

# Offer and Acceptance

By Dr. Swati Singh  
Assistant Professor  
Maharaja Agrasen University

# What is an offer?

- An offer is the starting point in the making of an agreement.
- An offer is also called 'proposal'.
- According to Section 2(a) of The Indian Contract Act, 1872, it is defined as  
“When one person signifies to another, his willingness to do or abstain from doing anything with a view to obtaining the assent of the other, to such an act or abstinence, he is said to make a **proposal**”

# ESSENTIAL ELEMENTS OF OFFER

1. It must be made by one person to another person. (Two Parties)
2. It must be an expression of readiness or willingness to do (i.e. a positive act) or to abstain from doing something (i.e. a negative act).
3. It must be made with a view to obtain the consent of that other person to proposed act or abstinence.
4. The offer must show willingness of the offeror.

# OFFERER (OR 'PROMISOR') AND OFFEREE (OR PROMISEE)

- ◉ The person making the proposal is called the 'offerer' or 'proposer'.
- ◉ The person to whom the proposal is made is called the 'offeree' or 'proposee'.

# HOW TO MAKE AN OFFER?

● An offer can be made by any act which has the effect of communicating it to another person. An offer may, either be an

1. 'express offer'
2. 'implied offer'.

# Types of offer

```
graph TD; A[Types of offer] --> B[General Offer]; A --> C[Special Offer]; A --> D[Counter Offer]; C --> E[Cross Offer]; C --> F[Standing Offer];
```

General Offer

Special Offer

Counter Offer

Cross Offer

Standing Offer

✓ General Offer:

- ⦿ It is not necessary that the offer should be made to a specific person.
- ⦿ The offer can be made to the world at large
- ⦿ The general offer can be accepted by any one.

✓ Specific offer:

- ⦿ The offer made to a specific person or a particular person or two or more than two specific persons.
- ⦿ The specific offer is made to an ascertained person.

## ✓ Cross Offer

- If two parties made offer to one another in ignorance of the offer made by other party, and terms conditions in both the offers are same.

## ✓ Continuous Offer:

- It is the offer which is open for a continuous period of time, it is also known as the open offer or the standing offer.
- It is in the nature of tender

## ✓ Counter Offer:

- The offer made by the offeree in return of the original offer is called as the counter offer.
- It amounts to rejection of original offer



- ◉ A offered to sell his pen to B for Rs100. B replied, 'I am ready to pay Rs 85'.
- ◉ In the above example, when the counter offer of Rs 85 is made by B, it amounts as a rejection of the original offer (i.e., Rs100) made by A.
- ◉ When the counter offer is made, the original offer is lapsed.
- ◉ It means when the counter offer of Rs 85 is made, and not accepted by A, B cannot accept the original offer of Rs 100.
- ◉ The counter offer results in a new offer which may be accepted or rejected by the other party.
- ◉ If he accepts it, the contract is said to be concluded.

✓ Express Offer:

- ⦿ The offer made by using words spoken or written is known as an express offer.

✓ Implied Offer

- ⦿ The offer which could be understood by a conduct of parties or circumstances of case is called the implied offer.

# LEGAL RULES AS TO OFFER

1. Offer Should Not Bind the Other Party to Reply: The offer should not bind the other party to reply. In the same way, if the offer should not contain terms, non-compliance of which may be assumed as acceptance.
2. Offer Must Be Definite, Unambiguous and Certain
3. Invitation to Offer is Not an Offer: A sent a letter to B stating the terms on which he is ready to do business as an agent. It was not an offer but only a statement on intention.
4. Terms and Conditions Communicated Along with an Offer: If the terms and conditions are communicated or informed before or at the time of making an offer, it gives an opportunity to the offeree to decide about the acceptance of the offer.

# MEANING OF ACCEPTANCE

- Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer.
- According to Section 2(b):-  
A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something

# LEGAL RULES AS TO ACCEPTANCE

1. Acceptance Must Be Absolute and Unqualified
  - ◉ Unqualified means unconditional.
  - ◉ The acceptance must be for the whole offer including all its terms and conditions if any.
2. Acceptance Must Be Communicated:
  - ◉ Mere mental acceptance is no acceptance.
  - ◉ But there is no requirement of communication of acceptance of the general offer.
  - ◉ The general offer can be accepted by the performance of a condition.

### 3. Manner of Acceptance

- The general rule says that it must be as per manner prescribed by the offeror.
- If no mode is prescribed, it can be accepted by some usual and reasonable manner.
- If there is a deviation in communication of the acceptance of offer, **the offeror may reject such acceptance** by sending a notice within a reasonable period of time.

### 4. Acceptance of Offer Must Be from Competent Person

### 5. Time Limit for Acceptance:

- If the offer prescribes the time limit, it must be accepted within a specified time.
- If the offer does not prescribe the time limit, it must be accepted within a reasonable time.

6. Acceptance May Be Express or Implied
7. Mere Silence Is Not Acceptance of an Offer
8. Acceptance Subject to Contract Is No Acceptance

# Difference between Offer and invitation to offer

Basis of Distinction	Offer	Invitation to Offer
Meaning	Where a person shows his Willingness to enter into a contract, it is called offer	Where a person invites others to make an offer to him, it is called as an invitation to offer.
Purpose	Offer is made by the person with the intention of entering into a contract	The purpose of making an invitation of the offer is to receive the offer of to negotiate the terms on which the person making the invitation is willing the contract
Legal effect	An offer is acted upon (i.e. accepted) result in contract	An invitation to offer if acted upon only results in offer



# GENERAL RULES AS TO COMMUNICATION OF ACCEPTANCE

## 1. In Case of Acceptance by Post:

- ◉ Where the acceptance is given by post, the communication of the acceptance is complete as against the proposer, when the letter of the acceptance is posted.
- ◉ Thus, a mere posting of the letter of the acceptance is sufficient to conclude the contract

## 2. Delayed or No Delivery of Letter:

- ◉ Where the letter of acceptance is posted by the acceptor but it never reaches the offeror or it is delayed in transit, it will not affect the validity of acceptance.

### 3. Acceptance by Telephones, Telex or Fax

- ◉ If communication of the acceptance is made by telephone, teleprinter, telex and fax machines, it completes when the acceptance is received by the offeror.

### 4. Place of Contract:

- ◉ In case of the acceptance by post, the place where the letter is posted is the place of contract.
- ◉ Acceptance is given by instantaneous means of communication (telephone, fax), the contract is made at the place where the acceptance is received.

## 5. Time of Contract;

- ◉ In case of acceptance by post, the time of posting the letter of acceptance is the time of contract.
- ◉ In case of acceptance by instantaneous means of communication, the time of contract is the time when the offeror gets the communication of the acceptance.

# COMMUNICATION OF OFFER AND ACCEPTANCE

- The communication of the offer is complete when it comes to the knowledge of the offeree.
- 1. Communication of Acceptance—Against the Offeror
- 2. Communication of Acceptance—Against the Offeree
- 3. Communication of Revocation of an Offer
- 4. Communication of Revocation of an Acceptance

**THANK YOU**