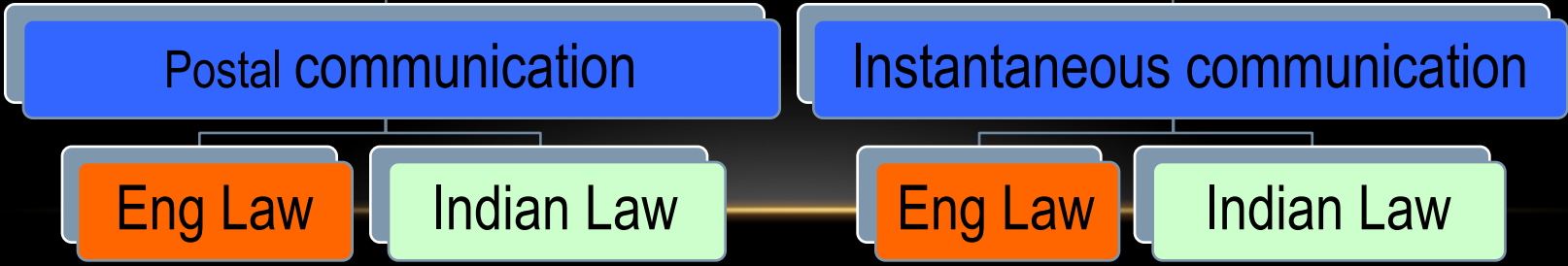


ACCEPTANCE

1. Definition of acceptance
2. Communication of acceptance
3. External manifestation of acceptance than mere preparedness to accept.
4. Communication of acceptance by the offeror only
5. Communication of acceptance by the offeree/acceptor only
6. Acceptance may be complete by fulfilling conditions of the offer
7. Mode of communication of acceptance under Indian Law

8. Completion of communication



DEFINITION OF 'ACCEPTANCE'

S. 2(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be *accepted*.

- Communication of acceptance

S.3 The communication of acceptance of proposal, is deemed to be made by any act or omission of the party accepting by which he intends to communicate such acceptance or which has the effect of communicating it.

- **Analysis**

- Express

- Implied

Written

Spoken

conduct

Rules relating to valid acceptance

Brogden v. Metropolitan Railway Company

'B' supplied coal to a railway co., without any formal agreement. Later, at the suggestion of 'B' both parties met and drafted an agreement. Some blanks were left to be filled by 'B' which he completed and returned it to co. Agent of the co., put it in his drawer and it remained there without final agreement being signified. 'B' went on supplying coal and received price on new terms. On arising of dispute 'B' argued he is not bound by the new contract.

HELD:

“The conduct of the agent in keeping the draft in his desk shows his mental acceptance but it was not expressed hence it was not a sufficient acceptance.

But the subsequent conduct of parties in supplying and accepting coal on the basis of proposed agreement was a conduct manifesting their intention. Thus final acceptance was given even though draft was not signed.”

Rule: “There shall be some external manifestation by words spoken or written or an overt act as against mere mental preparedness to accept the offer”

- ***Carlill v. Carbolic Smoke Ball Co.***

- *Felthouse v. Bindley*

Facts: Pt wrote to purchase his nephew's horse – “If I hear no more about the horse, I consider the horse mine at Rs. 10,000.” - No reply – nephew informed dt. his auctioneer not to sell the horse as it is already sold to his uncle – auctioneer by mistake sold it – pt sued on the ground that the horse has become property on communication from his nephew and the subsequent sale by dt is unauthorised and invalid.

HELD: It was clear that the nephew intended to sell the horse to his uncle but it was not communicated to his uncle, hence it was not a valid acceptance.

Felthouse v. Bindley Contd...

Principles:

1. Acceptance of the offer shall be communicated to the offeror himself.
2. communication to a stranger is no acceptance
3. Offeror cannot impose the burden of refusal.

Rule2: Acceptance shall be communicated to the offeror himself.

Powell v. Lee

FACTS: Pt. was an applicant for the headmastership of a school – management passed resolution appointing him – not communicated - one of the members of the panel communicated him in his individual capacity – later, management cancelled the resolution – pt sued for breach of contract

Held: communication of acceptance was not valid. It was almost like overhearing.

Rule3: Communication shall be by offeree/acceptor himself

4. Acceptance may be complete without communication but by fulfilling the conditions of the offer.

- Eg. General offer, unilateral contracts
- *Lalman v. Gouridatt, Carlill v. Carbolic Smoke Ball Co., Harbhajanlal v. Harcharanlal*

5. Mode of Communication

- English Law
 - Manner prescribed or indicated by the offeror
 - Eg. Order for goods to be sent by return wagon – goods sent by post – reaches after wagon – if goods were to reach speedily? – exclusive preference. – any little deviation may invalidate the acceptance.

Mode of communication - Indian Law

S. 7. Acceptance must be absolute.-

In order to convert a proposal into a promise, the acceptance must-

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted.

If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Completion of Communication

Postal communication

- English Law
- Indian Law
- Differences

Instantaneous communication

- English Law
- Indian Law

Completion of Communication

- Eng Law - *Adams v. Lindsell*

Facts: on September 2, 1817 dt's wrote a letter to Pt to sell a quantity of wool – letter added receiving your answer in course of transit – letter reached on 5th – same evening pt wrote a letter agreeing to buy the wool - letter was received by the dt on 9th – dt waited till 8th and sold it to another – dt was sued for breach

Contention – till they received pt's answer there was no binding contract between them.

Held: – communication is completed & contract concluded on posting the letter of acceptance.

the pt had no way of knowing that the dt's had not assented to it and so it might go on *ad infinitum*

House Hold Fire and Accident Insurance Company V. Grant

Facts: Dt., Applied for allotment of Shares – Letter of allotment posted but not reached – Is dt., bound?

OBSERVATION: post as agent – putting out of the control of the offeree.

“Thus, it may now be stated that where an offer is made and accepted by letters sent through the post, the contract is completed the moment the letter accepting the offer is posted, even though it never reaches the destination.”

INDIAL LAW

S.4 Communication when complete. - The communication of an acceptance is complete, -

- as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;
- as against the acceptor, when it comes to the knowledge, of the proposer.
- Eg. When B accepts A's proposal sent by post, acceptance is complete-
 - As against, A when the letter is posted
 - As against B when the letter is received by A

Differences – Eng. Law and Indian LAW

Eng Law

1. Both parties bound at the same time
2. Acceptance cannot be withdrawn
3. Agreement binds both simultaneously

Indian Law

1. Parties are bound at different times
2. Acceptance can be withdrawn
3. Agreement binds them at different times – anomaly.

Completion of communication – when parties are at instantaneous communication

- **ENG LAW**
- Above rules apply only when parties are at distance and communicate by post.
- When parties are at each other's presence or separated by space yet in direct communication like, telephone, telex, etc., no contract would arise till the offeror receives notification of acceptance.
- **Entores Ltd., v. Miles Fareast Corporation**
- **FACTS**: Offer from London to a party at Holland by telex – accepted by return telex – Qn: Where was the contract concluded?
- **HELD**: Telex is instantaneous communication. Rule is different from rule in case of postal communication. Contract is complete when the acceptance is received by the offeror and contract is made at the place where acceptance is received.

Absolute and Unqualified Acceptance

- Acceptance shall be absolute – any departure from the terms of the offer or any qualification vitiates the acceptance unless it is agreed by the offeror
- Acceptance of an offer with a variation is no acceptance, it is only a counter offer, it shall be further accepted by the offeror.
- Counter offer results in lapse of original offer
- Offer shall be accepted as whole and not in part. To do so amounts to counter offer - application for shares and appointment as manager.
- Implied acceptance of counter proposal – contract on new terms

Hargopal v. People's Bank of Northern India – pt applied for shares and appointment as permanent director of Co. – shares allotted but not appointed as director – dividends received.

Revocation of Acceptance

- ENG LAW

- Prof. Anson "acceptance is to offer what a lighted match is to a train of gunpowder" - Irrevocable

- INDIAN LAW

- Generally revocable – by speedier mode of communication
- S. 5 A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Revocation of Acceptance

Illustrations

- A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post.
- A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.
- B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.
- When letter of acceptance and revocation reach simultaneously revocation is deemed.

Lapse of Offer S. 6

1. Notice of revocation – shall reach offeree before he accepts, e.g. *Henthorn v Fraser* – offer to accept within 14 days – accepts by post – revocation notice posted – they crossed in transit

◆ **HELD** Revocation was ineffective

a) Offer may be revoked even before expiry of time promised

b) When letter of revocation reaches offeree it is deemed to be served

c) Notice of revocation shall be by the offeror only

d) General offers are revoked by the same mode of making offer – offeree even ignorant of revocation is bound

e) Auction sale – highest bidder may revoke before accepted

2. Lapse of time – fixed or reasonable time

3. Failure to accept condition precedent – eg. Deposits

4. Death or insanity of offeror – if offeree knows it before he accepts