



RJS

Rajasthan Judicial Services

Rajasthan High Court (RHC)

Volume - 5

Indian Contract Act 1872, The Transfer of Property Act 1882, The Sale of Goods Act 1930, The Limitation Act 1963



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CHAPTER

Indian Contract Act, 1872 (Part I)

Act no. - 9

Date of enactment: 25 April 1872

Date of enforcement.: 1 Sept 1872

Indian Contract Act, 1872 is a **substantive law**. Although substantive law determines the rights & duties of the parties, but it neither determines the rights nor describe the duties but the right and duties are decided by the parties themselves.

Case - Thirumalai chemicals Ltd. vs Union of India 8025(2011)

Supreme court held that substantive laws are a body which "creates, defines & regulates the rights & duties".

History before Contract Act, 1872

The contractual obligations Were made & fulfilled by the personal laws i.e.

- **Between Hindus** -> Hindu law
- **Between Muslims** -> Muslim law
- **One party Hindu; Another party Muslim.** -> law of the defendant's side.

Case: Madhav chandu u/s Rajcoomar Das, 1874 Calcutta HC Confirmed that no personal laws would be followed after ICA, 1872.

Contractual Obligations

- Contractual Obligations are of civil nature, in which-

1. Compensation or
2. Damages or
3. Specific performance of contract or
4. Injunction

is granted.

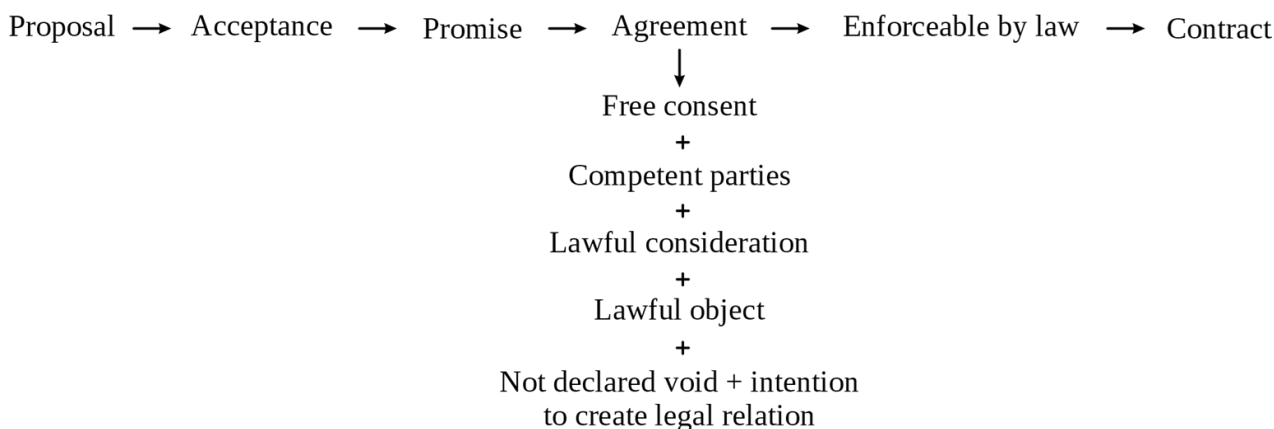
But there are certain criminal liabilities too.

Eg: - S-357. BNS) Criminal breach of contract

Nature of the Act

- Contract Act is **non-exhaustive** in nature. It means it not the complete Act.
- Contract Act is **prospective** in nature, the provisions of Contract Act, 1872 will apply on the matters introduced on or after 1st Sept. 1872.

How A Contract Is Formed



<h3>Topic-Wise List of Important Contract Act Cases</h3>
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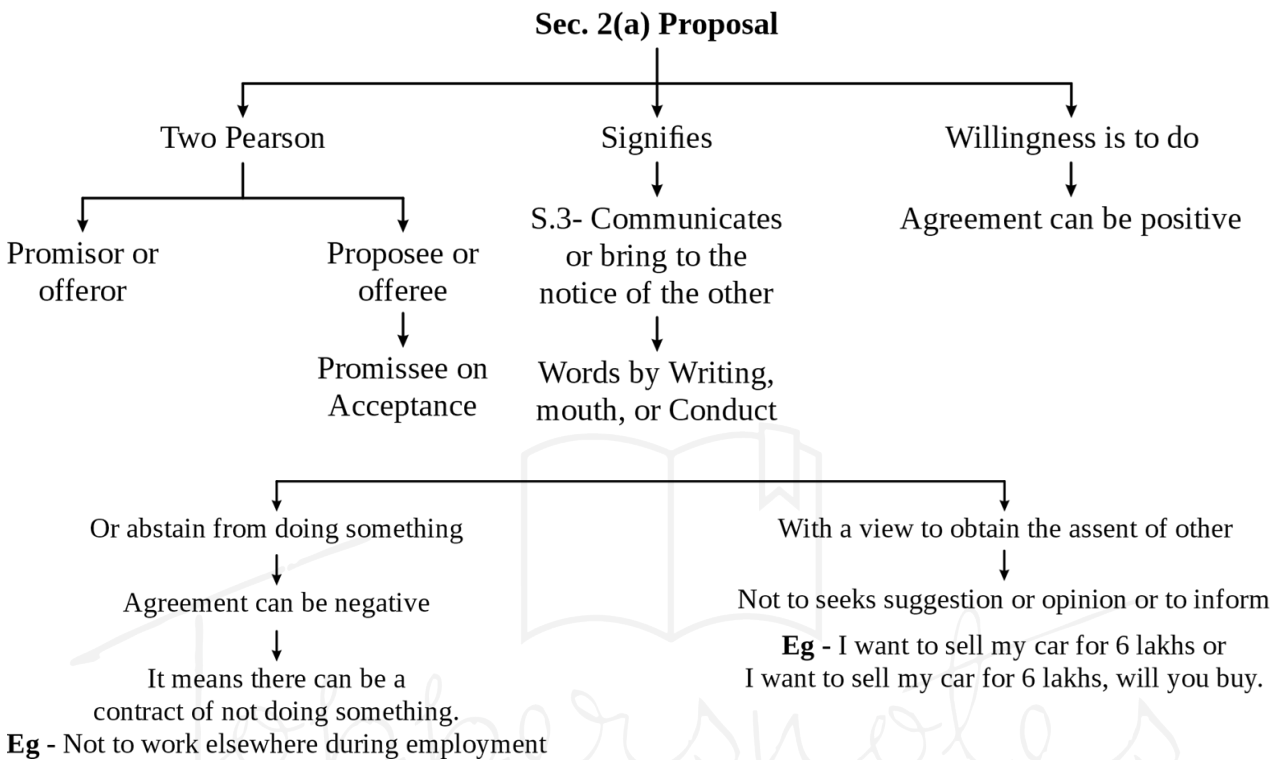
1. **Carlill v. Carbolic Smoke Ball Co. 1893** - General offer is valid; and performing the condition amounts to acceptance.
2. **Lalman Shukla v. Gauri Dutt 1913** - Knowledge of offer is essential for valid acceptance.
3. **Felthouse v. Bindley, 1862** - Silence does not amount to acceptance.
The offeree must communicate acceptance in clear terms
4. **Bhagwandas Goverdhandas v. Girdharilal, 1966** - Telephonic acceptance is complete where it is heard. Thus, place of hearing determines the jurisdiction.
5. **Harbhajan Lal v. Harcharan Lal, 1925** - Acceptance by performance of conditions is valid.
No additional communication is needed.
6. **Haji Mohd. Ishaq v. Mohd. Iqbal, 1978** - Acceptance must be absolute and unqualified.
7. **Bank of India v. O.P. Swarnakar, 2002** - VRS is only an invitation to offer, not an offer.
8. **State of Bihar v. Bengal Chemical, 1953** - Contract binding only when acceptance is in prescribed mode.
9. **Fitch v. Snedaker, 1868** - Reward cannot be claimed without knowing about the offer.
Mere act without offer-knowledge gives no right.
10. **R. v. Clarke, 1927** - One cannot accept an offer without knowing about it.
11. **Gujarat Bottling Co. v. Coca Cola, 1995** - Negative covenants valid if reasonable.
12. **Balfour v. Balfour, 1919** - Domestic agreements lack intention to create legal relations.
Hence, they are not enforceable in court.

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13. **Brooks v. Haigh, 1839** - Consideration must be real.
 14. **Durga Prasad v. Baldeo, 1881** - Past voluntary act is not consideration.
 15. **Abdul Aziz v. Masum Ali, 1914** - Promise of donation unenforceable without consideration.
 16. **Kedar Nath v. Gorie Mohamed, 1886** - Promissory estoppel when promisee acts on promise.
If money spent relying on promise, promisor becomes liable.
 17. **Hyde v. Wrench, 1840** - Counter-offer destroys the original offer
 18. **Chinnaya v. Ramaya, 1877** Consideration may move from third party.
 19. **Nash v. Inman, 1908** - Minor liable only for "necessaries." Expensive clothes not necessary → no liability.
 20. **Hirachand Punamchand v. Temple, 1911** - Third-party payment can be valid consideration.
 21. **Kanhaiya Lal v. National Bank 1923** - Past services requested by promisor = valid consideration.
 22. **Chikkam Ammiraju v. Chikkam Seshamma, 1917** - Threat of suicide is coercion.
 23. **Ranganayakamma v. Alwar Setti, 1889** - Coercion includes forcing adoption.
 24. **Mohri Bibi v. Dharmdas Ghose, 1903** - Minor's agreement is void ab initio.
 25. **Currie v. Misa, 187** - Consideration means "benefit to one, detriment to other."
 26. **Leslie v. Sheill, 1914** - Minor cannot be held liable in tort if it indirectly enforces contract
 27. **Lloyds Bank v. Bundy, 1975** - Inequality of bargaining power → undue influence.
 28. **Mannu Singh v. Umadat Pandey, 1890** - Spiritual influence may amount to undue influence.
 29. **Derry v. Peek, 1889** - Fraud requires intent to deceive. Innocent misstatement is not fraud.
 30. **Bishundeo Narain v. Seogeni Rai, 1951** - Fraud must be specifically pleaded.
 31. **Haji Mohd. Ishag v. Mohd. Iqbal** - Acceptance must match offer exactly
 32. **Durga Prasad v. Baldeo, 1881** - Past consideration not valid (related to mistake).
 33. **Fitch v. Sneadker, 1868** - Knowledge of reward necessary (also under consent).
 34. **Ranganayakamma v. Alwar Setti, 1889** - Adoption obtained by coercion (dual relevance).
 35. **Madhub Chunder v. Rajcoomar Doss, 1874** - Restraint of trade generally void.
 36. **Nordenfelt v. Maxim Nordenfelt 1894** - Reasonable restraint valid in special circumstances.

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37. **Shaikh Bros. v. O.S. Co. 1957** - Agreement becomes void if consideration fails completely.
 38. **Ganga Saran v. Ram Charan, 1951** - If event is within promisor's control, contract is not contingent.
 39. **Gherulal Parakh v. Mahadeodas Maiya (1959 SC)** - wagering agreements are void, but not unlawful in all respects; hence, collateral transactions are not always tainted.
 40. **Shivrajpur Syndicate v. CIT, 1947** - Contingent contract depends on uncertain future event.
 41. **Frost v. Knight, 1872** - Anticipatory breach gives immediate right to sue (often asked).
 42. **Nordenfelt v. Maxim, 1894** - Conditional restraint valid if reasonable.
 43. **Taylor v. Caldwell 1863** - Contract discharged due to destruction of subject matter.
 44. **Satyabrata Ghose v. Mugneeram 1954** - Broad interpretation of impossibility (frustration).
 45. **Robinson v. Davison, 1871** - Performance impossible due to illness in personal service contract.
 46. **Sushila Devi v. Hari Singh, 1971** - Property ceased to exist → agreement void.
 47. **Juggilal Kamlapat v. CIT, 1968** - Novation requires consent of all parties.
 48. **State of Rajasthan v. Basant Nahata, 2005** - Rights assignable; obligations not assignable.
 49. **Alopi Parshad v. Union of India 1960** - Change of circumstances not ground for additional payment.
 50. **Fibrosa Spolka v. Fairbairn, 1942** - Total failure of consideration → restitution allowed.
 51. **Krell v. Henry 1903** - Frustration due to failure of underlying purpose.
 52. **Hadley v. Baxendale 1854** - Damages limited to foreseeable losses. Foundation of S.73 of Contract Act.
 53. **Murlidhar Chiranjilal v. Harishchandra, 1961** - Damages aim to place party in same position as performance.
 54. **Kailash Nath v. DDA 2015** - Penalty enforceable only to extent of reasonable compensation.
 55. **ONGC v. Saw Pipes Ltd. 2003** - LDs payable even without proof of actual loss if reasonable.
 56. **Karsandas H. Thacker v. Saran Engineering 1965** - Special damages allowed if communicated.
 57. **Puran Lal v. State of UP 1971** - Quantum meruit applies when contract becomes void.
 58. **Hochster v. De La Tour (1853)** - When a party repudiates the contract before the performance date, the other party may treat it as breach and sue immediately.

Proposal

The definition is provided under Section 2(a): When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;



Essential of valid proposal:

1. There must be two parties.
2. The proposal must be Communicated.
3. Must be capable of creating legal relationship. (intention to create)
4. The proposal must be certain or ascertainable.

1. There must be two parties. [Section 2(c)]

- One who is making the offer or proposal -> **promisor**
- One who is accepting the offer -> **promise**

Case:- Graff v/s Evans (1882)

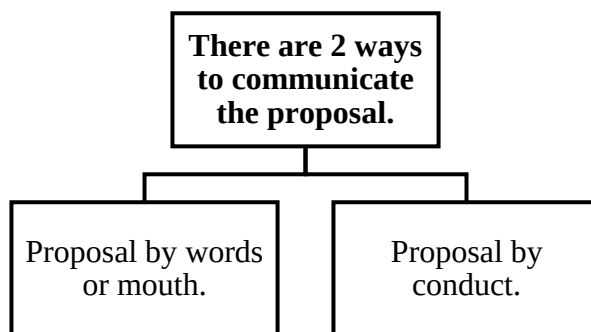
Facts:-

- Members of a Bar club.
- Tax on the Bar products.
- Consumption & selling of alcohol is comes under the ambit of tax Category.

Held

- It was held that for making a Contract, there must be at least two parties, hence club owners & their member is the one person means one cannot sell his goods to self & one can't buy his own goods.

2. Proposal must be communicated –



Note: it is important to refer Section 9 as it states that Promises can be express and implied. —the section 9 states 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.

3. Communication of proposal

Section 4 para 1 states that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Case- Lalmann Shukla v/s Gauri datt (1913) All. HC

Facts:-

- Defendant's **nephew** was missing.
- Lalman left the house to search him, after this defendant announces ₹500 price to get his nephew back.
- Lalman searched priorly & found his nephew, claimed for ₹500 but defendant denied to give.

Judgement-

- It was held that the communication of reward was not communicated to lalman as per the requirement of section 4 para 1 & he went in search without having knowledge of any reward.
- So, in this case, Lalmann doesn't received any kind of compensation. reward amount.

4. A proposal must be with an intention to create Legal relationship: -

In Contract Act, 1872 it is nowhere mentioned that there must be an intention to create legal relationship, but in English law, it is the settled principle that the intention of parties must be ascertained & should be relevant to a contract.

Case- Balfour v/s Balfour (1919)

This case involved a husband's promise to pay his wife £30/month while she stayed in England. Later, the husband stopped payments and the wife sued for breach of contract.

The Court held that domestic agreements between spouses are not intended to create legal relations. Hence, the wife's claim failed as there was no enforceable contract.

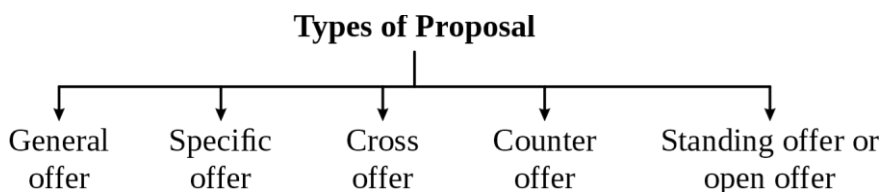
The case established the principle that intention to create legal relations is essential for a valid contract.

5. Proposal must be ascertained -

According to Section 29 of ICA, 1872, (9 of 1872), Agreements void for uncertainty. — Agreements, the meaning of which is not certain, or capable of being made certain, are void.

E.g. -

- A agrees to sell to B “my white horse for rupees five hundred or rupees one thousand”. There is nothing to show which of the two prices was to be given. The agreement is void. So, here this proposal is not certain, hence it can't be enforced.



1. General offer: -

The characteristics and aspects of a general offer:

- **Made to the World at Large:** Unlike a specific offer which is directed at a particular person, a general offer is open for acceptance by anyone who becomes aware of it and fulfills its conditions.
- **Acceptance by Performance:** A crucial aspect of a general offer is that acceptance typically occurs through the performance of the act specified in the offer. There is no need for explicit communication of acceptance to the offeror. Once the conditions are met, a binding contract is formed.
- **Intention to Create Legal Relations:** For a general offer to be valid, the offeror must have the intention to create a legally binding relationship upon the performance of the specified conditions.
- **Revocation:** A general offer can be revoked before anyone has accepted it by performing the conditions. However, once the conditions are fulfilled, the offeror is bound.
- **Landmark Case:**

The concept of a general offer was famously established in the English case of **Carlill v. Carbolic Smoke Ball Co. (1893)**. In this case, a company advertised a reward to anyone who contracted influenza after using their smoke ball as directed. Mrs. Carlill used the smoke ball and still got the flu, and the court held that the advertisement constituted a general offer, which she accepted by performing the conditions, making the company liable to pay the reward. This principle is applicable in India.

- **Bhajan Lal v. Har Charan Lal (1925 All. HC),**
The defendant announced a ₹500 reward for finding his missing son.
The plaintiff, knowing about the offer, traced and brought the boy back.
He claimed the reward, but the defendant refused to pay.
The Court held that this was a **general offer**, and performance itself constituted acceptance.
Since the plaintiff acted with knowledge of the offer, the defendant was bound to pay ₹500.

Examples of General Offers:

- **Reward Offers:** An advertisement offering a reward for finding a lost pet or for information leading to the arrest of a criminal. Anyone who finds the pet or provides the information can claim the reward.
- **Contests and Competitions:** Offers made to the public to participate in a competition with a prize for the winner.

2. Specific offer: -

The characteristics and aspects of a specific offer:

- **Directed to a Specific Offeree:** The most distinguishing feature of a specific offer is that it is addressed to one or more identified individuals. For instance, an offer made by 'A' to sell his car to 'B' is a specific offer.
- **Acceptance by the Designated Offeree Only:** Only the person or group to whom the offer is made can accept it. If someone else tries to accept a specific offer, it will not lead to a valid contract.
- **Communication is Crucial:** For a specific offer to be effective, it must be communicated to the specific offeree. The offeree must be aware of the offer to be able to accept it.
- **Intention to Create Legal Relations:** Like all valid offers, a specific offer must demonstrate the offeror's intention to create a legally binding agreement upon acceptance.
- **Formation of Contract:** A legally binding contract is formed when the specific offeree communicates their acceptance to the offeror.

Examples of Specific Offers:

- **Job Offer:** When a company sends a job offer letter to a particular candidate, it's a specific offer. Only that candidate can accept the job.
- **Personal Sale:** "I offer to sell my house at Civil Lines, Jaipur to you, Mr. Sharma, for INR 1.5 crore." This is a specific offer to Mr. Sharma.
- **Business Contract:** A supplier proposing a contract to a particular business for the supply of goods or services. Only that designated business can accept.

Difference from General Offer:

The primary distinction between a specific offer and a general offer lies in their audience and mode of acceptance:

- **Specific Offer:** Directed to a particular person/group, accepted by communication from that person/group.
- **General Offer:** Directed to the public at large, accepted by anyone who performs the stipulated conditions.

3. Cross- offer: -

A cross offer occurs when two parties make identical offers to each other at the same time, without knowledge of the other's offer.

The characteristics and aspects of cross offer

- **Identical Offers:** Both parties must propose the exact same terms for the same subject matter.
- **Simultaneous (or nearly simultaneous):** The offers are made at roughly the same time. This often happens when communication is by post or email, and the letters/emails cross in transit.
- **Ignorance of the Other Offer:** Crucially, neither party is aware that the other party has also made an identical offer. They are acting independently.

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- **No Contract Formed:** The most important point about cross offers is that they do not result in a valid contract. This is because a contract requires an offer and an acceptance of that offer. In a cross offer, there is no acceptance, only two parallel offers. Neither party has assented to the other's proposal.

Example:

- A in Jaipur sends a letter to B in Delhi offering to sell his vintage motorcycle for Rs. 1,00,000.
- At the exact same time, B in Delhi sends a letter to A in Jaipur offering to buy A's vintage motorcycle for Rs. 1,00,000.

Case: Tinn v. Hoffmann (1873):

- The defendant offered to sell 800 tons of iron to the plaintiff.
- The plaintiff replied offering to buy only 1,200 tons, which was not the same as the original offer.
- This amounted to a counter-offer, not acceptance.
- The Court held that when two cross offers are made without knowledge of each other, no contract arises.
- Principle: Acceptance must mirror the offer; a counter-offer destroys the original offer.

4. Counter-proposal :-

Key Characteristics of a Counter-Proposal

- **Rejection of the Original Offer:** The most critical effect of a counter-proposal is that it **automatically terminates and rejects the original offer**. The original offer no longer exists and cannot be accepted later by the offeree, unless the original offeror chooses to revive it.
- **Creation of a New Offer:** By proposing new terms, the offeree effectively becomes the **new offeror**. They are now making a fresh offer, and the ball is in the court of the original offeror (who is now the offeree) to accept or reject this new proposal.
- **Must be Communicated:** Like any offer, a counter-proposal must be communicated to the original offeror.
- **Intention to Create Legal Relations:** The counter-proposal must also show an intention to create a legally binding agreement if accepted

Case :- Hyde v/s Wrench 1840

- In this case defendant made an offer to sell his farm of £1000 to plaintiff, but plaintiff rejected it and asked to have the same prop in £950. Defendant refused to sell the prop. £950 & plaintiffs agreed to buy the land [for] £1000 but plaintiff's [acceptance was] rejected & defendant denied to sell the house.
- The court held that the defendant was not bound by such acceptance.

5. Standing offer: -

A standing offer (also known as an open offer or continuing offer) is an offer that remains open for acceptance over a period of time. It's essentially an invitation to do business as and when orders are placed.

Characteristics:

- **Open for a Period:** Unlike a one-time offer, a standing offer is valid for a specified duration (e.g., three months, one year).
- **Invitation to Tender/Supply:** It's often seen in the context of tenders or agreements for the continuous supply of goods or services. A party (usually a government department or a large organization) invites tenders for the supply of certain items over a period.
- **Acceptance by Placing Orders:** The "acceptance" of a standing offer doesn't create a single, overarching contract for the entire quantity mentioned. Instead, each time an order is placed by the offeree (the party accepting the standing offer), it constitutes an individual acceptance of the offer for that specific quantity, thereby forming a separate, binding contract for that particular order.
- **Revocability:** Crucially, a standing offer can be revoked at any time by the offeror before an actual order is placed against it. Even if the offer states it will remain open for a certain period, the offeror is generally not bound to keep it open unless there's separate consideration for keeping the offer open (e.g., an option contract). Once an order is placed, however, the offeror is bound to fulfill that specific order.
- **No Obligation to Order:** The party to whom the standing offer is made (the offeree) is not obligated to place any orders at all. They only become bound when they actually place an order.

Illustrative Example:

Imagine the Municipal Corporation of Jaipur issues a tender for the supply of 10,000 bags of cement over a period of 12 months. A cement supplier submits a tender, offering to supply cement at a certain price per bag for that period.

- This tender, when approved by the Corporation, becomes a standing offer.
- The Corporation is not obliged to buy all 10,000 bags or even any bags.
- If, on October 1st, 2025, the Corporation places an order for 500 bags of cement, a separate contract is formed for those 500 bags. The supplier is then bound to supply those 500 bags.
- Before October 1st, 2025, or after fulfilling the 500-bag order, the supplier could revoke their standing offer for the remaining quantity, provided no other orders have been placed.

Invitation to an offer

An invitation to an offer is essentially a preliminary communication or statement by one party that expresses a willingness to negotiate or engage in discussions with a view to receiving offers from others. It is not an offer itself, and therefore, it cannot be accepted to form a binding contract.

The party making the invitation to an offer does not intend to be immediately bound by any acceptance; rather, they are inviting others to make proposals (offers) which they are then free to accept or reject.

Characteristics:

- **No Intention to be Bound Immediately:** The primary distinguishing factor is the lack of immediate intention to create legal relations on the part of the person making the communication. They are simply testing the waters or seeking offers.

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- **Invitation to Negotiate:** It's an invitation for other parties to come forward and make offers.
 - **The "Offer" Comes from the Other Party:** When someone responds to an invitation to an offer, *they* are the ones making the offer.
 - **No Contract Upon "Acceptance":** If someone tries to "accept" an invitation to an offer, it doesn't create a contract. It merely becomes an offer from that person to the party who made the invitation.

Common Examples of Invitations to an Offer:

- **Display of Goods in a Shop Window or on Shelves:** When a shopkeeper displays goods with price tags, they are not making an offer to sell to every customer who walks in. Instead, they are inviting customers to make an offer to buy the goods at the displayed price. The customer makes the offer when they take the item to the counter, and the shopkeeper is free to accept or reject that offer (e.g., if the item is out of stock or if there's a policy against selling to that particular customer).

Landmark Case: *Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd. (1953)* (English case, widely followed in India) established this principle clearly for self-service stores.

Advertisements: Most advertisements for the sale of goods or services are considered invitations to an offer. For example, a newspaper ad for a car for sale or a flyer advertising a discount on electronics. The advertiser is inviting potential buyers to come forward and make offers.

Exception: The *Carlill v. Carbolic Smoke Ball Co.* case (discussed under general offer) is a rare exception where an advertisement was held to be a general offer due to the clear intention to be bound (depositing money in a bank account).

Auction Sales: When an auctioneer puts an item up for sale, they are not making an offer to sell to the highest bidder. Instead, they are inviting bidders to make offers. Each bid is an offer, and the contract is formed only when the auctioneer accepts a bid, usually by the fall of the hammer. Until the hammer falls, a bid can be withdrawn.

Tenders/Requests for Proposals (RFPs): When an organization issues a tender document or an RFP for the supply of goods or services, it is an invitation for interested parties to submit their offers (bids). The organization is not bound to accept any of the tenders received; it can choose the most suitable one or reject all of them.

Price Lists, Catalogues, and Menus: These documents merely indicate the prices at which goods or services may be sold. They invite customers to make offers based on those prices.

Harvey v. Facey (1893) PC:

1. Harvey telegraphed Facey asking: "Will you sell us Bumper Hall Pen? Telegraph lowest cash price."
2. Facey replied: "Lowest price £900."
3. Harvey then wired back: "We agree to buy at £900."
4. The Court held there was no contract, because Facey had only given information about price, not an actual offer to sell.
5. Principle: Mere statement of lowest price is not an offer; there must be a clear intention to be bound.

Difference b/w Offer & Invitation to Offer:

Basis	Offer	Invitation to Offer
Meaning	When one person signifies his willingness to another to do or not to do, with the view to take assent, is called offer.	when a person expresses something to another person, to invite him to make an offer, is called invitation to offer.
Defined in	Sc. 2(a) of ICA, 1872	Not defined in ICA
Objective	To enter into contract	To receive offer & negotiate the terms
Essential to Make an Agreement	Yes.	No.
Acceptance	offer + Acceptance -> Agreement. It becomes an agreement when accepted.	invitation to offer + Acceptance -> Offer, It becomes an offer when it is accepted.
Legal Consequence	It gives rise to legal consequences	It not rise to any legal consequences

Acceptance

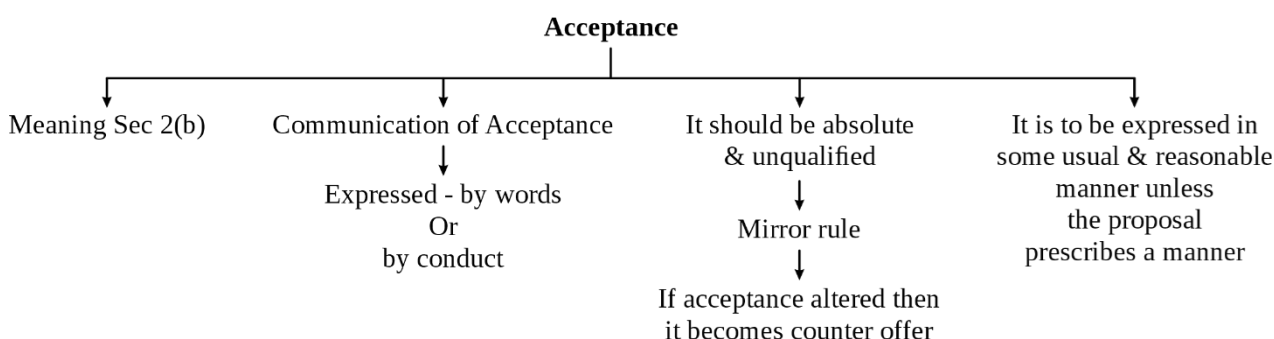
Introduction: -

- Acceptance is second - essential to make a Contract.
- Agreement can't be formed without the acceptance of an offer/proposal.

The definition is provided under section 2(b): it states that 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;

Sir William Anson said - "Acceptance is to an offer, what a lighted match is to a train of gunpowder".

- This statement was given by Sir William Anson - According to this relationship of an offer & acceptance can be understood & can be observed that how a contract becomes legally binding upon parties.
- When a lightened matchstick come nearly to the gunpowder, then it creates an explosion. Similarly, when acceptance is done to an offer, then it forms a contract, which must be fulfilled.



Mode of Communication

When manner or mode
is prescribed

When mode is not
prescribed

Communication of Acceptance (Section 4, Indian Contract Act)

Section 4 para 2:- Completion of Communication of Acceptance

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

Bound

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

Essentials of a Valid Acceptance

For an acceptance to be legally valid and form a binding contract, it must satisfy several key conditions:

1. Absolute and Unqualified (Mirror Image Rule)

The acceptance must be **complete and unconditional**. This means the offeree must agree to *all* the terms of the offer without any modifications, additions, or reservations. If the offeree tries to change any term, it's not an acceptance but a **counter-offer**, which automatically rejects the original offer.

- **Example:** If A offers to sell a car for ₹5,00,000, and B says, "I'll buy it for ₹4,50,000," it's a counter-offer, not an acceptance.

2. Communicated to the Offeror

Acceptance is not merely a mental decision; it must be **communicated** to the offeror. Until the offeror receives the acceptance, there's no contract. This communication can be:

- **Express:** Through words spoken or written (e.g., "I accept," signing a contract, sending an email).
- **Implied:** Through conduct that clearly indicates acceptance (e.g., an online buyer receives a product they ordered, implicitly accepting the seller's offer by keeping it).
- **Silence is generally not acceptance:** An offeror cannot stipulate that silence will be deemed acceptance.
- Acceptance must be signified to the Offeror only not to others.

Case:- Felthouse v. Bindley (1863, UK)

- An uncle (Felthouse) negotiated with his nephew to buy a horse, saying "*If I hear no more from you, I shall consider the horse mine at £30 15s.*"
- The nephew intended to sell but did not reply formally.
- Later, an auctioneer (Bindley) mistakenly sold the horse to someone else.