Subject Name: Contract Act
Topic Name: Offer- Types and Validity

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Introduction

An offer or proposal, as defined by Section 2(a), is when one person communicates to another their willingness to perform or refrain from performing a certain action, aiming to secure the other person's agreement to such action or inaction. It's worth noting that "offer" and "proposal" are synonymous terms and are used interchangeably.

This definition implies that an offer can involve either a positive action or a negative action (passive abstention from action).

Examples:
(i) Ashok offers to sell his computer to Akash. In this scenario, Ashok is proposing to perform an action, namely, selling his computer to Akash. This constitutes a positive act on Ashok's part (the offeror or proposer).
(ii) A banker offers not to pursue a civil suit against Vivek if he repays the outstanding amount of Rs 10,000 on his loan account. Here, the banker proposes to refrain from taking action, namely, abstaining from filing a civil suit against Vivek. This represents a negative act on the banker's part (the offeror or proposer).

How is an offer made?

An offer can be made in two primary ways:

(a) By any act, or

(b) By any omission, on the part of the party proposing, which is intended to communicate the proposal or has the effect of doing so (Section 3).

Moreover, an offer by an act can be further classified into two categories:

(a) Offer by Words:
An offer by words can take various forms, such as in writing through a letter, telegram, fax, email, advertisement, or orally either in person or over the telephone. These explicit offers are termed express offers.

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Examples:

(i) Anuradha offers to sell her house to Amitabh through a written letter, specifying the price. This constitutes an express offer made by act and in writing.

(ii) Anuradha proposes to sell her house to Amitabh over the phone at a certain price. Though not in writing, this still qualifies as an express offer made by act and orally.

(b) Offer by Conduct (by Implication):

An offer can also be inferred from positive acts or signs that convey a message to the other party. However, it's crucial to note that mere silence cannot be interpreted as an offer by conduct. An offer implied from the parties' conduct or the circumstances of the situation is referred to as an implied offer.

Example:
Tarun operates his Tata Safari as a taxi from Lucknow to Kanpur, charging Rs 200 per person. By having his taxi in the queue at the taxi stand, he implicitly offers to transport individuals from Lucknow to Kanpur for Rs 200 per person. His action serves as an implied offer without the need for verbal communication.

(c) Offer by Omission or Abstinence (from Doing Something):
Additionally, an offer can be made by a party by refraining from taking action or abstaining from doing something.

Example:
A banker offers not to pursue a civil suit against Salim if he repays the outstanding amount of Rs 20,000 on his loan account. This represents an offer made by the banker through abstention from filing a civil suit.

Special and General Offer

An offer can manifest in two distinct ways:

(a) To a specific person or a particular group of persons, termed as a specific offer.
(b) To the general public at large, known as a general offer.

A specific offer is exclusively open for acceptance by the designated individual or group and cannot be accepted by any other party.

Example:
Anuradha proposes to Amitabh to sell her house at a specified price. This constitutes a specific offer, open solely for acceptance by Amitabh and nobody else. **[Boulton vs Jones (1857) 2H. and N. 564]**

In contrast, a general offer is open for acceptance by any member of the public who adheres to its terms and conditions.

Example:
The Carbolic Smoke Ball Company advertised a reward of £100 to anyone who contracted influenza after using their smoke balls as directed for a specified period. Mrs. Carlill purchased the smoke balls, used them as directed, and still contracted influenza. Consequently, she claimed the reward from the company. Although the company argued that the offer was not specifically directed to her and she hadn't communicated her acceptance, Mrs. Carlill pursued legal action against them.

The court ruled in favour of Mrs. Carlill, stating that she was entitled to the reward as she had accepted the offer by fulfilling its conditions. Since the offer was of a general nature, any member of the public could accept it by meeting its terms, and there was no requirement for explicit communication of acceptance to the company. **[Carlill vs Carbolic Smoke Ball Company (1813) 1 Q. B. 256]**

Essentials of a Valid Offer

The essential requisites for a valid offer include:

(A) The offer must be made with the intention of securing its acceptance.
(B) The offer must be made with the intention of establishing a legal obligation.
(C) The terms of the offer must be clear, unambiguous, and definite, or capable of being made certain (Section 29). In other words, the terms should not be vague or indefinite.

Examples:
(i) Sarita offers to sell 20 kg of dry fruits to Vimla at Rs 400 per kg. However, the specific type of dry fruits is not mentioned, rendering the offer unclear and thus unacceptable.

(ii) Sarita, known for dealing exclusively in cashew nuts, offers to sell 20 kg of dry fruits to Vimla at Rs 400 per kg. In this case, since Sarita's specialisation in cashew nuts is clear, the term "dry fruits" is specific and unambiguous under the circumstances, making the offer valid.

(D) The offer must not be merely a statement of intent to offer or a mere invitation to offer.



Offer vs.Invitation to Offer

In legal contexts, distinguishing between an 'offer' and an 'invitation to offer' holds crucial significance. Various documents, such as prospectuses issued by companies or educational institutions, or price lists from publishing houses, serve as invitations to offer rather than constituting actual offers. For instance, when an individual fills out an application form for shares, admission, or purchases based on such invitations, it transforms into a concrete offer.

Harvey vs. Facie

The case of 'Harvey vs. Facie' exemplifies the nuanced disparities between an invitation to offer and an offer itself. Harvey, the plaintiff, initiated communication with Facie, the defendant, through telegrams regarding the purchase of a property named 'Bumper Hall Pen'. Facie responded with a telegram quoting the lowest cash price for the property. However, this response lacked a clear intention to sell the property, rendering it insufficient to constitute a valid offer.

The telegrams exchanged between Harvey and Facie reflected an enquiry and a response focused solely on pricing, without a definitive intent to sell the property. Consequently, the absence of a clear offer negated the possibility of acceptance. The judicial committee rejected Harvey's argument that Facie's quotation represented an offer to sell. Thus, Harvey's subsequent telegram expressing agreement to buy lacked legal significance, being an offer to buy, which Facie rightfully declined.

Communication of Offer

Communication of an offer from the offeror to the offeree is a fundamental prerequisite for its validity. Both specific and general offers necessitate communication to the offeree before they can be accepted.

Lalman Shukla vs. Gauri Dutt

In a notable case, Gauri Dutt dispatched his servant, Lalman Shukla, to search for his missing nephew. Shukla, unaware of any subsequent developments, successfully located the boy. Later, Dutt publicly announced a reward for anyone providing information about the missing nephew. Despite Shukla's unawareness of this announcement, he demanded the reward upon learning of it. Dutt, however, refused to pay.

The court held that Shukla was not entitled to the reward since he was unaware of the offer at the time of his actions. According to legal principles, an individual cannot accept an offer unless they have knowledge of its existence. Since Shukla was uninformed of the announced reward, he couldn't claim it. The crucial requirement of communication, integral to a valid offer, was absent in this case. Consequently, the formation of a legally binding contract did not occur due to the non-communication of the offer. As a result, the court dismissed the case.

Expiration of an Offer

An offer aims at securing acceptance, transitioning into a contract once the offeree agrees. However, it may lapse or be revoked by the offeror before acceptance. In both scenarios, the offer ceases to be valid.

(i) An offer may expire or lapse after a specified period or within a reasonable timeframe.
According to Section 6(2), the offeree must accept within the stipulated time or a reasonable period if no specific time frame is mentioned. Failure to accept within this timeframe results in the offer's automatic expiration, with reasonableness determined by the circumstances of each case.

In the case of Ramsgate Victoria Hotel Co. vs Montefiore (1860) L. R. I. Ex 109, Montefiore's offer to purchase shares was made on 8th June, but the company allotted the shares on 23rd November. Montefiore refused to purchase, leading to the lapse of the offer due to unreasonable delay.

(ii) An offer lapses upon the death or insanity of either the offeror or the offeree before acceptance. As per Section 69(4), if the offeror dies or becomes insane before acceptance, and the offeree is aware of this fact, the offer is automatically revoked. However, if the offeree is unaware at the time of acceptance, a valid contract is established. Similarly, if the offeree dies or becomes insane before acceptance, the offer terminates as a dead or insane person cannot accept, rendering the contract invalid.

(iii) An offer terminates upon rejection by the offeree.

(iv) An offer terminates when revoked by the offeror before acceptance.

(v) An offer terminates if not accepted in the specified mode or in a usual and reasonable manner in the absence of specific instructions.

(vi) A conditional offer terminates if the offeree does not accept the condition.

(vii) An offer terminates when the offeree makes a counteroffer.
Instead of accepting the offer's terms outright, the offeree introduces new conditions, resulting in the termination of the original offer and the creation of a counteroffer. For instance, if Anurag offers to buy a house from Anjum with possession on 30th November, and Anjum accepts but proposes possession on 31st December instead, it constitutes a counteroffer, rendering Anurag's initial offer void.