

## **PROPOSAL OR OFFER**

The entire process of entering into a contract begins with the proposal or an offer made by one party to another. The proposal must be accepted to enter into an agreement.

According to the Indian Contract Act 1872, proposal is defined in Section 2(a) as “when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer.”

### **Features of a valid offer**

The person making the offer/proposal is referred to as the “promiser” or the “offeror”. And the person who accepts an offer is referred to as “promisee” or the “acceptor”.

- The offeror must express his willingness to do or abstain from doing an act. Only willingness is not adequate. Or just an urge to do something or not to do anything will not be an offer.
- An offer can either be positive or negative. It can be a promise to do some act, and can also be a promise to abstain from doing any act/service. Both are valid offers.

### **The element of a valid offer**

#### ➤ **There must be two parties**

There have to be at least two parties a person making the proposal and the other person agreeing to it. All the persons are included i.e, Legal persons as well as artificial persons.

#### ➤ **Every proposal must be communicated**

Communication of the proposal is mandatory. An offer is valid if it is conveyed to the offeree. The communication can either be express or implied. It can be communicated by terms such as word of mouth, messenger, telegram, etc. Section 4 of the Indian Contract Act says that the communication of a proposal is complete when it comes to the awareness of the person to whom it is made.

**Example: - ‘A’ proposes, to sell a car to ‘B’ at a certain price. Once ‘B’ receives the letter, the proposal communication is complete.**

➤ **It must create Legal Relations**

An offer must be such that when accepted it will result in a valid contract. A mere social invitation cannot be regarded as an offer, because if such an invitation is accepted it will not give rise to any legal relationship.

**Example:** - 'A' invited 'B' to 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.

➤ **It must be certain and definite**

The terms of the offer must be certain and clear in order to create a valid contract, it must not be ambiguous.

➤ **It may be specific or general**

The specific offer is an offer that is accepted by any specific or particular person or by any group to whom it is made. Whereas, The general offers are accepted by any person.

**Classification of offer:** - Some types of offers can be based on the design, timing, purpose, etc. at the offer's classification.

- **Express Offer:-** An offer may be made by express words, spoken or written. This is known as Express offer.

**Example:-**When 'A' says to 'B', "will you purchase my car for Rs 2, 00,000"?

- **Implied Offer:** - An offer may be derived from the actions or circumstances of the parties. This is known as implied offer.

Example: - There is an implied offer by the transport company to carry passengers for a certain fare when a transport company operates a bus on a particular route.

- **General Offer:** - A general offer is not made by any specified party. It is one that is made by the public at large. Any member of the public can, therefore, accept the offer and have the right to the rewards/consideration.

Example: - 'A' advertises in the newspaper that whosoever finds his missing son would be rewarded with 2 lakh. 'B' reads it and after finding the boy, he calls 'A' to inform about his missing son. Now 'A' is entitled to pay 2 lakh to 'B' for his reward.

- **Specific Offer:** - It is the offer made to a specific person or group of persons and can be accepted by the same, not anyone else.

Example: - 'A' offers to sell his house to 'B'. Thus, a specific offer is made to a specific person, and only 'B' can accept the offer.

### Difference between General Offer and Specific Offer

General Offer	Specific Offer
General Offer is made to the whole world at large.	A specific Offer is made to some specific person.
A general offer can be considered by any person.	A specific offer can be accepted by only a specific person.

- **Cross offer:** - Two parties make a cross-offer under certain circumstances. It means that both make the same offer at the exact time to each other. However, in either case, the cross-offer will not amount to accepting the offer.

Example:-'A' and 'B' both send letters to each other offering to sell and buy B's house at the same time. This is the cross offer made where one party needs to accept the offer of another.

- **Counter-offer**:- A counter-offer is an answer given to an initial offer. A counter-offer means that the original offer has been refused and replaced by another. The counteroffer offers three choices to the original offered ,accept, refuse, or make another offer.

### **Lapses and revocation of an offer**

- An offer lapses after a defined or reasonable time.
- An offer lapse by not being accepted in the specified mode
- An offer lapses by rejection.
- An offer lapses by the offeror or the offeror's death or insanity until acceptance.
- An offer lapses by revocation before acceptance.
- An offer lapses by subsequent illegality or destruction of the subject matter.

### **Communication of offer (section 4)**

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

### **Time of revocation of an offer: - Revocation of the offer (Section 4)**

A proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterward.

**Revocation of the offer by the offeror**:- The offeror can withdraw his offer before it is accepted “the bidder can withdraw (revoke) his offer at an auction sale before being accepted by any auctioneer using any of the customary methods.

**Example**: - ‘A’ agreed to sell the property to ‘B’ by a written document which stated “this offer to be left over until Friday 9 AM”. On Thursday ‘A’ made a contract to sell the property to ‘C’. ‘B’ heard of this from ‘X’ and on Friday 7 AM he delivered to ‘an’ acceptance of his offer. Held ‘B’ could not accept A’s offer after he knew it had been revoked by the sale of the property to C.

## **ACCEPTANCE**

The Indian Contract Act 1872 defines acceptance in Section 2 (b) as “When the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise.” An offer can be revoked before it is accepted.

As specified in the definition, if the offer is accepted unconditionally by the offeree to whom the request is made, it will amount to acceptance. When the offer is accepted it becomes a promise.

**Example: - ‘A’ offer to buy B’s house for rupees 40 lacs and ‘B’ accepts such an offer. Now, it has become a promise.**

When an offer is accepted and it becomes promise it also becomes irrevocable. No legal obligation created by an offer.

### **Types of Acceptance**

- **Expressed Acceptance:** - If the acceptance is written or oral, it becomes an Expressed Acceptance.

**Example: - ‘A’ offers to sell his phone to ‘B’ over an email. ‘B’ respond to that email saying he accepts the offer to buy.**

- **Implied Acceptance:** - If the acceptance is shown by conduct, It thus becomes an Implied acceptance.

**Example:-**The Arts Museum holds an auction to sell a historical book to collect charity funds. In the media, they advertise the same. This says that a Mere Invitation to an Offer as per Indian Contract Act, 1872. The invitees offer for the same. Offer is expressed orally, so the offer to buy is an Express Offer, but by striking the hammer thrice the final call is made by the auctioneer. This is called Implied Acceptance.

- **Conditional Acceptance:-**A conditional acceptance also referred to as an eligible acceptance, occurs when a person to whom an offer has been made tells the offeror that he or she is willing to accept the offer provided that certain changes are made to the condition of the offer. This form of acceptance operates as a counter-offer. The original offeror must consider a counter-offer before a contract can be established between the parties.

#### Legal Rules and Conditions for Acceptance

- **Acceptance must be absolute and unqualified**

The offeree's approval cannot be conditional. For example, 'A' wants to sell her car to 'B' for Rs 2 lakh, 'B' can't come back and says that she accepts the offer but will buy the same for Rs. 1 lakh.

- **Acceptance must be told to the offeror**

If the acceptor just accepts the offer in his head and he does not mention the same to the offeror, it can not be called an Acceptance, whether in an express manner or an implied manner.

- **Acceptance must be recommended in the following mode**

Acceptance is sometimes required in a prescribed/specified communication mode.

- **In a reasonable amount of time, the acceptance is given**

It's very rare that an offer is always to get acceptance at any time and at all times. Therefore, the offer defines a time limit. If it does not, it should not be acknowledged forever.

### **Mere silence is not acceptance**

If the offeree fails to respond to an offer made to him, his silence can not be confused with acceptance. But, there is an exception to this rule. It is stated that, within 3 weeks of the date on which the offer is made, the non-acceptance shall be communicated to the offeror. Otherwise, the silence shall be communicated as acceptance.

### **Communication of acceptance (Section 4)**

Communication of acceptance is complete when it is put in the course of transmission to him as to be out of the power of the acceptor to withdraw the same and when it comes to the knowledge of the proposer.

**Time of revocation of acceptance:**-An acceptance may be revoked at any time, but not afterward, before the communication of the acceptance is complete as against the acceptor.

### **Conclusion**

Examination of offer and acceptance is a standard contract law method used to assess whether a two-party arrangement exists. An offer is a sign of their willingness to agree on certain terms from one person to another. If there is an express or implied agreement, a contract will then be formed. A contract is said to come into being when the acceptance of an offer has been told to the offeror by the offeree.