3: Communication, acceptance and revocation of proposals - 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.

4: Communication when complete - The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

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.

The communication of a revocation is complete, —

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

5: Revocation of proposals and acceptances - 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.

6: Revocation how made - A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

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.

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.

9: Promises, express and implied - In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

What is an Offer?

We have learnt earlier that for making a valid contract there must be a lawful offer and a lawful acceptance of that offer. An offer is also called ‘proposal’. The words 'proposal' and 'offer' are synonymous and are used interchangeably. Section 2(a) defines the term 'proposal' as follows:

> "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."

From the above definition of offer you will notice that an offer involves the following elements.

i) It must be an expression of readiness or willingness to do or to abstain from doing something. Thus, it may involve a 'positive' or a 'negative' act. For example, A offers to sell his book to B for Rs. 30. A is making a proposal to do something i.e., to sell his book. It is a positive act on the part of the proposer A. On the other hand, when A offers not to file a suit against B if the latter pays A the outstanding amount of Rs. 1,000, the act of A is a negative one i.e., he is offering to abstain from filing a suit.

ii) It must be made to another person. There can be no 'proposal' by a person to himself,

iii) It must be made with a view to obtain the assent of that other person to such act or abstinence. Thus a mere statement of intention— "I may sell my furniture if I get a good price" is not a proposal.

The person making the offer is called the 'offerer' or the 'promisor' and the person to whom it is made is called the 'offeree'. When the offeree accepts the offer, he is called the 'acceptor' or the 'promisee'. For example, Ram offers to sell his

scooter to Prem for Rs. 10,000 This is an offer by Ram. He is the offerer or the promisor. Prem to whom the offer has been made is the offeree and if he agrees to buy the scooter for Rs. 10,000 he becomes the acceptor or the promisee.

How is an Offer Made?

An offer can be made by any act which has the effect of communicating it to the other. An offer may either be an 'express offer' or an 'implied offer'

Express Offer: When an offer is made by words, spoken or written, it is termed as an express offer. When A says to B that he wants to sell his book to B for Rs. 20, it is an express offer. Similarly, when A writes a letter to B offering to sell his car to him for Rs. 40,000, it is also an express offer by A. The oral offer may be made either in person or over telephone. Section 9 of the Contract Act reads:

> "In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express."

Implied Offer: It is an offer which is not made by words spoken or written. An implied offer is one which is inferred from the conduct of a person or the circumstances of the particular case. For example, public transport like DTC in Delhi or BEST in Bombay runs buses on different routes to carry passengers who are prepared to pay the specified fare. This is an implied offer. Similarly, when a coolie picks up your luggage to carry it from railway platform to the taxi, it means that the coolie is offering his service for some payment. This is an implied offer by the coolie. A bid at an auction is an implied offer to buy. Section 9 says –

"In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied."

Which offer is specific and which is general?

According to law, an offer can be accepted only by the person to whom it is made. Hence, we must know how to identify the person to whom the offer has been made. From this point of view, an offer may be 'specific' or 'general'.

Specific offer: When an offer is made to a definite person or particular group of persons, it is known as specific offer and it can be accepted only by that definite person or that particular group of persons to whom it has been made. For example, A offered to buy certain goods from B at a certain price. This offer is made to a definite person B. Therefore, if goods are supplied by P, it will not give rise to a valid contract (**Boulton v. Jones, (1857) 2 H & N 564**).

General offer: On the other hand, if an offer which is not made to a definite person, but to the world at large or public in general, it is called a general offer. A general offer can be accepted by any person by fulfilling the terms of the offer. Offers of reward made by way of advertisement for finding lost articles is the most appropriate example of a general offer. For example, B issues a public advertisement to the effect that he would pay Rs. 100 to anyone who brings back his missing dog. This is a general offer and any member of the public can accept the said offer by finding the lost dog. Similarly, a company advertised that it would pay £ 100 to anyone who contracts influenza after using the smoke balls of the company for a certain period according to the printed directions. Mrs. Carlill used the smoke balls according to the directions of the company but subsequently she contracted influenza. She filed a suit for the reward. It was held

that she would recover the reward as she had accepted the offer by complying with the terms of the offer [**Carlill v. Carbolic Smoke Ball Co., [1893] 1 QB 256 (CA)**].

What are the legal rules for a valid offer?

An offer or proposal made by a person cannot legally be regarded as an offer unless it satisfies the following conditions.

1) Offer must intend to create legal relations: An offer will not become a promise even after it has been accepted unless it is made with a view to create legal obligations. It is so because the very purpose of entering into an agreement is to make it enforceable in a court of law. A mere social invitation cannot be regarded as an offer because if such an invitation is accepted it will not give rise to any legal relationship. For example, A invites his friend B to a dinner and B accepts the invitation. If B fails to turn up for dinner, A cannot go to the court to claim his loss. In social agreements the presumption is that the parties do not intend to create legal relationship. This point is very well illustrated by the case of **Balfour v. Balfour, [1919] 2 KB 571 (CA)** which has been discussed earlier. In business agreement, however, it is presumed that it will be followed by legal consequences. But if the parties to a business agreement also agree that none of them shall go to court in case of its breach, then even such an agreement will not be treated as a contract (refer to the case of **Rose & Frank Co. v. J. R. Crompton & Bros. Ltd., [1925] AC 445 (HL)** discussed earlier).

2) Terms of offer must be certain, definite and not vague: No contract can be formed if the terms of the offer are vague, loose and indefinite. The reason is quite simple. When the offer itself is vague or loose or uncertain, it will not be clear as to what

exactly the parties intended to do. A vague offer does not convey what it exactly means. For example, A promises to buy one more horse from B if the horse purchased earlier proves lucky. This promise cannot be enforced because it is loose and vague. Similar is the case when A agrees to sell his car to B for Rs. 30,000 after making necessary repairs. What are necessary repairs is a debatable question and as such the offer is not valid.

If, however, the terms of the offer are capable of being made certain, the offer is not regarded as vague. For example, A offers to sell to B "a hundred quintals of oil". The offer is uncertain as there is nothing to show what kind of oil is intended to be sold. But, if A is a dealer in coconut oil only, it is quite clear that he wants to sell coconut oil. Hence, his offer is not vague. It is a valid offer.

Sometimes, the parties agree to enter into a contract on some future date. Such agreement is not valid because the terms of the offer are uncertain and they are yet to be settled. The law does not allow making of an agreement to agree in future. In the case of Loftus v. Roberts, an actress was engaged for a provincial tour. The agreement provided that if the party went to London, the actress will be engaged at a salary to be mutually agreed upon. It was held that there was no contract because the terms were not definite.

3) The offer must be distinguished from a mere declaration of intention: Sometimes a person may make a statement without any intention of creating a binding obligation. Such statement or declaration only indicate that he is willing to negotiate and an offer will be made or invited in future. For example an auctioneer advertised in a newspaper that a sale of office furniture will be held on a certain date. A person with the intention to buy

furniture came from a distant place for the auction, but the auction was cancelled. He cannot file a suit against the auctioneer for his loss of time and expenses because the advertisement was merely a declaration of intention to hold auction, (Harris v. N Nickerson). Similarly, a notice that goods will be sold by tender does not amount to an offer. When a person calls for tenders, it is only an attempt to ascertain whether an offer can be obtained within such a margin as the seller is willing to adopt (Spencer v. Harding). The tenderers by submitting their tenders make offers and it is for the person inviting tenders to accept them or not. In case of Farina v. Fickus, a father wrote to his would be son-in-law that his daughter would have a share of what he left. It was held that the letter was a mere statement of intention and not an offer.

4) Offer must be distinguished from an invitation to offer:

An offer must be distinguished from an invitation to receive an offer or to make on offer or to negotiate. In the case of invitation to offer there is no intention on the part of the person sending out the invitation to obtain the assent of the other party to such invitation. On the other hand, offer is a final expression of willingness by the offerer to be bound by his promise, should the other party choose to accept it. In case of an invitation to offer, his aim is to merely circulate information of his readiness to negotiate business with anybody who on such information comes to him. An invitation to offer is not an offer in the eyes of law and does not become a promise on acceptance.

One must have noticed that shopkeepers generally display their goods in showcases with price tags attached. The shopkeeper in such cases is not making an offer so that you can accept it. He is in fact inviting you to make an offer which he may or may not

accept. One cannot compel the shopkeeper to sell the goods displayed in the showcase at the market price. Similarly, quotations, catalogues, price list, advertisements in a newspaper for sale or a circular sent to prospective buyers do not constitute an offer.

In the case of **Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd. [1953] 1 QB 401** goods were displayed in the shop for sale with price tags attached on each article. The customers used to select goods and take them to the cashier for the payment of the price. It was held, that in this case there was only an invitation to offer and not an offer itself. The shopkeeper cannot be compelled to sell the goods at the price indicated. The contract was made, not when the customer selected the goods, but when the cashier accepted the offer to buy and receive the price. Similarly, a prospectus issued by a company for subscription to its shares by the members of the public is only an invitation to offer. When a person fills up the form and deposit it with the bank along with the application money, he is simply making an offer to buy shares. Now it is for the company to accept his offer in full or partially, or reject it outright.

5) The offer must be communicated: An offer must be communicated to the person to whom it is made. The first part of the definition of proposal emphasises this fact by saying that "When one person signifies to another his willingness to or to abstain..." It means that an offer is complete only when it is communicated to the offeree. You should note that a person can accept the offer only when he knows about it. An offer accepted without his knowledge does not confer any legal rights on the

acceptor. There can be no valid acceptance unless there is knowledge of the offer.

In the case of **Fitch v. Snedaker, 38 N.Y. 248 (1868)**, S offered a reward to any one who returns his lost dog. F brought the dog without any knowledge of the offer of reward. It was held that F was not entitled to the reward because F cannot be said to have accepted the offer which he was not aware of. In another important case of **Lalman Shukla v. Gauri Dutt, (1913) ILR 35 All 446**, G sent his servant L to trace his lost nephew. When the servant had left, G announced a reward of Rs. 501 to anyone who traces the boy. L found the boy and brought him home. When L came to know of the reward, he decided to claim it. It was held that L was not entitled to the reward because he did not know about the offer when he found the missing boy. It is also necessary that the offer is communicated by the offerer himself or by his authorised agent. If a person comes to know about the offer from some other source, he cannot make it a binding contract by accepting it. For example, A writes a letter to B at Bombay offering to sell his house. This letter is misplaced and it never reaches B. But, a common friend P had informed B about the said letter of A containing the offer. B sends his letter of acceptance to A. In such a situation, no contract will be formed.

6) Offer should not contain a term the non-compliance of which would amount to acceptance: The offer should not impose on the offeree an obligation to reply. While making the offer the offerer cannot say that if the offer is not accepted before a certain date it will be presumed to have been accepted. Unless the offeree sends his reply, no contract will arise. For example, A writes to B "I offer to sell my scooter to you for Rs. 7,000. If I do not receive a reply by Wednesday next, I shall assume that you

have accepted the offer." If B does not reply, it shall not imply that he has accepted the offer. Hence, there will be no contract. However, the offerer can lay down the mode by which the acceptance is to be communicated.

7) Special terms or conditions in an offer must also be communicated: The offerer is free to lay down any terms and conditions in his offer, and if the other party accepts the offer then he will be bound by those terms and conditions. The important point is that if there are some special terms and conditions they should also be duly communicated. The question of special terms arises generally in case of standard form of contracts. For example, the Life Insurance Corporation of India has printed form of contracts containing large number of terms and conditions. Similarly, standard contracts are made with railways, shipping companies, banks, hotels, drycleaners etc. Such big companies are in a position to exploit the weakness of the individual by including certain terms and conditions in the contract which limit their liability. In order to protect the interest of the general public it is provided that the special terms of the offer must be duly brought to the notice of the offeree. If this is not done the offeree will not be bound by those terms. This can be done either by expressly communicating the special terms or by giving a reasonable notice about the existence of the special terms i.e., by drawing his attention to them by printing in red ink or bold letters 'for conditions see back' or 'P.T.O.' on the face of the printed form or ticket. If this is not done, the offeree will not be bound by them.

The leading case on this point is that of **Henderson v. Stevenson, (1875) LR 2 Sc & Div 470 (HL)**. In the case A purchased a steamer ticket for travelling from Dublin to

Whitehaven and this fact was printed on the face of the ticket. On the back of the ticket certain conditions were printed, one of which excluded the liability of the company for loss, injury or delay to the passenger or his luggage. A never looked at the back of the ticket and there was nothing to draw his attention to the conditions printed on the back side. His luggage was lost due to the negligence of the servants of the shipping company. It was held that A was entitled to claim compensation for this loss of his luggage in spite of the exemption clause because there was no indication on the face of the ticket to draw his attention to the special terms printed on the back of the ticket.

You must note that if the special terms and conditions have been brought to the notice of the offeree, he will be bound by them even if he has not read them or is an illiterate. In the case of **Parker v. South Eastern Railway Co., (1877) 2 CPD 416**, P deposited his bag in the cloakroom at a railway station. On the face of the receipt the words "see back" were printed. One of the conditions printed on the back limited the liability of the railway company for any package to £ 1. The bag was lost and P claimed £ 24 10s, the actual value of the bag. P admitted knowledge of the conditions printed on the back, but denied having read it. It was held that P was bound by the print on the back side even though he had not read them because the railways had given reasonably sufficient notice on the face of the ticket as to the existence of conditions. Therefore, P could recover £ 10 only.

The same rule is applicable even where the special conditions are printed in a language which the acceptor does not understand provided his attention has been drawn to them in a reasonable manner. In such a situation, it is the acceptor's duty to ask for the translation of the conditions before accepting the offer and if he

did not ask, he is presumed to know them and he will be bound by them.

You must also note that the special terms and conditions should be brought to the knowledge of the offeree before the contract is concluded and not afterwards. A subsequent communication will not bind the acceptor unless he himself agrees thereto. For example, a couple hired a room in a hotel for a week. When they entered the room they found a notice on the wall disclaiming the owners liability for damage, loss or theft of articles. Some of their items were stolen. The owner of the hotel was held liable since the notice was not a part of the contract as it came to the knowledge of the client after the contract has been entered into. (**Olley v. Marlborough Court Ltd., [1949] 1 KB 532**)

Finally, the terms and conditions must be reasonable. A term is considered to be unreasonable if it defeats the very purpose of the contract or if it is against the public policy. Thus, if the terms and conditions in a standardised contract are unreasonable, then the other party will not be bound by them. For example, if a drycleaner limits his liability to 20 per cent of the market price of the article in case of loss, the customer will not be bound by this conditions because it means that the drycleaner can purchase garments at 20 per cent of their price.

Cross Offers

Two offers which are similar in all respects, made by two parties to each other, in ignorance of each other's offer are known as 'cross offers". Cross offers do not amount to acceptance of one's offer by the other and as such no contract is concluded. For example, A of Delhi, by a letter offers to sell his house to B of Bombay for Rs. 10 lakh. At the same time, B of Bombay also makes an offer to A to buy A's house for Rs. 101 lakh. The two

letters cross each other. There is no concluded contract between A and B because both the parties are making offers. If they want to conclude a contract, at least one of them must send his acceptance to the offer made by the other.

Standing Offers

Sometimes an offer may be of a continuous nature. In that case it is known as standing offers, A standing offer is in the nature of a tender. Sometimes a person or a department or some other body requires certain goods in large quantities from time to time. In such a situation, it usually gives an advertisement inviting tenders.

An advertisement inviting tenders is not an offer but a mere invitation to offer. It is the person submitting the tender to supply goods or services who is deemed to have made the offer, when a particular tender is accepted or approved, it becomes a standing offer. The acceptance or approval of a tender does not however, amount to acceptance of the offer. It simply means that the offer will remain open during a specified period and that it will be accepted from time to time by placing specific orders for the supply of goods. Thus each order placed creates a separate contract. The offerer can however withdraw his offer at any time before an order is placed with him. Similarly, the party who has accepted the tender is also not bound to place any order unless there is an agreement to purchase a specified quantity. For example, A agrees to supply coal of any quantity to B at a certain price as will be ordered by B during the period of 12 months. It is a standing offer. Each order given by B will be an acceptance of the offer and A will be bound to supply the ordered quantity of coal. A can however, revoke the offer for future supplies at any time by giving a notice to the offeree.

What is an Acceptance?

We have learnt that when an offer is accepted, it results in an agreement. Let us now study what exactly an acceptance is. Acceptance is an expression by the offeree of his willingness to be bound by the terms of the offer. This results in the establishment of legal relations between the offerer and offeree. **Section 2(b)** of the Indian Contract Act defines the term 'acceptance' as "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise." For example, A offers to sell his book to B for Rs. 20. B agrees to buy the book for Rs. 20. This is an acceptance of A's offer by B.

Who Can Accept?

An offer can be accepted only by the person or persons to whom it is made. An offer made to a particular person (specific offer) can be accepted only by him and none else. The rule of law is that if A wants to enter into a contract with B, then C cannot substitute himself for B without A's consent. In the case of **Boulton v. Jones, (1857) 2 H & N 564**, A sold his business to B but this fact was not known to an old customer C. C sent an order for goods to A by name. B supplied the goods to C. It was held that there was no contract between B and C because C never made any offer to B. If an offer is made to the world at large (general offer) any person can accept the offer provided he has the knowledge of the offer. You have seen in Carlill v. Carbolic Smoke Ball Co's case that the lady accepted the offer by using the smoke balls. Similarly, in case a reward has been offered for giving information about missing person or a lost article, any person who gives the necessary information first, shall be entitled to the reward.

How is an Acceptance Made?

We know that an offer may be either express or implied. Similarly, the acceptance may also be either express or implied. When the acceptance is given by words spoken or written, it is called an 'express acceptance'. For example, A offers to sell his book to B for Rs. 20. B may accept this offer by stating so orally or by writing a letter to A. The acceptance may also be implied by conduct. For example, A offers a reward of Rs. 100 to anyone who traces his lost dog. B, who was aware of this offer, finds the dog, he is entitled to the reward as he accepted the offer by doing the required act. Take another example. A enters into DTC bus for going to Rajghat. This is an implied acceptance by A and he is bound to pay the fare.

What are legal Rules for a Valid Acceptance?

The acceptance of an offer to be effective must fulfil certain conditions. These are:

1) Acceptance must be absolute and unqualified: Section 7 (1) of the Indian Contract Act provides that 'In order to convert a proposal into a promise, the acceptance must be absolute and unqualified ....' This is so because a qualified and conditional acceptance amounts to a counter offer leading to the rejection of the original offer. No variation should be made by the offeree in the terms of offer. If while giving acceptance, any variation is made in the terms of the offer the acceptance will not be valid and there will be no contract. For example, A offers to sell his scooter to B for Rs. 8,000 and B agrees to buy it for Rs. 7,500. It is a counter offer and not an acceptance. If, later on, B is ready to pay Rs. 8,000 A is not bound to sell his scooter, because B's counter offer has put an end to the original offer.

Further an offer must be accepted in toto. If only a part of the offer is accepted the acceptance will not be valid. For example, A offers to sell 100 quintals of wheat to B at a certain price. B accepts to buy 70 quintals only. It is not a valid acceptance since it is not for the whole of the offer. Thus, an offer should be accepted as it is, without any reservations, variations or conditions. Any variation, howsoever unimportant it may be, makes the acceptance invalid.

Sometimes, a person may accept the offer "subject to a contract" or "subject to formal contract" or "subject to contract to be approved by the solicitors". In such cases no contract arises because a condition remains to be performed in the future. For example, A's bid was provisionally accepted at an auction sale. The acceptance was 'subject to confirmation'. Before confirmation, however, A withdrew his bid. It was held that because acceptance was not absolute, it was subject to confirmation, A can withdraw his bid before it is confirmed.

2) Acceptance must be in the prescribed manner: Where the offerer has prescribed a mode of acceptance, it must be accepted in that very manner. If the offer is not accepted in the prescribed manner it is up to the offerer to accept or reject such acceptance. But when the acceptance is not in the prescribed manner and the offerer wants to reject it, he must inform the acceptor within a reasonable time that he is not bound by acceptance since it is not in the prescribed manner. If he does not do so within a reasonable time, he will be bound by the acceptance. For example, A makes an offer to B and says "send your acceptance by telegram". B sends his acceptance by a letter. A can refuse this acceptance on the ground that it was not accepted in the prescribed manner. But, if A fails to inform B within a reasonable time he will be deemed

to have accepted the acceptance by ordinary letter and it will result in the formation of a valid contract. If, however, no mode has been prescribed, it should be accepted in some usual and reasonable manner.

3) Acceptance must be communicated: We have learnt in the definition of acceptance that it should be signified. In other words, acceptance is complete only when it has been communicated to the offerer. A mere mental acceptance, not evidenced by words or conduct, is no acceptance. Mere intention to accept an offer, without any outward manifestation of assent, does not create a contract. Acceptance must be communicated either expressly or by conduct from which assent can reasonably be inferred.

Communication of acceptance does not mean that the offerer must actually come to know of the acceptance in every case. Under the postal rule, once a letter of acceptance is properly addressed, stamped and posted, the communication of acceptance is complete as against the offerer. Therefore, even if the letter of acceptance is lost in transit or delayed, the offerer is bound by the acceptance because the acceptor has done all that is required of him.

One should note that the offerer, while making an offer, cannot impose a burden on the other party to communicate his refusal or rejection. He can certainly prescribe the manner in which the offer is to be accepted, but he cannot lay down the manner in which it is to be refused. For example, the offerer cannot say that if he does not hear anything from the other party within seven days, the offer will be deemed to have been accepted. This point is illustrated by the well-known case of **Felthouse v. Bindley (1862) 11 CB (NS) 869**. In that case, F offered by a letter to buy

his nephew's horse for £30, stating, "If I hear no more about him, I shall consider the horse mine." The nephew sent no reply, though he informed Bindley, his auctioneer, not to sell the horse as he intended to sell it to his uncle. Bindley, however, sold the horse by mistake. F sued the auctioneer for conversion. It was held that F could not succeed because the nephew had not communicated his acceptance; silence does not amount to acceptance, and therefore no contract had been concluded.

4) Acceptance must be communicated by a person who has the authority to accept: For an acceptance to be valid it should be communicated by the offeree himself or by a person who has the authority to accept. Thus, if acceptance is communicated by an unauthorised person, it will not give rise to legal relations. The case of **Powell v. Lee, (1908) 99 LT 284** can be mentioned in support of this point. In this case P applied for the post of a headmaster in a school. The managing committee passed a resolution appointing P to the post but this decision was not communicated to P. However, a member of the managing committee, in his individual capacity and without any authority, informed P about the decision. Subsequently, the managing committee cancelled its resolution and appointed someone else. P filed a suit for breach of contract. It was held that he was not informed about his appointment by some authorised person, hence there was no communication of acceptance.

5) Acceptance must be made within the time prescribed or within a reasonable time: Sometimes the offerer while making the offer fixes the period within which the offer should be accepted. In such a situation, the acceptance must be given within the prescribed time and if no time is prescribed, it should be accepted within a reasonable time. What is the reasonable

time depends upon the facts of the case. Where an offer to buy shares of a company was made in June but the acceptance was communicated in November, it was held that because acceptance was not given within a reasonable time the offer had elapsed. (**Ramsgate Victoria Hotel Co. v. Montefiore, (1866) LR 1 Ex 109**).

6) Acceptance must be given before the offer lapses or is withdrawn: The acceptance must be given while the offer is in force. Once an offer has been withdrawn or stands lapsed, it cannot be accepted. For example, A offered, by a letter, to sell his car to B for Rs. 40,000. Subsequently, A withdraws his offer by a telegram, which was duly received by B. After the receipt of the telegram, B sends his acceptance to A. This acceptance is not valid.

What is the need for communication of offer and acceptance?

We have learnt that offer and acceptance have to be communicated. Unless an offer is communicated it cannot be accepted. Similarly, an acceptance which is not communicated does not create any legal relations. Now the question arises as to when the communication of offer and acceptance is regarded as complete so as to bind the concerned parties.

When the contracting parties are face to face, there is no problem regarding communication, because there is instantaneous communication of the offer and its acceptance. The problem arises when parties are at a distance from each other and they have to do it through post. In such a situation, it is very important for us to know the exact time when communication of the offer and acceptance is complete because as soon as the

communication is complete the parties loose the right of withdrawal or revocation. Let us now take up the rules regarding the communication of the offer and acceptance.

Communication of Offer

According to **Section 4** of the Contract Act, the communication of an offer is complete when it comes to the knowledge of the person to whom it is made i.e., when the letter containing the offer reaches the offeree. For example, A of Delhi sends a letter by post to B of Bombay offering to sell his house for Rs. 10 lakh. The letter is posted on April 5, and this letter reaches B on April 7. The communication of the offer is complete on April 7.

In the above example, if the letter containing the offer never reaches B, but B comes to know about the proposal from some other source and sends his acceptance, it will not amount to proper communication of the offer and so no contract will arise.

Communication of Acceptance

The rules regarding communication of acceptance have to be studied from the point of view of offerer and as well as the offeree because the communication of acceptance is complete at different times for the offerer and the offeree.

According to **Section 4** of the Contract Act, "the communication of acceptance is complete: (a) 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, and (b) as against the acceptor, when it comes to the knowledge of the proposer. Thus, the offerer becomes bound by the acceptance as soon as the letter of acceptance is duly posted by the acceptor, but the acceptor is bound by his acceptance only when the letter of acceptance reaches the offerer. It is quite interesting to note that a valid

contract arises even if the letter of acceptance is lost in transit or is delayed. You should remember that the offerer will be bound by the acceptance only when the letter of acceptance was correctly addressed, properly stamped and actually posted. Thus, if the acceptance letter is not correctly addressed, it will not be binding upon the offerer.

From the above rules, it must be amply clear that so far as the acceptor is concerned, he is not bound by acceptance till it reaches the offerer. You must have noted that there is a time gap between the two dates, the date on which the letter of acceptance is posted and the date on which the offerer actually receives it. This time gap can be utilised by the acceptor to withdraw his acceptance by a speedier means of communication.

In the above example if B of Bombay sends his acceptance by post on April 10 the communication of acceptance is complete against A on April 10 i.e., when the letter of acceptance is posted, but the communication of acceptance shall be complete as against B only when this letter reaches A. Suppose A receives the letter of acceptance on April 12, at 11 a.m. then B will be bound by his acceptance on April 12 only. In other words, the law has given a chance to the acceptor to withdraw his acceptance.

Contracts over Telephone

A contract by telephone is treated on the same principle as an oral agreement made between two parties when they are face to face with each other. Thus, when offers of acceptance are made on phone, the parties are in direct contact and no contract is concluded until the offerer actually receives or hears the acceptance i.e., the contract is made only when the acceptance is clearly heard and understood by the offerer. The acceptor must

ensure that his acceptance is properly received by the offerer. Normally when the parties disconnect they usually utter such words as 'Bye', ‘O.K.’, etc. This indicates that the parties have heard what they wanted to communicate. But, if the conversation is interrupted before acceptance has been given, the contract is not concluded. For example, A made an offer to B over telephone. While B was conveying his acceptance, the line suddenly went dead and A could not hear anything. Thus, no contract was concluded. Then, B makes another attempt and this time he could convey his acceptance. The contract is said to be concluded on the second attempt.

What is revocation of offer and acceptance?

The term 'revocation' simply means 'taking back' or 'withdrawing'. Both offer and acceptance can be revoked or withdrawn. But, it is possible only upto a certain stage. Let us now study the rules regarding the revocation of offer and acceptance.

Revocation of Offer

According to **Section 5** of the Contract Act “a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.” You know that communication of acceptance is complete as against the offerer when it is put in a course of transmission so as to be out of his power. Hence, an offer can be revoked at any time before the letter of acceptance has been posted. For example, A offers by letter to sell his car to B at a certain price. A may revoke his offer at any time before B posts his letter of acceptance, but not afterwards. Once the letter of acceptance has been posted, the offer cannot be revoked. Therefore, when the

offerer wishes to revoke his offer, he must do so by a speedier mode of communication so that the revocation notice reaches the offeree before he posts his letter of acceptance.

Revocation must always be expressed and move from the offerer himself or 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.

Revocation of Acceptance

Section 5 of the Contract Act further provides that 'an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.' We have already learnt that the communication of acceptance is complete as against the acceptor when it comes to the knowledge of the offerer. Hence, the acceptor can revoke his acceptance at any time before his letter accepting the offer reaches the offerer. Once the letter acceptance reaches the offerer, the acceptance cannot be revoked. Thus, for effective revocation of acceptance it is necessary that the acceptor should adopt some speedier mode of communication so that his revocation reaches the offerer before the letter of acceptance. For example, A offers by a letter dated February 2, sent by post, to sell his house to B at a certain price. B accepts the offer on February 6 by a letter sent by post. The letter reaches A on February 8 at 2 p.m. Here B may revoke his acceptance at any time before 2 p.m. on February 8, but not afterwards.

Sometimes, an interesting situation may arise. The letter of acceptance and the telegram containing revocation of acceptance may be delivered to the offerer at the same time. In such a situation the formation of a contract is a matter of chance. Which one is opened first by the offerer will decide the issue. Generally

it is presumed that a man of ordinary prudence will first read the telegram. Hence, the revocation will be quite effective.

When the parties at distant places communicate over telephone or telex, the question of revocation does not arise because there is instantaneous communication of the offer and its acceptance. The offer is made and accepted at the same time.

In brief you should remember that an offer can be revoked at any time before the letter of acceptance is posted and an acceptance can be revoked before it reaches the offerer.

Communication of Revocation

The communication of revocation is complete at different times for the person who makes it and the person to whom it is made. According to **Section 4** the communication of revocation is complete.

i) As against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who make it.

ii) As against the person to whom it is made, when it comes to his knowledge.

Example: A proposes by letter to sell his house to B at a certain price. B accepts the proposal by a letter sent by post. If A revokes his offer by telegram, then revocation of offer is complete as against A, when the telegram is sent and for B it is complete when B receives the telegram. If B revokes his acceptance by telegram the revocation of acceptance is complete for B when the telegram is sent and as against A, when it reaches him.

When does an offer lapse?

We have learnt that the acceptance must be given before the offer lapses or is revoked. Now the question arises as to how long an offer remains open or upto what time it can be accepted. You must know this because the offer must be accepted before it lapses. Once an offer lapses it cannot be accepted. Let us now discuss the circumstances leading to lapse. They are as follows:

1) By lapse of stipulated or reasonable time: The offeree must accept the offer within the time prescribed in the offer and if no time is prescribed, it must be accepted within a reasonable time. Thus, the offer lapses if it is not accepted within the time prescribed in the offer or within a reasonable time. What is a reasonable time depends upon the circumstances in each case. In the case of **Ramsgate Victoria Hotel Co. v. Montefiore, (1866) LR 1 Ex 109**, M offered to buy shares of a company on June 8. The Company informed him about the allotment on November 23. M refused to accept the shares. It was held that M's offer to buy shares had lapsed because it was not accepted within a reasonable time.

2) By death or insanity of the offerer or the offeree before acceptance: An offer lapses by the death or insanity of an offerer 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 death or insanity of the offerer, there will be a valid contract. This means that the death or insanity of the offerer does not terminate the offer automatically. The offer lapses only when this fact comes to the knowledge of the offeree before acceptance. Our law is different in this respect from English law where the death of the offerer terminates the offer even if acceptance is made in ignorance of the death.

There is no provision in the Act about the effect of the death of an offeree before acceptance. But it is an established rule that the offer comes to an end on the death of the offeree, because an offer can be accepted only by the offeree and not by any other person. It cannot be accepted by the legal heirs of the offeree.

3) By failure to fulfil condition precedent to acceptance: When there is a condition in the offer which must be fulfilled before the acceptance of the offer, the offer lapses if the acceptance is given without fulfilling that condition. For example, A offered to sell his scooter to B for Rs. 10,000 subject to the condition that B should pay Rs. 2,000 before a certain date. B accepted the offer but did not pay the money. In this case the acceptance has no validity and the offer stands terminated.

4) By rejection of offer by the offeree: An offer lapses as soon as it is rejected by the offeree. Once an offer is rejected, it cannot be revived subsequently. An offer is said to be rejected, if the offeree expressly rejects it or accepts it subject to certain conditions.

5) If it is not accepted in the prescribed or usual mode: Sometimes, the offerer prescribes the mode of acceptance. In such a situation the offer must be accepted in that very manner and if it is not accepted in the prescribed mode the offer stands lapsed. For example, A offers to sell his house to B and writes to B 'send your acceptance by telegram'. Now if the acceptance is sent by some other mode, then A may not be bound by the acceptance.

6) By counter offer by the offeree: Counter offer means making a fresh offer instead of accepting the original offer. A counter offer amounts to the rejection of the original offer. Hence, as soon as the counter offer is made, the original offer

stand lapsed. If the person who makes a counter offer changes his mind and wishes to accept the original offer, he cannot do so. For example, A offered to sell his bicycle to B for Rs. 200. B said that he would buy it for Rs. 170. Here B's offer to buy for Rs. 170 is counter offer and terminates the original offer of A. If later on B wants to buy the cycle for Rs. 200, it will be a case of a fresh offer and not an acceptance of the original offer.

7) By revocation: If the offerer revokes the offer before its acceptance by the offeree, the offer stands lapsed. According to rules, an offer can be revoked, at any time before it is accepted by communicating a notice of revocation to the offeree. For example, at an auction sale, the highest bidder can revoke his offer to buy before the fall of the hammer.

8) By subsequent illegality or destruction of subject-matter: An offer lapses if it becomes illegal before it is accepted. For example, A of Delhi offered to supply 100 bags of rice to B at Lucknow on a certain date. But, before this offer is accepted by B, the Government has issued an order prohibiting the inter-state movement of foodgrains. Automatically the offer made by A comes to an end. Similarly, if the subject-matter of the offer is destroyed before acceptance, the offer lapses.