
AN OFFER TO THE PUBLIC AT LARGE

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ABSTRACT

The construction of a contract begins with an offer, which establishes the parties' contractual obligations. An offer is necessary for the creation of a contract since it is common knowledge that acceptances may only be made in response to preceding offers. Offer and acceptance are the two components that make up an agreement. It must be feasible to demonstrate that one party made an offer and the other party accepted it for the agreement to be enforceable. In this paper we will be learning about different types of offers with their precedents, majorly about general offer and other types of offers to the public.

KEYWORDS: contract, offer, preceding offer, precedent

INTRODUCTON

An agreement enforceable by law is a contract¹ Offer and acceptance are the two most important components of a valid contract. Offers and acceptances need to be firm and definite. An offer and acceptance must be conveyed to the other party in order to be valid. If either is unclear, it cannot lead to the conclusion of a contract and will be invalid. When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal.² Offer and acceptance are the two components of a contract, and in order for a contract to be deemed legitimate, it must be feasible to demonstrate that one party made an offer and the other party accepted it. An offer is a proposition or indication that one party is ready to make a legally binding commitment to another. A store owner places things in his window and labels them with pricing. It is only a call to the public to submit an offer to purchase the products at the advertised pricing; it is not an offer. For instance, in Y's shop, X notices a product with a price tag of Rs. 50. He makes Y a \$50 offer for the item. Y says the item is not for sale and refuses to sell. X cannot compel Y to sell the item to him for Rs. 50. An item's price marking is seen as an invitation to offer rather than a formal offer.

The essential components of a valid contract, as defined by the Indian Contract Act, are: an agreement; an intention to create a legal relationship; free and genuine consent; parties competent to enter into the agreement; a lawful consideration; a lawful object; an agreement that has not been declared void or illegal; certainty of meaning; the possibility of performance; and any legal requirements that may be necessary.³ A contract must be genuine and free from errors, misrepresentations, fraud, undue influence, and duress in order to be considered valid. The individual who makes the proposal is referred to as the "promisor," and the one who accepts it is referred to as the "promisee".⁴

When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted.⁵ The following are the prerequisites for acceptance: Acceptance should only be granted by the offeree, acceptance must precede the offer and must be definite and given in a fair amount of time.

¹ Section 2(h) of Indian Contracts Act 1972

² Section 2(a) of Indian Contract Act 1972

³ Section 2 & 10 of Indian Contract Act 1872

⁴ Section 2(c) of Indian Contract Act 1972

⁵ Section 2(b) of Indian Contracts Act 1972

An offer is an indication of a person's readiness to do or not do anything for another person in order to achieve that person's approval. A valid contract could be created if that individual accepts the offer. An offer must be specific, assured, and whole in every way. It has to be disclosed to the recipient of it. The parties are bound by the terms of the offer. The following offer kinds are available: A general offer is one that is presented to the globe or the general population. A form of offer known as a specific offer is one that is made to a particular person. Cross offer: When a new contract is established, the offeror and offeree disregard the initial offer. A counter offer is a sort of offer in which the offeree accepts the earlier offer with revisions but does not accept the earlier offer as is. A standing offer is one that is offered to the general public and is valid for a limited time only.

GENERAL OFFER

When an offer is offered to the general public, it is referred to as a general offer and can be accepted by anybody who wants to comply with the offer's conditions. A contract between the offeror and the offeree is formed when the person to whom the offer is intended accepts it. The number of contracts that will be made if a big number of people accept the offer will be equal to the number of people who accept it. Only the individual who completes the assignment can take the award if it is provided as compensation for doing so. It follows that while an offer may be made to anybody in the world, a contract for that offer must be formed with a specific person or entity. There is no requirement to communicate acceptance to the offeror in the event of a General Offer. Any individual who has received notice of the offer may accept it by doing what is needed under the offer. Simply meeting the terms of the offer itself is considered acceptance to form a contract. Though an offer can be presented to the entire globe, a contract can only be formed by accepting the offer.

Carlill V. Carbolic Smoke Ball Co (1893)

In the Carlill V. Carbolic Smoke Ball Co Pvt Ltd case, an Australian smoke ball company developed a product and advertised in the newspaper commercial saying the company would reimburse 100 euros to anyone who contracted the flu after using their product for a specified amount of time (special condition) as the company believed that their product could prevent influenza. Additionally, a publication said that the business had previously placed 1000 euros as proof. Louisa Carlill used the product as directed for the specified amount of time, contracted influenza, and then sued the manufacturer for breach of contract after the manufacturer refused

to pay Mrs. Carlill (the plaintiff) the 100 euros promised in the advertisement on the grounds that there was no consideration and no intent to establish a legal relationship. The action was allowed by the court, and the business was held liable for the breach of contract. The guarantee stated in the advertising was taken as evidence, and Carbolic Smoke Ball Co Ltd was found accountable. It was concluded that the deposit of 1000 euros at the Alliance Bank served as evidence of their sincerity in making their claim. Additionally, it was determined that no indication of acceptance is necessary for a general offer since anybody who reads the advertising and complies with the terms is deemed to accept the offer. The company's agreement was viewed as a unilateral contract and as an offer that creates a valid and binding contract.⁶

INVITATION TO OFFER

Making an offer is the initial step in creating a contract; however, there may be a phase before making an offer when someone invites another to make an offer (invitation to offer). The invitation is made by the promisee to the promisor. Promisor responds to the invitation with an offer. Following that, the promisee will either accept or reject the offer. An invitation is not the same as a proposal because it entails the submission of an offer. It does not, however, impose any legal responsibility on either party as a result of the decision to accept or reject the offer. The offer, however, becomes an agreement and may become a legally binding contract if it is accepted.

Pharmaceutical Society of Great Britain Vs Boots Cash Chemist Ltd.

There was a medical store in England where medications were on display. (Invitation to offer) The business also had some medicines whose sales were prohibited. When a client visited the store, he picked up those prohibited drugs and carried them to the billing counter. (He made an offer) The police entered the store and attempted to punish the shopkeeper for selling the prohibited medicine. The shopkeeper used the invitation to offer defence, claiming that the customer only made an offer that was not accepted by the shopkeeper. Because the shopkeeper did not accept the offer, he was not legally bound by any agreement or contract, and thus the police could not punish him for selling any medicine.⁷

⁶ Carlill v Carbolic Smoke Ball Co – 1893 available at <https://www.lawteacher.net/cases/carlill-v-carbolic-smoke-ball-co.php> (Last Modified 24 September 2021)

⁷ Pharmaceutical Society of Great Britain v Boots Cash Chemists Case Summary (1953) available at <https://lawplanet.in/pharmaceutical-society-of-great-britain-v-boots-cash-chemists-case-summary-invitation-to>

SPECIFIC OFFER

A specific offer is one that is presented to a specific or known individual; this form of offer may only be accepted by the individual to whom it is made. In other words, as the name implies, a proposal is communicated to a specific individual. The offer would become a contract only if that specific individual expressed assent. This represents a specific offer. It demonstrates the unique and exclusive nature of this type of offer.

Boulton v. Jones

Whereas the Plaintiff acquired the business of one Brocklehurst, the defendant used to do business with Brocklehurst and, unaware of the change in ownership, sent him an order for specific products. The Defendant learned of the modification only after receiving an invoice, by which time he had consumed the products. The defendant refused to pay the sum because he had a set-off against the original owner, which the plaintiff sued him for.⁸

The Judges ruled unanimously that the defendant was not liable. According to Pollock CB, the rule of law is clear: if you plan to contract with A, B cannot substitute himself as A without your agreement and to your disadvantage.

CROSS OFFER

Cross offers are made when two parties make similar offers to each other while being unaware of the other's offer. Cross offers are not valid offers. For example: If A makes an offer to sell his automobile to B for 7 lakhs and B, unaware of the offer, makes an offer to purchase the same car for 7 lakhs, they are said to have made a cross offer, and there is no acceptance in this scenario, therefore it cannot be a mutual acceptance. The fundamentals of a cross offer

Same offer to each other- When the offeror makes an offer to the offeree and the offeree makes the identical offer to the offeror without previous knowledge, both the object and the party remain the same.

offer/#:~:text=The%20court%20dismissed%20the%20Pharmaceutical,Pharmacist%20and%20poisons%20act%2C%201933.(Last Modified May 12 2021)

⁸ BOULTON VS. JONES [1857] available at <https://thelegallock.com/boulton-vs-jones-1857-case-brief> (Last Modified 25 January 2022)

Offers must be made in complete ignorance of one another- The two parties must make their offers in complete ignorance of one another.

Tinn V Hoffman

The defendant made an offer to the complainant to sell him 800 tonnes of iron at 69s per tonne, and the complainant made an offer to acquire the iron at equal conditions. The question in this case was whether there existed a contract between the parties and if simultaneous proposals were legal acceptance. The court determined that they were cross offers made without knowledge of one another and would not bind the parties. It is important to note that for a genuine contract to be created, there must be an offer and acceptance of the same, however in a cross offer, there is no acceptance, only simultaneous offers, and so a cross offer will not result in the creation of a contract.⁹

COUNTER OFFER

When the initial offer is conveyed to the other party, the respective individual may respond with changed or newer conditions under which the contract should be formed. Some technical details or other elements may be altered at the offeree's discretion. Once the offeror accepts the offeree's terms in the new offer, it becomes the real offer and an intrinsic element of the contractual relationship that is affected. A counter offer is made when the offeree makes a qualified acceptance of the offer subject to revisions and alterations in terms of the original offer. A counter offer is a response to the initial offer.

For example, if A offers B a car for 10 lakhs and B agrees to buy for 8 lakhs, this amounts to a counter offer and means that the first offer is rejected. If B later offers to buy for 10 lakhs, A may decline.

STANDING OFFER

It's similar to a general offer presented to the public at large. However, it will remain open for a limited time. People can continue to apply in that time range since it is also known as a continuing offer. When the other party accepts the offer, the contract is completed in this

⁹ Tinn v Hoffman and Co 1873 available at <https://www.lawteacher.net/cases/tinn-v-hoffman.php> (Last Modified 28 September 2021)

situation as well. The best example is a tender, which is essentially an offer. The contract would not be created unless it is accepted and the acceptance is communicated.

Perclval Ltd. V. London County Council Asylums and Mental deficiency Committee

The Plaintiff solicited bids for the provision of products. The defendant accepted the proposal in which he was required to deliver numerous unique items to the corporation for a term of 12 months. During this time, the Defendant did not furnish for a certain consignment. The Court determined that the Tender was a standing offer to be turned into a series of contracts by the business's future activities, and that an order precludes pro tanto the option of revocation, hence the company prevailed in an action for breach of contract.¹⁰

CONCLUSION

The Indian Contract Act does not explicitly state the various sorts of offers, but because we are a common law country, we construct legislation based on judgements made by Indian and British courts. Because an offer is the first stage in the formation of a contract, it is critical to differentiate what sort of offer the offeror has made, as different types of legal regulations apply to different types of offers. To minimise unwanted transactions, it is also critical to distinguish between an offer and an invitation to offer.

¹⁰ Perclval Ltd. v. London County Council Asylums and Mental Deficiency Committee available at <https://indiancaselaw.in/perclval-ltd-v-london-county-council-asylums-and-mental-deficiency-committee/> (Last Modified 9 February 2013)