ELEMENTS OF
MERCANTILE LAW
including Company Law and Industrial Law

[For B.Com., B.B.M., LL.B., other Professional Courses of all Indian Universities, and M.B.A., M.M.S., P.G.D.M. and I.A.S. Examinations]

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Nature of Contract

OBJECT OF THE LAW OF CONTRACT

The law of contract is that *branch of law which determines the circumstances in which promises made by the parties to a contract shall be legally binding on them.* Its rules define the remedies that are available in a court of law against a person who fails to perform his contract, and the conditions under which the remedies are available. It is the most important branch of business law. It affects all of us in one way or the other. It is, however, of particular importance to people engaged in trade, commerce and industry as bulk of their business transactions are based on contracts.

The law of contract introduces definiteness in business transactions. Sir William Anson observes in this connection that the law of contract is intended to ensure that what a man has been led to expect shall come to pass, and that what has been promised to him shall be performed. In simple words, it may be said that the purpose of the law of contract is to ensure the realisation of reasonable expectation of the parties who enter into a contract.

THE INDIAN CONTRACT ACT, 1872

The law relating to contracts is contained in the Indian Contract Act, 1872 The Act deals with (1) the general principles of the law of contract (Secs. 1 to 75), and (2) some special contracts only (Secs. 124 to 238). The first six chapters of the Act (which embody the general principles) deal with the different stages in the formation of a contract, its essential elements, its performance or breach and the remedies for breach of contract. The remaining chapters deal with some of the special contracts, *viz.*, indemnity and guarantee [Chapter VIII (Secs. 124 to 147)], bailment and pledge [Chapter IX (Secs. 148 to 181)], and agency [Chapter X (Secs. 182 to 238)].

The Act does not affect any usage or custom of trade (Sec. 1, para 1).

The references to Sections in Chapters 1 to 12 are to the Indian Contract Act, 1872, unless otherwise stated.

The Act is not exhaustive

The Indian Contract Act does not profess to be a complete and exhaustive code. It deals with the general principles of the law of contract and with some special contracts only. Some of the contracts not dealt with by the Act are those relating to partnership, sale of goods, negotiable

instruments, insurance, bill of lading, etc. There are separate Acts which deal with these contracts.

Nature of the law of contract

The law of contract differs from other branches of law in an important respect. It does not lay down a number of rights and duties which the law will enforce ; it consists rather of a number of limiting principles, subject to which the parties may create rights and duties for themselves which the law will uphold. The parties to a contract, in a sense, make the law for themselves. So long as they do not infringe some legal prohibition, they can make what rules they like in respect of the subject-matter of their agreement, and the law will give effect to their decisions [The *English Law of Contract* by Anson, 22nd ed. 1964, p. 3].

Law of contract is not the whole law of agreements nor the whole law of obligations

There are several agreements which do not give rise to legal obligations. They are, therefore, not contracts. Similarly, there are certain obligations which do not necessarily spring from an agreement, *e.g.*, (*i*) torts or civil wrongs, (*ii*) quasi-contracts, (*iii*) judgments of Courts. These obligations are not contractual in nature. But even then they are enforceable.

Salmond has rightly observed that the law of contract is "not the whole law of agreements, nor is it the whole law of obligations. It is the law of those agreements which create obligations, and those obligations which have their sources in agreements." It excludes from its purview all obligations which are not contractual in nature and agreements which are social in nature.

Law of contract creates *jus in personam* as distinguished from *jus in rem*

Jus in rem means a right against or in a respect of a thing ; *jus in personam* means a right against or in respect of a specific person. A *jus in rem* is available against the world at large ; a *jus in personam* is available only against particular persons.

Examples. (*a*) *A* owes a certain sum of money to *B*. *B* has a right to recover this amount from *A*. This right can be exercised only by *B* and by none else against *A*. This right of *B* is a *jus in personam*.

(*b*) *X* is the owner of a plot of land. He has a right to have quiet possession and enjoyment of that land against every member of the public. Similarly every member of the public is under an obligation not to disturb *X*'s possession or enjoyment. This right of *X* is a *jus in rem*.

DEFINITION OF CONTRACT

A contract is an agreement made between two or more parties which the law will enforce. Sec. 2 (*h*) defines a *contract as an agreement e nforceable by law*. This definition is based on Pollock's definition which is as follows : "Every agreement and promise enforceable at law is a contract."

Sir William Anson defines a contract as "a legally binding agreement between two or more persons by which rights are acquired by one or more to acts or forbearances (abstaining from doing something) on the part of the others."

According to Salmond, a contract is "an agreement creating and defining obligations between the parties."

Agreement and its enforceability. If we analyse the definitions of contract we find that a contract essentially consists of two elements, *viz.*, (1) *agreement*, and (2) its *enforceability* by law.

An *agreement* is defined as "every promise and every set of promises, forming consideration for each other." [Sec. 2 (*e*)]. A promise is defined thus : "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." [Sec. 2 (*b*)]. This, in other words, means that an agreement is an accepted proposal. In order, therefore, to form an agreement, there must be a proposal or offer by one party and its acceptance by the other. To sum up :

Agreement = Offer + Acceptance.

Consensus ad idem

The essence of an agreement is the meeting of the minds of the parties in full and final agreement ; there must, in fact, be *consensus ad idem*. The expression "agreement" as defined in Sec. 2 (*e*) is essentially and exclusively consensual in nature [*Sunnam Sattiah* v. *State*, A.I.R. (1980) A.P. 16], *i.e.*, before there can be an agreement between two parties, there must be *consensus ad idem*. This means that the parties to the agreement must have agreed about the subject-matter of the agreement in the same sense and at the same time. Unless there is *consensus ad idem*, there can be no contract.

Example, *A*, who owns two horses named Rajhans and Hansraj, is selling horse Rajhans to *B*. *B* thinks he is purchasing horse Hansraj. There is no *consensus ad idem* and consequently no contract.

In order to determine whether, in any given agreement, there is existence of *consensus ad idem*, it is usual to employ the language of offer and acceptance. Thus if *A* says to *B*, "Will you purchase my blue car for Rs. 10,000 ?" and *B* says "yes" to it, there is *consensus ad idem* and an agreement comes into existence.

Obligation

An agreement, to become a contract, must give rise to a legal obligation or duty. The term 'obligation' is defined as a legal tie which imposes upon a definite person or persons the necessity of doing or abstaining from doing a definite act or acts. It may relate to social or legal matters. An agreement which gives rise to a social obligation is not a contract. It must give rise to a legal obligation in order to become a contract.

Examples. (*a*) *A* agrees to sell his car to *B* for Rs. 10,000. The agreement gives rise to an obligation on the part of *A* to deliver the car to *B* and on the part of *B* to pay Rs. 10,000 to *A*. This agreement is a contract.

(*b*) *A* promises to sell his car to *B* for Rs. 10,000 received by him as the price of the car. The agreement gives rise to an obligation on the part of *A* to deliver the car to *B*. This agrement is also a contract.

Agreement is a very wide term

An agreement may be a *social agreement* or a *legal agreement*. If *A* invites *B* to a dinner and *B* accepts the invitation, it is a social agreement. A social agreement does not give rise to contractual obligations and is not enforceable in a Court of law. It is only those agreements which are enforceable in a Court of law which are contracts.

Examples. (*a*) *A* invites his friend *B* to come and stay with him for a week. *B* accepts the invitation but when he comes to *A*, *A* cannot accommodate him as his wife had died the day before. *B* cannot claim any compensation from *A* as the agreement is a social one.

(*b*) A father promises to pay his son Rs. 100 every month as pocket allowance. Later he refuses to pay. The son cannot recover as it is a domestic agreement and there is no intention on the part of the parties to create legal relations.

To conclude : Contract = Agreement + Enforceability at law.

Thus all contracts are agreements but all agreements are not necessarily contracts.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

According to Sec. 10, 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 expressly declared to be *void*. In order to become a contract, an agreement must have the following essential elements :

1. *Offer and acceptance.* There must be *two parties* to an agreement, *i.e.*, one party making the offer and other party accepting it. The terms of the offer must be definite and the acceptance of the offer must be absolute and unconditional. The acceptance must also be according to the mode prescribed and must be communicated to the offeror.

2. *Intention to create legal relationship.* When the two parties enter into an agreement, their intention must be to create legal relationship between them. If there is no such intention on the part of the parties, there is no contract between them. Agreements of a social or domestic nature do not contemplate legal relationship. as such they are not contracts.

Example. A husband promised to pay his wife a household allowance of £ 30 every month. Later the parties separated and the husband failed to pay the amount. The wife sued for the allowance. *Held*, agreements such as these were outside the realm of contract altogether [*Balfour* v. *Balfour*, (1919) 2 K.B. 571].

In commercial and business agreements, the presumption is *usually* that the parties intended to create legal relations. But this presumption is rebuttable which means that it must be shown that the parties did not intend to be legally bound.

Examples. (*a*) There was an agreement between *R* Company and *C* Company by means of which the former was appointed as the agent of the latter. One clause in the agreement was : "This agreement is not entered into.....as a formal or legal agreement, and shall not be subject to legal jurisdiction in the law courts." *Held*, there was no binding contract as there was no intention to create legal relationship [*Rose & Frank Co.* v. *Crompton Bros.*, (1925) A.C. 445].

(*b*) In an agreement, a document contained a condition "that it shall not be attended by or give rise to any legal relationship, rights, duties, consequences whatsoever or be legally enforceable or be the subject of litigation, but all such arrangements, agreements and transactions are binding in honour only." *Held*, the condition was valid and the agrement was not binding [*Jones* v. *Vernon's Pools. Ltd.* (1938) 2 All E.R. 626].

3. *Lawful consideration.* An agreement to be enforceable by law must be supported by consideration. 'Consideration' means an advantage or benefit moving from one party to the other. It is the essence of a bargain. In simple words, it means '*something in return*'. The agreement is legally enforceable only when both the parties give *something* and get *something in return*. A promise to do something, getting nothing in return is usually not enforceable by law. Consideration need not necessarily be in cash or kind. It may be an act or abstinence (abstaining from doing something) or promise to do or not to do something. It may be past, present or future. But it must be real and lawful [Secs. 2 (*d*), 23 and 25].

4. *Capacity of parties—competency.* The parties to the agreement must be capable of entering into a valid contract. Every person is competent to contract if he (*a*) is of the age of majority, (*b*) is of sound mind, and (*c*) is not disqualified from contracting by any law to which he is subject (Secs. 11 and 12). Flaw in capacity to contract may arise from minority, lunacy, idiocy, drunkenness, *etc.*, and status. If a party suffers from any flaw in capacity, the agreement is not enforceable except in some special cases.

5. *Free and genuine consent.* It is essential to the creation of every contract that there must be free and genuine consent of the parties to the agreement. The consent of the parties is said to be free when they are of the same mind on all the material terms of the contract. The parties are said to be of the same mind when they agree about the subject-matter of the contract in the same sense and at the same time (Sec. 13). There is absence of free consent if the agreement is induced by coercion, undue influence, fraud, misrepresentation, *etc.* (Sec. 14).

6. *Lawful object.* The object of the agreement must be lawful. In other words, it means that the object must not be (*a*) illegal, (*b*) immoral, or (*c*) opposed to public policy (Sec. 23). If an agreement suffers from any legal flaw, it would not be enforceable by law.

7. *Agreement not declared void.* The agreement must not have been expressly declared void by law in force in the country (Secs. 24 to 30 and 56).

8. *Certainty and possibility of performance.* The agreement must be certain and not vague or indefinite (Sec. 29). If it is vague and it is not possible to ascertain its meaning, it cannot be enforced.

Examples. (*a*) *A* agrees to sell to *B* "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b*) *O* agreed to purchase a motor van from *S* "on hire-purchase terms". The hire-purchase price was to be paid over two years. *Held*, there was no contract as the terms were not certain about rate of interest and mode of payment. No precise meaning could be attributed to the words "on hire-purchase" since there was a wide variety of hire-purchase terms [*Scammel* v. *Ouston*, (1941) A.C. 251].

(*c*) *A* company agreed with *V* that on the expiration of *V*'s existing contract, it would favourably consider an application by *V* for a renewal of his contract. *Held*, the agreement was not intended to bind the company to renew its contract with *V* and imposed no obligation on it to review it [*Montreal Gas Co.* v. *Vasey*, (1900) A.C. 595].

The terms of the agreement must also be such as are capable of performance. Agreement to do an act impossible in itself cannot be enforced

[Sec. 56 (1)]. For example, where *A* agrees with *B* to put life into B's dead wife, the agreement is void as it is impossible of performance.

9. *Legal formalities.* A contract may be made by words spoken or written. As regards the legal effects, there is no difference between a contract in writing and a contract made by word of mouth. It is, however, in the interest of the parties that the contract should be in writing. There are some other formalities also which have to be complied with in order to make an agreement legally enforceable. In some cases, the document in which the contract is incorporated is to be stamped. In some other cases, a contract, besides being a written one, has to be registered. Thus where there is a statutory requirement that a contract should be made in writing or in the presence of witnesses or registered, the required statutory formalities must be complied with (Sec. 10, para 2).

CLASSIFICATION OF CONTRACTS

Contracts may be classified according to their (1) validity, (2) formation, or (3) performance.

1. Classification according to validity

A contract is based on an agreement. An agreement becomes a contract when all the essential elements referred to above are present. In such a case, the contract is a *valid contract.* If one or more of these elements is/are missing, the contract is either *voidable, void, illegal* or *unenforceable.*

Voidable contract. 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 [Sec. 2 (*i*)]. This happens when the essential element of *free consent* in a contract is missing. When the consent of a party to a contract is not free, *i.e.,* it is caused by coercion, undue influence, misrepresentation or fraud, the contract is voidable at his option (Secs. 19 and 19-A). The party whose consent is not free may either rescind (avoid or repudiate) the contract if he so desires, or elect to be bound by it. A voidable contract continues to be valid till it is avoided by the party entitled to do so.

Example. A promises to sell his car to *B* for Rs. 2,000. His consent is obtained by use of force. The contract is voidable at the option of *A.* He may avoid the contract or elect to be bound by it.

A contract becomes voidable in the following two cases also :

(1) When a person promises to do something for another person for a consideration but the other person prevents him from performing his promise, the contract becomes voidable at his option (Sec. 53).

Example. A and *B* contract that *B* shall execute certain work for *A* for Rs. 1,000. *B* is ready and willing to execute the work accordingly but *A* prevents him from doing so. The contract is voidable at the option of *B* and if he elects to rescind it, he is entitled to recover from *A* compensation for any loss which he has incurred by its non-performance.

(2) When a party to a contract promises to perform an obligation within a specified time, any failure on his part to perform his obligation within the fixed time makes the contract voidable at the option of the promisee (Sec. 55, para 1).

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in

which he is promisor. If the party rescinding the contract has received any benefit under the contract from another party to such contract he shall restore such benefit, so far as may be, to the person from whom it was received (Sec. 64). The party rightfully rescinding the contract is also entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract (Sec. 65).

Void agreement and void contract

Void agreement. An agreement not enforceable by law is said to be void [Sec. 2 (*g*)]. A void agreement does not create any legal rights or obligations. It is a nullity and is *destitute of legal effects* altogether. It is void *ab initio, i.e.,* from the very beginning as, for example, an agreement with a minor or an agreement without consideration.

Void contract. A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2 (*j*)]. A contract, when originally entered into, may be valid and binding on the parties, *e.g.,* a contract to import goods from a foreign country. It may subsequently become void, *e.g.,* when a war breaks out between the importing country and the exporting country.

It is illogical to talk of a void contract *originally entered into,* for what is supposed to be a contract is no contract at all. We may talk of such a contract as a void agreement.

For a detailed discussion of void contracts, refer to Chapter 7.

Illegal agreement. An illegal agreement is one which trangresses some rule of basic public policy or which is criminal in nature or which is immoral. Such an agreement is a nullity and has much wider import than a void contract. *All illegal agreements are void but all void agreements or contracts are not necessarily illegal.* An illegal agreement is not only void as between the immediate parties but has this further effect that even the collateral transactions to it become tainted with illegality. A collateral transaction is one which is subsidiary, incidental or auxiliary to the principal or original contract.

Example. B borrows Rs. 5,000 from *A* and enters into a contract with an alien to import prohibited goods. *A* knows of the purpose of the loan. The transaction between *B* and *A* is collateral to the main agreement. It is illegal since the main agreement is illegal.

If the main agreement is void, the collateral transactions to it are not affected. In the above case, if *B* had entered into a void agreement with a minor, the contract between *B* and *A* would not have been affected.

Unenforceable contract. An unenforceable contract is one which cannot be enforced in a Court of law because of some technical defect such as absence of writing or where the remedy has been barred by lapse of time. The contract may be carried out by the parties concerned ; but in the event of breach or repudiation of such a contract, the aggrieved party will not be entitled to the legal remedies.

2. Classification according to formation

A contract may be (*a*) made in writing or by word of mouth, or (*b*) inferred from the conduct of the parties or the circumstances of the case. These are the modes of formation of a contract.

Contracts may be classified according to the mode of their formation as follows :

Express contract. If the terms of a contract are expressly agreed upon (whether by words spoken or written) at the time of formation of the contract, the contract is said to be an express contract. Where the offer or acceptance of any promise is made in words, the promise is said to be express(Sec. 9). An express promise results in an express contract.

Implied contract. An implied contract is one which is inferred from the acts or conduct of the parties or course of dealings between them. It is not the result of any express promise or promises by the parties but of their particular acts. It may also result from a continuing course of conduct of the parties. Where the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied (Sec. 9). An implied promise results in an implied contract.

Examples. (*a*) There is an implied contract when *A* —

(*i*) gets into a public bus, or

(*ii*) takes a cup of tea in a restaurant,

(*iii*) obtains a ticket from an automatic weighing machine, or

(*iv*) lifts *B*'s luggage to be carried out of the railway station.

(*b*) *A* fire broke out in *P*'s farm. He called upon the Upton Fire Brigade to put out the fire which the latter did. *P*'s farm did not come under the free service zone although he believed to be so. *Held*, he was liable to pay for the service rendered as the service was rendered on an implied promise to pay [*Upton Rural District Council* v. *Powell*, (1942) All E.R. 220].

Quasi-contract. Strictly speaking, a quasi-contract is not a contract at all. A contract is intentionally entered into by the parties. A quasi-contract, on the other hand, is created by law. It resembles a contract in that a legal obligation is imposed on a party who is required to perform it. It rests on the ground of equity that "a person shall not be allowed to enrich himself unjustly at the expense of another."

Example. T, a tradesman, leaves goods at *C*'s house by mistake. *C* treats the goods as his own. *C* is bound to pay for the goods.

E-Commerce contract. An *E-commerce contract* is one which is entered into between two parties *via* Internet. In Internet, different individuals or companies create networks which are linked to numerous other networks. This expands the area of operation in commercial transactions for any person.

3. Classification according to performance

To the extent to which the contracts have been performed, these may be classified as —

(1) *Executed contract.* 'Executed' means that which is done. An executed contract is one in which both the parties have performed their respective obligations.

Example. A agrees to paint a picture for *B* for Rs. 100. When *A* paints the picture and *B* pays the price, *i.e.*, when both the parties perform their obligations, the contract is said to be executed.

In some cases, even though a contract may appear to be completed at once, its effects may still continue. Thus when a person buys a bun containing a stone and subsequently breaks one of his teeth, he has a right to recover damages from the seller [*Chaproniere* v. *Mason*, (1905) 21 T.L.R. 633].

(2) *Executory contract.* 'Executory' means that which remains to be carried into effect. An executory contract is one in which both the parties

have yet to perform their obligations. Thus in the above example, the contract is executory if *A* has not yet painted the picture and *B* has not paid the price. Similarly, if *A* agrees to engage *B* as his servant from the next month, the contract is executory.

A contract may sometimes be *partly executed* and *partly executory*. Thus if *B* has paid the price to *A* and *A* has not yet painted the picture, the contract is executed as to *B* and executory as to *A*.

Another classification of contracts according to the performance is as follows :

Unilateral or one-sided contract. A unilateral or one-sided contract is one in which only one party has to fulfil his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence. Such contracts are also known as contracts with *executed consideration.*

Example. A permits a railway coolie to carry his luggage and place it in a carriage. A contract comes into existence as soon as the luggage is placed in the carriage. But by that time the coolie has already performed his obligation. Now only *A* has to fulfil his obligation, *i.e.*, pay the reasonable charges to the coolie.

Bilateral contract A bilateral contract is one in which the obligations on the part of both the parties to the contract are outstanding at the time of the formation of the contract. In this sense, bilateral contracts are similar to executory contracts and are also known as contracts with *executory consideration.*

CLASSIFICATION OF CONTRACTS IN ENGLISH LAW

In English Law, contracts are classified into (1) formal contracts, and (2) simple contracts.

1. **Formal contracts.** These include (*a*) contracts of record, and (*b*) contracts under seal,

(*a*) **Contracts of record.** A contract of record is either a *judgment of a Court* or *a recognisance.* A *judgment* is an obligation imposed by a Court upon one or more persons in favour of another or others. Strictly speaking, it is not a contract which rests upon agreement. A *recognisance* is a written acknowledgement of a debt due to the Crown. It is usually met with in connection with criminal proceedings. For example, when a person is arrested, he may be released on a promise to appear in a Court or to be of good behaviour, subject to a money penalty if the obligation is broken. This obligation is a recognisance.

Contracts of record derive their binding force from the authority of the Court. They are, in fact, not real contracts because they lack the essential element of *consensus.* They are enforced compulsorily by the Court.

(*b*) **Contracts under seal.** A contract under seal is one which derives its binding force from its *form* alone. It is in writing and is signed, sealed and delivered by the parties. It is also called a *deed* or a *speciality contract.* No consideration is, however, necessary in the case of contracts under seal.

The contracts which must be made under seal, include (*i*) contracts made without consideration, (*ii*) contracts made by corporations, (*iii*) conveyances of the legal estate in land or any interest in land, including

leases of land for more than three years, and (*iv*) a transfer of a British ship, or any share therein.

Contracts of record and contracts under seal are known as *formal contracts* because their validity depends on the form in which they are made.

2. **Simple contracts.** All contracts which are not made under *seal* are simple contracts. They may be in writing or may be made by word of mouth. All simple contracts must be supported by consideration. These contracts are also known by the older name—*parol* contracts.

The classification of contracts as formal and simple is according to the English Law. Our laws knows *nothing* of the formal contracts. Subject to certain exceptions, all contracts under the Indian Law must be supported by consideration. But there are certain types of contracts which must be in writing. In certain cases contracts have also to be registered.

SUMMARY

DEFINITION OF CONTRACT

A contract is an agreement made between two or more parties which the law will enforce. According to Sec. 2 (*h*), a contract is an agreement enforceable by law. An agreement comes into existence by the process of offer by one party and its unqualified acceptance by the other party.

The parties who enter into an agreement must agree upon the subject-matter in the same sense and at the same time, *i.e.*, there must be *consensus ad idem.*

An agreement may be a social agreement or a legal agreement. A *social agreement* is that which does not give rise to legal consequences. In case of its breach the parties cannot go to the Law Court to enforce a right. A *legal agreement* is that which gives rise to legal consequences and remedies in the Law Court in case of its breach.

Essentials of contract. (1) There must be an *agreement.* This involves two parties, one party making the offer and the other party accepting it. (2) The parties must intend to create *legal relationship.* (3) The parties must be *capable* of entering into an agreement as regards age and understanding. (4) The agreement must be supported by *consideration* on both sides. (5) The *consent* of the parties must be *free* and *genuine.* (6) The object of the agreement must be *lawful* (7) The terms of the agreement must be *certain* and capable of performance. (8) The agreement must *not* have been *expressly declared as void.*

CLASSIFICATION OF CONTRACTS

Void agreement—an agreement not enforceable by law [Sec. 2 (*g*)].

Void contract—a contract which *ceases* to be enforceable by law [Sec. 2 (*j*)].

Voidable contract—a contract which is enforceable by law at the option of one party thereto, but not at the option of the other [Sec. 2 (*i*)].

Illegal agreement—an agreement which involves the transgression of some rule of basic public policy and is criminal in nature or immoral. It is not only void as between the immediate parties but it also taints the collateral transactions with illegality.

Express contract—a contract is which the terms are stated in words (written or spoken) by the parties.

Implied contract—a contract which is inferred from the circumstances of the case or from the conduct of the parties.

Quasi-contract—an obligation created by law, regardless of agreement.

Executed contract—a contract which is wholly performed by both the parties.

Executory contract—a contract in which the promises of both the parties have yet to be performed.

Partly executory, partly executed—a contract in which one party has perfomed his obligation, but the other party has yet to perform his obligation.

Unilateral contract—a contract in which only one party has yet to perform his obligation.

Bilateral contract—a contract in which both the parties have yet to perform their obligations.

TEST QUESTIONS

1. What is the object and nature of the law of contract ?

2. "The Indian Contract Act, 1872 is not a complete code dealing with all branches of the law of contract." Comment.

3. "The parties to a contract, in a sense, make the law for themselves." Comment.

4. "All agreements are not contracts but all contract are agreements." Discuss the statement explaining the essential elements of a valid contract.

5. Describe the essentials of a valid contract. When does an agreement become void ?

6. (*a*) "The law of contract is not the whole law of agreements, nor is it the whole law of obligations." Discuss.

(*b*) What tests would you apply to ascertain whether an agreement is a contract ?

7. Make up an example to illustrate the correlative nature of rights and obligations arising from a contract.

8. Illustrate the distinction between void, voidable and illegal agreements. Discuss the validity of agreements collateral to such agreements.

9. Distinguish between the following classes of contracts :

(*a*) Express and implied contracts. (*b*) Executed and executory contracts. (*c*) Valid, void and voidable contracts. (*d*) Void agreements and void contracts.

10. "In commercial and business agreements, the presumption is that the parties intended to create legal relations." Discuss.

11. "As regards the legal effects, there is no difference between a contract in writing and a contract made by word of mouth." Discuss.

12. Write short notes on : Unenforceable contract, executed contract, obligation, consensus ad idem, unilateral contract, quasi-contract.

PRACTICAL PROBLEMS

Attempt the following problems, giving reasons :

1. Over a cup of coffee in a restaurant, *A* invites *B* to a dinner at his house on a Sunday. *B* hires a taxi and reaches *A*'s house at the appointed time, but *A* fails to perform his promise. Can *B* recover any damages from A ?

[*Hint* : No, (*Balfour* v. *Balfour*)].

2. State whether there is any contract in the following cases :

(*a*) *A* engages *B* for a certain work and promises to pay such remuneration as shall be fixed by *C*. *B* does the work.

(*b*) *A* and *B* promise to marry each other.

(*c*) *A* takes a seat in a public vehicle.

(*d*) *A* invites *B* to a card party. *B* accepts the invitation.

[*Hint* : (*a*) There is a contract between *A* and *B* and *A* is bound to pay the remuneration as shall be fixed by *C*. If *C* does not fix, or refuses to fix the remuneration, *A* is bound to pay a reasonable remuneration. (*b*) and (*c*) There is a contract between *A* and *B*. (*d*) There is no contract.]

3. *A* forced *B* to enter into a contract at the point of pistol. What remedy is available to *B*. if he does not want to be bound by the contract ?

[*Hint* : He can repudiate the contract as his consent is not free].

4. *M* mows *L*'s lawn without being asked by *L* to do so. *L* watches *M* do the work but does not attempt to stop him. Is *L* bound to pay any charges to *M* ?

[*Hint* : Yes, *L* is bound to pay *M* a reasonable remuneration].

5. *C* orally offered to pay *A*, an auto mechanic, Rs. 50 for testing a used car which *C* was about to purchase from *D*. *A* agreed and tested the car. *C* paid *A* Rs. 50 in cash for his services. Is the agreement between *C* and *A* (*a*) express or implied, (*b*) executed or executory, (*c*) valid, void, voidable or unenforceable ?

[*Hint* : The agreement is (*a*) express, (*b*) executed, and (*c*) valid].

6. *A* promises to pay *B* Rs. 500 if he (*B*) beats *C*. *B* beats *C*, but *A* refuses to pay. Can *B* recover the amount ?

[*Hint* : No as the agreement is illegal].

7. *A* sent in a football pools coupon containing a condition that it "shall not be attended by or give rise to any legal relationship, rights, duties, consequences." He sued for £ 4,335 which he claimed to have won. Is the claim enforceable ?

[No. (*Appleson* v. *Littlewood Ltd.*, (1939) 1 All E.R. 464)].

8. *D* lived as a paying boarder with a family. He agreed with the members of the family to share prize money of a newspaper competition. The entry sent by *D* won a prize of £ 750. He refused to share the amount won. Can the members of the family recover their share ?

[*Hint* : Yes, as there was a "mutuality in the agreement between the parties" and the parties had intended to be bound (*Simpkins* v. *Pays*, (1955) 3 All E.R. 10)].

2

Offer and Acceptance

OFFER

At the inception of every agreement, there must be a *definite offer* by one person to another and its *unqualified acceptance* by the person to whom the offer is made. An offer is a proposal by one party to another to enter into a legally binding agreement with him. A person is said to have made a proposal, when he "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." [Sec. 2 (*a*)]. For example, *A* says to *B*, "Will you purchase my car for Rs. 5,000 ?" *A*, in this case, is making an offer to *B* as he signifies to *B* his willingness to sell his car to *B* for Rs. 5,000 with a view to obtaining *B*'s assent to purchase the car.

The person making the offer is known as the *offeror, proposer, or promisor* and the person to whom it is made is called the *offeree* or proposee. When the offeree accepts the offer, he is called the *acceptor* or *promisee* [Sec. 2 (*c*)].

How an offer is made

An offer may be made by *express* words, spoken or written. This is known as an *express offer*. For example, when *A* says to *B*, "Will you purchase my house at Meerut for Rs. 50,000 ?" or when *A* advertises in a newspaper offering Rs. 50 to anyone who returns his lost dog, there is an *express* offer.

An offer may also be implied from the *conduct* of the parties or the circumstances of the case. This is known as an *implied offer*. Thus when a transport company runs a bus on a particular route, there is an implied offer by the transport company to carry passengers for a certain fare. The acceptance of the offer is complete as soon as a passenger boards the bus [*Wilkie* v. *London Passenger Transport Board*, (1947) 1 All E.R. 258, C.A.]. Likewise when a weighing machine is installed on a railway platform or a public place, there is an implied offer by the owner of the machine. Any one by putting the required coin in the slot of the weighing machine can accept this offer.

When an offer is made to a definite person, it is called a **specific offer.** It can be accepted only by the person to whom it is made.

When an offer is made to the world at large, it is called a **general offer.**

Example. A company advertised in several newspaperis that a reward of £ 100 would be given to any person who contracted influenza after using the smoke balls of the company according to its printed directions. One Mrs. Carlill used the smoke balls according to the directions of the company but contracted influenza. *Held*, she could recover the amount as by using the smoke balls she had accepted the offer [*Carlill* v. *Carbolic Smoke Ball Co.*, (1893) 1 Q.B. 256].

Where an offer is made to the world at large, any person or persons with notice of the offer may accept the offer. When the offer is accepted by a particular person, there is a contract between the offerer and that particular person. If a large number of persons accept the offer, there are as many contracts as the number of persons accepting the offer. Where a reward has been offered for giving a specific piece of information, *e.g.*, information about the thief of a certain property, or finding of a specific thing, acceptance can be made only by the first person who gives the information [*Lancaster* v. *Walsh*, (1838) 4 M. & W. 16].

What constitutes an offer ?

Not every proposal made by an offerer is legally regarded as an offer. The tests to determine whether or not an offer has actually been made are as follows :

1. The offer must show an obvious intention on the part of the offerer to be bound by it, *i.e.*, the offerer must signify to the offeree his willingness to do or to abstain from doing something. Thus if *A* jokingly offers *B* Rs. 10 for his typewriter and *B*, knowing that *A* is not serious, says, "I accept," *A*'s proposal does not constitute an offer.

2. The offerer must make the offer with a view to obtaining the assent of the offeree to such act or abstinence.

3. The offer must be definite.

4. It must be communicated to the offeree.

These points have been discussed at appropriate places.

LEGAL RULES AS TO OFFER

1. *Offer must be such as in law is capable of being accepted and giving rise to legal relationship.* A social invitation, even if it is accepted, does not create legal relations because it is not so intended. An offer, therefore, must be such as would result in a valid contract when it is accepted.

2. *Terms of offer must be definite, unambiguous and certain and not loose and vague.* If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.

Examples. (*a*) *A* offered to take a house on lease for three years at £ 285 per annum if the house was "put into thorough repair and drawing rooms handsomely decorated according to the present style." *Held*, the offer was too vague to result in a contractual relation [*Taylor* v. *Portington*, (1855) All E.R. 128].

(*b*) *A* says to *B*, "I will sell you a car." *A* owns three different cars. The offer is not definite.

(*c*) *O* accepted to buy from *S* a motor van giving another van in part exchange. The contract provided : "This order is given on the understanding that the balance of the purchase price can be had on hire purchase terms over a period of two years." *Held*, the order (*i.e.*, the offer) was too vague to be given a definite meaning and, therefore, there was no contract [*Scammel* v. *Ouston*, (1941) A.C. 251].

(*d*) A husband on leaving his wife promised to pay her £15 a week "so long as I can manage it". *Held*, although the husband and wife, who lived apart because of break-up of their marriage, could enter into a legally binding agreement, the vague or discretionary terms of the arrangement indicated an intention not to create legal relations [*Gould* v. *Gould*, (1970) 1 Q.B. 275].

But if the agreement contains a machinery for ascertaining a vague term, the agreement is not void on the ground of its being vague.

Example. *F* sold a piece of land to a motor company subject to an agreement that the company should buy all their petrol from *F* at a price to be agreed by the parties from time to time. Any dispute was to be submitted to arbitration. The price was never agreed and the company refused to buy. *Held*, there was a binding contract to buy petrol of reasonable quality at a reasonable price to be determined in case of dispute by arbitration [*Foley* v. *Classique Coaches Ltd.*, (1934) 2 K.B. 1).

4. *An offer may be distinguished from* :

(i) *A declaration of intention and an announcement.* A declaration by a person that he intends to do something gives no right of action to another. Such a declaration only means that an offer will be made or invited in future and not that an offer is made now. An advertisement for a concert or an auction sale does not amount to an offer to hold such concert or auction sale [*Executive Engineer, Sundargarh* v. *Mohan Prasad Sahu*, A.I.R. (1990) Ori. 26].

Examples. (*a*) An auctioneer advertised in a newspaper that a sale of office furniture would be held. A broker came from a distant place to attend that auction, but all the furniture was withdrawn. The broker thereupon sued the auctioneer for his loss of time and expenses. *Held*, a declaration of intention to do a thing did not create a binding contract with those who acted upon it, so that the broker could not recover [*Harris* v. *Nickerson* (1873) L.R. 8 Q. B. 286].

(*b*) A father wrote to his would-be son-in-law that his daughter would have a share of what he left. *Held*, it was merely a statement of intention [*Re Ficus*, (1900) 1 Ch. 331].

Likewise, an announcement of a beauty competition by a Beauty Parlour or a scholarship examination by some College is not an offer [*Rooke* v. *Dawson*, (1895) 1 Ch. 480].

(ii) *An invitation to make an offer or do business.* Display of goods by a shopkeeper in his window, with prices marked on them, is not an offer but merely an invitation to the public to make an offer to buy the goods at the marked prices. Likewise, quotations, catalogues, advertisements in a newspaper for sale of an article, or circulars sent to potential customers do not constitute an offer. They are instead an *invitation* to the public to make an offer. A person, in case the prices of the goods are marked, cannot force the seller to sell the goods at those prices. He can, at the most, ask the seller to sell the goods to him, in which case he would be making an offer to the seller and it is up to the seller to accept t... not.

Example. Goods are sold in a shop under the 'self-service' system. Customers select goods in the shop and take them to the cashier for payment of the price. The contract, in this case, is made, not when a customer selects the goods, but when the cashier accepts the offer to buy and receives the price [*Pharmaceutical Society of Great Britain* v *Boots Cash Chemists*, (1953) 1 Q.B. 401].

Newspaper advertisements are not offers. A recognised exception to this is a general offer of reward to the public. Thus when *A* advertises in a newspaper that he would pay Rs. 100 to anyone who finds and returns her lost dog, the offer is addressed to the first person who by performing the ...uired act with knowledge of the offer of reward, creates an agreement.

4. *Offer must be communicated.* An offer, to be complete, must be communicated to the person to whom it is made. Unless an offer is communicated to the offeree by the offeror or by his duly authorised agent, there can be no acceptance of it.

An acceptance of an offer, in ignorance of the offer, is no acceptance and does not confer any right on the acceptor.

Examples. (*a*) S offered a reward to anyone who returned his lost dog. *F* brought the dog to S without having heard of the offer. *Held, F* was not entitled to the reward [*Fitch* v. *Snedaker*, (1868) 38 N.Y. 288].

(*b*) *S* sent his servant, *L*, to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. *L* traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. *Held*, he was not entitled to the reward [*Lalman* v. *Gauri Dutt*, (1913) 11 All. L.J. 489].

5. *Offer must be made with a view to obtaining the assent.* The offer to do or not to do something must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.

6. *Offer should not contain a term the non-compliance of which may be assumed to amount to acceptance.* Thus a man cannot say that if acceptance is not communicated by a certain time, the offer would be considered as accepted. For example, where *A* writes to *B*, "I will sell you my horse for Rs. 5,000 and if you do not reply, I shall assume you have accepted the offer," there is no contract if *B* does not reply. *B* is under no obligation to speak. However, if *B* is in possession of *A*'s horse at the time the offer is made and he continues to use the horse thereafter, *B*'s silence and his continued use of horse amount to acceptance on his part of the terms of *A*'s offer.

7. *A statement of price is not an offer.* A mere statement of price is not construed as an offer to sell [*Harvey* v. *Facey*, (1893) App. Cas 552].

Example. Three telegrams were exchanged between Harvey and Facey.

1. "Will you sell us your Bumper Hall Pen ? Telegraph lowest cash price—answer paid." (Harvey to Facey).

2. "Lowest price for Bumber Hall Pen £ 900." (Facey to Harvey).

3. "We agree to buy Bumper Hall Pen for the sum of £ 900 asked by you." (Harvey to Facey).

Held, there was no concluded contract between Harvey and Facey [*Harvey* v. *Facey*, (1893) A.C. 552].

The first telegram asked two questions : (*i*) the willingness of Facey to sell, and (*ii*) the lowest price. Facey replied only to the second question and gave his lowest price, *i.e.*, he supplied mere information and no offer had been made by him to sell. There could be a contract only if he had accepted Harvey's last telegram.

Tenders

A tender (in response to an invitation to offer) is an offer and may be either—

(1) a definite offer to supply specified goods or services ; or

(2) a standing offer.

(1) *Tender as a definite offer.* When tenders are invited for the supply of specified goods or services, each tender submitted is an offer. The party inviting tenders may accept any tender he chooses and thus bring about a binding contract.

Example. A invites tenders for the supply of 1,00,000 bricks. *X*, *Y*, and *Z* submit the tenders. *A* accepts *X*'s tender. There is a binding contract between *A* and *X*.

(2) *Tender as a standing offer.* Where goods or services are required over a certain period, a trader may invite tenders as a standing offer which is a *continuing* offer. The acceptance of a standing offer has the effect that as and when the goods or services are required, an order is placed with the person who submitted the tender and each time a distinct contract is made.

Example. A railway company invited tenders for certain iron articles which it might require over a year. *W*'s tender was accepted. He supplied goods to the railway company for some time under the orders given by the latter. He refused to execute an order given during the currency of the tender. *Held, W* could not refuse to supply goods within the terms of the tender [*Great Northern Rail.* v. *Witham*, (1873) L.R. 9 C.P. 16].

Special terms in a contract

Where any special terms are to be included in a contract, these must be duly brought to the notice of the offeree at the time when the proposal is made. If it is not done and if the contract is subsequently entered into, the offeree will not be bound by them. Also these terms should be presented in such a manner that a reasonable man can become aware of them before he enters into a contract.

Examples (*a*) A hotel put a notice in a bed room, exempting the proprietor from liability for loss of client's goods. *Held*, the notice was not effective as it came to the knowledge of the client only when the contract to take a room had already been entered into [*Olley* v. *Marlborough Court Ltd.*, (1949) K.B. 532].

(*b*) A transport company accepts goods of *G* for being carried without any conditions. Subsequently it issues a circular to the consignors limiting its liability for the goods damaged or lost in transit. *G* is not bound by this condition since it is not communicated to him prior to the date of contract.

Certain conditions are attached to transactions like purchase of a ticket for a journey or deposit of luggage in a cloak room. Wherever on the face of a ticket the words "For conditions see back" are printed, the person concerned is as a matter of law held to be bound by the conditions subject to which the ticket is issued whether he takes care to read them or not. The fact that he did not or could not read does not alter the legal position.

Examples. (*a*) *P* deposited a bag in the cloak room of a railway station. On the face of the ticket, issued to him, was written "See back". One of the printed conditions limited the liability of the company for loss of a package to £ 10. The bag was lost and *P* claimed £ 24.50 as its value. *Held, P* was bound by the conditions on the back of the ticket even if he had not read them [*Parker* v. *S.E. Rail. Co.* (1877) 2 C.P.D. 416].

(*b*) *P* agreed to purchase a machine and signed a contract to the effect. The contract contained several clauses in small print which *P*

did not read. *Held*, *P* was bound by those clauses [*L'Estrange* v. *Graucob Ltd.*, (1934) 2 K.B. 394].

(c) *T*, a lady who could not read, took a ticket from a railway company. On the face of the ticket was written "For conditions see back". One of the conditions absolved the railway company from liability for personal injuries to passengers. *T* was injured by a railway accident. *Held*, she was bound by the conditions and could not recover damages [*Thompson* v. *L.M. & S. Rail. Co.*, (1930) 1 K.B. 41].

If conditions are printed on the back of a ticket, but there are no words at all on the face of it to draw the attention of the person concerned to those conditions, he is not bound by them. However, if the conditions are contained in a voucher or receipt for payment of money which is normaliy not supposed to contain the conditions of the contract, they do not bind the person receiving the voucher or receipt.

Example. *C* hired a deck chair from Municipal Council. He paid a hire of 2d. for 2 sessions of 3 hours. He was given a ticket which he put in his pocket unread. The ticket contained the following condition : "The Council will not be liable for any accident or damage arising from hire of chair." When *C* sat in the chair, it broke and injured him. *Held*, the Council was liable to *P* in damages for personal injury. Slesser, L. J. observed : "In my opinion this ticket is no more than a receipt and is quite different from a railway ticket which contains upon it the terms upon which a railway company agrees to carry passengers." [*Chapleton* v. *Barry Urban District Council*, (1940) 1 K.B. 352].

Ordinarily, the acceptance of a document containing the contract implies acceptance of all the terms and contained in the document. Exceptions are, however, made in the following cases :

(1) When there is a misrepresentation or fraud.

(2) When the notice of the terms is insufficient.

Example. A purchased a ticket which had on its face "Dublin to Whitehaven". On the back of the ticket, there was a term that the carrying company was not liable for losses of any kind. But there was nothing on the face of the ticket to draw *A*'s notice to the terms and conditions on the back of the ticket. *Held*, *A* was not bound by these terms and conditions [*Henderson* v. *Stevenson*, (1875) L.R. 2 H.L. App. Cas. 470].

3. When there is nothing to lead the purchaser of a ticket to believe that there are additional terms.

Crosss Offers

When two parties make identical offers to each other, in ignorance of each other's offer, the offers are cross offers. In such a case, the Court will not construe one offer as the offer and the other as the acceptance and as such there can be no concluded contract [*Tinn* v. *Hoffmann*, (1873) 29 L. T. 271].

ACCEPTANCE

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offeree to an offer. In other words, it is the manifestation by the offeee of his willingness to be bound by the terms of the offer. It is "to an offer what a lighted match is to a train of

gunpowder. It produces something which cannot be recalled, or undone." This means when the offeree signifies his assent to the offeror, the offer is said to be accepted. An offer when accepted becomes a promise [Sec. 2 (*b*)].

Acceptance may be **express** or **implied.** It is *express* when it is communicated by words, spoken or written or by doing some required act. It is *implied* when it is to be gathered from the surrounding circumstances or the conduct of the parties.

Examples. (*a*) At an auction sale, *S* is the highest bidder. The auctioneer accepts the offer by striking the hammer on the table. This is an implied acceptance.

(*b*) A widow promised to settle some immovable property on her niece if the niece stayed with her in her residence. The niece stayed with her in her residence till her death. *Held,* the niece was entitled to the property [*V. Rao* v. *A. Rao,* (1916) 30 Mad. 509].

Acceptance of an offer requires more than a tacit (implied) formation of intention to accept. To give evidence of that intention, there must be some overt (apparent) act, or words spoken or written must be used.

Acceptance means in general communicated acceptance (*Anson*).

Who can accept

Acceptance of particular offer. When an offer is made to a particular person, it can be accepted by him *alone.* If it is accepted by any other person, there is no valid acceptance. The rule of law is clear that if you propose to make a contract with *A, B* cannot substitute himself for *A* without your consent.

Example. Boulton bought a hose-pipe business from Brocklehurst. Jones to whom Brocklehurst owed a debt, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not addressed to him. Jones refused to pay Boulton for the goods because he, by entering into contract with Brocklehurst, intended to set off his debt against Brocklehurst. *Held,* the offer was made to Brocklehurst and it was not in the power of Boulton to step in and accept and therefore there was no contract [*Boulton* v. *Jones,* (1857) 2 H. and N. 564].

Under a quasi-contract, Boulton can however recover the goods from Jones.

Acceptance of general offer. When an offer is made to world at large, any persons to whom the offer is made can accept it [*Carlill* v. *Carbolic Smoke Ball Co.,* (1893) 1 Q. B. 256].

LEGAL RULES AS TO ACCEPTANCE

The acceptance of an offer is the very essence of a contract. To be legally effective, it must satisfy the following conditions :

1. *It must be absolute and unqualified, i.e., it must conform with the offer.* An acceptance, in order to be binding, must be absolute and unqualified [Sec. 7 (1)] in respect of all terms of the offer, whether material or immaterial, major or minor. If the parties are not *ad idem* on all matters concerning the offer and acceptance, there is no contract.

Examples. (*a*) *A* made an offer to B to purchase a house with possession from 25th July. The offer was followed by an acceptance suggesting possession from 1st August. *Held,* there was no concluded contract [*Routledge* v. *Grant,* (1828) 4 Bing. 653].

(*b*) *M* offered to sell a piece of land to *N* at £ 280. *N* accepted a enclosed £ 80 with a promise to pay the balance by month instalments of £ 50 each. *Held*, there was no contract between *M* a *N*, as the acceptance was not unqualified [*Neale* v. *Merret*, (1930) W 189].

(*c*) *N* offered to buy *J*'s horse if warranted *quiet in harness*. *J* agre to the price and warranted the horse *quiet in double harness*. Hel there was no acceptance [*Jordon* v. *Norton*, (1838) 4 M. & W. 155].

(*d*) *A* says to *B*, "I offer to sell my car for Rs. 50,000." *B* replies, will purchase it for Rs. 45,000." This is no acceptance and amounts a counter-offer.

2. *It must be communicated to the offeror*. To conclude a contra between the parties, the acceptance must be communicated in so perceptible form. A mere resolve or mental determination on the part the offeree to accept an offer, when there is no external manifestation the intention to do so, is not sufficient [*Bhagwan Dass Kedia* v. *Girdha Lal*, A.I.R. (1966) S.C. 543]. In order to result in a contract, the acceptan must be a "matter of fact".

Examples. (*a*) *A* tells *B* that he intends to marry *C*, but tells nothing of his intention. There is no contract, even if *C* is willing marry *A*.

(*b*) *F* offered to buy his nephew's horse for £ 30 saying : "If I hear n more about it I shall consider the horse is mine at £ 30." The nephe did not write to *F* at all, but he told his auctioneer who was selling hi horses not to sell that particular horse because it had been sold to hi uncle. The auctioneer inadvertently sold the horse. *Held*, *F* had n right of action against the auctioneer as the horse had not been sol to *F*, his offer of £ 30 not having been accepted [*Felthouse* v. *Bindley* (1862) 11 C.B. (N.S.) 869].

(*c*) A draft agreement relating to the supply of coal was sent to the manager of a railway company for his acceptance. The manage wrote the word "approved" and put the draft in the drawer of his table intending to send it to the company's solicitor for a formal contract to be drawn up. By some oversight the document remained in the drawer. *Held*, there was no contract [*Brogden* v. *Metropolitan Rail. Co.*, (1877) 2 A.C. 666].

In some cases the offeror may dispense with the communication of acceptance. It happens when the performance of certain conditions takes place, or some required act is done (Sec. 8). For example, in *Carlill* v. *Carbolic Smoke Ball Co.*, (1893) 1 Q.B. 256, where Carlill used the smoke balls of the company according to its directions and contracted influenza, it amounted to acceptance of the offer by doing the required act and she could claim the reward.

3. *It must be according to the mode prescribed or usual and reasonable mode*. If the acceptance is not according to the mode prescribed, or some usual and reasonable mode (where no mode is 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 prescribed mode only. If he does not inform the offeree, he is deemed to have accepted the acceptance [Sec. 7 (2)].

Example. *A* makes an offer to *B* and says : "If you accept the offer, reply by wire." *B* sends the rely by post. It will be a valid acceptance

unless A informs *B* that the acceptance is not according to the mode prescribed.

4. *It must be given within a reasonable time.* If any time limit is specified, the acceptance must be given within that time. If no time limit is specified, it must be given within a reasonable time.

Example. On June 8 *M* offered to take shares in *R* company. He received a letter of acceptance on November 23. He refused to take the shares. *Held, M* was entitled to refuse as his offer had lapsed as the reasonable period during which it could be accepted had elapsed [*Ramsgate Victoria Hotel Co.* v. *Montefiore*, (1886) L.R. 1 Ex. 109].

5. *It cannot precede an offer.* If the acceptance precedes an offer, it is not a valid acceptance and does not result in a contract.

Example. In a company, shares were allotted to a person who had not applied for them. Subsequently when he applied for shares, he was unaware of the previous allotment. The allotment of shares previous to the application is invalid.

6. *It must show an intention on the part of the acceptor to fulfil terms of the promise.* If no such intention is present, the acceptance is not valid.

7. *It must be given by the party or parties to whom the offer is made.*

8. *It must be given before the offer lapses or before the offer is withdrawn.*

9. *It cannot be implied from silence.* The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has by his previous conduct indicated that his silence means that he accepts.

Examples. (*a*) *A* wrote to *B*, "I offer you my car for Rs. 10,000. If I don't hear from you in seven days, I shall assume that you accept." *B* did not reply at all. There is no contract.

(*b*) *Harvey* v. *Facey*, (1893) App. Cas. 552 discussed earlier in this Chapter.

Acceptance given by a person other than the offeree or by a person who is not authorised to give acceptance is ineffective in law. Likewise information received from an unauthorised person is ineffective [*Powel v. Lee*, (1908) 24 T.L.R. 606].

Acceptance subject to contract

Where an offeree accepts an offer "subject to contract" or "subject to formal contract" or "subject to contract to be approved by solicitors", the matter remains in the negotiation stage and the parties do not intend to be bound until a formal contract is prepared and signed by them.

Example. C and *D* signed an agreement for the purchase of a house by *D* "subject to a proper contract" to be prepared by *C*'s solicitors. A document was prepared by *C*'s solicitors and approved by *D*'s solicitors, but *D* refused to sign the document. *Held*, there was no contract as the agreement was only conditional [*Chillingworth* v. *Esche*, (1924) 1 Ch. 97].

Unless there is an agreement to the contrary, a contract is made between two parties either when a formal contract is signed by them or, if each party is to sign a separate counterpart of the contract, when the separate counterparts so signed are exchanged.