

**“All contracts are agreements but all agreements are not contracts”**

According to section 2 (h) of the Indian Contract Act, “an agreement enforceable by law is a contract”. That is all agreements are not contract. An agreement, in order to become a contract must satisfy certain conditions which are the essential elements of a contract. For example, if an agreement is not indented to create legal relationship, agreement not made with the free consent of the parties, agreement not made for a lawful object etc. These agreements are not valid contracts. An agreement which does not create legal obligation is also not a contract. Thus all contracts are agreements but all agreements are not contracts.

**OFFER AND ACCEPTANCE**

Offer and acceptance are the two basic elements which comprise an agreement. One person makes an offer to another person, when the other person accepts that offer, it becomes an agreement.

**Offer or Proposal**

According to 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 other to such act or abstinence, he is said to make a proposal.”

Offer is one of the essential elements of a contract. The person making the offer or proposal is called the offeror proposer or promisor and the person to whom the proposal is made is called ‘the propose’ or offeree.

**Elements of an Offer:**

1. In an offer one party must express his willingness for doing or not doing a thing
2. It must be made to another person
3. Offer is made with a view to know the assent of the other person.
4. There must be an intention to create legal relationship.

Example: X desire to sell his Car to Y for Rs. 3,00,000 \_ it does not constitute offer, because X has merely expressed his desire. On the other hand if X asks Y would you buy my Car for Rs.3,00,000, this makes an offer, and here X is the offeror.

**Classification of offer:**

1. **Specific offer:** - When an offer is made to a specific person or class of persons, such offer is known as specific offer. The specific offer can be accepted only by that particular person or organization.
2. **General offer:** It is an offer which is made to a group of people or public at large. Such offer can be accepted by any member of that group.
3. **Cross offer:** - When two parties exchange identical offers with each other, in ignorance of each other’s offer, the offers are cross offer.
4. **Counter offer:** Incomplete and conditional acceptance of an offer is known as counter offer. In other words, when an original offer is rejected and a new offer is made, it is known as counter offer.
5. **Standing offer (Tender):-** An offer for a continuous supply of a certain article at a certain rate over a definite period is called a standing offer.

## ESSENTIALS OF VALID OFFER

The following characteristics are necessary to create a valid offer.

1. **The terms of an offer must be clear and certain:** - The terms of an offer should not be indefinite, vague or loose. The vagueness of an offer will not create any contractual relationship .  
For example, A says to B “ I will sell you a Car” as A owns four cars, the offer is not definite.
2. **Offer may be express or implied:** - An express offer is one which may be made by words spoken or written. An implied offer is one which may be gathered from the conduct of the party or the circumstances of the case.
3. **The offer must be communicated to the offeree:** - An offer must be communicated to the offeree. Until an offer is made known to the offeree, he does not know what he has to accept.
4. **An offer must be made with an intention of creating legal obligations:** - A proposal will not become a promise even after it has been accepted unless it was made with a view to create legal obligations. An offer to perform social or moral acts, without any intention of crating legal relations, will not be a valid offer.
5. **Offer may be conditional:** - An offer can be made subject to a condition. It can be accepted only subject to those conditions. If the condition is not accepted, the conditional offer lapses.
6. Offer must be made with a view to obtaining the assent of the other party
7. **Invitation to an offer is not an offer:**-Offer is different from invitation to an offer. Quotations, catalogues of goods, advertisement for tender etc are not actual offer. They are mere invitation to offer.
8. **Offer may be specific or general:** - The offer being made to a particular individual or organization is known as specific offer. On the other hand, if an offer has been made to a group of people or public at large, such offer is known as general offer.
9. **Offer should not contain a term the on-compliances of which would amount to acceptance:** While making the offer one cannot say that, if the offer is not accepted before a certain date, it will presumed to have been accepted.

### When Does an offer comes to an End? / Revocation of Offer/Lapses of Offer:-

The Offer must be accepted before it lapses. Sec. 6 of the contract act deals with various modes of revocation of an Offer.

1. **Revocation by Communication of notice (Sec. 6(1)):-** A person who makes an offer can withdraw it at any time before acceptance. Such revocation may be express or implied. Notice of revocation will take effect only when it comes to the knowledge of the offeree.
2. **By lapse of time (Sec.6 (2)):-** An offer lapses if it is not accepted within the prescribed time. Where no time is fixed, it should be accepted within a reasonable time. Otherwise the offer will lapse after a reasonable time.
3. **Death or insanity of an offeror:-** An offer lapses by the death or insanity of the offeror, if the fact of his death or insanity comes to the notice of the acceptor before acceptance.

4. **Non fulfillment of pre requisite conditions:** - When the offeror has put some conditions, which are prerequisites to acceptance, such conditions must be fulfilled before accepting offer. Non fulfillment of such conditions will lead to revocation of an offer.
5. **By counter offer:** - The offer will be revoked if the offeree makes a counter offer.
6. **Offer not accepted according to the mode prescribed:-** Sometimes the offeror may prescribe particular mode in which offeree must send his acceptance. Non compliance of prescribed mode may lead to rejection of acceptance.
7. **Subsequent Illegality or destruction of subject matter:** - An offer lapses, if it becomes illegal after it is made but before it is accepted.

## ACCEPTANCE

According to section 2(b) a proposal or offer is said to have been accepted when the person to whom the proposal is made, signifies his assent to the proposal. An offer when accepted becomes a promise. Offer and Acceptance in a contract are like two sides of a coin and the absence of any one will not create any contractual relationship between these parties. According to William Anson, “acceptance is to offer what is a lighted match is to a train of gun powder.”

An acceptance can be made by words spoken or written. It can be made by conduct also. It can be accepted only by the person to whom it is made.

## ESSENTIALS OF A VALID ACCEPTANCE:-

1. **Acceptance must be absolute and unconditional:** - Partial and conditional or qualified acceptance will not be a valid acceptance. That is the acceptor either should accept the item of the offer in toto or should reject it in toto. There should not be any variation in terms while accepting the proposal.
2. **Acceptance must be given in a prescribed mode or manner:** - If the acceptance is not made according to the mode prescribed, the offeror may intimate to the offeree within a reasonable time that the acceptance is not according to the mode prescribed, and may insist that the offer must be accepted in the mode prescribed. But if still it is not followed, the offeror can reject that acceptance.
3. **Time of Acceptance:** - Acceptance must be made within the time allowed. When no time is specified, acceptance must be given within reasonable period of time.
4. **Acceptance must be communicated:** Acceptance to be legally effective must be communicated and brought to the knowledge of the offeror. Even if the acceptor has accepted the offer but if it is not communicated properly, it would not result into an agreement.
5. **Acceptance may be express or implied:** - When an acceptance is made by words spoken or written, it is an express acceptance. If it is accepted by conduct, it is an implied acceptance. For example when a person goes to a Restaurant and has some food, he impliedly accepts to pay for it.
6. **Acceptance must be made before offer is revoked:** - The acceptance of an offer must be done before the offer lapses or is withdrawn or cancelled. Once an offer is dead due to any reason it is dead for ever.
7. **Acceptance must be made by the offeree:** - Acceptance must be made only by the person to whom the offer is made and not by others.
8. **Acceptance is not implied from silence of the party:** - Generally, silence on the part of offeree regarding the offer in no case may amount to acceptance.