligation i.e. obligation which is enforceable at law [Section 2(h)]. Agreement which give rise only to social, moral or domestic cannot be termed as contracts. [*Balfour v. Balfour* 1919].

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(iii) Incorrect:

According to Section 20 of the Indian Contract Act, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. Since, neither party was aware of the fact that the horse was dead at the time of bargain, the contract is void, and not voidable.

1998 - Nov [1] State with reasons whether the following statement is Correct or incorrect:

- (i) Communication of an offer is complete when the letter is posted though it has not reached the person to whom the offer is made.

(2 marks)

Answer:

Incorrect:

Communication of an offer is complete when it comes to the knowledge of the person to whom it is made (Section 4 of the Indian Contract Act, 1872). When the letter containing offer is posted, the offer will be complete only when the letter reaches the person to whom it is made.

1999 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (i) Where the mode of acceptance is prescribed in the proposal, it need not be accepted in that manner.

(2 marks)

Answer:

Incorrect:

Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. Section 7(2) of the Indian Contract Act, 1872 lays down that if the proposal prescribes the manner of acceptance and the acceptance is not made accordingly, the proposer may within a reasonable time, insist to follow the mode of acceptance prescribed and not otherwise.

1999 - Nov [1] State with reasons whether the following statements are correct or incorrect:

- (i) A proposal when accepted becomes a contract.
(ii) An illegal contract is fatal to the main contract, but not to collateral transactions.

(2 marks each)

Answer:

(i) Incorrect:

Section 2(b) of the Indian Contract Act, 1872, which defines the term 'acceptance' state that proposal when accepted becomes a promise. Thus, acceptance creates the promise and not a contract because to create a contract, the element of enforceability is necessary.

(ii) Incorrect:

An illegal agreement is one, which has been expressly declared as the unlawful. Such an agreement is a nullity and hence cannot be enforced. When an agreement is illegal, collateral agreements to such illegal agreements are also illegal. Hence the question of their enforcement does not arise.

2000 - May [1] State with reasons in brief whether the following statement is correct or Incorrect:

(i) Every agreement is necessarily regarded a contract. (2 marks)

Answer:

The statement is incorrect:

As per Section 10 of the Indian Contract Act, 1872, an agreement is regarded as a contract when it is enforceable by law. In other words, an agreement that the law will enforce is a contract. Hence, every agreement cannot essentially be regarded as a contract, but every contract is an agreement.

2001 - May [1] State with reasons in brief whether the following statement are correct or incorrect:

(i) The proposal should always be communicated to the person to whom it is made.

(ii) A Tender does not amount to an offer. (2 marks each)

Answer:

(i) Correct:

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made (Section 4 of Indian Contract Act, 1872).

(ii) Correct:

A tender is in the same category as a quotation of price. It is not an offer. It is merely an invitation to an offer. When a tender is approved, it is converted into standing offer. A contract arises only when an order is placed on the basis of a tender.

2001 - Nov [1] State with reasons in brief whether the following statement is correct or incorrect:

- (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 or others, is void. (2 marks)

Answer:

Incorrect:

According to Section 2(i) of the Indian Contract Act, 1872, 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 or others, is a voidable contract and not void.

2002 - May [1] State with reasons in brief whether the following statement is correct or incorrect:

- (i) Communication of acceptance of an offer is complete as against the acceptor the moment it comes to the knowledge of the offeror. (2 marks)

Answer:

Correct:

The communication of acceptance is complete as against the acceptor when it comes to the knowledge of the proposer since it will then be out of the power of the acceptor to revoke. (Section 4 para 2 of the Indian Contract Act, 1872.)

2002 - Nov [1] State with reasons in brief whether the following statement is correct or incorrect:

- (i) Offer may be revoked after the letter of acceptance is posted by acceptor. (2 marks)

Answer:

Incorrect:

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards (Section 5 of the Indian Contract Act). The Communication of acceptance is complete as against the proposer when the letter of acceptance is posted (Section 4 of the Indian Contract Act). As the letter of acceptance is posted, offer cannot be revoked in this case.

SHORT NOTES

1995 - Nov [7] Write short note on the following:

(b) Voidable Agreement.

(5 marks)

Answer:

Voidable Agreement:

A contract the consent to which is caused by coercion, undue influence, fraud or misrepresentation is voidable at the option of the party whose consent was so caused. (*Bishandeo Narain v. Seogero Rai AIR 1951 SC 280*).

Thus, the aggrieved party has the option either to avoid the contract or alternatively, to affirm it. The burden of proving the said elements is on the plaintiff. [*Hims Enterprise v. Ishak Bin Subari (1992) 1 CLJ 132*]. He can exercise his option only once. If the contract is affirmed, it becomes enforceable and if avoided it becomes void [*East India Commercial Company v. Collector of Customs AIR 1962 SC 1893*]. It continues to be valid and enforceable till it is repudiated by the aggrieved party. The application of option by aggrieved party is subject to certain restrictions:

1. When the party, aware of his right to rescind, affirms the contract, the right of rescission is lost.
2. When a party at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor.
3. Rescission must be claimed within reasonable time.

4. The right of rescission is lost when a third party, acting in good faith, acquires right in the subject matter of the contract.
5. Rescission is subject to the condition that the party seeking rescission must be in position to restore the benefits he may have obtained under the contract.

Section 19A deals with the contracts affected by undue influence which have been declared as voidable at the option of aggrieved party. Such contracts may be set aside absolutely or partly. Court enjoys discretion.

1996 - Nov [7] Write short note on the following:

(a) Acceptance by conduct.

(5 marks)

Answer:

Acceptance by Conduct: Section 2(b) of the Indian Contract Act states that when a person to whom a promise is made, signifies his assent thereto, the proposal is said to have been accepted. The assent means that acceptance has been signified either in writing or by word of mouth or by performance of the act. Thus, acceptance may be in writing, oral or by conduct.

Thus, where a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance. To illustrate it, a tradesman receives an order from a customer and executes it by sending the goods, the customer's order for goods constitute the offer which has been accepted by the tradesman subsequently by sending the goods. This example is a case of acceptance by conduct.

In fact, where the offeror invites acceptance by the performance of the act, the performance of the act becomes a valid acceptance of the offer. On this account it is provided in Section 8 that the performance of the condition or conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. A bus conductor shouting that the bus is going to a particular place invites passengers to board the bus. A passenger boards the bus and pays the fare. Boarding and paying the fare amounts to acceptance by conduct on the passenger.

But performance of the act without knowledge of the offer, does not amount to a valid acceptance. *Lalman Shukla v. Gourie Dutt and Crown v. Clarke* are the cases on this point.

1998 - May [7] Write short note on the following:

(a) Kinds of offer.

(2 marks)

Answer:

The kinds of offer may be discussed as follow:

- (i) **General Offer:** It is an offer made to the public at large and hence anyone can accept and do the desired act (*Carlill v. Carbolic Smoke Ball Co.* 1893). For instance, an offer to give reward to any body who finds a lost dog is a general 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.
- (ii) **Specific Offer:** When the offer is made to a specific or an ascertained person it is known as a specific offer. Specific offer can be accepted only by that specified person to whom the offer has been made (*Bottom v. Johns*).
- (iii) **Cross Offer:** When two parties exchange identical offers in ignorance at the time of each others offer, the offers are called Cross Offers. There is no binding contract in such a case because offer made by a person can not be treated as an acceptance of the another's offer [*Tinn v. Hoffman and Co.* (1873) 29 L.T. 271]
- (iv) **Counter Offer:** When the offeree offers to qualified acceptance at the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter offer amounts to rejection of the original offer (*Hyde B. v. Wrench* 1840).
- (v) **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 the supply of goods is a kind of standing offer.

1999 - May [7] Write short note on the following:

(c) Executed and executory contracts.

(2 marks)

Answer:

Executed and Executory Contracts: On the basis of execution or performance, contracts may be classified into two groups i.e. executed and executory.

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Executed contract is a contract where both the parties have fulfilled their respective terms and obligations, and where in nothing remains to be done by either party. Thus, executed is a contract which has reached to its maturity of performance and completion of contractual obligations.

On the other hand executory contract is a contract where both the parties have still to perform their respective contracted obligations. In such contracts, some act remains to be performed at a future date.

1999 - Nov [5] Write short note on the following:

(ii) Offer and invitation to offer.

(2 marks)

Answer:

Offer and Invitation to Offer: When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the asset of that other to such act or abstinence, he is said to make an offer or proposal [Section 2(a) Indian Contract Act, 1872]. A valid offer must meet the tests of (1) contractual intention of definiteness and (2) communication to offeree.

Offer is different from an invitation to offer. In an offeror expresses his willingness to contract in terms of his offer with such finality that the only thing to be awaited is the assent of the other party. Where a party without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer. He only invites the other party to make an offer on those terms. An invitation to traders to make tenders, an invitation by a company to the public to subscribe its shares, display of goods for sale in shop windows, auction sales, quotation of prices in reply to a query, are all examples of invitation to offer - buy or sell as the case may be.

2001 - May [7] Write short note on the following:

(c) Void Contracts.

(5 marks)

Answer:

Void Contracts (read as void agreements): An agreement which is not enforceable by law is void. Such an agreement has some legal defect and therefore cannot be enforced in a Court of Law. Section 2(i) defines a void contract as, "a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."

Thus, a void agreement does not have any legal affect i.e., the party not performing his part of the promise under a void contract cannot be sued in a law court, rather does not have any legal obligations.

Examples of Void Contracts:

1. A contract vitiated by mistake as to fact and both the parties are mistaken as to the identity, existence of the subject matter of the contract etc. (Section 20)
2. Where the consideration or object of the contract is unlawful (Section 23).
3. Where the contract is not supported by consideration.
4. Agreements declared expressly void by the Contract Act, such as:
 - agreement in restraint of marriage (Section 26)
 - agreement in restraint of trade (Section 27)
 - agreement in restraint of legal proceedings (Section 28)
 - agreement by way of wager (Section 30).

There may be cases of such contracts where in the beginning they are valid but later on become void due to impossibility of performance due to operation of law.

2001 - Nov [5] Write short note on the following:

- (a) When is the communication of an offer and acceptance through post complete? (2 marks)

Answer:

Communication of an offer is complete through post when it comes to the knowledge of the person to whom it is made i.e., when the letter containing the offer reaches the offeree. (Section 4 Indian Contract Act, 1972).

Communication of acceptance has two aspects:

- (i) As against the proposer.
- (ii) As against the acceptor.

Against the proposer, the communication of acceptance is complete when it is put in the course of transmission to him, so as to be out of the prior of the acceptor, but it shall be complete as against the acceptor when it comes to the knowledge of the proposer. e.g. A proposer by letter to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post. The communication of acceptance is complete;

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- (a) As against A, when the letter is posted by B.
- (b) As against B, when the letter is received by A.

Thus, an offer can be revoked till a duly addressed letter of acceptance is put in the course of transmission and not thereafter. It is immaterial whether the letter of acceptance reaches the other party or is lost in transit. The acceptance can, however, be revoked till the letter of acceptance actually reaches the offeror and he learns of its contents.

2002 - May [2] Write short note on the following:

- (a) Executed and Executory contracts. (2 marks)

Answer:

An executed contract is one in which both the parties have performed their respective obligations. In other words, if the consideration for the performance of obligation is paid, it is a contract for executed consideration. For example, A agrees to write an article to B for ₹ 5,000. When A writes the article and B pays the price, i.e. when both the parties have performed their obligations, the contract is called an 'Executed' Contract.

An executory contract is one in which both the parties have not yet performed their obligations. In other words, if the consideration to the performance of obligations is still to be payable, the contract is known as contract for executory consideration. Thus, in the above example the contract is executory if A has not yet written the article and B has not paid the price.

2002 - Nov [2] Write short note on the following:

- (a) Rules regarding acceptance. (5 marks)

Answer:

Rules relating to Acceptance of Offer:

The following are the Rules relating to Acceptance of Offer:

- (i) **Absolute and Unqualified:** As per Section 7 of the Indian Contract Act, 1872, an acceptance is valid when it is absolute and unqualified and is expressed in some unusual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted.

- (ii) **Communicated to Offeror:** An acceptance with a variation is no acceptance. It is simply a counter proposal, which shall have to be accepted by the original proposer before a contract can be deemed to have come into existence. A counter proposal is the offer by the offeree and can result in a contract only if the other party accepts it. It must further be remembered that an acceptance must specifically relate to the offer made. An offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto.
- (iii) **Mode Prescribed:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e. not in the prescribed manner, the proposer is presumed to have consented to the acceptance.
- (iv) **Reasonable Time:** Acceptance must be given within a reasonable time and before the offer lapses.
- (v) **Mere Silence is not Acceptance:** Acceptance may be expressed or implied. Acceptance must be given after knowing the offer. Acceptance must be given by the person to whom the proposal is made.
- (vi) **By Conduct Also:** The assent mean that acceptance has been signified either in writing or by word of mouth or by performance of some act. Therefore, when, a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

DISTINGUISH BETWEEN

1995 - Nov [4] (b) Distinguish between :

- (ii) General offer and Specific offer.

(5 marks)

Answer:

General and Specific 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 (*Bottom v. Johns*). On the other hand general offer is an offer made to the public in general and hence anyone can accept and do the desired act. In *Carlill v. Carbolic Smoke Ball Co.* (1893) The Court accepted that an offer could be made to the world at large.

Section 8 of the Indian 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.

1996 - May [4] (b) Distinguish between :

- (ii) Offer and invitation to an offer. (2 marks)

Answer:

Offer and Invitation to an Offer: An offer is the final expression of willingness by the offeror to be bound by his offer, should the other party choose to accept it. On the other hand offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Thus, where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms.

In order to ascertain whether a particular statement amounts to an offer or an invitation to offer, the test would be intention with which such statement is made. The mere statement of the lowest price which the vendor would sell contains no implied contract to sell at that price to the person making the inquiry.

Examples: Quotations, Catalogues and Price lists cannot be considered as offers.

1996 - Nov [6] (b) Distinguish between :

- (i) Void and Voidable Contract. (5 marks)

Answer:

Void and Voidable Contracts: The two can be distinguished on the basis of :

1. **Definition:** A contract which ceases to be enforceable by law become void when it ceases to be enforceable. A voidable contract is an agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of other or others.

2. **Nature:** A void contract is valid when it is made but subsequently becomes unenforceable on certain grounds such as supervening impossibility, subsequent illegality, repudiation of a voidable contract, a contingent contract depending upon happening of a uncertain event when occurrence of such event becomes impossible. A voidable contract on the other hand, is voidable at the option of the aggrieved party.
3. **Rights:** A void contract does not provide any legal remedy for the parties to the contract. They even cannot get it performed when they so desire. The aggrieved party in a voidable contract gets a right to rescind the contract. When such a party rescinds-it, the contract becomes void. In case the aggrieved party does not rescind the contract, within a reasonable time, the contract remains valid.
4. In Case of void agreements, restitutions is always allowed unless the illegality on the void nature of the agreement was known to the parties at the time of making of the agreement. In voidable contracts, when they are rescinded benefit will be restored as far as possible.
5. A voidable contract does not affect the collateral transactions. But where the agreements is void on account of illegality the collateral transactions will also become void.

1997 - May [4] (b) Distinguish between :

- (ii) Void agreement and an Illegal agreement. (2 marks)

Answer:

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENTS: According to Section 2(g) of the Indian Contract Act, 1872, an agreement not enforceable by law is void. Both the agreements are not enforceable by the law courts. The points of distinction, however, of both these agreements can be made on the following basis:

1. **Scope:** An illegal agreement is always void while a void agreement is not always illegal being void due to some other factor e.g., an agreement in which the terms of the agreement are uncertain.
2. **Effect of collateral transactions:** If an agreement is merely void and not illegal, the collateral transaction to the agreement may be enforced for execution, but collateral transactions of an illegal agreement cannot be enforced since they are also declared to be illegal.

3. **Punishment:** Illegal agreements are punishable under the Indian law, while void agreements are not.
4. **Void-ab-initio:** Illegal agreements are void from the very beginning, but sometimes void agreements are not. Sometimes a valid contract may be subsequently void e.g. doctrine of supervening impossibility may apply.

2000 - Nov [4] (b) Distinguish between :

- (i) Void and Illegal agreements. (5 marks)

Answer:

Please refer on 1997 - May [4] (b) (ii) page no. 1091

2000 - Nov [6] (b) Distinguish between :

- (i) Wagering agreements and contingent contracts. (5 marks)

Answer:

Wagering Agreements and Contingent Contracts: The two can be distinguished below:

1. A wagering agreement is a promise to give money or moneys worth upon the determination or ascertainment of an uncertain event.
A contingent contract on the other hand, is a contract to do or not to do something if some event, collateral to contract does or does not happen.
2. A wagering agreement consists of reciprocal promises, while a contingent contract may not contain reciprocal promises.
3. In a wagering agreement the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
4. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a contingent nature.
5. A wagering agreement is void, while a contingent contract is valid.
6. In a wagering agreement the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager. In other words, a wager is a game of chance, but this is not so in case of a contingent contract.

2001 - Nov [6] (b) Distinguish between :

- (ii) Offer and an Invitation to Offer. (5 marks)

Answer:

Offer and an Invitation to Offer: When a person communicates to another his willingness to do or abstain from doing something with a view to obtain the assent of that other person towards the act or abstinence, the person making the communication is said to be making an offer.

An invitation to offer is a mere statement of intention inviting a person to come and negotiate. Therefore, it is prelude to an offer. It is devoid of any legal effects., e.g.,

- (a) goods displayed in show window with price tags thereon.
- (b) Prospectus issued by a company inviting the public to apply for shares.
- (c) Price lists or catalogues.
- (d) Circulars sent to potential customers.
- (e) Tender notice.
- (f) Auction notice.

DESCRIPTIVE QUESTION

1994 - Nov [2] Comment on the following:

- (a) Acceptance is to a proposal what a lighted match is to a train of gun-powder. (5 marks)

Answer:

Offer is lighted match while acceptance is a train of gun powder: It is a cardinal rule as regards to acceptance that once the acceptance has been made to an offer the contract is complete. According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gun powder". The effect is that the acceptance produces something which can not be recalled or undone. But the man who led the train may remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptance. Acceptance converts the offer into a promise and then it is too late to revoke it. This means that as soon as a lighted match is brought in contact with a train of Gun Powder the gun powder explodes. Offer is compared to gun powder and acceptance to a lighted match. Gun Powder (i.e. The Offer) by itself is inert, it is the lighted match (i.e., the acceptance)

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which causes the gun powder to explode. The meaning is that an offer by itself cannot create legal relations between the parties, but as soon as it is accepted by the offeree, legal relationship is established between the parties. Once an offer is accepted it becomes a promise and cannot be revoked or withdrawn.

1994 - Nov [5] (b) What agreements are expressly declared void by the Indian Contract Act? (5 marks)

Answer:

Void contract, in effect, is no contract at all. Usually the word void means not binding in law. As such void contract means a contract which has no legal effect at all, it is a nullity and will not create any legal rights between the parties. A contract may be void from its very inception or it may become void subsequently. The Indian Contract Act specifically declares the followings agreements as void:

1. Agreements entered by parties incompetent to contract such as minor, lunatic, persons of unsound mind, alien enemy, sovereign States, Ambassadors and Diplomatic Couriers.
2. Agreements with an unlawful consideration and object in full or in part (Sec. 23).
3. Agreements made under a mutual mistake of fact by both the parties to the contract (Sec. 22).
4. Agreements without consideration (Sec. 25).
5. Agreements in restraint of marriage, trade, or legal proceedings etc.
6. Agreements the meaning of which is not certain. But where the meaning thereof is capable of being made certain, the agreement shall be a valid one (Sec. 29).
7. Wagering agreements i.e., agreements involving a payment of a sum of money upon the determination of an uncertain event and where none of the parties to the agreement has a legitimate interest in the subject matter of the agreement.

1996 - May [5] (a) What are the essential elements of a valid contract?
(5 marks)

Answer:

The examination of the provisions of **Section 10 of the Indian Contract Act, 1872** disclose the following essentials of a valid contact:

1. There must be an agreement between the parties to the contract with an intention to create legal relationship. An agreement consists of offer and acceptance, which is enforceable by law.
2. There must be consideration and its object both must be lawful and not prohibited by law.
3. The parties must have capacity to make a valid contract so as to be not affected by the provisions of Section 11.
4. The consent of the parties must be free so as not to be covered by the provisions of Section 14.
5. The agreement must not be one which the law declares to be either illegal or void.
6. The agreement must be in writing and registered if so required by the law for the time being in force.

1996 - Nov [2] Comment on the following:

(a) A proposal can be revoked otherwise than by communication.
(5 marks)

Answer:

A proposal can be revoked otherwise than by communication: A proposal may be revoked not only by the communication of the notice of revocation by the proposer or by his authorised agent to the other party but also:

1. **By lapse of time fixed for acceptance or lapse of reasonable time, if not acceptance has been specified [Section 6(2)]:** A proposer is not bound to keep his proposal open indefinitely, the reason being that it would amount to a promise without consideration and such a promise is unenforceable. (*Ramsgate Victoria Hotel Co. Vs. Montefiore*).
2. **By the failure of the acceptor to fulfil a condition precedent to acceptance:** Section 6 of the Act contains the law on this subject. A proposal is also revoked by the failure of the acceptor to fulfil condition precedent to acceptance. e.g. A agrees to execute a certain document in favour of B, if B deposits ₹ 5,000/- as earnest money.

3. **By the death of insanity of the proposer:** Death or insanity of the proposer under the law operates as the revocation of the proposal, only if the fact of the death or insanity has come to the knowledge of the acceptor.

1997 - May [5] Answer in brief on the following:

- (a) What is an illegal agreement? State the effects of illegality. (5 marks)

Answer:

The illegal agreements are those which involve committing of a crime or act of moral turpitude or acts opposed to public morals. An illegal agreement is not only void as between the immediate parties; but its collateral transactions are also illegal.

Effects of illegality: Generally in law, no action is allowed on an illegal agreement so that people will be discouraged from entering into an illegal agreement. Thus, no action can be taken for recovery of money paid or property transferred under an illegal agreement and for breach of illegal agreement.

In case of equal guilt in an illegal agreement, the position of defendant is better than that of plaintiff. However, the plaintiff may sue on an illegal agreement than where he was induced to enter into an agreement by fraud or undue influence and where an essential part of the agreement has not been carried out and he is truly repentant.

1997 - Nov [2] Comment on the following:

- (b) Counter offer to an offer lapses the offer. (5 marks)

Answer:

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. Counter offer amounts to rejection of the original offer. (*Hyde v. Wrench, 1840*)

The rule is based on the principle that unless the parties have consensus-ad-idem i.e. are of one mind there cannot be agreement between them. The rule is in itself obviously necessary for words of acceptance which do not correspond to the proposal actually made are not really an acceptance of anything and therefore, can amount to nothing more than a new proposal, or, as it is frequently called a counter offer. Making a counter offer amounts to a rejection of the original offer, which offer can not be thereafter accepted.

1997 - Nov [3] (a) Define the term 'Acceptance'. Discuss the legal provisions relating to communication of acceptance. (10 marks)

Answer:

According to Section 2(b), the term 'acceptance' is defined 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."

An acceptance in order to be valid must be absolute, unqualified, accepted according to the mode if any prescribed within reasonable time and communicated to offeror. Acceptance can also be made by way of conduct. The legal provisions relating to communication of acceptance are contained in Section 4.

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

The communication of an acceptance is complete:

- (a) as against the proposer, when it is put in a course of transmission to him, so as to be out of power of the acceptor;
- (b) as against the acceptor, when it comes to the knowledge of the proposer.

Illustrations: A proposes, by letter, to sell a house to B at a certain price:

- (1) The communication is complete when B receives the letter.
- (2) B accepts the proposal by a letter sent by post. The communication is complete:
as against A, when letter is posted.

As against B when the letter is received by A.

Section 3 of the Act prescribes, in general terms, two modes of communication, namely: (1) by any act or (2) by omission, intending thereby to communicate to the other or which has the effect of communicating it to the other. This first method would include any conduct and words whether written or oral. Written words would include letters, telegrams, telex messages, advertisements, etc. Oral words would include telephone messages. Any conduct would include positive acts or signs so that the other person understands what the person acting or making signs means to say or convey. Omission would exclude silence but include such conduct or

forbearance on one's part that the other person takes it as his willingness or assent. These are not the only modes communication of the intention of the parties. There are other means as well, e.g., if you as the owner, deliver the goods to me as the buyer thereof at a certain price, this transaction will be understood by every one, as acceptance by act or conduct, unless there is an indication to the contrary.

The phrase appearing in Section 3 "which has the effect of communicating it", clearly refers to an act or omission or conduct which may be indirect but which results in communicating an acceptance or non-acceptance. However, a mere mental but unilateral act of assent in one's own mind does not tantamount to communication, since it cannot have the effect of communicating it to the other.

1998 - Nov [3] (a) Who is competent to accept an offer? Explain the rules relating to an offer, as provided in the Indian contract Act, 1872.

(10 marks)

Answer:

Who can accept an offer?

When an offer is made to a particular person it can be accepted by him alone. If it is accepted by any other person, there is no valid acceptance. However, in case of general offer, it can be accepted by any one, who has the knowledge of the offer. The persons who wants to accept the offer must be competent to enter into contract, as per requirements of the Indian Contract Act.

Legal Rules relating to an offer:

- (i) Offer must be such as in law is capable of being accepted and giving rise to legal relationship. A social invitation, even if it is accepted, does not create any relation because it is not so intended.
- (ii) Terms of offer must be definite, unambiguous and certain and not loose and vague.
- (iii) Offer must be distinguished from: (i) a declaration of intention and an announcement and (ii) an invitation to make an offer or do business.

- (iv) Offer must be communicated, otherwise there can be no acceptance of it. An acceptance of the offer, in ignorance of the offer, is no acceptance and does not confer any right on the acceptor.
- (v) Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.
- (vi) Offer should not contain a term the non-compliance of which may be assumed to amount to acceptance. Thus, a man cannot say that if acceptance is not communicated by a certain time, the offer would be considered as accepted.
- (vii) A statement of price is not an offer.

1999 - May [2] Comment on the following:

- (b) Offer is lighted match while acceptance is a train of gunpowder.

(5 marks)

Answer:

It is a cardinal rule as regards to acceptance that once the acceptance has been made to an offer the contract is complete. According to "Sir William Anson" Acceptance is to offer what a lighted match is to a train of gunpowder". The effect is that the acceptance produces something which cannot be recalled or undone. But the man who led the train may remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptance. Acceptance converts the offer into promise and then it is too late to revoke it. This means that as soon as a lighted match is brought in contact with a train of gunpowder, the gun powder explodes. Offer is compared to gun powder and acceptance to a lighted match. Gun powder (i.e. the offer) by itself is inert, it is the lighted match i.e. the acceptance Which causes then gunpowder to explode. The meaning is that an offer by itself cannot create legal relations between the parties, but as soon as it is accepted by the offeree, legal relationship is established between the parties, Once an offer is accepted it becomes a promise and cannot be revoked or withdrawn.

1999 - May [5] (b) When the revocation of a proposal may be made otherwise than by communication?

(5 marks)

Answer:

Revocation of proposal otherwise than by communication: A proposal may be revoked not only by the communication of the notice of revocation by the proposer or by his authorised agent to the other party but also;

- (i) **By lapse of time [Section 6(2)]:** Proposer is not bound to keep his proposal open indefinitely the reason being that it would amount to a promise without consideration, and such a promise is unenforceable (*Ramsgate victoria Hotel Co. V. Montefire 1866*).
- (ii) **By non-fulfilment by the offeree of a condition precedent to acceptance [Section 6(3)]:** A proposal is also revoked by the failure of the acceptor to fulfil condition precedent to the acceptance. A condition precedent is a condition which prevents an obligation to come into existence until the condition is satisfied. An offeror may impose condition such as executing a certain document, or deposition of certain amount as earnest money. Failure to satisfy any such condition shall make a proposal lapse.
- (iii) **By the death or insanity of the proposer:** Death or insanity of the proposer, under the Indian law, operates as the revocation of the proposal, only if the fact to the death or insanity has come to the knowledge of the acceptor. If the acceptor accepts an offer in ignorance of the death or insanity of the offeror, the acceptance is valid.
- (iv) **If a counter offer is made to it:** The counter offer lapses the offer made by the offeror.
- (v) If an offer is not accepted according to the prescribed or usual mode, provided the offeror gives notice to the offeree within a reasonable time that the acceptance is not according to the prescribed or usual mode. If the offeror keeps quiet, he is deemed to have accepted the acceptance [Section 7(2)].

An offer can, however, be revoked subject to the following rules:

- (i) It can be revoked at any time before its acceptance is complete as against the offeror.
- (ii) Revocation takes effect only when it is communicated to the offeree.

- (iii) If the offeror has agreed to keep his offer open for a certain period, he can revoke it before the expiration of the period only.
- (a) if the offer has in the meantime not been accepted or
 - (b) if there is no consideration for keeping the offer open.

2000 - May [2] Comment on the following:

- (i) An acceptance must be made before the proposal lapses. (5 marks)

Answer:

Under Section 5 of the Indian Contract Act, 1872, 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 acceptance is complete as against the acceptor but not afterwards. Therefore an acceptance must be made before the offer lapses or is revoked.

2000 - May [4] (i) What are implied contracts? State the various implied contracts. (10 marks)

Answer:

Under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are termed as “Quasi-Contracts” or Implied Contracts. A quasi contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another.

Sections 68 to 72 of the Indian Contract Act, 1872 have prescribed the following relationships creating quasi-contractual relationship:

1. **Supply of necessaries:** Under Section 68, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his conditions in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
2. **Payment by an interested person:** It has been laid down in Section 69 of the Indian Contract Act that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

3. **Obligation to pay for non-gratuitous Act:** Section 70 of the Indian Contract Act states that where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation in respect of or to restore, the things so done or delivered.
4. **Responsibility of finder of goods:** Under Section 71 of the Act, a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.
5. **Case where money is paid by mistake or under coercion:** Finally, Section 72 of the Indian Contract Act provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. Thus, quasi-contractual right is always a right to money and generally, though not always to a liquidated sum of money. It does not arise from any agreement between the parties concerned, but is imposed by the law. It is a right which is not available against whole world but against a particular person or persons only. There is no contract between the parties in cases of quasi contracts, yet they are put in the same position as if there were a contract between them.

2000 - Nov [3] (a) State the rules relating to acceptance of a Contract.

(10 marks)

Answer:

Rules Relating to Acceptance of a Contract: The Indian Contract Act, 1872 specifies the following rules relating to the acceptance of a contract. It means that a valid contract can be made only by adhering to the following rules relating to the acceptance of an offer. These are:

1. **Acceptance must be absolute and unqualified:** Acceptance shall be valid only when it is absolute and unqualified and is expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted.
2. **Acceptance must be communicated to the offeror:** Acceptance must be brought to the knowledge of the offeror. Unless the offeror knows about the acceptance, he can not be bound by the acceptance given by the offeree. Mere silence is no acceptance.

3. **Acceptance must be in the mode prescribed:** Where the mode of acceptance has been prescribed in the proposal, it must be accepted in the manner prescribed, otherwise it shall not bind the offeror. However, the offeror may later on waive this condition and bound himself from the acceptance not given in the prescribed mode.
4. **Time:** Acceptance must be given within the prescribed time and where no time is prescribed, within the time which is reasonable and does not allow the offer to lapse.
5. Acceptance may be expressed i.e. words of mouth or in writing, or even implied i.e. by conduct of the party concerned.
6. **Acceptance must be made by the person to whom the offer is made:** Acceptance given by some other person or even on behalf of the person to whom the offer is made, is not valid acceptance.
7. It cannot precede an offer. If it does, it is not a valid acceptance and does not result in a contract.
8. It must show an intention on the part of the acceptor to fulfil the terms of offer.
9. It must be given before the offer lapses or before the offer is withdrawn.

2002 - May [5] (a) When does an offer come to an end? (5 marks)

Answer:

An offer may come to an end by revocation or lapse or rejection. According to Section 6 and 7 of the Indian Contract Act, 1872, an offer comes to an end in the following cases:

1. If the offerer revokes his offer before it has been accepted by the offeree, the offer comes to an end.
2. The offer comes to an end if it is not accepted within the time fixed in the offer, or within a reasonable time as the case may be. What is a reasonable time is a question of fact.
3. If there is a condition mentioned in the proposal, before the fulfilment of which the acceptor can not accept the proposal, the offer will automatically be revoked if the acceptor fails to fulfil that condition precedent.

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4. If the fact of the death or insanity of the proposer comes to the knowledge of the acceptor before acceptance, the offer of proposal is revoked. (Section 6)
5. Sometimes, the mode of acceptance is specifically prescribed in the offer. In such a case, if the proposal is not accepted in the prescribed form or method, it stands revoked. [Section 7(2)]
6. An offer comes to an end as soon as it is rejected by the offeree.
7. An offer lapses if it becomes illegal before it is accepted.

2002 - Nov [2] Comment on the following:

- (a) All contracts are agreements, but all agreements are not contracts.

(5 marks)

Answer:

“All contracts are agreements, but all agreements are not contracts”:

An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract. For example, A invites B to see a football match and B agrees. But A could not manage to get the tickets for the match, now B cannot enforce this promise against A i.e. no compensation can be claimed because this was a social agreement where there was no intention to create a legal relationship.

All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus existence of an agreement is a pre-requisite for existence of a contract. Therefore, it is true to say that all contracts are agreements.

Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

2018 - Nov [6] (a) Explain the modes of revocation of an offer as per the Indian Contract Act, 1872. (5 marks)

Answer:

The modes of revocation of an offer as per the Indian Contract Act, 1872 are:

- (i) By notice of revocation
- (ii) **By lapse of time :**
The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely.
- (iii) By non-fulfilment of condition precedent where the acceptor fails to fulfil a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offeror for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money.
- (iv) By death or insanity
- (v) By counter offer
- (vi) By the non-acceptance of the offer according to the prescribed or usual mode
- (vii) By subsequent illegality.

PRACTICAL QUESTION

2018 - Nov [3] (b) (i) Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed. (3 marks)

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- (ii) A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely, looked at the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. (3 marks)

Answer:

- (i) According to the facts of this case there appears to be a clear-cut application of the definition of a contract that is statutorily defined as an agreement enforceable by law. In this case though initially Mr. Ramesh made an agreement in the form of promise to his wife Mrs. Lali of paying ₹ 50,000 but after getting the agreement registered under the law he got the agreement converted into a contract which is legally enforceable. Hence it can be concluded that Mrs. Lali will succeed in her suit to recover ₹ 50,000 from her husband Mr. Ramesh.
- (ii) According to the facts of the case this case qualifies as a typical example covered within the definition of a General offer that means an offer made to public at large and hence anyone can accept and do the desired act. In this case, Ms. Lovely had accepted the general offer by seeing the price tag and when she moved to purchase that she was refused by the shop-keeper who had himself previously made the general offer by putting the dress on display with the price tag. Hence it can be concluded that Ms. Lovely can certainly sue the shop-keeper.