

# Contract and offer

[Law](#), [Contract Law](#)



A contract is defined as an agreement enforceable by law. Hence for all contracts there should have an agreement. The agreement arises by one of the parties making an offer and its acceptance by the other party. Both offer and acceptance create an agreement. In simple contract should first contain an offer made by one party to the other. What is an offer? As per Sec 2(a) of the contract act “ When one person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that others to such act or abstinence is said to make a proposal”.

The word offer of the English law is synonymous to the word proposal of Indian contract act. The person making the proposal is called the proposer or offeror and the person accepting the proposal is called the offeree. A proposal is an expression of will or intention. A person making the proposal that he is willing to contract on the terms stated in it. The proposal is made to obtain the assent of the other party to whom the proposal is made. When “ A” expresses his willingness to sell motor car for Rs. 10, 000 with a view to get B’s acceptance to his offer, A is said to make a proposal. How is offer made?

Offer is made either by words spoken or by words written. This is an express offer. If A either tells or writes to B that he is prepared to sell his car for Rs. 20, 000 it is an express offer. An offer is made by conduct or behaviour. Then it is an implied offer. For example, A is standing in a queue for getting ticket for a train. Characteristics of valid offer 1)The terms of an offer must be clear and certain or at least capable of being made certain. The terms of an offer must be definite, certain and clear. It should not be indefinite, loose or vague. The vagueness of an offer will not create any contractual relationship.

The main reason is that the court cannot say what the parties are to do or expected to do a vague offer does not convey what exactly it means.

Example:- A agrees to B a hundred tons of oil. There is nothing what so ever to show what kind of oil whether coconut or gingili oil was intended to be sold. Hence the agreement is void for uncertainty and vagueness under section 29 of the contract act. In Taylor Vs Portington A agreed to decorate the room according to present style, the court held that present style is vague and uncertain term and therefore the promise could not be enforced.

According to section 29 of the contract act, the agreement in which the term is not certain or capable of being made certain are void and the same cannot be enforced in a court of law. 2) Offer must be communicated to the offeree An offer becomes effective only when it has been communicated to the offeree, otherwise it cannot be known whether the parties are of the same mind. Until an offer is made known to the offeree, he does not know what he has to accept. The offeree must have some knowledge about the offer. Otherwise any act done by him will not create any contractual obligations.

In Fitch Vs Snedakar a person gave information (which would lead to the arrest of the murderers of two policemen) without knowing that an award was offered for it, and claimed the award subsequently. It was held that he was not entitled to the award as he was not aware of the same. 3) An offer must be made with an intention of creating legal obligations The most important characteristic of a valid offer is that it must create legal obligation among the parties, otherwise it is not an offer in the eye of law. An offer will not become a promise unless it is made with a view to create legal obligations.

If the parties agree that breach of entire party will not give rise to legal rights there is no contract, even though the offer and acceptance have been reduced into writing. An offer must impose some legal duty on the party making it. An offer to perform social act or an invitation to social affairs are not valid offers in the eye of law, because in such cases there is no intention between the parties to create legal obligation. Example:- A invited B to dinner at his house on a particular day. When B went to A's house on the particular day for dinner, A was not available in the house and the dinner also was not ready.

In such a case , B could not enforce it or claim any compensation for expenses incurred by him and inconvenience caused to him by A, because A's invitation to dinner did not give rise to a legally binding agreement but is only a social affair. 4) Invitation to an offer is not an offer Quotations, catalogue of goods, advertisements for tender and prospectus of a company are no actual offer. They are mere invitations to offer. In case of an invitation to offer there is no intention on the part of the person sending out the invitation to obtain the assent of the other person to such invitation.

When a merchant sends his quotation, it is not an offer but is only an invitation on his part of his readiness to transact business on those terms. Similarly mere statement of the lowest price at which the vendor would sell, will not amount to an offer. In ' Harvey Vs Facey' it was held that mere statement of price is not an offer. 5) Special terms attached to an offer must be communicate When any special terms are to be included in a contract it is theresponsibilityof the offeror to bring those special terms to the knowledge of the offeree. Otherwise the offeree will not be bound by them.

Offeree can be held liable for the non-fulfilment of the conditions only when they have been expressly communicated to him or reasonable notice of the existence of the conditions is brought to his knowledge. Suppose the words 'seek back' are printed on the face of the ticket and the conditions are printed on the back. In such cases, even if the passenger has not actually read the conditions, he will be bound by them. 6)An offer may be to an individual or to the public at large When an offer is addressed to a definite person or body of persons it is called a specific offer.

When it is addressed to the whole world, it is a general offer. In Carlil Vs Carbolic Smoke ball Company, the company has offered advertisement a reward of Rs 100 to anybody contracting influenza after using the smoke ball according to their direction. Mrs. Carlil used it as directed, but still she had an attack of influenza. It was held that she was entitled to the award of Rs 100 as it was a general offer and she accepted it. 7)Offer may be express or implied An express offer is one which may be made by words spoken or written. Example:-

A writes to B that he is prepared to sell his house for Rs 2 lakhs. This is an express offer. An implied offer is one which may be gathered from the conduct of the party of the circumstances of the case. If a person hires a taxi car for going from one place to another he thereby undertakes to pay the fare even though he makes no express promise to do so. So it is an implied offer. 8)Offer must be made with a view to obtaining the assent of the other party An offer must be distinguished from mere expression of intention.

Mere enquiry is not an offer. An offer must be made with a view to obtain the assent of the other party. 9)Offer may be conditional An offer can be made

subject to a conditional. In that case it can be accepted only subject to that condition. A conditional offer lapses when the condition is not accepted.

10) Offer should not contain a term, the non-compliance of which would amount to acceptance. One cannot say while making the offer that if the offer is not accepted before a certain date will be presumed to have been accepted.