CHAPTER I – OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3. Communication, acceptance and revocation of proposals

4. Communication when complete

5. Revocation of proposals and acceptance

6. Revocation how made

7. Acceptance must be absolute

8. Acceptance by performing conditions, or receiving consideration

9. Promises, express and implied

3. Communication, acceptance and revocation of proposals

A proposal, an acceptance or a revocation is communicated by any act or omission of the party by which he intends to communicate it, or which has the effect of communicating it.

> 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.

Section 3 of the Indian Contract Act, 1872 sets out how proposals, acceptances and revocations are communicated. Communication can be made by an act, such as speaking, writing a letter, sending an email, making a gesture or performing a required act. It can also be made by an omission, meaning conduct that conveys assent or withdrawal without words. This fits s. 9, under which a promise may be express (in words) or implied (by conduct). The provision gives two alternative tests. The first is the party's intention to communicate. The second, even without that intention, is whether the act or omission actually had the effect of communicating. So a party cannot escape a communication that has in fact reached the other side merely by saying he did not mean to communicate it. Section 3 says what counts as communication, while s. 4 says when it is complete. A proposal is communicated when it comes to the knowledge of the offeree. An acceptance is complete against the proposer when it is put in course of transmission to him, and against the acceptor when it comes to the proposer's knowledge. A revocation is complete against the person making it when it is put in course of transmission, and against the other party when

it comes to his knowledge. Because a proposal must be communicated, a person who acts without knowing of it cannot claim to have accepted it (*Lalman Shukla v. Gauri Dutt*, (1913) 11 ALJ 489, Allahabad HC). Silence alone is generally not acceptance, but conduct can be (s. 8). For example, A, a shopkeeper, displays a notice offering ₹500 to anyone who returns his lost bag. B reads the notice, finds the bag and hands it to A. The notice is A's act communicating the proposal, and B's performance is an act communicating acceptance (s. 8), so B is entitled to the reward. Similarly, if C hails a taxi by raising his hand and the driver stops and opens the door, the proposal and acceptance are made by conduct, without words. On revocation, if A writes to B withdrawing his offer before B's acceptance is complete against A, the letter is an act communicating revocation. Under s. 4, it binds B once it comes to his knowledge.

4. Communication when complete

A proposal, acceptance or revocation shall be complete when it comes to the knowledge of the person to whom it is made, but an acceptance shall bind the proposer, and a revocation shall bind its maker, as soon as it is dispatched beyond the sender's control.

> The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
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> 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.
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> 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;
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> **Illustrations**
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> (a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.
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> (b) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, as against A when the letter is posted; as against B, when the letter is received by A.
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> (c) A revokes his proposal by telegram. The revocation is complete as against A when the telegram is dispatched. It is complete as against B when B

> receives it. B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is dispatched, and as against A when it reaches him.

Section 4 of the Indian Contract Act, 1872 sets out when a communication becomes effective. This matters mainly where the parties deal at a distance through post, courier or a similar channel, so there is a gap in time between sending and receipt. A proposal is complete only when the offeree actually learns of it, because no one can accept an offer they do not know of. An acceptance is complete at two different moments. As against the proposer, it is complete once the acceptor puts it in a course of transmission so that it is out of the acceptor's power, for example by posting the letter, and from then on the proposer is bound and can no longer revoke the proposal (s. 5). As against the acceptor, it is complete only when it comes to the proposer's knowledge, so until that moment the acceptor may still revoke the acceptance by a quicker means (s. 5). A revocation follows the same pattern. It binds the person making it once it is dispatched beyond their control, and it takes effect against the other party only when it comes to that party's knowledge. The full text of s. 4 includes this second limb; it is missing from the extract quoted, though illustration (c) reflects it. The result is that the proposer who chooses to deal by post bears the risk of delay in transit, while each party keeps the power to withdraw until the relevant moment. For example, on 1 March X in Patna posts a letter offering to sell 100 bags of rice to Y in Delhi at ₹2,000 a bag, and Y reads it on 4 March, so the proposal is complete on that date. Y posts a letter of acceptance on 5 March. That acceptance is complete against X on 5 March, so X is bound from then and cannot revoke the offer. It is complete against Y only when it reaches X on 8 March, so if Y emails a withdrawal on 6 March and X reads it before the letter arrives, no contract is formed. Similarly, if X had emailed a revocation of the offer on 4 March, it would bind X when sent but would affect Y only when Y read it. Had Y already posted the acceptance before reading it, the revocation would come too late and the contract would stand. The postal rule derives from *Adams v. Lindsell* (1818), and the Supreme Court in *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*, AIR 1966 SC 543, held that it does not apply to instantaneous communication such as telephone, where an acceptance is complete only when the proposer hears it.

5. Revocation of proposals and acceptance

A proposal shall be revocable only until the acceptance is complete as against the proposer, and an acceptance only until it is complete as against the acceptor.

> A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.
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> An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.
>
> **Illustrations**
>
> (a) A proposes, by a letter sent by post, to sell his house to B.
>
> (b) B accepts the proposal by a letter sent by post.
>
> (c) A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.
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> (d) B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Section 5 of the Indian Contract Act, 1872 fixes the last point up to which each party may withdraw, and that point depends on when communication is "complete" under Section 4. Communication of an acceptance is complete in two stages. As against the proposer, it is complete when the acceptance is put in the course of transmission to him, so that it is out of the acceptor's power, as when a letter is posted. As against the acceptor, it is complete only when the acceptance comes to the knowledge of the proposer. The result is a gap between the two moments. The proposer loses the right to revoke as soon as the acceptance is dispatched, because from then on he is bound. The acceptor keeps the right to revoke until the acceptance actually reaches the proposer. A revocation is effective only if it is itself communicated in time. Under Section 4, it is complete as against the person to whom it is made only when it comes to his knowledge, so a revocation that arrives too late has no effect. Once the relevant point has passed, neither party can withdraw, and a binding contract exists. Section 6 sets out how a proposal is revoked: by notice, by lapse of the time fixed or of a reasonable time, by failure of a condition precedent, or by the proposer's death or insanity, if this comes to the acceptor's knowledge before acceptance. For example, on 1 March X sends Y a letter by post offering to sell his car for

₹3 lakh. The letter reaches Y on 3 March, and Y posts his acceptance on 5 March, which reaches X on 8 March. X may revoke his offer only until 5 March, when Y posts the acceptance. A revocation sent by X on 4 March is effective only if it reaches Y before Y posts his letter. A revocation that reaches Y on 6 March is too late, and X is bound. Y, for his part, may revoke his acceptance until 8 March. If Y sends a telegram or email of revocation that reaches X before or at the same time as the acceptance letter, the acceptance is withdrawn and no contract arises. A revocation that reaches X after the acceptance letter has no effect.

6. Revocation how made

A proposal shall stand revoked by notice of revocation, by lapse of time, by failure of a condition precedent to acceptance, or by the proposer's death or insanity known to the acceptor before acceptance.

> A proposal is revoked—
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> (1) by the communication of notice of revocation by the proposer to the other party;
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> (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;
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> (3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or
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> (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.

Section 6 of the Indian Contract Act, 1872 lists the ways a proposal comes to an end, after which it can no longer be accepted to form a contract. It works alongside s. 5, which allows a proposal to be revoked at any time before communication of its acceptance is complete as against the proposer, but not afterwards. First, the proposer may revoke the proposal by communicating notice of revocation to the other party. The notice must come from the proposer or the proposer's authorised agent, and under s. 4 it takes effect against the offeree only when it comes to the offeree's knowledge. Second, a proposal lapses when the time fixed in it for acceptance expires. If no time is fixed, it lapses after a reasonable time, which depends on the subject matter and the circumstances: a reasonable

time would be short for perishable goods or shares with fluctuating prices, and longer for land. Third, where the proposal requires the acceptor to fulfil a condition before accepting, such as paying a deposit, it lapses if the acceptor fails to do so. Fourth, the proposer's death or insanity revokes the proposal only if the acceptor learns of it before accepting; an acceptance made in ignorance of the death or insanity may still result in a binding contract. For example, on 1 March A offers in writing to sell his flat to B for ₹40 lakh and asks for a reply within 10 days. If A's letter of revocation reaches B on 5 March, before B has accepted, the offer is revoked under s. 6(1). If B does nothing until 15 March, the offer lapses under s. 6(2), and B's acceptance after that date creates no contract. If the offer required B to pay a token advance of ₹1 lakh before accepting and B accepts without paying it, the offer is revoked under s. 6(3). If A dies on 4 March and B accepts on 6 March without knowing of the death, the offer is not revoked and a contract may arise. If B already knew of A's death, the offer is revoked under s. 6(4) and B can no longer accept it.

7. Acceptance must be absolute

To turn a proposal into a promise, the acceptance must be absolute and unqualified, and must be expressed in the manner the proposal prescribes or, if none is prescribed, in some usual and reasonable manner.

> 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.

Section 7 of the Indian Contract Act, 1872 sets two conditions for a valid acceptance. The first is that the acceptance must be absolute and unqualified. The acceptor must agree to every term of the proposal exactly as made. An acceptance that adds a condition, changes a term or accepts only part of the proposal is not an acceptance. It is a counter-proposal,

which rejects the original proposal and creates no contract unless the original proposer accepts it in turn. This is often called the "mirror image" rule. In *Hyde v Wrench* (1840) 3 Beav 334, an offer to sell a farm for £1,000 was met with an offer to buy at £950. That counter-offer rejected the original offer, so the buyer could not later accept the £1,000 offer once it had been refused. A mere request for information, such as asking whether delivery could be made earlier, is not a counter-offer and does not destroy the proposal. The second condition concerns the manner of acceptance. If the proposal prescribes a manner, such as "reply by registered post" or "accept in writing", the acceptance should follow it. If it prescribes none, any usual and reasonable manner will do. When the acceptor departs from a prescribed manner, the acceptance is not automatically void. The proposer may, within a reasonable time after the acceptance is communicated to him, insist that the proposal be accepted only in the prescribed manner. If he fails to do so within that time, he is treated as having accepted the acceptance, and the contract is complete. For example, A offers to sell his car to B for ₹3 lakh and asks B to reply by e-mail. If B replies, "I accept, provided you fit new tyres", that is not an acceptance but a counter-proposal, and no contract arises unless A agrees to fit the tyres. If B instead replies by telephone, "I accept your offer of ₹3 lakh", the acceptance is unqualified but not in the prescribed manner. A may, within a reasonable time, tell B that he will treat the offer as accepted only by e-mail. If A says nothing and lets the reasonable time pass, he is taken to have accepted B's telephonic acceptance, and a binding contract for the sale of the car exists.

8. Acceptance by performing conditions, or receiving consideration

Performing the conditions of a proposal, or accepting the consideration offered with it, shall amount to acceptance of the proposal.

> 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.

Section 8 of the Indian Contract Act, 1872 recognises that a proposal can be accepted by conduct as well as by words. It covers two situations. In the first, the proposer asks for an act rather than a promise, as in general offers of reward made to the public. Anyone who performs the stated conditions

accepts the proposal by doing so and does not need to tell the proposer beforehand. This works as an exception to the general rule in s. 4 that acceptance must be communicated. In the second situation, the proposer offers or sends something with the proposal in exchange for a promise. A person who knowingly takes that consideration accepts the proposal, and is bound by the return promise that goes with it. In both situations the person must act with knowledge of the proposal and in response to it. Doing the act without knowing of the offer is not acceptance, because acceptance means assenting to a proposal one knows about. The acceptance must also be complete, so performing only part of the conditions is not enough. In *Carlill v Carbolic Smoke Ball Co.* [1893] 1 QB 256, the company advertised that it would pay £100 to anyone who caught influenza after using its smoke ball as directed. Mrs Carlill used it as directed and caught influenza. The court held that by performing the conditions she had accepted the offer, and she did not need to tell the company first. In contrast, in *Lalman Shukla v Gauri Dutt* (1913) 11 ALJ 489, a servant traced his master's missing nephew without knowing that a reward had been announced. His claim to the reward failed, because he could not accept an offer he did not know about. To give an example of the second limb, if S sends T a set of books with a note saying "keep these for ₹2,000", and T knowingly keeps and uses them, T has accepted the proposal and must pay the price.

9. Promises, express and implied

A promise shall be express when its proposal or acceptance is made in words, and implied when its proposal or acceptance is made otherwise than in words.

> 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.

Section 9 of the Indian Contract Act, 1872 classifies promises by the way the proposal or acceptance is communicated. A promise is express when the proposal or acceptance is made in words, whether spoken or written, such as a written agreement, a letter, an email or an oral offer accepted orally. A promise is implied when the proposal or acceptance is shown otherwise than in words, that is, by the conduct of the parties or by the circumstances of the case. Both kinds are equally valid and binding, because the law looks at

whether the parties actually agreed, not at the form in which they showed it. The words “in so far as” also mean that one contract can be partly express and partly implied, for instance an offer made in words and accepted by conduct (as s. 8 recognises, acceptance may be made by performing the conditions of a proposal). For example, A writes to B offering to sell his bicycle for ₹5,000, and B replies in writing, “I accept.” The promise is express. By contrast, when C boards a public bus and takes a seat, the transport operator is held to have impliedly offered to carry passengers for the fixed fare, and C has impliedly accepted that offer by boarding, so C is bound to pay the fare though no words were exchanged. Similarly, when a person takes goods from a self-service store counter and pays at the till, the contract arises from conduct alone. The leading English case *Upton-on-Severn RDC v Powell* [1942] 1 All ER 220 illustrates an implied promise: a person who called the fire brigade and received its services was held impliedly bound to pay for them.