

[NOTE: As per **Section 64** of the Contract Act, in case of a voidable contract, if the aggrieved party decides to repudiate the contract, the party rescinding the contract must restore the benefit received by him under the contract to the person from whom the benefit was received and the other party is freed from his obligation to perform the contract. This is called **“RESTITUTION”**]

5. **Unenforceable Contract:** It is contract which is otherwise valid, but cannot be enforced because of some technical defects like absence of a written form or absence of a proper stamp. Such contracts cannot be proved in court. But, such contracts can be enforced if the technical defect involved is removed.

Example: An oral agreement for arbitration is unenforceable because the law requires that an arbitration agreement must be in writing. If the oral agreement for arbitration is reduced to writing, it will become enforceable.

6. **Illegal Agreements:** An illegal agreement is one the object of which is unlawful, or is prohibited by law or otherwise against the policy of law. Such agreements cannot be enforced by law. Illegal agreements are always void ab initio. Thus, a contract to commit dacoity is an illegal agreement and cannot be enforced at law.

- **EFFECT ON COLLATERAL AGREEMENT:** In case of illegal agreements, even the collateral agreements become void. Although an illegal agreement should be distinguished from a void contract. **All illegal agreements are void but all void agreements or contracts are not necessarily illegal.** Every void agreement is not illegal unless its object or consideration is immoral, or opposed to public policy etc. A void contract does not affect collateral or a parallel contract.

C. On the basis of execution or performance-

1. **Executed contracts:** An executed contract is one where both the parties have performed their respective obligations under the contract and nothing remains to be done by either party.

Example: A offers to sell his bike to B for Rs. 15,000. B accepts A's offer. A delivers his bike to B and B pays Rs. 15,000 to A. It is an executed contract.

2. **Executory Contract:** Where the contract is yet to be performed either wholly or partially or one or both parties have yet to perform their obligation, the contract is executory contract.

Example: A offers to sell his bike to B for Rs. 15,000. B accepts A's offer. If the bike has not yet been delivered by A and the price has not yet been paid by B, it is an executory contract.

3. **Partly Executed and Partly Executory Contract:** It is a contract where one of the parties to the contract has fulfilled his obligation and the other party has still to perform his obligation.

Example: A offers to sell his bike to B for Rs. 15,000 on a credit of one month. B accepts A's offer. A delivers his bike to B. Here, the contract is executed as to A and executory as to B.

D. On the basis of liability-

1. **Unilateral Contracts:** A unilateral contract is one in which a promise on one side is exchanged for an act on the other side. A contract is said to be unilateral where one party has discharged his obligation either before or at time of entering into contract.

2. **Bilateral Contracts:** These are the contract where a promise on one side is exchanged for a promise on the part of the other party.

DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT

BASIS OF DISTINCTION	VOID AGREEMENT	VOID CONTRACT
1. DEFINITION	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)]
2. TIME WHEN BECOMES VOID	It is void from the very beginning. (void ab initio)	It becomes void subsequently due to change in law or change in circumstances.
3. RESTITUTION	Generally no restitution is granted, however, the Court may on equitable grounds grant restitution in case of fraud or misrepresentation.	Restitution may be granted when the contract is discovered to be void or becomes void.
4. DESCRIPTION IN THE ACT	Such agreements have been mentioned as void in the Act. Agreements without consideration, agreements with unlawful object or consideration and some other agreements have expressly been declared to be void.	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become void or not.

DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT

BASIS OF DISTINCTION	VOID AGREEMENT	VOIDABLE CONTRACT
1. DEFINITION & ENFORCEABILITY	An agreement not enforceable by law is said to be void. It cannot be enforced by any party. It is a nullity and hence does not exist in the eye of law.	A contract enforceable by law at the option of the aggrieved party is a voidable contract. It continues to be enforceable if the aggrieved party does not repudiate the contract.
2. PERIOD OF VALIDITY	It is void from the beginning i.e. void ab initio	It is valid till it is avoided (or rescinded) by the aggrieved party to the contract.
3. CHANGE IN STATUS	Status of void agreement does not change with the change in circumstances.	Status of such contract change when the aggrieved party elects to avoid or rescind it within a reasonable time. It becomes void when the aggrieved party elects to rescind it.
4. CAUSES	An agreement is void because an essential element of a valid contract (other than free consent) is missing. Reasons may be that it was made with incompetent parties or for unlawful objects and consideration, or without	A contract is voidable when the consent of the party is caused by coercion or undue influence or fraud or misrepresentation.



	consideration, or it is expressly declared to be void under the law.	
5. TRANSFER OF TITLE	The party obtaining goods under void agreement cannot transfer a good title to the third party.	The party obtaining goods under voidable agreement can transfer a good title to the third party if the third party obtains it in good faith and for consideration and the aggrieved party has not avoided the contract before such transfer.
6. RESTITUTION	Parties do not have right to restore the benefits passed on to the other unless the parties were unaware of the impossibility of performance at the time of agreement or the party to the agreement was minor.	Generally, right for restitution is available if the party elects to avoid the contract.
7. DAMAGES	No party has a right to get compensation for damages because such agreement has no legal effect.	If a party rightfully rescinds (i.e. puts and end) the contract, he can claim compensation, he can claim compensation of damages sustained by him due to non-fulfillment of the promise.

DISTINCTION BETWEEN VOID CONTRACT & VOIDABLE CONTRACT

BASIS OF DISTINCTION	VOID CONTRACT	VOIDABLE CONTRACT
1. DEFINITION	A contract which ceases to be enforceable by law become void, when it ceases to be enforceable.[Sec.2(j)]	A contract which is enforceable by law at the option of the aggrieved party is a voidable contract.
2. PERIOD OF VALIDITY	It remains valid till it does not cease to be enforceable.	It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.
3. WILL OF THE PARTY	Its validity is not affected by the will of any party. It is decided by the law Court.	Its validity is affected by the will of the aggrieved party. Aggrieved party has option to treat it either binding or repudiate it.
4. CAUSES	Contracts become void due to change in circumstances or in the law of land.	Contract is voidable when the consent of the party is caused by coercion, undue influence, fraud or misrepresentation. Sometimes, it may be voidable under the provisions of the Sections 39, 53 and 55.

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT

BASIS OF DISTINCTION	VOID AGREEMENT	ILLEGAL AGREEMENT
1. DEFINITION	An agreement not enforceable by law is void.	An agreement which is expressly or impliedly prohibited by law is illegal.
2. EFFECT ON COLLATERAL AGREEMENT	The agreement collateral to the void agreement is not necessarily void.	The agreement collateral to an illegal agreement is always void.
3. SCOPE	All void agreements need not necessarily be illegal agreements. Hence, the scope is wider than that of the illegal agreements.	All illegal agreements are void.
4. RESTITUTION	The Court may grant restitution of money advanced if is minor or if the parties were unaware of the impossibility of performance of the agreement.	Restitution of money is not granted in case of an illegal agreement.

PROPOSAL/OFFER

To form an agreement, there must be at least two elements– one offer and the other acceptance. Offer or proposal is the starting point in the formation of an agreement. The word proposal is synonymous with the English word ‘offer’. Thus offer is the foundation of any agreement.

As per **Sec 2(a) of Indian Contract Act-**

“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.”***

Observing the above definition, a proposal involves the following essential elements-

- ⇒ It must be made by one person to another person. In other words, there cannot be a proposal by a person to himself.
- ⇒ It must be an expression of readiness or willingness to do (***i.e. a positive act***) or to abstain from doing something (***i.e. a negative act***)
- ⇒ It must be made with a view to obtain the consent of that other person to proposed act or abstinence.

The person who makes an offer is called “**Offeror**” or “**Promisor**” and the person to whom the offer is made is called the “**Offeree**” or “**Promisee**”

HOW AN OFFER IS MADE: An offer may be either ***express*** or ***implied***. An express offer is one which is made by words either spoken or written such as letter, telegram, telex, fax messages, e-mail or through internet. An implied offer is one which may be gathered from the conduct of the party or the circumstances of the case.

LEGAL RULES AS TO VALID OFFER

1. **Offer must be communicated to the offeree:** The offer is completed only when it has been communicated to the offeree. Until the offer is communicated, it cannot be accepted. Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor. 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. [**Harris v. Nickerson** (1873)]
In **Lalman Shukla v. Gauri Dutt** (1913), A’s nephew has absconded from his home. He sent his servants to trace his missing nephew. When the servant had left, A afterwards announced that anybody who discovered the missing boy would be given the reward of Rs.500. The servant discovered the missing boy without knowing about the reward. When the servant came to know about the reward, he brought an action against A to recover the same. But his action failed. It was held that the servant was not entitled to the reward because he did not know about the offer when he discovered the missing boy.
2. **Special terms of the offer must also be communicated:** If the special terms of the offer are not communicated, the offeree will not be bound by those terms. This question of special terms generally arises in case of standard form of contracts.
3. **The offer must be certain, definite and unambiguous:** No contract can come into existence if the terms of the offer are vague or loose and indefinite. Both the parties should be clear about the contract, its terms and the legal consequences that may follow in a particular contract.

Sec.29 of Contract Act provides “**a contract the terms of which is not certain and is not capable of being made certain is void for uncertainty**”

Example: A offered to sell to B. ‘a hundred tons of oil’. The offer is uncertain as there is nothing to show what kind of oil is intended to be sold.

4. **The offer must be capable of creating legal relation:** The offeror must intend the creation of legal relations. He must intend that if his offer is accepted a legally binding agreement shall result. A social, moral or domestic agreement without any intention to create legal relation is not a contract because the presumption is that parties do not intend legal consequences to follow from breach of contract. For example, A invited B to a dinner and B accepted the invitation. It is a mere social invitation. And A will not be liable if he fails to provide dinner to B.
5. **Offer may be express and implied:** The offer may be express or implied. An offer which is expressed by words, written or spoken/oral, is called an express offer. The offer which is expressed otherwise than in words i.e. by conduct, is called an implied offer [Section 9].
6. **An offer may be conditional:** An offer can be made subject to a condition. In that case, the offer can be accepted only subject to that condition. A conditional offer lapses when the condition is not accepted.
7. **Communication of offer must be complete and acceptance of such original offer only can make a contract i.e. a counter offer if made in place of acceptance will result in the lapse of the original offer:**

Example: A offered to sell his pen to B for Rs.100. B replied, “I am ready to pay Rs.90. On A’s refusal to sell at this price, B agreed to pay Rs.100. Held, there was not contract as the acceptance to buy it for Rs.90 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.100 is a fresh offer from B to which A was not bound to give his acceptance. This is called a counter offer and a counter offer amounts to rejection or lapse of the original offer after which original offer cannot be accepted.
8. **Cross offer do not conclude a contract:** Where two parties make identical offers to each other, in ignorance of each others offer, the offers are known as cross-offers and neither of the two can be called an acceptance of the other and, therefore, there is no contract.
9. **An offer must not thrust or put the burden of acceptance on the offeree:** 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, it will be presumed to have been accepted. Moreover, acceptance cannot be presumed from silence. Acceptance is valid only if it is communicated to the offeror.

Example: A writes to B, “I offer to sell my house for Rs. 40000. If I do not receive a reply by next Monday, I shall assume that you have accepted the offer.” There will be no contract if B does not reply.
10. **An invitation to offer is not an offer:** An offer must be distinguished from an invitation to offer. In the case of an “invitation to offer” the aim is merely to circulate information of readiness to negotiate business with anybody who on such information comes to the person sending it. Such invitations are not offer in the eyes of law and do not become promises on acceptance.

Example: Menu card of restaurants, price-tags attached with the goods displayed in any showroom or supermarket is an invitation to proposal/offer and not an offer in itself. If the salesman or the cashier does not accept the price, the interested buyer cannot compel him to sell, if he wants to buy it, he must make a proposal. Similarly, job or tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer. An advertisement for auction sale is merely an invitation to make an offer and not an offer for sale. Therefore, an advertisement of an auction can be withdrawn without any notice. The persons going to the auction cannot claim for loss of time and expenses if the advertisement for auction is withdrawn.

KINDS OF OFFER/PROPOSAL

1. **Express offer-** When the offeror is expressly communicated by the offeror by words, spoken or written, the offer is said to be an express offer.
2. **Implied offer-** When the offer is not communicated expressly rather an offer may be implied from the conduct of the parties or the circumstances of the case, it is said to be an implied offer.
3. **Specific offer-** It means an offer made to a particular person or to a group of persons. A specific offer can be accepted only by that person to whom it is made and communication of acceptance is necessary in case of specific offer.
4. **General offer-** It means an offer which is made to the public in general. General offer can be accepted by anyone. If offeree fulfills the term and condition which is given in offer then offer is said to be accepted. Communication of acceptance is not necessary in case of general offer. Mere compliance with the terms of the offer gives rise to a contract. In **Carlill v Carbolic Smoke Ball Company Limited (1893)**, the Company advertised that a reward of \$100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company according to the printed directions. One lady, Mrs. Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza. She filed a suit to recover the reward of Rs.100. The court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such she is entitled to recover the reward from the company.
5. **Cross offer-** When two parties exchange identical offers in ignorance at the time of each other's offer, the offer's are called cross offer. A contract comes into existence when any of the parties, accept the cross offer made by the other party.
6. **Counter offer-** When the offeree gives a qualified or conditional acceptance of the offer i.e. an acceptance subject to modifications and variations in the terms of original offer, he is said to make a counter offer. In other words, an offer made by the offeree in return of the original offer is called as a counter offer. A counter offer amounts to rejection of the original offer.
7. **Standing, open and continuous offer-** An offer which is allowed to remain open for acceptance over a period of time is known as standing, open or continuous offer. Tender for supply of goods is a kind of standing offer. For example, when we ask the newspaper vendor to supply the newspaper daily, in such case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called standing offers.
8. **Standard form of contract-** In commercial transactions, usually parties do not intent to negotiate the terms of contract at every occasion. And therefore, the institutions such as banks, insurance

policy departments etc. design a standard document to be signed with every person who intends to avail services from such institutions. Such documents are called Standard form of contracts.

LAPSE OF OFFER/MODES OF REVOCATION OF OFFER (SECTION 6)

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end in any of the following ways stated in **Section 6** of the Indian Contract Act:

- 1. By communication of notice of revocation:** An offer may come to an end by communication of notice of revocation by the offeror. It may be noted that an offer can be revoked only before its acceptance is complete for the offeror. In other words, an offeror can revoke his offer at any time before he becomes bound by it. Thus, the communication of revocation of offer should reach the offeree before the acceptance is communicated.
- 2. By lapse of time:** An offer lapses-
 - a) If either offeror or offeree dies before acceptance.
 - b) If it is not accepted within-
 - o The specific time, or
 - o A reasonable time, if not time is specifiedWhere time is fixed for the acceptance of the offer, and it is not acceptance within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time. The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.
- 3. By failure to accept condition precedent:** Where, the offer requires that some condition must be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.
- 4. By the death or insanity of the offeror:** Where, the offeror dies or becomes, insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valid. This will result in a valid contract, and legal representatives of the deceased offeror shall be bound by the contract. On the death of offeree before acceptance, the offer also comes to an end by operation of law.
- 5. By counter offer by the offeree:** Where a counter offer is made by the offeree, the original offer automatically comes to an end, as the counter offer amounts to rejection of the original offer.
- 6. By not accepting the offer, according to the prescribed or usual mode:** Where some manner of acceptance is prescribed in the offer, the offeror can revoke the offer if it is not accepted according to the prescribed manner.
- 7. By rejection of offer by the offeree:** Where the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it. The rejection of offer may be express or implied.
- 8. By change in law:** Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.

ACCEPTANCE

Acceptance is defined under Sec. 2(b) of Indian Contract act:

“When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.”

Alike a proposal, an acceptance may also be express or implied. When acceptance is made by words, spoken or written, it is an express acceptance. If it is accepted by conduct, it is an implied acceptance. Thus where a person boards a train or bus, he impliedly accepts to pay the usual fare.

Who may accept?

An offer can be accepted only by the person to whom the offer is made. It cannot be accepted by another person without the consent of the person making it. Specific answer to this question may be given with reference to type of offer-

(a) In case of specific offer- Can be accepted only by the person to whom that offer was made.

(b) In case of General offer- An offer made to the world at large or public in general (called general offer) can be accepted by any person having knowledge of the offer by fulfilling the terms of the offer.

How to make acceptance?

Like an offer, an acceptance may also be either 'express acceptance' i.e. by words, oral or written or 'implied acceptance' i.e. otherwise than by words which means by conduct.

LEGAL REQUIREMENTS OF A VALID ACCEPTANCE

1. Acceptance must be absolute and unconditional: As per Sec. 7(1), an acceptance must be unconditional and unqualified. Accepting an offer with conditions, variations and reservations amounts to a counter offer and rejection of the original offer. The acceptor must comply with the terms of the offer. A variations or alteration, however, small of the offer, will make the acceptance invalid.
2. Acceptance must be communicated to the offeror: If the offeror remains silent and does nothing to show that he has accepted the offer, no contract is formed. The acceptor should do something to signify his intention to accept. Thus, where a person accepts an offer but fails to post the letter of acceptance, it is no acceptance.
3. Acceptance must be within a reasonable time: Acceptance to be valid must be made within the time allowed by the offeror and if no time is specified, it must be made within a reasonable time.
4. It must be according to the mode prescribed or usual or reasonable mode: As per Sec. 7(2), if the proposal does not prescribe the manner in which it is to be accepted, then the offer must be accepted in some usual and reasonable manner. And if the proposal prescribes the manner in which it is to be accepted then the offer must be accepted in the prescribed manner only, within a reasonable time. Acceptance should be exactly made as is demanded by the offeror. This is also called "mirror image rule."

Consequence of not accepting the offer in the prescribed manner- If the offer is not accepted in the prescribed manner then the offerer may approve or reject such acceptance. Once such a deviated acceptance is communicated to offerer, he may insist that the acceptance must be made in the manner prescribed. If the offerer wants to reject such acceptance, he must inform the acceptor within a reasonable time that he is not bound by the acceptance because it is not in the prescribed manner. Failure on the part of the offeror to do so will imply that he has accepted the acceptance although it is not in the desired manner.

5. **The acceptor must be aware of the proposal at the time of the offer:** Acceptance follows offer. If the acceptor is not aware of the existence of the offer and conveys his acceptance, no contract comes into being.
6. **Acceptance must be given before the offer lapses or before the offer is revoked:** It means that acceptance must be made within the offer is in force i.e. before the offer has been revoked or offer has lapsed.
7. **Acceptance cannot be implied from silence:** Offer should not contain a term the non-compliance of which would amount to acceptance. One cannot say while making the offer if offeree remains silent then acceptance shall be presumed from such silence. Silence is not permitted as a mode of acceptance in law. Acceptance is valid only if it is communicated to the offeror.

GENERAL RULES AS TO COMMUNICATION OF OFFER, ACCEPTANCE AND REVOCATION

When parties are at a distance and the offer and acceptance are exchanged through post, rules are contained in **Sections 3 and 4.**

1. **Communication of proposal is complete-** When it comes to the knowledge of the person to whom it is made i.e. the offeree. In case an offer is made by post, its communication will be complete when the letter containing the offer reaches the offeree.
2. **Communication of acceptance is complete-**The communication of acceptance is complete at different times for the proposer and acceptor. The rules regarding the communication of acceptance are as follows:
 - a) **As against the proposer:** As soon as a duly addressed letter of acceptance is put into the course of transmission i.e. when the letter of acceptance is posted so as to be out of reach of the acceptor, whether the same reaches the proposer or not. Thus, mere posting of letter of acceptance is sufficient to conclude a contract. However, the letter must be properly addressed and stamped. Where the letter of acceptance is posted by the acceptor but it never reaches the offeror, or it is delayed in transit, it will not affect the validity of acceptance. The offeror is bound by the acceptance.
 - b) **As against the acceptor:** As soon as the proposer receives the letter of acceptance.

[NOTE: The time gap between the date on which the letter of acceptance is posted and the date on which the letter of acceptance is received by the proposer may be utilized by the acceptor to withdraw or revoke his acceptance by a speedier mode of communication so that the revocation notice reaches the proposer before the letter of acceptance.]

- **ACCEPTANCE BY TELEPHONES TELEX OR FAX:** Such contracts are treated on the same principle as an oral agreement made between two parties when they are face to face with