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Concept of Offer Under Indian Contract Act 1872

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An Offer is what will eventually culminate into a contract. It is a sort of genesis for a contract. Although ‘offer’ is not defined in the Indian Contract Act, it seems to be almost similar to a proposal.

However, that’s not the case.

If you recall,

1) A proposal + acceptance = **promise**.

2) Two promises which form the consideration for each other make an **agreement.**

Now, when you make a proposal, *with an intention to enter into an agreement*, such a proposal is what we term as an **‘offer’**.

Such an offer, just like a proposal, can be to do or not to do (also termed as ‘abstain from doing’) a certain thing.

Here, we will draw another difference between an offer and a proposal.

A proposal is simply when a person seeks to arrive at an agreement with a person, and that is that.

An offer made with the object of not only entering into any kind of agreement but an agreement enforceable by law.

Therefore, when an X makes a proposal to Y, that Y give him a spare pen when they reach the exam hall on the 2nd floor, they will arrive at an agreement. Now, it is not enforceable as such.

When X makes an offer to pay 15 lakh rupees to the car showroom in exchange for one of their cars, they both seek to arrive at an agreement enforceable by the courts of law.

Therefore, the distinguishing element is that of legal intention between the parties.

Types of Offer

Offers can be distinguished into two four types, depending on *to whom* the offer has been made or the *way* the offer has been made.

1. General and Specific offers

A general offer is one which is made **to the public at large**. Anyone who acts upon the offer or performs what has been set out in the offer (the conditions), *after seeing the offer*, will be said to have accepted the offer.

The best example of this is an **offer of a reward**. So, if Paris loses her Chihuahua, and she puts up a Rs. 1,000 reward in return for any information (the consideration) leading to discovery, then anyone who sees that offer is free to act upon it.

If they are successful in fulfilling the conditions of the reward (the offer), then they can claim the reward.

A specific offer is one which is made to a specific person or a specific set of persons. It is the most common type of offer. For example, when you offer a certain shopkeeper an amount of money in exchange for his goods, no other shopkeeper can accept your offer.

2. Explicit and Implicit offers

Most offers are made explicitly or in words (spoken or written). Implied offers are ones which are made through means other than that of an explicit offer.

Usually, we look at the **conduct of the parties** to determine an implied offer. For example, when you board a public bus, it is not because the bus conductor has explicitly asked you the board the bus.

The offer is implied in the fact that the bus plies on a particular route, and is offering to transport people for a fare. If you board the bus, then you **impliedly accept** to pay the fare.

Even returning the dog or providing any information, in the case of a general offer, is a way of impliedly accepting the offer of reward.

Let’s check your understanding so far.

Principle 1*:* An offer is a proposal made with an intention of entering into an agreement.

Principle 2*:* Acceptance of an offer is essential for the existence of an agreement.

Facts: Rashid has lost his wallet inside his college campus. He uploads a post on the college Facebook group with its photo and promises a reward of Rs. 500/- for returning it or any information leading to discovery. In the meantime, Aditya, Rashid's roommate, who was attending a lecture when Rashid discovered he lost his wallet, spots the wallet outside the library. He returns the wallet to Rashid. Later in the evening, when he accesses Facebook, he sees the post with the promise of reward. He approaches Rashid to claim the reward.

(a) Aditya will get the reward since he found the wallet.

(b) Aditya will not get the reward since he performed the duty of a friend, which transcends any contractual relations.

(c) Aditya will get the reward since he performed a condition of the contract by returning the wallet.

(d) Aditya will not get the reward since he did not accept the offer, as he was unaware about the offer in the first place.

Answer: (d) For the reasons given in the option, Aditya's actions were not influenced in any way by the offer. Therefore, his actions were not driven by the agreement (which was absent, to begin with), but maybe by social duty. The Law of Contracts is not concerned with social obligations.

The offer need not have been seen first hand – even if Aditya got to know about the reward through a friend, and not the Facebook post, and then he acted upon it, he would still be accepting the offer.

All that is required is for the offer *to be known* to the promisee.

Invitation to Offer

An invitation to offer, as the term suggests, is an invitation to another person to make an offer.

The 'acceptance' of this offer happens by making an offer in return. That is the only term of such an invitation.

Therefore, an invitation to offer precedes an offer.

Invitation to Offer → Offer → Acceptance

NOTE: It is not necessary that an invitation to offer must take place for an offer to be made. An offer can be made regardless of any invitations to offer.

Invitations to offer can be slightly tricky to identify. These two examples are great to start with:

1. Tenders

Large corporations and bodies make advertisements *inviting* tenders mostly for carrying out some specialized work or supplying goods, etc. Now, how does a tender work?

Several companies will *make an offer* against the advertisement. The organization, based on its need and budget, will narrow down on a particular company or companies and will *accept* their tender.

It's obvious that the companies are making an offer against an invitation, and not accepting an offer, since in the latter case, the company making the tender will then end up entering into several agreements. However, the organization just needs one or a few companies to do the work!

2. Shops

If you approach a shopkeeper, then do you think he can refuse to sell his goods? Yes, he can! Legally, at least.

What he is doing by putting up his goods for display is that he is inviting any interested buyer to make an offer. Although the transaction doesn't look like one where you make an offer and not the shopkeeper, the paragraph above is proof that it's *you* who makes the offer.

So, the **test to see whether a proposal is an offer or an invitation to offer** is to find out the party whose statement (acceptance) leads to an agreement. Since,

Offer → Acceptance → Agreement

It would also be the same party who has the choice to either negate or validate the other party's statement (which, would be the offer). The promisor (offeror) cannot refuse to perform after the promisee accepts the offer.

Lesson – An invitation to offer does not carry any willingness to enter into a binding agreement.

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