

INDIAN CONTRACT ACT, 1872

(ACT NO. 9 OF 1872)

Introduction

Assent of Governor General - 25th April, 1872

Came into force - 1st September, 1872. (S.1)

Extension – Whole of India. (S.1)

- The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, w.e.f. 31-10- 2019.
- It is not an exhaustive law
- It does not have retrospective effect.

Previously it had 4 parts –

General – (Ss. 1-75)

Sales of goods Act – (Ss. 76-123) ---- presently separate Act

Special contract – (Ss. 124-238)

Partnership – (Ss. 239-266) ----- presently separate Act

- **General Law of contract –**

Preliminary – (Ss. 1-2)

Ch. 1 – Communication, acceptance and revocation of contract (Ss. 3-9)

Ch. 2 – of contracts, voidable contract and void contract (Ss. 10-30)

Ch. 3 – of contingent contract (Ss. 31-36)

Ch. 4 – of the performance of contract (Ss. 37-67)

Ch. 5 – certain relations resembling those created by contract (quasi-contract) (Ss. 68-72)

Ch. 6 – consequences of breach of contract (Ss. 73-75)

Ch. 7 – sales of goods (Ss. 76-123) ---- **Repealed**

Ch. 8 – Indemnity and guarantee (Ss. 124-147)

Ch. 9. Bailment (Ss. 148- 181)

Ch. 10 Agency (Ss. 182-238)

Ch. 11 Partnership (Ss. 239-266) ----- **Repealed**

CONTRACT

‘Sir William Reynell Anson’ is called the father of Contract Act.

According to him – ‘A contract is an agreement enforceable by law, made between two or more persons by which rights are acquired by one or more to act or forbearance on the part of another’.

Contract – An agreement enforceable by law is a contract. [S. 2(h)]

Two essentials :

(1) Agreement

(2) enforceable by law.

Agreement – Every promise and every set of promises forming consideration for each other. [S. 2(e)]

Promise – A proposal, when accepted becomes a promise. [S. 2(b)]

Proposal – (i) Signifying (expressing) by one person to another his willingness to do or to abstain from doing anything,

(ii) with a view to obtaining the assent of the other to such act or abstinence. [S. 2(e)]

Acceptance – When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. [S. 2(b)]

Consideration –

i) When, at the desire of the promisor,

ii) the promisee or any other person

(a) has done or abstained from doing, or

(b) does or abstains from doing, or

(c) promises to do or to abstain from doing something,

iii) such act or abstinence or promise is called a consideration for the promise. [S. 2(d)]

Promisor, Promisee [S. 2(c)]

The person making the proposal >>promisor

The person accepting the proposal >> promisee.

Thus, a contract is an agreement, an agreement is a promise and a promise is an accepted proposal, so every agreement is the result of a proposal from one side and its acceptance by the other.

When agreement becomes contract – Every contract is an agreement but every agreement is not a contract. Only those agreements become contracts which satisfy the conditions of S. 10.

Section 10- All agreements are contracts if they are made by :

- (i) free consent of the parties (Ss. 13-22)
- (ii) competent to contract (Ss. 11-12)
- (iii) for a lawful consideration, (S. 25)
- (iv) with a lawful object, (Ss. 23-30) and
- (v) not expressly declared to be void.

Proposal or offer

Proposal – (i) Signifying (expressing) by one person to another his willingness to do or to abstain from doing anything,

(ii) with a view to obtaining the assent of the other to such act or abstinence. [S. 2(e)]

Proposer >> promisor >> offeror

Proposee >> promisee >> offeree

Communication of proposal

The willingness to make a proposal should be 'signified' i.e., the proposal should be communicated to the other party.

Sec. 3 provides the modes of communication which says that -

Proposal may be communicated by any act or omission of the party proposing by which he intends to communicate such proposal or which has the effect of communicating it.

Express offer- An offer which is expressed by words, written or spoken.

Implied offer- An offer which is expressed by conduct.

An acceptance may also be likewise.

If the proposal or acceptance is made in words, the promise is express. If the proposal or acceptance is made otherwise than in words, the promise is said to be implied. (S. 9)

Communication when complete

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. (S. 4)

Leading case – *Lalman Shukla vs Gauri Datt, 1913 All.* (nephew got lost, servant went to search him, offer of Rs 501 afterwards, searched without knowledge of offer) In order to constitute a contract, there must be an acceptance of an offer and there can be no acceptance unless there is knowledge of the offer.

Revocation of proposal

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer.

Communication of revocation is complete

- **as against the person who revokes**, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who revokes;
- **as against the person to whom it is made**, when it comes to his knowledge. (S. 5)

General offers

The offer may be made to the world at large, but the contract is not made with the world. Contract is made only with that person who comes forward and performs the conditions of the proposal. (***Carlill vs Carbolic Smoke Ball Co., 1893***)

Proposals acceptable by conduct – In cases like ***Carbolic Smoke Ball Co.***, communication of acceptance is not necessary. In advertisement cases a person is not required to notify his acceptance of the offer before he performs the condition.

Section 8- (i) Performance of the conditions of a proposal, or

(ii) the acceptance of any consideration for a reciprocal promise offered with a proposal, is an acceptance of the proposal.

Leading case - *Har Bhajan vs Har Charan Lal, 1925 All.*, (young boy ran away, pamphlet offering reward, plaintiff took the boy to railway police, sent telegram to boys father, substantially performed the condition)

General offer of continuing nature – Open for acceptance to any number of persons until it is retracted (as in *Carbolic Smoke Ball Case*). But if an offer requires some information as to a missing thing, it is closed as soon as the first information received.

Offer and invitation to offer

When a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but only invites the other party to make an offer on those terms. This is the basic distinction between an offer and an invitation to receive an offer.

Leading case – *Harvey vs Facey, 1893 PC* (Bumper Hall Pen case)

A shopkeeper's catalogue of price is not an offer, it is only an invitation to the intending customers to offer to buy at the indicated price.

An auctioneer's announcement that the specified goods will be sold at auction is not an offer to hold the auction.

Indication of reserved price is neither a proposal to sell at that price nor it is a valuation of the property.

The highest bid is nothing more than an offer to buy and it requires to be accepted by the auctioneer.

ACCEPTANCE

Definition – When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. [S. 2(b)]

Communication of acceptance

The assent should be signified by an act or omission by which the party accepting intends to communicate his assent or which has the effect of communicating it. (S.3)

Characteristics of Acceptance

- (i) **Acceptance by external manifestation** - There should be some external manifestation (overt act) of acceptance. A mere mental determination to accept unaccompanied by any external indication will not be sufficient. Such manifestation may be express or implied.

- (ii) **Acceptance by conduct** – Sec. 8 provides for the acceptance of proposal by performance.
- **Leading case – *Hindustan Cooperative Insurance Society vs Shyam Sunder, 1952 Cal.*** (After the assurance of the company, proposer submitted proposal form and cheque for half-yearly premium, cheque encashed, no reply to proposer of acceptance) held – by cashing the cheque the company had accepted the proposal without there being the formal acceptance.
- (iii) **Communication to offerer himself** - Acceptance must be communicated to the offerer himself or the person authorised by him. Communication to other person is as ineffectual as if no communication has been made.
- (iv) **Communication by acceptor himself** – Communication of acceptance should be from a person who has the authority to accept. Information received from an unauthorised person is ineffective.
- ***Powell vs Lee, 1908*** - Headmaster appointment case.
- (v) **Offer cannot impose burden of refusal** – upon the offeree. The offerer cannot say that if no answer is received within a certain time, the same shall be deemed to have been accepted.
- (vi) **When communication is not necessary** – when a particular mode of acceptance is prescribed in the offer then the acceptor has to follow that mode and there is no need to communicate the acceptance. (***Smoke Ball case***)

Mode of communication

Acceptance should be made in prescribed manner – According to S. 7 -

In order to convert a proposal into a promise the acceptance must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner of acceptance.

If the proposal prescribes the manner of acceptance, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Thus, S. 7 requires that acceptance should be made in the manner prescribed in the proposal.

Effect of departure from the prescribed manner - If it is not made in the prescribed manner, the proposer may reject such acceptance within a reasonable time and if he fails to do so, the contract is confirmed and he becomes bound by the acceptance.

Where no manner is prescribed >> the acceptance must be expressed in some usual and reasonable manner.

When communication complete

The communication of acceptance is complete :

- **as against the proposer** when it is put in a course of transmission to him, so as to be out of the power of the acceptor;
- **as against the acceptor**, when it comes to the knowledge of the proposer.
(S. 4)

When contract concluded

Postal communication – the contract is concluded at the place from where the proposal is accepted and communication of acceptance is dispatched. (cf- English law- where contract is concluded against both when a letter of acceptance is posted)

Direct communication – the contract is complete when the acceptance is received by the offerer; and the contract is made at the place where acceptance is received. (*Entores Ltd. vs Miles Far East Corp., 1955 QB*)

Bhagawandas Goverdhandas Kedia vs Girdharilal Parshottamdas & Co., 1996 SC, - Plaintiffs made an offer from Ahmedabad to defendants at Khamgaon to purchase certain goods and the defendants accepted the offer. The question was whether the conversation resulted in a contract at Khamgaon or Ahmedabad.

The majority (Hidayatullah J. dissented) followed the English rule laid down in *Entores case* and not extended the post office rule to telephonic communications. Shah J., held that S. 4 does not imply that the contract is made *qua* the proposer at one place and *qua* the acceptor at another place. **The conversation over the telephone is analogous to the conversation when the parties are in presence of each other, where the negotiations are concluded by the instantaneous speech.** Hence, the contract was concluded at Ahmedabad.