

# INDIAN CONTRACT ACT 1872

## CONTRACT: Offer/Proposal

### Definition:

According to section 2(a) of Indian contract act, 1872, defines offer as “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”.

### Legal rules (OR) essential elements of a valid offer/proposal:-

**1) Offer must be capable of creating legal relations:** A social invitation, even if it is accepted does not create legal relationship because it is not so intended to create legal relationship. Therefore, an offer must be such as would result in a valid contract when it is accepted.

**2) Offer must be certain, definite and not vague:** If the terms of the offer are vague, indefinite, and uncertain, it does not amount to a lawful offer and its acceptance cannot create any contractual relationship.

**3) Offer must be communicated:** An offer is effective only when it is communicated to the person whom it is made unless an offer is communicated; there is no acceptance and no contract. An acceptance of an offer, in ignorance of the offer can never be treated as acceptance and does not create any right on the acceptor.

#### **Example: LALMAN SHUKLA (VS) GAURI DATT. (1913)**

**Facts:** ‘S’ sent his servant, ‘L’ to trace his missing nephew. He then announced that anybody would be entitled to a certain reward. ‘L’ traced the boy in ignorance of his announcement. Subsequently, when he came to know of his reward, he claimed it.

**Judgment:** He was not entitled for the reward.

**4) Offer must be distinguished from an invitation to offer:** A proposer/offer must be distinguished from an invitation to offer. In the case of invitation to offer, the person sending out the invitation does not make any offer, but only invites the party to make an offer. Such invitations for offers are not offers in the eyes of law and do not become agreement by the acceptance of such offers.

**Example: Pharmaceutical society of great Britain (vs) Boots cash chemists (1953).**

**Facts:** Goods are sold in a shop under the 'self service' system. Customers select goods in the shop and take them to the cashier for payment of price.

**Judgment:** The contract, in this case, is made, not when a customer selects the goods, but when the cashier accepts the offer to buy and receives the price.

**5) Offer may be expressed (or) implied:** An offer may be made either by words (or) by conduct. An offer which is expressed by words (i.e., spoken or written) is called an '**express offer**' and offer which is inferred from the conduct of a person (or) the circumstances of the case is called an '**implied offer**'.

**6) Offer must be made between the two parties:** There must be two (or) more parties to create a valid offer because one person cannot make a proposal/offer to himself.

**7) Offer may be specific (or) general:** An offer is said to be specific when it is made to a definite person, such an offer is accepted only by the person to whom it is made. On the other hand general offer is one which is made to a public at large and maybe accepted by anyone who fulfills the requisite conditions.

**Example: Carilill (vs) Carbolic Ball company (1893).**

**Facts:** A company advertised in several newspapers is that a reward of L 100 (pounds) would be given to any person contracted influenza after using the smoke ball according to the printed directions. Once Mr. Carilill used the smoke balls according to the directions of the company but contracted influenza.

**Judgment:** she could recover the amount as by using the smoke balls she accepted the offer.

**8) Offer must be made with a view to obtaining the assent:** A offer to do (or) not to do something must be made with a view to obtaining the assent of the other party addressed and it should not made merely with a view to disclosing the intention of making an offer.

**9) Offer must not be statement of price:** A mere statement of price is not treated as an offer to sell. Therefore, an offer must not be a statement of price.

**Example: HARVEY (VS) FACEY (1893):**

**Facts:** Three telegrams were exchanged between Harvey and Facey.

(a) “Will you sell us your Bumper hall pen? Telegram lowest cash price- answer paid”. [Harvey to Facey].

(b) “Lowest price fro bumper hall pen L 900 (pounds)”. [ Facey to Harvey ]

(c) “We agree to buy Bumper hall pen for the sum of L 900 (pounds) asked by you”. [ Facey to Harvey]

**Judgment:** There was no concluded contract between Harvey and Facey. Because, a mere statement of price is not considered as an offer to sell.

**10)** Offer should not contain a term “the non-compliance” of which may be assumed to amount to acceptance.

**COMMUNICATION OF OFFER AND REVOCATION OF OFFER:** An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated to the offeree. The following are the rules regarding communication of offer and revocation of offer:

**(a) Communication of offer:**

- I. The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.
- II. An offer may be communicated either by words spoken (or) written (or) it may be inferred from the conduct of the parties.
- III. When an offer/proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

**(b) Revocation of offer:** A proposal/offer may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.