**Offer**

Definition: Section 2 of the Contract Act,1872 says that-

*“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”.*

Elements of a proposal

i. Signification of one’s willingness;

ii. Willingness is expressed to another person;

iii. The willingness may be affirmative or negative;

iv. It has a definite object with the intention to create a legal relation.

**Elements of offer and proposal**

An offer must have certain essentials in order to constitute it a valid offer. These are:

1. The offer must be made with a view to obtain acceptance. **[section 2 (a)].**

2. The offer must be made with the intention of creating legal relations. [**Balfour vs. Balfour(1919) 2K.B.571]**

3. The terms of offer must be definite, unambiguous and certain or capable of being made certain **(section 29).** The terms of the offer must not be loose, vague or ambiguous.

**Legal rules regarding a valid offer**

There are some rules for an offer to be valid. Those are given below:

1. **An offer may be expressed or implied**: An offer may be made either by words or by conduct. An offer which is expressed by words, spoken or written, is called an express offer and the one which is inferred from the conduct of a person or the circumstances of the case is calledan **‘implied offer”.**
2. **An offer must contemplate to give rise to legal consequences and be capable of creating legal relations:** If the offer does not intend to give rise to legal consequences, it is not a valid offer in the eye to law. The proposer must intend to create legal relations and his willingness must be capable of creating legal relations.
3. **The terms of the offer must be certain and clear:** If the terms of the offer are not definite and certain, it does not amount to a lawful offer.
4. **An offer must be communicated to the offeree:** An offer is effectively when it is communicated to the **According to Maugham: *unless all the material terms of the contract are agreed, there is no binding obligation.***
5. **An invitation to offer is not an offer:** An offer must be distinguished from an invitation to receive offer. In the case of an invitation to receive offer the person sending out the invitation does not make an offer but merely invites the other party to make an offer. Its object is merely to circulate information that he is willing to deal with anybody who is willing to open negotiations with him. Such invitations for offers are therefore not offers in the eye of law and do not become agreements by their acceptance.
6. **An offer may be specific or general:** An offer is said to be specific when it is made to a definite person or persons. Such an offer can be accepted only by the person or persons to whom it is made. A general offer is one which is made to the world at large or public in general and may be accepted by any person who fulfills the requisite conditions. The leading case on the subject of general offer is that, [**Carlill vs Carbolic Smoke Ball Co.(1883)]** offeree. Until the offer is made known to the offeree, there can be no acceptance and no contract.
7. **An offer must be communicated to the offeree:** An offer is effective only when it is communicated to the offeree. Until the offer is made known to the offeree, there can be no acceptance and no contract.
8. **An offer should not certain a term the non-compliance of which would amount to acceptance:** Thus an offer cannot saythat ifacceptance cannot communicated up to a certain date, the offer would be presumed to have been accepted. If the offeree does not reply, there is no contract, because no obligation to reply can be imposed onhim, on the ground of justice.
9. **Two identical cross-offer do not make contract:** When two parties make identical offers to each other, in ignorance of each others offer, the offers are cross-offers. Cross-offers do not constitute acceptance of ones offer by the other and as such there is no completed agreement.

**Communication of offer**

It is to be noted that an offer can be made only when it is communicated to the offeree. It is general conception that without communication of the offer there can be no consensus, and therefore no contract.

Thus, if A promises for something if an act is done, and B does that act not knowing about the offer, there will be no contract. Similarly A does some work without the knowledge or request of B, A cannot enforce payment for the work done.

Thus two persons may have a common intention but without communication there is no agreement. An offer is not, therefore, open to a person who is ignorant of it; nor an ignorant compliance with the terms of an offer means an acceptance of it. Thus where a reward is offered for an act, the doing of the act in ignorance of the proposal does not entitled a party to the reward **(Fitch vs Snedarar).**

**Section 4 of the Contract Act 1872,** says about the **communication of offer.** Here it is said that-

***“The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made”.***

**Example: A** proposes, by letter, to sellhis car to **B** at a certain price.The communication of the proposal is complete when **B** receives the letter.

**“An invitation to offer is not an offer”**

An invitation to offer means, taking preparation to accept the offer. When one person circulate the information that he or she wants to deal with anybody and on that circulation any person makes an offer then the former case in act, will be treated as invitation to offer in law and the later case treated as offer.

A person may make a statement without any intention of creating a binding obligation. It may amount to a mere declaration of intention and not to a proposal.

**Differences between offer and invitation to offer**

An offer must be distinguished from invitation to offer. A prospectus issued by a college foe admission to various courses is not an offer. It is only an invitation to offer. A prospective student by filling up an application form attached to the prospectus is making the offer. An auctioneer, at the time of auction, invites offers from the would-be-bidders. He is not making a proposal. A display of goods with a price on them in a shop windowis constructed an invitation to offer and not an offer to sell.

An advertisement for tender is not an offer which, binds a party to sell to the person who makes the highest tender but is a mere attempt to ascertain whether an offer there an offer can be obtained within such a margin as the sellers are willing to adopt. The advertisement therefore, invites a proposal and does not make it. **[Spencer vs Harding, L.R.5,C.P.561].** Hence the acceptance of a tender may be qualified by conditions **[Kundan vs Secretary of State,1930].** Similarly when a shopkeeper issues a price list or places prices goods in his shop-widow, he is not deemed in law to make an offer to sell at the named prices or to sell at all. In both cases it is invitation to intending purchasers to make an offer.

**Revocation of Offer**

An offer is made with a view to obtain assent thereto. A s soon as the offer is accepted is becomes a contract. But therefore it is accepted, it may lapse, or may be revoked. According to Contract Act 1872, two question may arise regarding the revocation of offer.

1. **When an offer can be revoked:** Section 5 of the Contract Act, 1872 says when an offer can be revoked?

***Section 5 says that-“A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards”.***

So an offer is made irrevocable by acceptance. In the illustration of section 5 said that- A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards**.**

**2. How an offer can be revoked:** Section 6 of the Contract Act 1872 lays down the mechanism or different ways of revocation of offer. An offer can be revoked by the following ways-

**i**. **By notice:** An offer may be revoked by the offeror by giving notice of revocation to the other party before it is accepted. Notice of revocation will take effect only when it comes to the knowledge of the offeree. **Example:** A offers his house to B for 3 Lakhs tk. Before B accepted the offer, A withdrew his offer by informing B. There will be a contract as the offer has been revoked before its acceptance.

**ii. By lapse of time:** According to section 6(2) of the Contract Act, the offer must be accepted by the offeree within the time mentioned in the offer an if no time is mentioned, the within a reasonable time. The offer lapses after the time stipulated in the offer expires if by that time offer has not been accepted. If no time is specified, then the offer lapses within a reasonable time. What is a reasonable time is a question of fact and would depend upon the circumstances of each case**.**

**Example: M** offers to purchase shares in company by writing a letter on June 8. The company allotted the shares on 23rd November. **M** refused the shares. **Held:** That the offer lapsed as it was not accepted within a reasonable time **[Ramsgate Victoria Hotel Co. vs Montefiore (1860) L.R.I Ex.109]**

**iii. By non-fulfillment of condition precedent**: An offer may be revoked by the non-fulfillment of a condition precedent by the other party in time. **Example: A** offers to sell his car to **B** forTK.**10** lakhs if **B** joins the lions club within a week. But **B** fails to join the lions club. The offer stands revoked and cannot be accepted by B.

**iv. By death or insanity:** Section 6(4) of the Contract Act provides that a proposal is revoked by the death or insanity ofthe prosper, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance. Therefore, if the acceptance is made in ignorance of the death, or insanity of offeror, there would be a valid contract. Similarly, in the case of the death of offeree before acceptance, the offer is terminated.

v. **By counter-offer:** An offer terminates by counter offer by the offeree. When in place of accepting the terms of an offer as they are, the offeree accepts the same subject to certain condition or qualification, he is said to make a counter offer**. Example:** **A** offers his watch to **B** for 500 Tk. **B** instead of saying yes offers only 300 Tk. **A**’s offers is revoked and there is no contract.

vi. **By refusal:** An offer or proposal once refused is deed and cannot be revived by its subsequent acceptance.

vii. **Not accepted in prescribed mode**: An offer terminates by not being accepted in the mode prescribed, or if no mode is prescribed, in some usual and reasonable manner.

**Counter-offer**

The acceptance of counter-offer has not been defined anywherein the Contract Act, 1872. The question of counter offer is related with the nature of acceptance. The offeree is required to give his assent unconditionally to the exact terms proposed by the offeror, if it is not so identical with the offer then this so called acceptance in fact will be treated as a counter-offer. If the acceptance does not becomes absolute and unqualified, then two consequences arise-

**i.** It cannot be a valid acceptance; and

ii. It turns into a counter-offer

**Example**: **A**- I will sell my pen to you for Tk.20

**B**-I am ready to purchase it for Tk.19 or I agree but you have to give me a pen holder at no extra cost.

Here **B**’s statement is not a valid acceptance and it is termed as counter offer in law.

**Cross offers**

Where two parties make identical offers to each other, in ignorance of each other’s offer, the offers are known as cross-offers and neither of the two can be called an acceptance of the other and, therefore, there is no contract.

**Example:** **H** wrote to **T** offering to sell him 800 tons iron at 69s.per ton. Onthe same day **T** wrote to **H** offering to buy 800 tons at 69s. Their letters crossed in the past. **T** contended that there was a good contract.

**Held:** There was no contract **[Tinn vs Hoffman & Co. (1873)**