



<b>AGREEMENT</b>
<p><b>2(a): Proposal</b> - 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.</p> <p><b>2(b): Promise</b> - 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.</p> <p><b>2(c): Promisor and Promisee</b> - The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”</p> <p><b>2(e): Agreement</b> - Every promise and every set of promises, forming the consideration for each other, is an agreement.</p> <p><b>2(g): Void agreement</b> - An agreement not enforceable by law is said to be void.</p> <p><b>2(i): Voidable contract</b> - An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.</p>
<p><b>3: Communication, acceptance and revocation of proposals</b> - 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.</p>
<p><b>4: Communication when complete</b> - The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.</p> <p>The communication of an acceptance is complete, —</p> <p>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;</p> <p>as against the acceptor, when it comes to the knowledge of the proposer.</p> <p>The communication of a revocation is complete, —</p> <p>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;</p> <p>as against the person to whom it is made, when it comes to his knowledge.</p>
<p><b>5: Revocation of proposals and acceptances</b> - A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.</p> <p>An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.</p>
<p><b>6: Revocation how made</b> - A proposal is revoked—</p> <p>(1) by the communication of notice of revocation by the proposer to the other party;</p> <p>(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;</p> <p>(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or</p> <p>(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.</p>
<p><b>7: Acceptance must be absolute</b> - In order to convert a proposal into a promise, the acceptance must—</p> <p>(1) be absolute and unqualified;</p>



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(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.

**Boulton v. Jones, (1857) 2 H & N 564** – The case held that where an offer is made to a specific person, only that person can accept it. Therefore, if another person supplies the goods without the offeror’s intention to contract with him, no valid contract arises. [Specific offer]

**Carlill v. Carbolic Smoke Ball Co., [1893] 1 QB 256 (CA)** – The Court of Appeal held that the company’s advertisement promising £100 to anyone who used the smoke ball as directed and still contracted influenza constituted a valid general offer to the public, which Mrs. Carlill accepted by performing the prescribed conditions. Therefore, she was entitled to recover the reward. [General offer]

**Balfour v. Balfour, [1919] 2 KB 571 (CA)** – An agreement between husband and wife for payment of a monthly allowance during their separation lacked an intention to create legal relations and was therefore not enforceable as a contract. [Social relation]

**Rose & Frank Co. v. J. R. Crompton & Bros. Ltd., [1925] AC 445 (HL)** – Although commercial agreements are generally presumed to create legal relations, that presumption can be rebutted by an express clause showing the contrary intention. So, where the agreement expressly stated that it was not a formal or legal agreement and was not intended to be enforceable in courts, it did not constitute a binding contract. [Legal relation]

**Loftus v. Roberts, (1902) 18 TLR 532** – The agreement provided that if the theatrical party went to London, the actress would be employed at a salary “to be mutually agreed upon.” The court held that this was not a binding contract, because an essential term (salary) was left uncertain and dependent on future agreement. Thus, it was merely an “agreement to agree,” which is unenforceable. [Agreement to agree]

**Farrina v. Fickus, (1866) LR 1 Ex 295** – A mere declaration of intention does not amount to a binding offer. So, a father’s statement that his daughter would have a share in what he left was held to be only an expression of intention and not an enforceable promise. [Declaration of intention]

**Spencer v. Harding, (1870) LR 5 CP 561** – A circular or notice inviting tenders is not an offer but merely an invitation to offer (invitation to treat). The submission of a tender constitutes the offer, which the person calling for tenders may accept or reject. [Invitation to offer]

**Harris v. Nickerson, (1873) LR 8 QB 286** – An advertisement announcing that certain goods would be sold by auction is merely a declaration of intention or an invitation to treat, not a binding offer. Therefore, a person who travels to attend the auction cannot recover damages if the auction is cancelled. [Advertisement of auction]

**Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd., [1953] 1 QB 401** - The display of goods with price tags in a self-service shop is merely an invitation to treat (invitation to offer), not a legal offer. The customer makes the offer when presenting the goods at the cashier’s desk, and the contract is concluded only when the cashier accepts the offer and takes payment.

**Fitch v. Snedaker, 38 N.Y. 248 (1868)** – A person who performs the required act without knowledge of the reward offer cannot claim the reward, because acceptance of an offer

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| requires knowledge of the offer at the time of performance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Lalman Shukla v. Gauri Dutt, (1913) ILR 35 All 446</b> – Gauri Dutt sent his servant, Lalman Shukla, to search for his missing nephew. After Lalman had already left in search of the boy, Gauri Dutt announced a reward of Rs. 501. Lalman found the boy and brought him back without knowledge of the reward. Later, after learning of the reward, he claimed it. Held, Lalman was not entitled to the reward because he had no knowledge of the offer when he performed the act; therefore, there was no acceptance of the offer. |
| <b>Henderson v. Stevenson, (1875) LR 2 Sc &amp; Div 470 (HL)</b> – An exemption clause printed on the back of a ticket was not binding on the passenger because nothing on the face of the ticket gave notice that conditions were printed on the reverse side. Therefore, the passenger was entitled to recover compensation for loss of luggage caused by the company’s negligence.                                                                                                                                                   |
| <b>Parker v. South Eastern Railway Co., (1877) 2 CPD 416</b> – Where reasonable notice of contractual conditions is given, a person is bound by those conditions even if he has not actually read them.                                                                                                                                                                                                                                                                                                                                 |
| <b>Olley v. Marlborough Court Ltd., [1949] 1 KB 532</b> – An exclusion clause displayed inside a hotel room was not binding because it was brought to the customer’s notice only after the contract had already been concluded at the reception desk. Therefore, the hotel owner remained liable for the theft.                                                                                                                                                                                                                         |
| <b>Felthouse v. Bindley, (1862) 11 CB (NS) 869</b> - The court held that silence cannot amount to acceptance, and therefore no contract arose because the nephew had never communicated acceptance of the uncle’s offer. Consequently, the uncle could not sue the auctioneer for conversion of the horse.                                                                                                                                                                                                                              |
| <b>Powell v. Lee, (1908) 99 LT 284</b> - Acceptance must be communicated by an authorized person. Since the plaintiff was informed of his appointment by a person who had no authority to communicate the committee’s decision, there was no valid communication of acceptance and hence no binding contract arose.                                                                                                                                                                                                                     |
| <b>Ramsgate Victoria Hotel Co. v. Montefiore, (1866) LR 1 Ex 109</b> - An offer to purchase shares lapses if not accepted within a reasonable time. Since the allotment was communicated several months after the offer was made, the offer had expired and no binding contract arose.                                                                                                                                                                                                                                                  |
| <b>CONTRACT:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>2(h): Contract</b> - An agreement enforceable by law is a contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>10: What agreements are contracts</b> - All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.<br><br>Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.                           |
| <b>Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge &amp; Co. Ltd., [1915] AC 847</b> – Only a party to a contract can enforce it; a person who is not a party to the contract cannot sue upon it even if the contract is made for his benefit.                                                                                                                                                                                                                                                                                              |
| <b>Khwaja Muhammad Khan v. Husaini Begum, (1910) 37 IA 152 (PC)</b> – Although the wife was not a party to the agreement between her father and father-in-law, she was entitled to enforce the promise for payment of <i>Kharch-i-Pandan</i> (pin money), since the agreement was made for her benefit and created an obligation in the nature of a trust. [Trust]                                                                                                                                                                      |
| <b>Rakhmabai v. Govind, (1904) ILR 29 Bom 321</b> – Where, on partition of a joint Hindu family, provision is made for the marriage expenses of female members, the female beneficiary is entitled to enforce that provision even though she was not a party to the arrangement. [Trust]                                                                                                                                                                                                                                                |
| <b>Gregory &amp; Parker v. Williams, (1817) 3 Mer 582</b> – When a person receives money for another and acknowledges liability to that other person, a direct obligation arises                                                                                                                                                                                                                                                                                                                                                        |

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enforceable by the beneficiary. [Acknowledgement]
<b>Shuppu Ammal v. Subramaniam, (1910) ILR 33 Mad 238</b> – Where a family arrangement or settlement is made for the benefit of certain family members, those beneficiaries may enforce the agreement even if they were not originally parties to it. [Family settlement]
<b>Kishan Lal Sadhu v. Pramila Bala Dasi, AIR 1929 Cal 131</b> – Where the benefit of a contract is assigned, the assignee is entitled to enforce the contractual rights in his or her own name. [Assignment]
<b>EXERCISES</b>
<p>1. Define the term "proposal". Discuss the essentials of a valid offer.</p> <p>2. What is acceptance? How can an offer be accepted? Who can accept an offer?</p> <p>3. Comment on the following statements.</p> <p>i) "An invitation to offer is not an offer."</p> <p>ii) "Acceptance must be something more than a mere mental assent."</p> <p>iii) "There cannot be a contract to make a contract".</p> <p>4. When does an offer come to an end?</p> <p>5. Explain briefly the law relating to communication of offer, acceptance and revocation. Is there any limit of time after which an offer cannot be revoked?</p> <p>6. Can the following be regarded as offers?</p> <p>i) a catalogue of goods for sale</p> <p>ii) an advertisement to sell goods by auction</p> <p>iii) display of goods with price tags attached to them</p> <p>iv) an advertisement by a company for subscribing to its shares</p> <p>v) an announcement or notice to pay a reward of Rs. 100 to anyone who finds and returns his lost dog.</p> <p>7. Explain the following terms with examples</p> <p>i) Cross Offer</p> <p>ii) Counter Offer</p> <p>iii) General Offer</p> <p>iv) Implied Offer</p> <p>8. Discuss the rule that a stranger to a contract cannot sue on the contract. Are there any exceptions to this rule?</p>

