

each other. In such cases, the communication of acceptance is complete when the acceptance is received or is heard by the offeror and not when it is transmitted by the offeree. The contract is concluded as soon as the offeror receives or hears the acceptance. Therefore, the acceptor must ensure that his acceptance is properly received by the proposer.

- **THE PLACE OF CONTRACT:** In case of acceptance by the post, the place where the letter of acceptance is posted is the place of contract. Where the acceptance is given by instantaneous means of communication (telephone, fax, telex etc.), the contract is made at the place where the acceptance is received or is heard.

COMMUNICATION OF REVOCATION OF OFFER OR ACCEPTANCE

The term '**revocation**' means 'taking back' or 'withdrawal'. Rules regarding revocation have been incorporated under Sec. 5 of the Contract Act. The communication of a revocation is complete as against the person who makes it when it is put into the course of transmission. As against the person to whom it is made, when it comes to his knowledge.

Time limit for revocation of offer: A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. We know that communication of acceptance is complete when a properly addressed and stamped letter of acceptance is duly posted by the acceptor. Hence, an offer can be revoked at any time before the letter of acceptance is duly posted by the acceptor. Thus, the proposer may revoke his offer by a speedier mode of communication which will reach before the letter of acceptance is posted by the acceptor.

RULES REGARDING REVOCATION:

- Revocation must always be express.
- Revocation must move from the offeror/proposer himself or through a duly authorised agent
- Notice of revocation of a general offer must be given through the same channel by which the original offer was made.
- Offer can be revoked even if the letter of acceptance is lost or delayed in transit.

Time limit for revocation of acceptance: According to Sec. 5, "**An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards**"

We know that communication of acceptance is complete as against the acceptor when the letter of acceptance is actually received by the proposer. Hence, an acceptance can be revoked at any time before the letter of acceptance is actually received by the proposer. Thus, the acceptor may revoke his acceptance by a speedier mode of communication which will reach before the letter of acceptance is received by the proposer.

The proposition relating to the revocation of proposal and acceptance has been described by Anson in the following words-

“Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled or altered.”

Here, gunpowder is offer and lighted match is the acceptance. When a lighted match is shown to a train of gunpowder, it explodes and something happens which cannot be undone. Similarly, an offer once accepted cannot be revoked. However, acceptance can be revoked by resorting to some quicker means of communication so that the offeror learns about such revocation before acceptance.

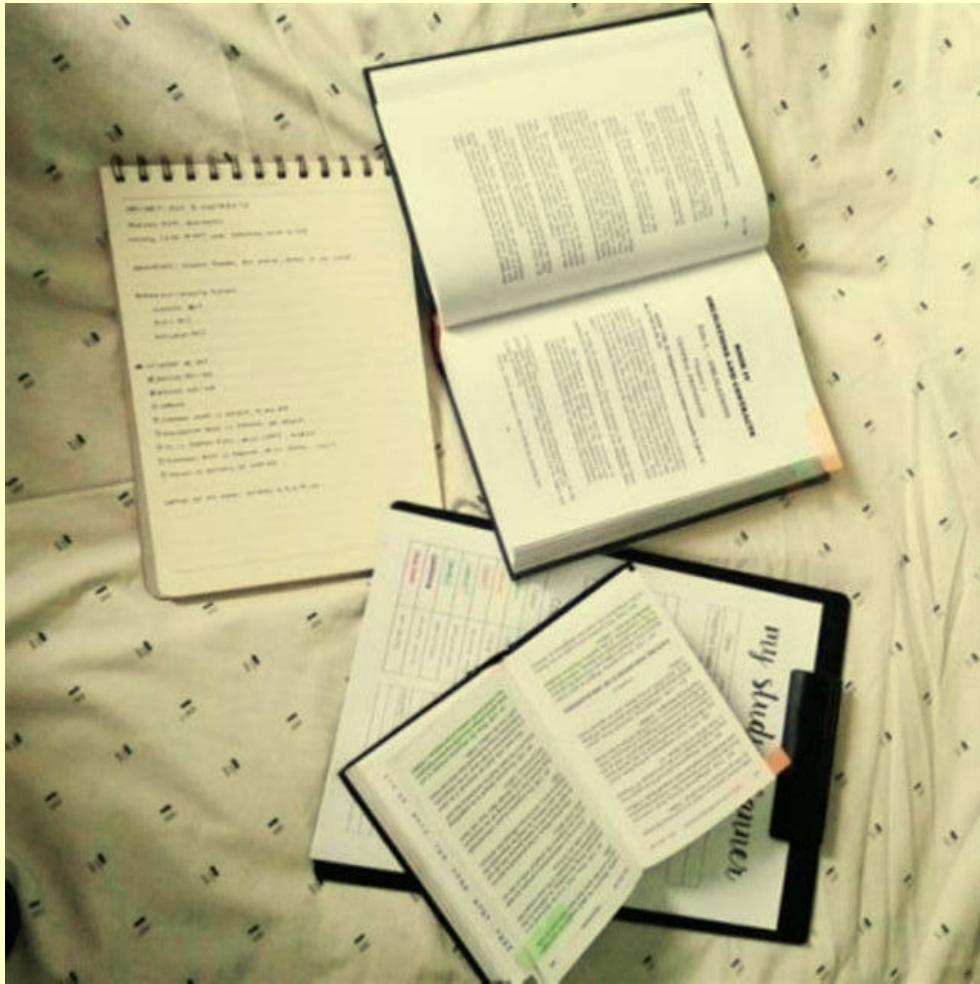
SIMULTANEOUS DELIVERY OF LETTER OF ACCEPTANCE AND THE TELEGRAM CONTAINING REVOCATION OF ACCEPTANCE

In such cases, the formation of contract will depend upon the fact which one is read first by the offeror. Generally, it is presumed that a man of ordinary prudence will first read the telegram and therefore the revocation will be quite effective.

In case of contracts over telephone or telex or fax, the question of revocation does not arise because there is instantaneous communication of the offer and its acceptance (i.e. the offer is made and accepted at the same time.)

RELEVANT CASES ON ACCEPTANCE

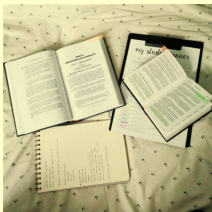
- *Lalman v. Gauridatta (1913)*
- *Adams v. Lindsell (1818)*
- *Bhagvandas Goverdhandas Kedia v. Girdharilal Pursottamdas (1966)*
- *Powell v. Lee (1908)*
- *Felthouse v. Bindley 1863*
- *Harvey v. Facey (1893)*
- *Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd. (1952)*
- *MC Pherson v. Appanna (1951)*



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CONSIDERATION

Consideration is the foundation of every contract and also one of the essential elements thereof. The law insists on the existence of consideration if a promise is to be enforced as creating legal obligations. In the absence of consideration a promise or undertaking is purely gratuitous and therefore creates no legal binding effect. Consideration must be of two directional nature. That means both parties should get benefitted mutually. The term “consideration” means **something in return** i.e. **quid pro quo**. What is ‘something’ has been explained by Justice Lush in a leading English case **Currie v. Misa** as follows-

“A valuable consideration in the sense of the law, may consist either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.”

Pollock has suggested that *“consideration is the price for which the promise of the other is bought and the promise thus given for value is enforceable.”*

Consideration may be in the form of cash, goods, act or abstinence. A promise without consideration is null and void. It is called a naked promise or **“Nudum Pactum.”** **Nudo pacto non oritur actio**, i.e. **an agreement without consideration is void.** **Section 25** of the Indian Contract Act supports this contention and provides that agreement without consideration is void.

Sec. 2(d) of the Indian Contract act, 1872 defines consideration as-

“When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise.”

ESSENTIAL ELEMENTS OF A VALID CONSIDERATION

- 1. Consideration must move at desire of the promisor:** An act or abstinence constituting consideration must have been done at the desire of the promisor only. Any act performed at the desire of the third party or without the desire of the promisor cannot be a valid consideration.
- 2. It may move from the promisee or any other person:** An act constituting consideration may be done by the promisee himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that even a stranger to the consideration can sue on a contract, provided he is a party to the contract (**Chinayya v. Ramayya**)
- 3. Consideration may be of past, present or future:**
 - a) Past Consideration:** A consideration for the act done in past or which has already moved before the formation of the agreement is a past consideration. Past consideration is valid in Indian Contract Act, but past consideration is no consideration in English Law.
 - b) Present Consideration:** When both the parties are ready to give consideration at the same time or the consideration which moves simultaneously with the promise is a present consideration.

- c) **Future Consideration:** When a party promises to do or to abstain from doing something in future, it is a future consideration. The consideration which is to be moved after the formation of agreement is called future consideration.
4. **Consideration need not to be adequate:** As per the definition of consideration it simply indicates that "**something in return**" is consideration which must actually be of some value in the eyes of law, that '**something**' can be adequate or grossly inadequate. Law only requires the presence of some consideration in a valid contract; its adequacy is not required in law.
According to **Explanation 2 of Sec. 25**, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.
5. **Consideration must be real:** It should not be uncertain, illusory or impossible.
6. **Consideration must be lawful:** For a valid contract it is necessary that the consideration should be lawful as according to Sec.23 of the Indian Contract Act, otherwise it will become void and unenforceable i.e. it must not be illegal, immoral or opposed to public policy.
7. **Must be something other than the promisor's existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.

RELEVANT CASELAWS ON CONSIDERATION-

- *Durga Prasad v. Baldeo (1880)*
- *Kedar Nath v. Gouri Mohammed (1886)*
- *Abdul Aziz v. Masum Ali (1914)*
- *Chinnaya v. Ramayya (1882)*
- *Tweddle v. Atkinson (1861)*

A CONTRACT WITHOUT CONSIDERATION IS VOID

The general rule as laid down under **Section 25** is "**An agreement made without consideration is void**". Every agreement to be enforceable at law must be supported by valid consideration. An agreement made without consideration is void and is unenforceable except in certain cases. **Sec. 25 & Sec. 185 specifies exceptional cases where an agreement though made without consideration will be valid.** These are as follow:

1. **Agreement made on account of natural love and affection [Sec. 25(1)]:** An agreement though made without consideration will be valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. An agreement without consideration will be valid provided-
- (a) *It is expressed in writing;*
 - (b) *It is registered under the law for the time being in force;*
 - (c) *It is made on account of natural love and affection;*
 - (d) *It is between parties standing in a near relation to each other.*

All these essentials must be present to enforce an agreement made without consideration.

2. **Agreement made to compensate past services voluntarily rendered [Sec. 25(2)]:** An agreement made without consideration will be valid if it is a promise to compensate wholly or in a part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do. To apply this rule, the following essentials must exist:

- (a) *The act must have been done voluntarily;*
(b) *For the promisor or it must be something which was the legal obligation of the promisor;*
(c) *The promisor must be in existence at the time when the act was done;*
(d) *The promisor must agree now to compensate the promisee.*
3. **Promise to pay a time-barred debt [Sec. 25(3)]**: A promise to pay a time-barred debt is also enforceable. But the promise must be in writing and be signed by the promisor or his agent authorized in that behalf. The promise may be to pay the whole or part of the debt. An oral promise to pay a time-barred debt is unenforceable.
4. **Completed gifts [Exp. 1 to Sec. 25]**: Explanation 1 to Section 25 provides that the rule '**No consideration, No contract**' shall not affect validity of any gifts actually made between the donor and the donee. Thus if a person gives certain properties to another according to the provision of the Transfer of Property Act, he cannot subsequently demand the property back on the ground that there was no consideration.
5. **Agency (Sec. 185, Indian Contract Act)**: There is one more exception to the rule. It is given in section 185 which says that no consideration is needed to create an agency.
6. **Guarantee (Sec 127, Indian Contract Act)**: A contract of guarantee is made without consideration.
7. **Remission (Sec 63)**: No consideration is required for an agreement to receive less than what is due. This is called remission in the law.

DOCTRINE OF PRIVACY OF CONSIDERATION AND PRIVACY OF CONTRACT

The Indian law is different from the English law and the definition of consideration under the Indian Contract Act clearly provides that consideration may move from the promisee or any other person. So consideration may flow from a stranger to the contract as well. **Under the English law the consideration must move from the promisee only and not from a stranger, and a stranger to a consideration cannot enforce it. This is known as "the principle of privacy of contract".**

It means that as per privacy of contract, a stranger to a contract cannot enforce that contract or cannot sue on such contract. Only parties to a contract can sue each other or be sued upon. A stranger to a contract can't sue in England as well as in India though it may be for his benefit. Privacy of contract means the relationship subsisting between the parties to a contract.

Exception to this principle-

1. **Trust**: In case of trust a beneficiary can sue upon the contract. This exception to the rule of Privacy of contract has been recognised in a well known case of **Khwaja Mohd. Khan v. Hussaini Begum (1910)**
2. **Family settlement/Marriage contract**: In case of family settlement members who were not originally party to the contract can also sue upon it. A female member can enforce a provision for marriage expenses made on partition of HUF.

In a case, two brothers, on partition of family joint properties, agreed to invest in equal shares for their mother's maintenance. It was held that the mother was entitled to require her sons to make the investment.

3. **Acknowledgement of liability:** Where a person admits his liability thereafter if he refused, he will be stopped from denying his liability.
4. **Assignment of contract:** Assignee (the person to whom benefits of contract are assigned) can enforce upon the contract.
5. **Contract entered into through an agent:** A principal may sue under the contract entered into by his agent on his behalf.

CAPACITY OF PARTIES TO CONTRACT

Meaning of Capacity to Contract: Capacity or competence to contract means **legal capacity of parties to enter into a contract**. In other words, it is the **capacity of parties to enter into a legally binding contract**.

WHO ARE COMPETENT TO CONTRACT

Every person is legally competent to contract if he fulfills the following three conditions-

1. He has attained the age of majority, according to the law to which he is subject;
2. He is of sound mind; and.
3. He is not disqualified from contracting by any other law to which he is subject.

- 1) **MINORS:** Any person, who has not attained the age of majority prescribed by law, is known as minor. **Section 3 of the Indian Majority Act, 1875** prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years-
 - i. **Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or**
 - ii. **Where the minor's property has been placed under the superintendence of a Court of Wards.**

- 2) **PERSONS OF UNSOUND MIND:** According to **Sec. 12** of Contract Act, 1872, person is said to be of sound mind for the purpose of making a contract-
 - ⇒ **if he is capable of understanding the terms of contract at the time of making it, and**
 - ⇒ **if he is capable of making a rational judgment as to the effect upon his interests.**

- **Types of Persons of Unsound Mind:**

- ✓ Idiot
- ✓ Lunatic
- ✓ Delirious persons
- ✓ Drunken or intoxicated persons
- ✓ Hypnotized persons
- ✓ Mental decay

According to **Sec. 12**, **"A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind. And a person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind."**

3) **PERSONS DISQUALIFIED BY OTHER LAWS:** There are certain persons who are disqualified from contracting by the other laws of our country. It refers to statutory disqualification imposed on certain person in respect of their capacity to contract. They are as under:

- ✓ **Alien enemy:** An alien is a person who is a citizen of a foreign country. An alien may either be an alien friend or an alien enemy. Aliens are generally competent to contract with citizens of the India. He can maintain an action on a contract entered into by him during peace time. But if a war is declared, an alien enemy cannot enter into a contract with the Indian citizen. Contracts entered into before the declaration of war are either stayed or terminated but contracts made during the wartime are absolutely unenforceable.
- ✓ **Foreign sovereigns, diplomatic staff etc.:** These persons are immune from the jurisdiction of local courts, unless they voluntarily submit to its jurisdiction. These persons have a right to enter into contracts and enforce those contracts in our courts but they cannot be sued in our courts without the sanction of the Central Government unless they choose to submit themselves to the jurisdiction of our Courts. Rules regarding suits by or against foreign sovereigns are laid down in Section 84 to 87 of Civil Procedure Code.
- ✓ **Corporations and companies:** A corporation is an artificial person as recognised by law. It exists only in the eyes of law. It is competent to enter into a contract only through its agent. The contractual capacity of a company is determined by the 'object clause' of its memorandum of Association. The contractual capacity of statutory corporations is determined by the statute creating it.
- ✓ **Insolvents:** When a person's debts exceed his assets, he is adjudged insolvent and his property stands vested in the Official Receiver or Official Assignee appointed by the Court. An insolvent cannot enter into a contract as his property is vested in the official receiver or official assignee. This disqualification of an insolvent is removed after he is discharged.
- ✓ **Convicts:** A convict while undergoing imprisonment is incapable of entering into a contract. But this disability comes to an end on the expiry of the sentence.
- ✓ **Married women:** A woman is competent to enter into a contract. Marriage does not affect the contractual capacity of a woman. She can even bind her husband in cases of pressing necessity. A married woman may sue or be sued in her own name in respect of her separate property.
- ✓ **Professional persons:** Doctors and advocates are included in the class. In England barristers are prohibited by the etiquettes of their profession from suing for their fees.

STATUS OR NATURE OF MINOR'S AGREEMENTS

A minor's agreement being void is wholly devoid of all effects. When there is no contract there should be no contractual obligation on either side.

- 1) **An agreement with or by minor is void:** Section 10 of the Indian Contract Act requires that the parties to a contract must be competent and Section 11 says that a minor is not a competent. But neither section makes it clear whether the contract entered into by a minor is void or voidable. Till 1903, courts in India were not unanimous on this point the Privy Council made it perfectly clear that a minor is not competent to a contract and that **a contract by minor is void ab initio**. Minor's agreement is absolutely void from very beginning, i.e. void ab initio. **It is nullity in the eye of law.**

An agreement with minor, therefore, can never be enforced by law. The leading case on minor's contract is *Mohri Bibi V. Dharmo Das Ghosh (1903)*

- 2) **No ratification:** An agreement with the minor is completely void. A minor cannot ratify the agreement even on attaining majority, because a void agreement cannot be ratified. A person who is not competent to authorize an act cannot give it validity by ratifying.
- 3) **Minor can be a promisee or beneficiary:** If a contract is beneficial to a minor, it can be enforced by him. There is no restriction on a minor from being a beneficiary, for example, being a payee or a promisee in a contract. Thus a minor is capable of purchasing immovable property and he may sue to recover the possession of the property upon tender of the purchase money. Similarly a minor in whose favor a promissory note has been executed can enforce it.
- 4) **No estoppel against a minor:** Where a minor by misrepresenting his age has induced the other party enter into a contract with him, he cannot be made liable on the contract. There can be no estoppel against a minor. It means he is not estopped from pleading his infancy in order to avoid a contract.
- 5) **No specific performance except in certain cases:** A minor's contract being absolutely void, there cannot be a question of specific performance of such contract. A guardian of a minor cannot bind the minor by an agreement for the purchase of immovable property; so the minor cannot ask for the specific performance of the contract which the guardian had no power to enter into. But a contract entered into by guardian or manager on minor's behalf can be specifically enforced if-
 - a. ***The contract is within the authority of the guardian or manager.***
 - b. ***It is for the benefit of the minor.***
- 6) **Liability for torts:** A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract. But a minor cannot be made liable for a breach of contract by framing the action on tort.
- 7) **No insolvency:** A minor cannot be declared insolvent as he is incapable of contracting; debts and dues are payable from the personal properties of minor and he is not personally liable.
- 8) **Partnership:** A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Contract Act, he can be admitted to the benefits of partnership.
- 9) **Minor can be an agent:** A minor can act as an agent. But he will not be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.
- 10) **Minor cannot bind parent or guardian:** In the absence of authority, express or implied, an infant is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.
- 11) **Joint contract by minor and adult:** In such a case, the adult will be liable on the contract and not the minor.
- 12) **Surety for a minor:** In a contract of guarantee when an adult stands for a minor then he (adult) is liable to third party as there is direct contract between the surety and the third party.



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Subject - Law of Contract-I

13) Minor as shareholder: A minor, being incompetent to contract cannot be a shareholder of the company. If by mistake he becomes a member, the company can rescind the transaction and remove his name from register. But, a minor may, acting through his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him.

14) Liability for necessities: The case of necessities supplied to a minor or to any other person whom such minor is legally bound to support is governed by **Section 68** of the Indian Contract Act. A claim for necessities supplied to a minor is enforceable by law. But a minor not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.

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