AILET

Legal Reasoning: Offer and Acceptance for CLAT 2020

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Introduction

Any agreement between two or more parties that is enforceable by law is a contract. In India, contracts are governed by the Indian Contract Act, 1872 (**ICA**) which is a statute containing detailed provisions on various aspects of contracts including execution and enforcement. The various provisions contained in the Act are referred to as "Sections".

Section 2(h) of the ICA defines a contract as *"an agreement enforceable by law*". Thus, the formation of an "agreement" is necessary for a contract to come into existence. Section 2(e) of the ICA defines agreement as *"Every promise and every set of promises, forming the consideration for each other, is an* agreement".

The formation of an agreement takes place when an "offer" is made by one party and is "accepted" by another. Under ICA, an offer is termed as "proposal". If there is no proposal at all or if a proposal has been made but not accepted, an agreement does not come into existence.

The ICA regulates various aspects of offer and acceptance such as manner of making an offer/acceptance, when communication of an offer/acceptance gets completed and conditions of a valid acceptance.

Important Aspects of Offer

Section 2 (a) of the ICA defines a proposal by stating 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*".

Thus, an offer/proposal essentially indicates a person's willingness to do some act or to abstain from doing some act. Section 2(c) denotes any person making a proposal as "promisor".

Section 3 of the ICA explains how an offer/proposal can be made. It states that a party may communicate a proposal by doing any act or omission by which he/she intends to communicate such proposal or which has the effect of communicating it.

For example, if A goes to a stationery shop, picks up a pen and places a note of Rs. 10 in front of the shopkeeper while pointing to the pen or holding it up in his hand without saying anything, A's conduct may be interpreted to mean that A has made an offer to purchase the pen from the shopkeeper for Rs. 10.

Section 4 of the ICA explains as to when the communication of a proposal/offer gets completed. It states that the communication of a proposal gets completed when the proposal comes to the knowledge of the person to whom it has been made.

For example, if A sends a letter by post to B containing an offer, the communication of such offer shall get completed only when the letter has been received and read by B. If B has only received the letter but not read it, the communication of A's offer shall not stand completed as the offer has not "come to the knowledge" of B.

The ICA also permits the revocation of an offer/proposal which has been made by a party. Section 6 describes that a proposal may be revoked in the following ways –
(1) by giving a notice of revocation to the concerned party,
(2) by lapse of the time prescribed for acceptance of the proposal of or by lapse of a reasonable time when no particular time has been prescribed,
(3) by the failure of the acceptor to fulfil a condition precedent to acceptance and
(4) by death or insanity of the proposer provided that the fact of such death or insanity comes to the acceptor's knowledge before acceptance of the proposal.

It is important to note that an offer is different from an invitation to offer. Sometimes, a person may make statements or give some information expecting others to make an offer on the basis of such statement or information.

Therefore, the giving of such information shall not be an offer but only an invitation to make an offer. For example, the display of goods by a shopkeeper in his shop is not an offer to the public/prospective customers to purchase those goods, rather, it is an invitation to make an offer.

If a customer, after looking at the goods displayed in a shop, indicates his willingness to purchase a particular good, it shall constitute an offer to purchase that good. If the shopkeeper agrees to

such offer, only then shall a contract between the shopkeeper and customer come into existence.

An offer made to a particular person is called a specific offer and when an offer has not been made to any particular person but to the public at large, it is called a general offer.

For example, an offer to give reward to anyone who traces a missing child is a general offer. Such offer shall be deemed to have been accepted by any person who brings back the child in anticipation of the reward.

In such a case, the promisor shall be bound to reward the person who brought back the child. However, if a person brings back the child without knowing about the offer of reward, he cannot claim anything from the promisor since bringing back the child without knowing about the offer shall not amount to acceptance of the offer.

Important Aspects of Acceptance

Section 2(b) of the ICA defines "acceptance" stating that *"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*".

Thus, giving assent to a proposal amounts to acceptance. Once acceptance has been indicated, the proposal is treated as a promise i.e. the promisor shall be held liable to fulfil the promise. Section 2(c) of ICA states that a person who accepts a proposal is known as "promisee".

Section 3 of the ICA explains how an acceptance must be communicated. It states that a party may communicate his/her acceptance of a proposal by doing any act or omission by which he/she intends to communicate such acceptance or which has the effect of communicating it.

For example, if B has received A's letter by post containing an offer and after reading the letter, B sends a letter to A indicating his acceptance, the act of sending the letter of acceptance by B shall constitute acceptance of the offer.

If B only prepares the letter of acceptance but never sends it to A, mere preparation shall not constitute acceptance since the acceptance has not been communicated to A. Thus, it is important to remember that *acceptance must be communicated to be considered as a valid acceptance*.

Section 4 of the ICA explains as to when the communication of acceptance gets completed. It states that communication of an acceptance is complete-
(a) as against the promisor/proposer, when it has been put into a course of transmission to

him/her and
(b) as against the acceptor/promisee, when it comes to the knowledge of the promisor.
Understanding as to when the communication of an acceptance gets completed is relevant because section 5 of the ICA permits an offer to be revoked at any time before the communication of acceptance is complete as against the promisor.

Similarly, an acceptance can also be revoked at any time before its communication is complete as against the acceptor.

Besides the requirement of being communicated, there are two other essentials conditions provided under section 7 of ICA for an acceptance to be considered as valid. These conditions are –

1. Acceptance must be absolute and unqualified – For acceptance to be valid, it must be absolute and unqualified i.e. the person giving acceptance must have agreed to the proposal/offer as it is without any reservations or suggested modifications whatsoever.For example, if A proposes to sell his pen to B for Rs. 10 and in response, B states that he is willing to buy the pen for only Rs. 7, then B's statement to buy the pen for Rs. 7 does not constitute acceptance of A's offer but instead, constitutes a counteroffer to A to purchase A's pen for Rs. 7. If B had agreed unconditionally to A's original offer for purchase of the pen for Rs. 10, only then would have a contract come into existence.
2. Acceptance must be indicated in the usual and reasonable manner unless the proposal itself prescribes the manner for indicating acceptance. Usual and reasonable manner means the manner which is usually followed for a particular kind of transaction according to the usage or custom of that particular trade.If the acceptance is indicated in a manner other than that specifically stated in the proposal, the person making the proposal shall have the discretion to either re-insist that the acceptance is indicated only in the prescribed manner or accept the giving of acceptance in the manner actually adopted by the acceptor.

Further, section 8 of ICA states that the performance of the conditions associated with a proposal also amounts to acceptance of the proposal. This implies that acceptance can also be indicated by a party by his/her conduct.

All content written above is only meant to be read and understood for conceptual clarity and not memorized. The various sections of ICA referred above are only for reference and also need not be memorized.

Read our post on void agreements here.

Read CLATapult's post on offer and acceptance here.