

PROPOSAL/OFFER

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I. Definition

- Proposal – S. 2(a) 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**
 - Analysis
 - *Expression of willingness to do or abstain from doing something*
 - *Made with the object of obtaining assent of the other*
- S. 2(c) The person making the proposal is called the "**promisor** and the person accepting the proposal is called the **promisee.**"

II. COMMUNICATION OF PROPOSAL

- Definition – signify – indicate or declare
- S.3 The **communication of proposals**, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by **any act or omission** of the party proposing, accepting or revoking by which he intends to communicate such proposal acceptance or revocation, or **which., has the effect of communicating it.**



III. PROPOSAL – EXPRESS OR IMPLIED

- *Upton Rural District Council v. Powell*
 - There was an implied promise to pay
- *Haji Md. Ishaq v. Md Iqbal* – goods ordered by go between man – received by the dt - paid part price – letter received for the payment of the rest and not resisted.

IV. COMPLETION OF COMMUNICATION

- S. 4 The, communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
- Eg. *Lalman v Gouridatt*

V. INTENTION TO CONTRACT

- No provision in the Act – But it is a requirement under English Law – every conversation/transaction though involves agreement is not a contract
- ***Balfour v Balfour***
 - Intention of the parties to be gathered from the terms of the contract and surrounding circumstances. courts to decide in each case. Generally in all social matters it is presumed there is no intention to create legal relation. But in business matters it is presumed to intend such relation.

Jones v. Padavatton

Facts: A divorced woman lived in Washington with her son – employed on attractive terms – her mother living in Trinidad, who wished to live near the lady as she was attached to grandson – persuaded the daughter much against her will to leave the job, take legal education in England & finally come back to Trinidad as practicing lawyer – mother agreed to pay all expenses, purchased a house in England, part of it was rented out & a part was allowed to her daughter – for 5 long years daughter could not complete law, in the meantime she got remarried – differences arose between mother & daughter – mother stopped payments & also commenced eviction proceedings.

Held: Lord Dancwerts, “it is a most difficult case, it is a family arrangement which depends on the good faith of the promises which are not intended to be rigid and binding agreements.”

Lord Solomon, “the lady acting on her mother’s promise, had left an attractive service and gone to another country for education and in these circumstances her mother cannot get out of the promise at her sweet will and leave the daughter in that condition. Thus, the agreement resulted in a contract, but the agreement could last only for a period reasonably sufficient for the daughter to complete her education and the period of 5 years was more than sufficient for the daughter to complete her education. She could not have expected her mother to support her for the whole life.”

Objectivity

- Test – objective and not subjective
- Business matters – intention to contract present
- Social/family matters – no such intention
- E.g., Prize money at football game, agreement between friends to share the travel expenses, entering public transport or public place.

KINDS OF OFFER – GENERAL - SPECIFIC

- *Carlill v. Carbolic Smoke ball Co.*
- Held – “ there may be general offer and acceptance of the general offer may not be communicated. By fulfilling the conditions of such offer the offeree is said to accept the offer.
- **S. 8. Acceptance by performing conditions, or receiving consideration.**-Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.
- *Harbhajanlal v. Harcharanlal (general offer overheard)*
- General offer continues till revocation or till the purpose is accomplished.

Offer and Invitation to Treat

- Offer to negotiate, offer to treat, etc.
- *Harvey v. Facey* – Pt. telegraphed:
- “Will you sell us Bumper hall Pen? Telegraph lowest cash Price”
- dt. – “lowest cash price for BHP is \$900”
- Pt. – “we agree to buy the BHP for the price quoted please send the title deeds
- Dt. refused to sell and the pt. sued him for breach of contract.
- Held: dt. answered only second question and reserved their answer to the first, hence no offer. Last telegram of pt. was an offer to buy which was not accepted by the pt.

EXAMPLES

- Catalogues and display of goods
- Auction sale

LAPSE OF OFFER

- Notice of Revocation
 - Lapse of time,
 - Failure to accept condition precedent
 - Death or insanity of offeror.
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