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OFFER/ PROPOSAL: AN ESSENTIAL ELEMENT IN CONTRACT LAW

INTRODUCTION

Offer or proposal is the first important essential element required for a contract to start from. Section 2(a) of the Indian Contract Act, 1872 defines offer which means, when one person communicates or signifies his willingness to other person to do or abstain from doing any act, with a view to obtain the other person's consent for that act or abstinence, he is said to make an offer. Offer is made by one party to another party. According to section 2(c) of the ICA¹, the party making the proposal is called promisor and the party accepting the proposal is called promisee. Offer when accepted becomes a Promise, which is when backed up by consideration forms an agreement.

A proposal consists of:

1. A statement expressing the offeror's willingness to do or abstain from doing something.
2. It ought to be made with a perspective on acquiring a consent of the offeree to the proposed act or abstinence.

ESSENTIALS OF PROPOSAL

There are four main essentials of proposal, these are:

1. *It must be signified*
2. *To do or abstain from doing*
3. *With a view to obtain assent/consent*
4. *To that other*

¹ The Indian Contract Act, 1872

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1. It must be signified

It means proposal is required to be signified i.e., it must be communicated.

Proposal can be communication in two ways:

- a. Either expressly, or
- b. Either Impliedly

In the case of *Upton-on-Severn RDC v. Powell*², the honorable court has recognized the concepts of implied offer where a party calls a fire brigade, court finds charges are required to be paid is obvious or implied.

2. To do or abstain from doing

It means proposal can be of anything where you require to do or require to abstain.

Illustration:

A wants to sue B for partition but B makes a proposal if A abstain to sue B, he will pay him 30 lakhs. It is a proposal of abstain.

3. With a view to obtain assent

It means party must really want contract or legally bounded obligation. In the case of *Balfour v. Balfour*³, where domestic arrangement is made between husband and wife, court finds it unenforceable due to lack of intention to come in contract.

While in the case of *Merritt v. Merritt*⁴, where the agreement between husband and wife, it was expressly stated by the husband to give away his property to his wife, and on denying the same, the court held that, There was a legal intention and so you are bound to give away your property to your wife.

Therefore, the court laid down a test to determine the legal intention as it varied from the facts of cases to cases.

The Test for the same came is called as "Reasonable person mind".

² (1942) 1 All E.R. 220 (CA).

³ (1919) 2 K.B. 571.

⁴ (1970) 1 W.L.R. 1211.

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In this particular test it is said that, what is intentional or not has to be seen by mind of reasonable person.

4. To that other

Anson famously said “contract is not required to be made to specific person but it has to be accepted by specific person”

It means offer or proposal can be made to world at large or can be made to a specific person, when it is made to the world, it is termed as General Offer, and when it is made to a specific person, it is termed as specific offer.

GENERAL OFFER

Concept of general offer was not always accepted in legal field. Previously, in 1603, Weeks v. Tybald⁵, honorable court has rejected such offer as valid and said offer must be made to a specific person but later on with the emergence of the famous case, Carlill v. Carbolic smoke ball Co.⁶ case, where the plaintiff has accepted general offer made in the advertisement, court held communication of acceptance is not necessary in these cases and general offer to be valid.

WHEN COMMUNICATION IS COMPLETE?

Section 4 of the Indian Contract Act states communication of proposal is complete when it comes to knowledge of person to whom it is made.

One of the landmark on this above is case related to this is Lalman Shukla v. Gauri Datt⁷, where honorable court denies plaintiff the reward of an offer made by the respondent (Gauri Datt), and held that, as it never came to knowledge of Lalman Shukla and he did not completed the task with the intention to receive that reward. It came into his knowledge later on only after he found respondent’s nephew. Therefore, as the communication of proposal of reward was not in the knowledge of the plaintiff, so he would not be entitled for the same.

⁵ 74 E.R. 982.

⁶ (1893) 1 Q.B. 256.

⁷ (1913) 11 All L.J. 489.

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Similarly, in the case of R v. Clarke⁸, the court clearly held and stated again the same principle that, communication is complete when the offer comes to the knowledge of the offeree or the person to whom it is made.

INVITATION TO OFFER

Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but only invites the other to make an offer.

Likewise, just putting items in a shop is not an offer to sell but only an invitation to offer. In Pharmaceutical Society of Great Britain v. Boots Cash Chemist (southern) ltd. case⁹, court has stated mere putting items (poison) in basket is not acceptance as no offer is made, and clearly distinguished offer from invitation to offer. Section 2(a) of the Indian Contract act define offer. An offer is completely different from an invitation to offer.

CONCLUSION

Recently, honorable courts are taking WhatsApp messages as a proposal but if blue ticks are not present, can we find or assume as complete offer is a subject of discussion. Thus, proposal is nothing but offer by one party to another to form a contract. A proposal when accepted becomes a promise and a promise combined with a consideration forms an agreement. An agreement enforceable by law is categorized as a valid contract. Therefore, proposal is the first and the most important element of contract.

⁸ (1927) 40 C.L.R. 227.

⁹ (1953) 2 WLR 427.