

Offer

Offer (i.e. Proposal) [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 person either to such act or abstinence, he is said to make a proposal.

To form an agreement, there must be at least two elements – one offer and the other acceptance. Thus offer is the foundation of any agreement.

“When one person signifies to another his willingness –

- to do or to abstain from doing anything,
- with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.” The person who makes an offer is called “Offeror” or “Promisor” and the person to whom the offer is made is called the Offeree” or “Promisee”.

Example

Mr. A says to Mr. B, “Will you purchase my car for Rs.1,00,000?” In this case, Mr. A is making an offer to Mr. B. Here A is the offeror and B is the offeree.

Essentials elements of an offer:-

- (1) There must be two parties.

- (2) The offer must be communicated to the offeree.
- (3) The offer must show the willingness of offeror. Mere telling the plan is not offer.
- (4) The offer must be made with a view to obtaining the assent of the offeree.
- (5) A statement made jokingly does not amount to an offer.
- (6) An offer may involve a positive act or abstinence by the offeree.
- (7) Mere expression of willingness does not constitute an offer. A tells B' that he desires to marry by the end of 2008, if does not constitute an offer of marriage by A' to B' A further adds will you marry me.

Then it becomes offer.

Legal Rules as to valid offer :-

1. Offer must be communicated to the offeree: The offer is completed only when it has been communicated to the offeree. Until the offer is communicated, it cannot be accepted. Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.

Example: A's nephew has absconded from his home. He sent his servant to trace his missing nephew. When he servant had left, A then announced that anybody who discovered the missing boy, would be given the reward of Rs.500. The servant discovered the missing boy without knowing the reward. When the servant came to know about the reward, he brought an action against A to recover the same. But his action failed. It was held that the servant was not entitled to the reward because he did not know about the offer when he discovered the missing boy. [Lalman Shukla v. Gauri Datt (1913) All LJ 489]

2. The offer must be certain definite and not vague unambiguous and certain.

Example: A offered to sell to B. 'a hundred tons of oil'. The offer is uncertain as there is nothing to show what kind of oil is intended to be sold.

3. The offer must be capable of creating legal relation. A social invitation is not create legal relation.

Example: A invited B to a dinner and B accepted the invitation. It is a mere social invitation. And A will not be liable if he fails to provide dinner to B.

4. Offer may be express and implied: The offer may be express or implied; An offer may be express as well as implied. An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct, is called an implied offer [Section 9].

5. Communication of complete offer.

Example: A offered to sell his pen to B for Rs.1,000. B replied, “I am ready to pay Rs.950”. On A’s refusal to sell at this price, B agreed to pay Rs.1,000. held, there was not contract at the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound go give his acceptance.

6. Counter offer – A counter offer amounts to rejection of the original offer

7. Cross offer do not conclude a contract

8. An offer must not thrust the burden of acceptance on the offeree.

Example: A made a contract with B and promised that if he was satisfied as a customer he would favorably consider his case for the renewal of the contract. The promise is too vague to create a legal relationship. ³/₄ The acceptance cannot be presumed from silence. ³/₄ Acceptance is valid only if it is communicated to the offeror.

9. Offer must be distinguished from invitation to offer.

Example: Menu card of restaurant is an invitation to put an offer.

Example ; Price – tags attached with the goods displayed in any showroom or supermarket is also an invitation to proposal. If the salesman or the cashier does not accept the price, the or the cashier does not accept the price, the interested buyer cannot compel him to sell, if he wants to buy it, he must make a proposal.

Example: Job or tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer.

Example: An advertisement for auction sale is merely an invitation to make an offer and not an offer for sale. Therefore, an advertisement of an auction can be withdrawn without any notice. The persons going to the auction cannot claim for loss of time and expenses if the advertisement for auction is withdrawn.

10. Offeror should have an intention to obtain the consent of the offeree.

11. An answer to a question is not an offer.

Types of Offer

I. Express offer - When the offeror expressly communicates the offer, the offer is said to be an express offer. The express communication of the offer may be made by Spoken word or Written word.

II. Implied offer – when the offer is not communicated expressly. An offer may be implied from :- The conduct of the parties or The circumstances of the case.

III. Specific :- It means an offer made in

(a) a particular person or

(b) a group of persons: It can be accepted only by that person to whom it is made. Communication of acceptance is necessary in case of specific offer.

IV. General offer: - It means an offer which is made to the public in general.

- General offer can be accepted by anyone.
- If offeree fulfills the term and condition which is given in offer, then offer is accepted.
- Communication of acceptance is not necessary in case of general offer.

Example: Company advertised that a reward of Rs.100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company according to the printed directions. One lady, Mrs. Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza. She filed a suit to recover the reward of Rs.100. The court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such was entitled to recover the reward from the company. *Carlill v Carbolic Smoke Ball Co.* 1893

V. Cross offer:- When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers. Two cross offers do not conclude a contract.

Two offers are said to be cross offers if

1. They are made by the same parties to one another
2. Each offer made in ignorance of the offer made by the
3. The terms and conditions contained in both the offers' are same.

Example : A offers by a letter to sell 100 tons of steel at Rs.1,000 per ton. On the same day, B also writes to A offering to buy 100 tons of steel at Rs.1,000 per ton. When does a contract come into existence: - A contract comes into existence when any of the parties, accept the cross offer made by the other party.

VI Counter offer :- when the offeree give qualified acceptance of the offer subject to modified and variations in the terms of original offer.

Counter offer amounts to rejection of the original offer. Legal effect of counter offer:-

- (1) Rejection of original offer
- (2) The original offer is lapsed
- (3) A counter offer result is a new offer. In other words an offer made by the offeree in return of the original offer is called as a counter offer.

Example: A offered to sell his pen to B for Rs.1,000. B replied, “ I am ready to pay Rs.950.” On A’s refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was not contract as the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

VII. Standing, open and continuous offer:- An offer is allowed to remain open for acceptance over a period of time is known as standing, open or continually offer. Tender for supply of goods is a kind of standing offer.

Example: When we ask the newspaper vendor to supply the newspaper daily. In such case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called Standing Offer.

LAPSE OF AN OFFER

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end in any of the following ways stated in Section 6 of the Indian Contract Act:

1. **By communication of notice of revocation:** An offer may come to an end by communication of notice of revocation by the offeror. It may be noted that an offer can be revoked only before its acceptance is complete for the offeror.

In other words, an offeror can revoke his offer at any time before he becomes bound by it. Thus, the communication of revocation of offer should reach the offeree before the acceptance is communicated.

2. **By lapse of time;** Where time is fixed for the acceptance of the offer, and it is not acceptance within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time. The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.

3. **By failure to accept condition precedent:** Where, the offer requires that some condition must, be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.

4. **By the death or insanity of the offeror:** Where, the offeror dies or becomes, insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valid. This will result in a valid contract, and legal representatives of the deceased offeror shall be bound by the contract. On the death of offeree before acceptance, the offer also comes to an end by operation of law.

5. **By counter – offer by the offeree:** Where, a counter – offer is made by the offeree, and then the original offer automatically comes to an end, as the counter – offer amounts to rejections of the original offer.

6. **By not accepting the offer, according to the prescribed or usual mode:** Where some manner of acceptance is prescribed in the offer, the offeror can revoke the offer if it is not accepted according to the prescribed manner.

7. **By rejection of offer by the offeree:** Where, the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by

subsequently attempting to accept it. The rejection of offer may be express or implied. 8. By change in law: Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.