

## The proposal under Indian Contract Act

### Introduction

Contracts play an important role in our everyday life ranging from insurance policies to employment contracts. In Fact, we enter into contracts even without thinking, for example, while buying a movie ticket or downloading an app. The contract is oral or written agreements between two or more parties. Parties entering into a contract might include individual people, companies, non-profits or government agencies. The whole process of entering into a contract starts with an offer by one party, an acceptance by another party, and an exchange of consideration (something of value). Let us take a look at the aspect of offer and acceptance.

### Proposal or offer

- The entire process of entering into a contract begins with the proposal or an offer made by one party to another. The proposal must be accepted to enter into an agreement.
- According to [Section 2\(a\) of the Indian Contract Act, 1872](#), *“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”*.

A proposal must be definite and specific in its terms, and it should be communicated to the other party with the intention of obtaining their [acceptance](#). Once the other party accepts the proposal, it becomes a promise, and the terms of the contract bind the parties. If the proposal is not accepted, it will be considered a mere invitation to offer, and it will not create any legal obligation between the parties.

### Examples

1. A company (A) offers to sell its products to another company (B) for a certain price. The offer is made in writing and sent via email to company B. This offer is a proposal, and if company B accepts the offer, it becomes a binding contract.
2. A person (A) offers to sell their car to another person (B) for a certain amount. The offer is made orally during a conversation between the two parties. This offer is also a proposal, and if person B accepts the offer, it becomes a binding contract.
3. A construction company (A) submits a proposal to a government agency (B) for building a new bridge. The proposal includes the details of the project, such as the cost, timeline, and specifications. This proposal is an offer to enter into a contract with the government agency (B), and if the agency accepts the proposal, it becomes a binding contract.

### Features of a valid offer

The person making the offer/proposal is referred to as the “promiser” or the “offeror”. And the person who accepts an offer is referred to as “promisee” or the “acceptor”.

- The offeror must express his willingness to do or abstain from doing an act. Only willingness is not adequate. Or just an urge to do something or not to do anything will not be an offer.
- An offer can either be positive or negative. It can be a promise to do some act, and can also be a promise to abstain from doing any act/service. Both are valid offers.

### The essential element of a valid offer

There must be two parties

There have to be at least two parties a person making the proposal and the other person agreeing to it. All the persons are included i.e, Legal persons as well as artificial persons.

Every proposal must be communicated

Communication of the proposal is mandatory. An offer is valid if it is conveyed to the offeree. The communication can either be express or implied. It can be communicated by terms such as word of mouth, messenger, telegram, etc. [Section 4](#) of the Indian Contract Act says that the communication of a proposal is complete when it comes to the awareness of the person to whom it is made.

Example

'A' proposes, to sell a car to 'B' at a certain price. Once 'B' receives the letter, the proposal communication is complete.

It must create Legal Relations

An offer must be such that when accepted it will result in a valid contract. A mere social invitation cannot be regarded as an offer, because if such an invitation is accepted it will not give rise to any legal relationship.

Example

'A' invited 'B' to dinner and 'B' accepted the invitation. It is a mere social invitation. And 'A' will not be liable if he fails to provide dinner to B.

It must be certain and definite

The terms of the offer must be certain and clear in order to create a valid contract, it must not be ambiguous.

It may be specific or general

The specific offer is an offer that is accepted by any specific or particular person or by any group to whom it is made. Whereas, The general offers are accepted by any person.

Classification of offer

Some types of offers can be based on the design, timing, purpose, etc. Let us look at the offer's classification.

Express Offer

An offer may be made by express words, spoken or written. This is known as Express offer.

Example

When 'A' says to 'B', "will you purchase my car for Rs 2,00,000"?

Implied Offer

An offer may be derived from the actions or circumstances of the parties.

This is known as Implied offer.

Example

There is an implied offer by the transport company to carry passengers for a certain fare when a transport company operates a bus on a particular route.

#### General Offer

A general offer is not made by any specified party. It is one that is made by the public at large. Any member of the public can, therefore, accept the offer and have the right to the rewards/consideration.

#### Example

'A' advertises in the newspaper that whosoever finds his missing son would be rewarded with 2 lakh. 'B' reads it and after finding the boy, he calls 'A' to inform about his missing son. Now 'A' is entitled to pay 2 lakh to 'B' for his reward.

#### Specific Offer

It is the offer made to a specific person or group of persons and can be accepted by the same, not anyone else.

#### Example

'A' offers to sell his house to 'B'. Thus, a specific offer is made to a specific person, and only 'B' can accept the offer.

#### Difference between General Offer and Specific Offer

General Offer	Specific Offer
General Offer is made to the whole world at large.	A specific Offer is made to some specific person.
A general offer can be considered by any person.	A specific offer can be accepted by only a specific person.

#### Cross offer

Two parties make a cross-offer under certain circumstances. It means that both make the same offer at the exact time to each other. However, in either case, the cross-offer will not amount to accepting the offer.

#### Example

'A' and 'B' both send letters to each other offering to sell and buy B's house at the same time. This is the cross offer made where one party needs to accept the offer of another.

#### Counter-offer

A counter-offer is an answer given to an initial offer. A counter-offer means that the original offer has been refused and replaced by another. The counteroffer offers three choices to the original offerer; accept, refuse, or make another offer.

#### **What is an invitation to offer?**

An invitation to offer is a preliminary communication that invites or encourages someone to make an offer or proposal, rather than being an actual offer itself. It is an invitation to negotiate or make an offer, which may or may not result in the formation of a contract.

In simple terms, an invitation to offer is an invitation to commence negotiations or discussions, and it does not create a legal obligation to accept any resulting offer.

Examples of an invitation to offer include advertisements, price lists, catalogues, and displays of goods in a shop window or online store. These do not constitute a binding offer, but rather an invitation to customers to make an offer to purchase.

For example, a shop owner displaying goods in their store window is an invitation to customers to make an offer to purchase those goods. The customer's offer to purchase the goods at a certain price would constitute a proposal, and the shop owner's acceptance of the proposal would form a binding contract.

### **Landmark cases dealing with invitations to treat/offer**

#### **Pharmaceutical Products of India Ltd. v. Gwalior Chemical Works Ltd. (1960)**

In this case, the court held that a price list is an invitation to treat and not an offer or proposal. The court held that a contract is only formed when an offer is made by one party and accepted by the other.

#### **Fisher v. Bell (1961)**

This case established the principle that a display of goods in a shop window or on a shelf is generally an invitation to treat and not an offer. The customer's offer to purchase the goods at a certain price would constitute a proposal, and the shop owner's acceptance of the proposal would form a binding contract.

#### **Harvela Investments Ltd. v. Royal Trust Co. of Canada (1986)**

This case established the principle of the "invitation to tender," which is a process by which a party invites potential contractors to submit bids for a project. The court held that an invitation to tender is not an offer, but rather an invitation to submit offers.

#### **Mohanlal v. Kashiram (1962)**

In this case, the court held that an advertisement for the sale of property is an invitation to treat and not an offer. The court held that a contract is only formed when an offer is made by one party and accepted by the other.

#### **Harvey v Facey (1893)**

In this case, the plaintiff (Harvey) telegraphed the defendant (Facey) asking if he would sell certain property and, if so, at what price. The defendant replied with a telegraph that simply stated the lowest price that he would accept for the property. The plaintiff then claimed that the defendant had made an offer to sell the property at that price, which he had accepted by his subsequent telegraphs.

The court, however, held that the defendant's telegraph was not an offer to sell the property, but rather a mere statement of the lowest price he would accept. The court held that the defendant had not made any offer, and therefore there was no contract between the parties.

The court further explained that an invitation to treat is not an offer, but rather an invitation to commence negotiations or discussions. The court held that the defendant's telegraph was an invitation to treat, and not an offer to sell the property.

### **Intention to create a legal relationship**

The intention to create a legal relationship is a key element in the formation of a contract. It refers to the intention of the parties to create a legally binding agreement, i.e. an agreement that can be enforced by law.

In general, the law assumes that parties intend to create a legal relationship when they enter into a contract. However, in certain situations, the parties may not intend to create a legally binding agreement, such as in social or domestic arrangements. For example, if friends agree to meet at a café, there may not be an intention to create a legally binding agreement.

In order for a contract to be enforceable, the intention to create a legal relationship must be present at the time of entering into the agreement. This means that both parties must have a common intention to create legal relations.

The intention to create a legal relationship can be expressed or implied. It may be expressed through the language used in the contract, such as when the parties state explicitly that they intend to create a legally binding agreement. Alternatively, the intention may be implied from the circumstances surrounding the agreement. For example, if a person provides a service and is paid for it, there may be an implied intention to create a legal relationship.

If the parties do not have the intention to create a legal relationship, the agreement will not be enforceable as a contract. Therefore, the presence or absence of the intention to create a legal relationship is a crucial factor in determining the validity of a contract.

### **Balfour v Balfour**

[Balfour v Balfour](#) is a landmark case in the law of contract that deals with the issue of intention to create a legal relationship. The case was decided by the English Court of Appeal in 1919.

In this case, Mr. Balfour was a British civil servant who was posted to Ceylon (now Sri Lanka) in 1915. At that time, his wife, Mrs. Balfour, remained in England due to health reasons. Before leaving, Mr. Balfour promised to pay his wife a monthly allowance of £30 until she joined him in Ceylon. However, the couple later separated and Mrs. Balfour sued her husband for breach of contract, claiming the unpaid allowance.

The court held that there was no contract between the parties. The court found that the promise made by Mr. Balfour was a mere social arrangement between husband and wife, and not intended to create a legal relationship. The court noted that not all agreements between family members or spouses are legally binding and that the intention to create a legal relationship must be present in order for a contract to be enforceable.

The court explained that in the absence of an intention to create a legal relationship, there is no consideration, which is an essential element of a contract. [Consideration](#) refers to the exchange of something of value, such as money or services, between the parties. In this case, Mrs. Balfour had not given any consideration in exchange for the promise made by her husband.

Therefore, the case established the principle that a social or domestic agreement, made without any intention to create a legal relationship, does not give rise to a binding contract.

## **Merritt v Merritt**

Merritt v Merritt is a landmark case in the law of contract that deals with the issue of intention to create a legal relationship. The case was decided by the English Court of Appeal in 1970.

In this case, Mr. and Mrs. Merritt were a married couple who had separated, but had not yet divorced. They owned a house jointly, and had agreed to transfer ownership of the house to Mrs. Merritt in exchange for her agreement to pay off the outstanding mortgage on the property. The couple had made a written agreement to this effect, which was signed by both parties.

After Mrs. Merritt had paid off the mortgage, Mr. Merritt refused to transfer ownership of the house to her. Mrs. Merritt sued her husband for breach of contract, claiming ownership of the property.

The court held that there was a valid and enforceable contract between the parties. The court found that the written agreement signed by the parties was evidence of their intention to create a legal relationship, and that both parties had given consideration in exchange for the promise made by the other. Mrs. Merritt had promised to pay off the mortgage, and Mr. Merritt had promised to transfer ownership of the house.

The court explained that the fact that the parties were married did not necessarily mean that there was no intention to create a legal relationship. The court noted that the parties were separated and had agreed to transfer ownership of the property in exchange for Mrs. Merritt's payment of the mortgage. The court found that the agreement was not merely a domestic arrangement, but a binding and enforceable contract.

Therefore, the case established the principle that an agreement made between spouses or family members may give rise to a binding contract, provided that there is evidence of an intention to create a legal relationship, and that both parties have given consideration in exchange for the promise made by the other.

## **Communication of offer is necessary**

[Lalman Shukla v. Gauri Dutt](#) is a landmark case in the law of contract that deals with the issue of offer and acceptance. The case was decided by the Privy Council in 1913.

In this case, Lalman Shukla was a servant of Gauri Dutt, who was the uncle of Lalman's deceased father. Gauri Dutt had sent Lalman to search for his missing nephew, and had promised to pay a reward of Rs. 501 to anyone who could find him. However, before Lalman could return with the news that Gauri Dutt's nephew had been found, Gauri Dutt learned of his nephew's death from other sources.

Gauri Dutt then refused to pay Lalman the promised reward, claiming that the offer of the reward was made only for the purpose of finding his nephew alive, and that since his nephew was now dead, there was no offer to be accepted.

The court held that there was no contract between the parties. The court found that Gauri Dutt's promise to pay the reward was an offer, and that Lalman's search for his nephew was an acceptance of that offer. The court noted that an offer can be accepted by performing the requested act, and that Lalman's search was the performance of the requested act.

The court rejected Gauri Dutt's argument that the offer was only for the purpose of finding his nephew alive. The court explained that the offer was not limited to finding the nephew alive, but was for the act of finding the nephew, regardless of whether he was alive or dead. Therefore, the court

found that Lalman had accepted the offer by performing the requested act, and that Gauri Dutt was bound to pay the promised reward.

Therefore, the case established the principle that an offer can be accepted by performing the requested act, and that an offer may be for a specific act rather than a specific result.

## **Types of Offer/Proposals**

### **Cross Offers**

A cross offer occurs when two parties make identical offers to each other without knowing that the other has made an offer. In such a situation, neither party can accept the other's offer, as there is no clear indication of an intention to create a legally binding agreement. Here are a few landmark cases related to cross offers:

#### **Tinn v. Hoffman (1873)**

In this case, the plaintiff and the defendant were negotiating the sale of a quantity of tin. The plaintiff sent a letter offering to sell the tin at a certain price, and the defendant sent a letter in response, also offering to buy the tin at the same price. However, neither party had received the other's letter at the time they made their offer. The court held that there was no contract between the parties, as neither party had accepted the other's offer.

### **Counter Offer**

A counter-offer is a response to an initial offer that varies the terms of the original offer. It is essentially a rejection of the original offer, and it terminates the initial offer. Here are a few landmark cases related to counter-offers:

#### **Hyde v. Wrench (1840)**

In this case, the defendant offered to sell his estate to the plaintiff for a certain price. The plaintiff made a counteroffer for a lower price, which the defendant rejected. The plaintiff then attempted to accept the defendant's original offer, but the defendant refused to sell. The court held that there was no contract between the parties, as the plaintiff's counteroffer amounted to a rejection of the defendant's offer.

### **Specific and general offers**

In [contract law](#), an offer is a proposal made by one party (the offeror) to another party (the offeree) with the intention of creating a legally binding agreement. Offers can be categorized into two main types: specific offers and general offers.

A specific offer is an offer made to a specific person or group of people. For example, if a person offers to sell their car to a particular individual for a certain price, this is a specific offer. Specific offers can only be accepted by the person or group of people to whom they are addressed. If the offer is not accepted within the specified time period or on the specific terms outlined in the offer, it lapses and cannot be accepted later.

A general offer, on the other hand, is an offer made to the public at large or a group of people who may accept it.

For example, an advertisement offering a reward for the return of a lost item is a general offer. Anyone who finds the lost item and meets the conditions of the offer can claim the reward. The key

difference between a specific offer and a general offer is that a general offer can be accepted by anyone who meets the conditions of the offer.

It is important to note that specific and general offers have different legal implications. For instance, in the case of a specific offer, the offeror is obligated to sell the item to the offeree if the offeree accepts the offer within the specified time period and on the specific terms outlined in the offer.

In the case of a general offer, the offeror is only obligated to fulfil the offer if someone meets the conditions of the offer and accepts it.

Overall, the distinction between specific and general offers is an important one in contract law, as it determines the legal implications of an offer and the conditions under which it can be accepted.

### **Carlill v. Carbolic Smoke Ball Company (1893)**

One landmark case related to the distinction between specific and general offers is [Carlill v. Carbolic Smoke Ball Company](#) (1893). In this case, the Carbolic Smoke Ball Company made a general offer through newspaper advertisements promising a reward to anyone who used their product and still contracted influenza. The advertisement stated that the company had deposited 1,000 pounds in a bank to show their sincerity in carrying out the offer.

Mrs. Carlill purchased and used the product as directed but still contracted influenza. She sued the company for the reward, arguing that she had accepted the general offer by using the product as directed. The company argued that the advertisement was not a specific offer to Mrs. Carlill, and therefore there was no contract between them.

The court ruled in favour of Mrs. Carlill, holding that the advertisement constituted a general offer that she had accepted by using the product as directed. The court held that the advertisement contained specific terms that could be reasonably interpreted as an offer, and that Mrs. Carlill had provided consideration (i.e. using the product as directed) in exchange for the promise of a reward. The court further held that the deposit of 1,000 pounds in a bank demonstrated the company's intent to be bound by the offer. This case is often cited as a landmark case on the distinction between specific and general offers.

### **Standing, open and continuing offers**

In contract law, offers can be classified into different types based on their duration and ability to be accepted. The three main types of offers are standing offers, open offers, and continuing offers.

#### **Standing offers**

A standing offer is an offer that is made to a particular person or group of people and is valid for a specific period. It is a type of specific offer that remains open for acceptance during the specified period. For example, if a company offers to sell a particular product to a specific customer at a fixed price for a period of one year, this would be a standing offer.

#### **Open offers**

An open offer is a type of general offer that is open to anyone who meets the specified conditions. It is an offer that remains open for a reasonable period and can be accepted by anyone who meets the specified conditions. For example, if a company offers a reward to anyone who returns a lost item, this would be an open offer.

#### **Continuing offers**



A continuing offer is an offer that remains open for a specified period but can be accepted multiple times during that period. For example, if a company offers to supply a particular product to a customer at a fixed price for a period of one year, and the customer can place orders for the product during that period, this would be a continuing offer.

It is important to note that the legal implications of these different types of offers can vary. For instance, a standing offer can only be accepted by the person or group of people to whom it is addressed and only within the specified period. An open offer can be accepted by anyone who meets the specified conditions within a reasonable period, while a continuing offer can be accepted multiple times within the specified period.

### **Bengal Coal Co v Homee Wadia & Co**

The case of *Bengal Coal Co v Homee Wadia & Co (1912)* is a landmark case in the area of standing, open and continuing offers.

In this case, the Bengal Coal Co. offered to sell a certain quantity of coal to Homee Wadia & Co., stating that the offer would remain open until a specific date. Homee Wadia & Co. did not accept the offer within the specified time frame but attempted to do so after the date had passed. The Bengal Coal Co. refused to accept the order, arguing that the offer had lapsed.

The court held that the offer made by the Bengal Coal Co. was a standing offer, and since it had not been accepted within the specified time frame, it had lapsed. The court stated that the nature of the offer was such that it could only be accepted within the specified period, and once that period had expired, the offer was no longer valid.

This case established the principle that a standing offer can only be accepted within the specified period, and once that period has expired, the offer lapses. It also emphasizes the importance of the terms and conditions of an offer, and how they can impact the validity of the offer.

### **Rajendra Kumar v State of Madhya Pradesh**

The case of [\*Rajendra Kumar v State of Madhya Pradesh \(1977\)\*](#) is a landmark case related to the doctrine of continuing offers in contract law.

In this case, Rajendra Kumar applied for a post in the state government and was selected for the job. He was given an appointment letter, which stated that he had to report for duty within a specified period, failing which his appointment would be deemed as cancelled. Rajendra Kumar failed to report for duty within the specified period, and his appointment was cancelled.

Rajendra Kumar challenged the cancellation of his appointment, arguing that the offer made by the state government was a continuing offer, and therefore, he had the right to report for duty at any time. The state government argued that the offer was not a continuing offer, and the appointment was cancelled due to the failure of the applicant to report for duty within the specified period.

The court held that the offer made by the state government was not a continuing offer, and the applicant had to report for duty within the specified period. The court emphasized that the terms of the offer must be clear and unambiguous, and in the absence of any ambiguity, the court must give effect to the terms of the offer.

This case established the principle that the doctrine of continuing offer applies only when the offer is clear and unambiguous, and the terms of the offer provide for a continuing acceptance. It highlights

the importance of the terms and conditions of an offer and their interpretation in determining the validity of the offer.

Lapses and revocation of an offer

- An offer lapses after a defined or reasonable time.
- An offer lapse by not being accepted in the specified mode
- An offer lapses by rejection.
- An offer lapses by the offeror or the offeror's death or insanity until acceptance.
- An offer lapses by revocation before acceptance.
- An offer lapses by subsequent illegality or destruction of the subject matter.

When communication is complete

- Communication of offer ([section 4](#))

The communication of the offer is complete when it comes to the knowledge of the person to whom it is made.

Time of revocation of an offer

- Revocation of the offer ([Section 4](#))

A proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterward.

Revocation of the offer by the offeror

The offeror can withdraw his offer before it is accepted "the bidder can withdraw (revoke) his offer at an auction sale before being accepted by any auctioneer using any of the customary methods.

Example

'A' agreed to sell the property to 'B' by a written document which stated "this offer to be left over until Friday 9 AM". on Thursday 'A' made a contract to sell the property to 'C'. 'B' heard of this from 'X' and on Friday 7 AM he delivered to 'A' acceptance of his offer. Held 'B' could not accept A's offer after he knew it had been revoked by the sale of the property to C.