

# LAWXPERTS.

## WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS + QUESTION PAPER-ORIENTED.

## CONTRACTS – PRIMER ON OFFER / PROPOSAL

**DEFINITION:** Section 2(a) - a proposal made by one person to another to do an act or abstain from doing it.”

### Parties in contract :

The person who makes the offer – promisor/offeror or

The person to whom an offer is made is known as the promisee or the offeree.

Thus an offer can be contains two parts ingredients :-

- (a) a promise by the offeror, and
- (b) a request to the offeree for something in return of the offer.

**When offer accepted by offeree – it becomes promise**

### DETERMINATION OF AN OFFER (TEST OF AN OFFER)

Every proposal not offer ! How to find out offer - Three questions to be answered !

1. Does the offer show a clear intention on the part of the offeror to be bound by it?
2. Whether the proposal is definite?
3. Whether the offer is communicated to the offeror?

If all the above questions are answered in positive – it constitutes a valid offer.

### NOW WHAT ARE THE CHARACTERISTIC OF VALID OFFER?

- 1) OFFER MUST BE CERTAIN - offer must be certain, definite and clear.
- 2) THE OFFER MUST BE CAPABLE OF CREATING A LEGAL RELATIONSHIP.
- 3) THE OFFER MUST BE COMMUNICATED TO THE OTHER PARTY # *Lalman Shukla vs Gauri Datt.*
- 4) MERE STATEMENT OF PRICE IS NOT OFFER – it is invitation to offer # *Harvey and Facey,*

5) OFFER MAY BE GENERAL OR SPECIFIC-

- Offer to definite person specific offer
- Offer to public or a group general offer # *Carlill V. Carbolic Smoke Ball Co*

6) OFFER MAY BE EXPRESS OR IMPLIED:

- An offer made by words, spoken or written is termed as an 'express offer'.
- '*Implied offer*' means an offer made by conduct

7) OFFER MUST BE MADE WITH A VIEW TO OBTAIN THE CONSENT OF THE OFFEREE.

8) OFFER SHOULD NOT CONTAIN A TERM SAYING NON-COMPLIANCE OF SOME CONDITION WOULD AMOUNT TO ACCEPTANCE.

9) SPECIAL CONDITIONS ATTACHED TO AN OFFER MUST ALSO BE COMMUNICATED # Thompson V. L. M. & S. Rly. (1930).

**AN OFFER MUST BE DISTINGUISHED FROM AN INVITATION TO OFFER**

INVITATION TO OFFER	OFFER
<b>The person sending out the invitation does not make an offer but only invites the other party to make an offer</b>	When one party (the offeror) makes a definite proposal to another party (the offeree) It expresses initial intention It expresses final willingness
<b>Example: Issue of prospectus by the company inviting applications</b>	Example: Application filled in by prospective applicants to the Company

**TENDER**

A tender may be either:

- (i) A definite or single offer- tender for specified goods, or
- (ii) A standing or an open offer- continuing offer – tender for future and existing goods or future goods # *Percival Ltd. V.L.C.C. (1918)*.

**CROSS OFFERS** : Identical offers made by two parties in ignorance of each other's offer, are termed as cross offers. They will not constitute acceptance of one's offer by the other # *Tinn V. Hoffman 1873*.