



Fundamentals of Contract Law- I

2.4.11 Aviation Contracts and
Tenders



Topics to be covered

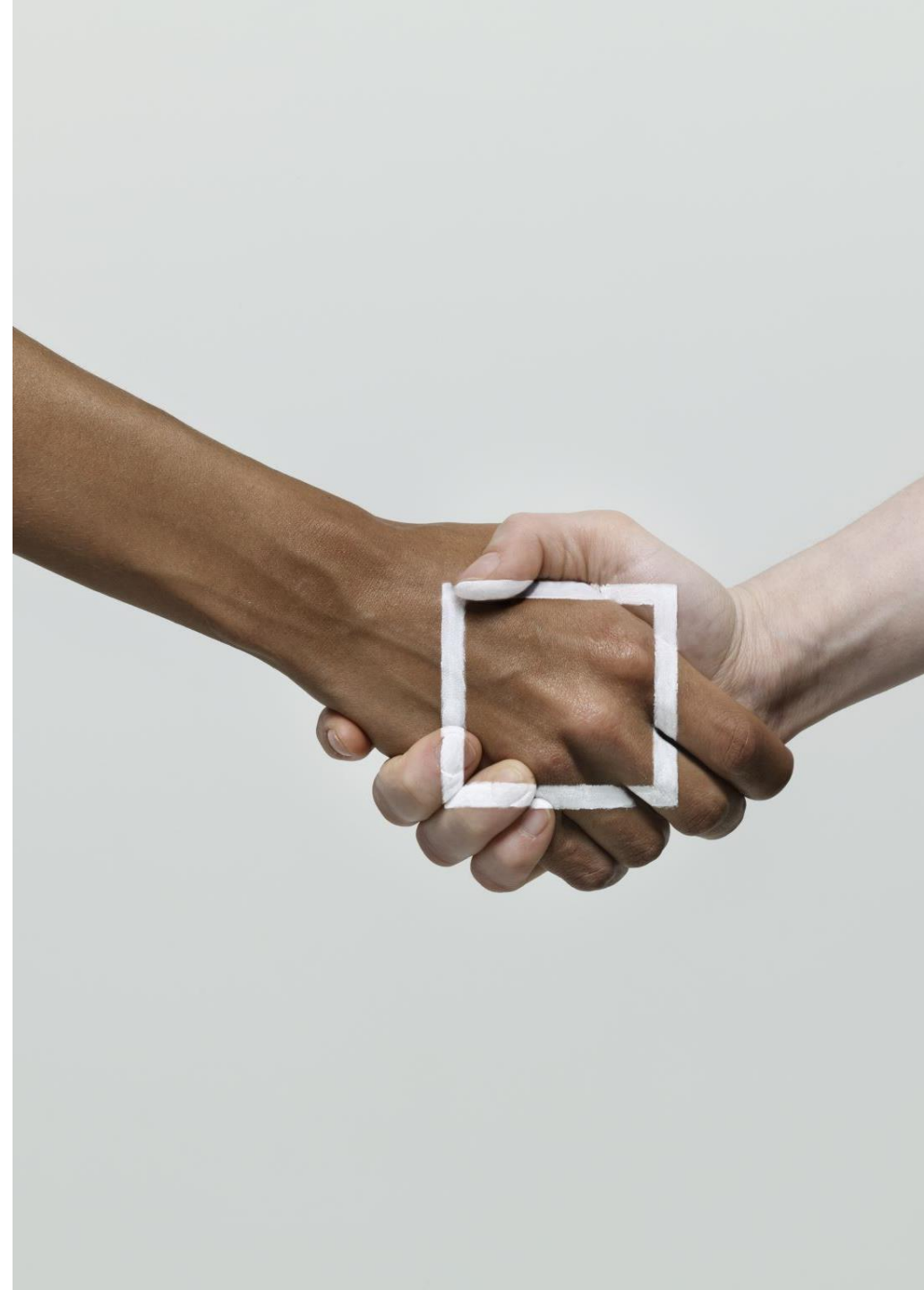
- What is an agreement?
- What is a contract?
- What is a proposal?
- What is acceptance of proposal?
- What is consideration?
- Who has the capacity to enter into contract?

Section 1- Short Title

- 1. Short title.—This Act may be called the Indian Contract Act, 1872. Extent, Commencement.—It extends to the whole of India 2 [3***]; and it shall come into force on the first day of September, 1872.
- Saving—4 *** Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Definition of proposal

- Section 2(a)
- 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.
- Key ingredients?



- What does it mean to obtain assent? Whose assent?
- What do we call them?
- Section 2(c)- The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”
- So proposal is a promise to do something or not do something to receive the assent from the promisee?





- Shanthi writes an email to her brother that she needs Rs. 10,000 immediately and that she will pay back the money on 1 February 2024 after she gets her salary?
- Is this a proposal?
- Who is the promisor and who is the promisee?



- Satish: Will you sell your house for 90 lakhs?
- Nandini: I will not sell my house for anything less than 1.5 crore.
- Is this a proposal? Who is the promisee and promisor?

What is the difference between offer and invitation to treat?

- Avtar Singh says-

“An offer is the final expression of willingness by the offeror to be bound by his offer, should the other party choose to accept it. This may be inferred from the definition of “proposal” in Section 2(a), which emphasizes that there should be the expression of willingness to do or abstain with a view to obtaining the assent of the other. The offeror must have expressed his willingness to contract in terms of his offer with such finality that the only thing to be waited for is the assent of the other party. 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 party to make an offer on those terms.

Harvey v Facey [1893] AC 552

On October 1891, negotiations took place between L M Facey and the Appellants for the sale of a property. How did the negotiations take place:

- 7 October 1891, LM Facey was travelling in train from Kingston to Porus.
- Appellants caused a telegram to be sent after him from Kingston addressed to him 'on the train for Porus' in the following words:

'Will you sell us Bumper Hall Pen? Telegraph lowest cash price – answer paid;'

Same day L M Facey replied by Telegram in the following words-

'Lowest price for Bumper Hall Pen [Euro] 900';

Then the appellants replied by Telegram addressed to LM Facey 'on train at Porus' in the following words:

'We agree to buy Bumper Hall Pen for the sum of nine hundred pounds asked by you. Please send us your title deed in order that we may get early possession.'

Lord Morris

- The first telegram asks two questions- what are they?
- Which questions were answered?
- Appellants treated the second telegram which was LM Facey's answer stating the lowest price as an unconditional offer to sell to them at the price named

Decision

“Their Lordships cannot treat the telegram from L M Facey as binding him in any respect, except to the extent it does by its terms, viz, the lowest price. Everything else is left open, and the reply telegram from the appellants cannot be treated as an acceptance of an offer to sell to them; it is an offer that required to be accepted by L M Facey. The contract could only be completed if L M Facey had accepted the appellant’s last telegram.

Question: If L M Facey’s reply to first telegram’s first question was yes, can it be considered as acceptance?

- Appellants argued that ‘yes’ is implied in the second telegram
- Ratio- “Their Lordships are of opinion that the mere statement of the lowest price at which the vendor would sell contains no implied contract to sell at that price to the persons making the inquiry ...”

Catalogues, display of goods

- Is this an offer or invitation to treat?

Pharmaceutical Society of Great Britain v Boots Cash Chemist (1952)

- Pharmacy and Poisons Act, 1933
- Section 18(1)-

“Subject to the provisions of this Part of this Act, it shall not be lawful-

(a) For a person to sell any poison included in Part I of the Poison List, unless- (i) he is an authorized seller of poisons; and (ii) the sale is effected on premises duly registered under Part I of this Act; and (iii) the sale is effected by, or under the supervision of, a registered pharmacist.”

- There was a self-service system in defendant shop
- A question arose if the self-service shop violated the Pharmacy and Poisons Act
- Act stated that the sale should be effected under the supervision of a registered pharmacist.
- So when does the sale happen in a self-service shop?
- What is self-service system?
- The system of self-service consists in allowing persons who resort to the shop to go to shelves where goods are exposed for sale and marked with the price. They take the article required and go to the cash desk, where the cashier or assistant sees the article, states the price, and takes the money.
- In this case, There was a portion of the shop called “Chemist’s dept” and here there were certain shelves where some drugs contained poisonous substances but in minute quantities so there was no acute danger. Some of these substances were covered in Part I of the Poisons List under the Act. These medicines were sold without a doctor’s prescription. Therefore, it can be taken safely by the purchaser.

Issue

- The issue in this case was not that the defendant's are exposing dangerous drug for sale but rather if it is sold under the supervision of a qualified pharmacist.
- Thus, it becomes pertinent to find out when does the sale gets completed in a self-service system.
- Is it completed when the customer picks up the medicine from the shelf?
- Or is it completed when the customer pays the cash at the cashier's desk?
- Or after passing the scrutiny of the pharmacist and leaving the shop?

Different arguments

- Plaintiff's argument-

In a self-service system, there is an offer to sell to any person who came into the shop and that it is equivalent to saying “Help yourself to any of these articles, all of which are priced”.

- Defendant's argument-

There is nothing revolutionary in this kind of trading and that self-service system is not different from a shop keeper exposing goods to indicate to the public that he is willing to treat. Therefore, self-service system is not an offer to sell

Decision

- The offer here is the offer to buy and not an offer to sell. In a self-service system, the customer was informed that he could pick up an article and bring it to the shop-keeper, the contract for sale being completed if the shop-keeper accepted the customer's offer to buy.
- On the question of supervision of pharmacist

“The fact that the supervising pharmacist is at the place where the money has to be paid is an indication that the purchaser may or may not be informed that the shop keeper is willing to complete the contract.”

Reasoning for the decision

- Applying common sense-
 - If it was considered that the contract was complete when the purchaser picked up the article, then the property would pass to him at once so he can simply take it away or he cannot even be able to put it back by saying he has changed his mind.
 - So it was held that self-service shop is similar to normal transaction in a shop

Analogy of a book store

- Books are displayed in a bookshop and customers are invited to pick them up and look at them even if they do not actually buy them. There is no offer of the shop-keeper to sell before the customer has taken the book to the shop-keeper or his assistant and said that he wants to buy it and the shopkeeper has said: “Yes.” That would not prevent the shop-keeper, seeing the book picked up, from saying: “I am sorry I cannot let you have that book. It is the only copy I have got, and I have already promised it to another customer.”

Ratio

- There was no sale until the buyer's offer to buy was accepted by the acceptance of the purchase price, and that took place under the supervision of a pharmacist.

Other concepts from the interpretation clause

When is the proposal said to be accepted?
Section 2(b)

What happens when the proposal is accepted?

What happens when the promise has
consideration?

But what is consideration?

What is a reciprocal promise?

Intention to create Legal Contract

- No provision in ICA but a settled English position that the contract should be made with the intention of creating legal relationship.
- Balfour v Balfour (1919)
- Mr. Balfour worked in Ceylon (Sri Lanka)
- But they came to England during vacation.
- Mrs. Balfour developed rheumatoid arthritis and her doctor stated that the climate in Ceylon may worsen her health.
- So he decided to leave England leaving her and as he was about to sail, he promised her E 30 a month until she comes back to Ceylon.



- He was sending the money for sometime but they drifted apart.
- Mr. Balfour wrote that it was better they remain apart.
- He stopped the payment.
- Mrs. Balfour sued him for the monthly payment.
- Held: No obligation to pay as there was no enforceable agreement.
- Lord Atkin- There was no intention to affect legal relations.
- “The ordinary example is where two parties agree to take a walk together, or where there is an offer and an acceptance of hospitality. Nobody would suggest in ordinary circumstances that those agreements result in what we know as a contract, and one of the most usual forms of agreement which does not constitute a contract appears to me to be the arrangements which are made between husband and wife.”



McGregor v McGregor (1888)

- Husband and wife had an agreement.
- The English court of appeal held that a lawful agreement made between husband and wife, in compromise of legal proceedings, by which they agreed to live apart, the husband agreeing to allow the wife a weekly sum for maintenance, and she agreeing to maintain herself and her children, and to indemnify him against any debts contracted by her.
- Court- “[W]e are not to be distracted by the relation between parties rather ask the real question which is whether they intended any legal consequences by their agreement or not.”



Simpkins v Pays (1955)



Ms. Simpkins was a paying guest at Ms. Pays house.



Ms. Simpkins frequently entered into newspaper competitions.



Once, the paying guest, along with Ms. Pays and her granddaughter agreed to fill a weekly coupon with three forecast with each person making one forecast.



The entry was submitted in Ms. Pays name. They agreed to divide the prize money if they win.



Eventually, the forecast made by Ms. Pays's granddaughter won a prize of E750 under Ms. Pays name.



Ms. Pays refused to share her pay with the paying guest.



Simpkins filed a suit for one-third of the prize.



Issue: Whether there was an intention to create legal relations in the form of an informal arrangement between the Parties so as to constitute a legal agreement to distribute the shares?



Decision: All parties agreed to the manner of submission that it will be made in Ms. Pays name. Since there was mutuality in the arrangement that all three persons will share the prize money equally, she is entitled to 1/3rd of the prize.



Ms. Simpkins filling out the coupon was not a voluntary service but rather pursuant to an agreement which shows that there was an intention to create legal relations.



Communication, acceptance and revocation of proposals

- Section 3- The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it
- Should it be in writing?
- “any act” “which has the effect of communicating it”
“deemed to be”

Promises, express and implied

- Section 9- In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.



Case on Implied Promise

- Upton-on-Severn Rural District Council v Powell (1942)
- The Appellant had a farm in Pershore which is in Upton police district but not in Upton fire district
- A fire broke out in the farm and the Appellant “telephoned” to the police inspector at Upton to send fire brigade.
- The Upton fire brigade was informed and immediately went at once.
- The farm was actually within Pershore fire brigade and not upton fire brigade.
- Even when the fire brigade was called, all the parties were under the impression that the farm was within Upton fire district.
- Even when the police “telephoned”, it was not the Upton fire brigade directly as they did not have a telephone, the police called a garage near by to inform the fire station.
- The appellant was entitled to have the free services from Pershore fire brigade without payment. But Upton Fire Brigade was entitled to repayment of its expenses to go to a fire outside its area.
- It appears that some 6 hours after the arrival of the Upton fire brigade, the officer of the Pershore brigade arrived on the scene but without his brigade; he pointed out to the Upton officer that it was a Pershore fire, and not an Upton fire, but the Upton fire brigade continued rendering services until the next day when the Pershore fire brigade arrived and took over.

Issue and Decision

- Issue- Whether or not any contract was made by which the Upton fire brigade rendered services on an implied promise to pay for them made by or on behalf of the appellant.
- Decision- “that on any view the appellant must be treated as having asked for the Upton fire brigade.”

Sec 4- Communication when complete.

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

The communication of an acceptance is complete,

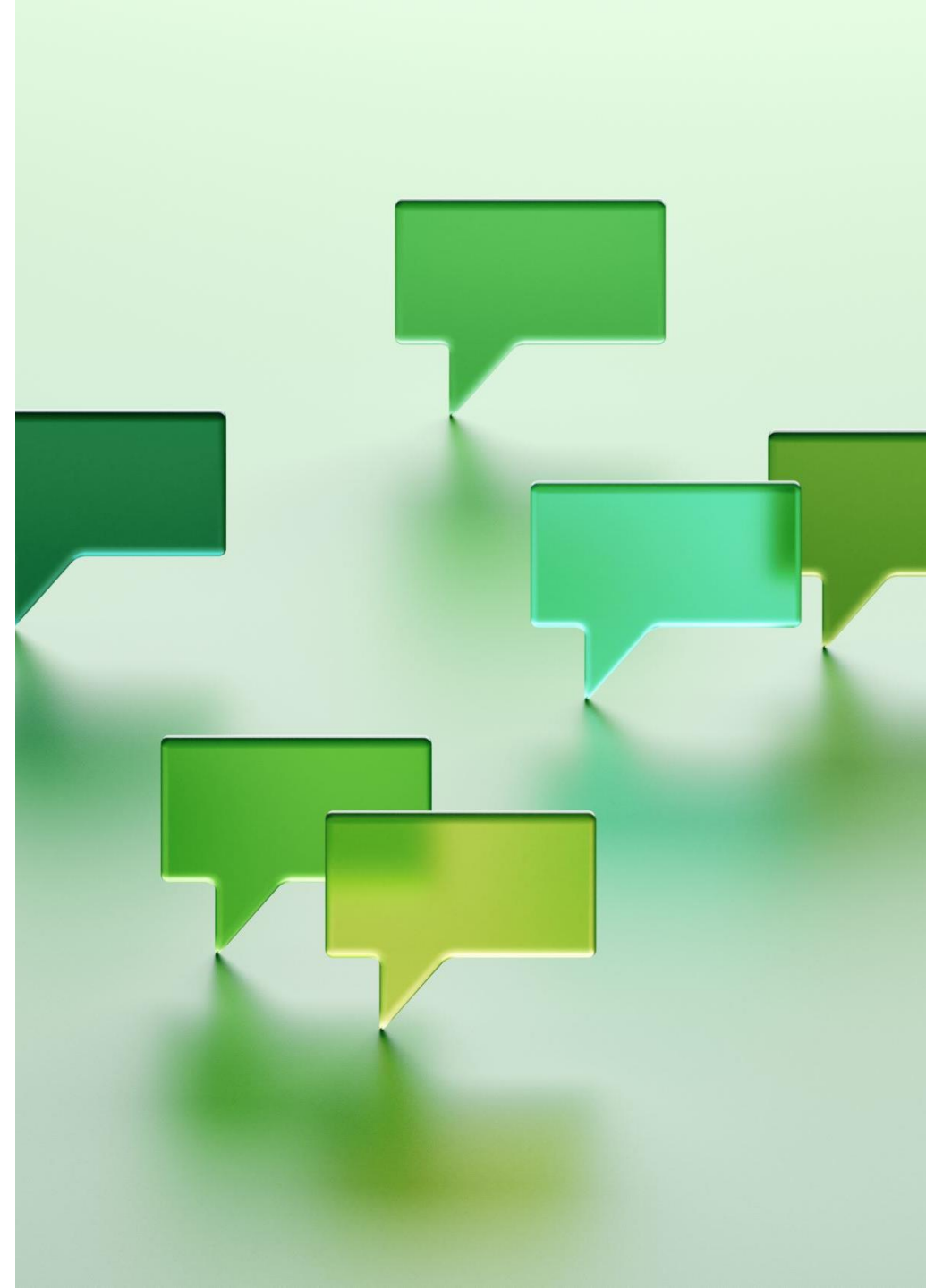
as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.



Communication of proposal is complete only when it comes to the knowledge of the person to whom it is made

- Lalman Shukla v Gauri Datt (1913)
- In January- the nephew of the defendant absconded from home.
- Defendant sent his servants' to different places to search the boy and one of the servants was Plaintiff. The Plaintiff was the *munim* of his firm.
- The Plaintiff was asked to go to Hardwar and all his expenses were paid.
- After the servants left, the Defendant issued hand bills offering a reward of Rs. 501 to anyone finding the nephew.
- The Plaintiff traced the boy to Rishikesh and “wired” to the Defendant who was in Hardwar about it and brought the boy back to Cawnpore.

- The Defendant gave a reward of two sovereigns and twenty rupees.
- The Plaintiff did not ask anything and continued to work for the defendant for about six months. Then he got fired.
- Then he filed a suit that the Defendant had promised him the reward. But factual examination revealed that the hand-bills were issued subsequently to Plaintiff's departure for Hardwar.

Arguments

- Defendant- The Plaintiff's claim can only be maintained on the basis of contract; that there must have been an acceptance of the offer and an assent to it, that there was no contract between the parties in this case and that, in any case, the Plaintiff was already under an obligation to do what he did and was, therefore, not entitled to recover.
- Plaintiff- the Plaintiff that a privity of contract was unnecessary and that neither motive nor knowledge was essential.

Decision

- In order to constitute a contract, there must be an acceptance of offer and there can be no acceptance unless there is a knowledge of the offer. Motive is not essential but knowledge and intentions are.

Can there be a general offer?

- Weeks v Tybald- There was a general offer of E100 to anyone marrying his daughter. After marrying, the son-in-law sued the father-in-law. Is he entitled to the cash?
- Ans to Weeks case- The court said no as “it is not averred nor declared to whom the words were spoken”
- This position has changed.
- But the settled position is there can be general offers as opposed to specific offers.

Carlil v Carbolic Smoke Ball Co (1893)

- An advertisement was published on 13 November 1891 as following:

“£ 100 reward will be paid by the Carbolic Smoke Ball Co. to any person who contracts the increasing epidemic influenza, colds, or any diseases caused by taking cold, after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. £ 1,000 is deposited with the Alliance Bank, Regent Street, showing our sincerity in the matter. During the last epidemic of influenza many thousand Carbolic Smoke Balls were sold as preventives against this disease, and in no ascertained case was the disease contracted by those using the Carbolic Smoke Ball. One Carbolic Smoke Ball will last a family several months, making it the cheapest remedy in the world at the price – 10s. post free. The ball can be refilled at a cost of 5s. Address: Carbolic Smoke Ball Co., 27, Princes Street, Hanover Square, London, W.”

Facts of the case

- The Plaintiff believed the accuracy of the advertisement.
- She followed the instructions and took the smoke ball for several weeks from middle of November until 17 Jan 1892
- She had an attack of influenza.
- Then her husband wrote a letter to the Defendant asking for [Euro] 100 as promised through the advertisement.
- Defendant did not pay. Hence a suit was filed.
- The facts were not disputed the argument was on the points of law.

- Judge Lindley stated that:

“Carbolic smoke ball. What that is I do not know. ... They are so confident in the merits of this thing that they say in one leaflet that the carbolic smoke ball never fails to cure all the diseases therein mentioned when used strictly according to these directions. Like other tradespeople they want to induce the public to have sufficient confidence in their preparation to buy it largely.”

The Plaintiff used the smoke balls three times daily for few weeks and the smoke balls did not prevent influenza.

Decision

- It is not a contract made with all the world.
- It is an offer made to all the world.
- Ratio- why should not an offer be made to all the world which is to ripen into a contract with anybody who comes forward and performs the conditions? It is an offer to become liable to anyone, who before it is retracted performs the conditions. Although the offer is made to all the world the contract is made with that limited portion of the public who come forward and perform the conditions on the faith of the advertisement.

What is a general offer of continuing nature?

- An offer which can be accepted by many persons like the Smoke Ball case.
- However, if a general offer is made for a tip about certain person, then the offer is closed as soon as the first information arrives.

Harbhajan Lal v HarCharan Lal (1925)

- A young boy named Ram Kishen of 13-14 years ran away from home.
- His father issued a pamphlet stating- “Anybody who finds the trace of the boy and brings him home, will get Rs. 500”
- This was the translation given to Meras J.
- The Plaintiff saw the handbill and when he was at the Dharamshala of Bareilly Junction Railway Station, he overheard a conversation and realizes that the boy was Ram Kishen.
- Then he immediately takes him to the Railway Police and sends a Telegram.
- Is he entitled to the reward of Rs. 500?
- Was that a general offer?
- Did the Plaintiff accept the offer by performing the conditions?
- Did he bring the boy home?
- Is he entitled to the reward?

Decision

Judge- “I am of opinion that the plaintiff substantially performed the condition and that the judgment of the Small Cause Court is extremely artificial. In these circumstances that decision must be reversed and there must be a decree in favour of the plaintiff for Rs. 500 with costs.”

Sec 7- Acceptance must be absolute

- What are the conditions for acceptance in Sec 7?
- Adams v Lindsell (1818)
- 2 September 1817- Defendants who deal in wool wrote a letter-
- “We now offer you eight hundred tods of wether fleeces, of a good fair quality of our country wool, at 35s. 6d. per tod, to be delivered at Leicester, and to be paid for by two months' bill in two months, and to be weighed up by your agent within fourteen days, receiving your answer in course of post.“
- Letter was misdirected by the defendants to some other place so the Plaintiffs received it on 5th September at 7 pm.
- The same evening, they wrote a reply agreeing to accept the wool on the terms proposed.
- The deadline given was 8 September by the Defendant but the reply reached them on 9th September.

- Defendants sold the wool to some other buyer. This was the case of action for on-delivery of wool according to agreement.
- Was there an agreement?
- When does offer and acceptance result in an agreement?
- Defendant's argument- Plaintiff's answer was not received by the Defendants so at the time of selling the wool, there was no agreement.
- Ratio- "if the defendants were not bound by their offer when accepted by the plaintiff's till the answer was received, then the plaintiffs ought not to be bound till after they had received the notification that the defendants had received their answer and assented to it. And so it might go on ad infinitum".
- Decision- "The defendants must be considered in law as making, during every instant of the time their letter was travelling, the same identical offer to the plaintiffs; and then the contract is completed by the acceptance of it by the latter. Then as to the delay in notifying the acceptance, that arises entirely from the mistake of the defendants, and it therefore must be taken as against them, that the plaintiffs' answer was received in course of post."

Postal Rule

- The Contract arises on the date when the letter of acceptance is posted in due course.
- Household Fire & Accident Insurance Co v Grant (1879)
- Defendant applied for shares in the Plaintiff's company and the letter of acceptance of his application was lost in post.
- When the company went bankrupt, was he supposed to pay the share price?
- Applying postal rule, the Court asked him to pay.
- Reasoning- Post be treated as the agent of both parties then as soon as the letter of acceptance is delivered to the post office, the contract is made as complete and final and absolutely binding as if the acceptor had put his letter into the hands of a messenger sent by the offeror himself as his agent to deliver the offer and to receive the acceptance.

Entores v Miles Far East Corp (1955)

- Plaintiffs were based in London and the Defendants based in Holland.
- Telax machine was used to communicate offer and acceptance for supply of cathodes at a particular price.
- In which jurisdiction was the contract concluded?
- This case became significant Denning J's observations
- He asked a hypothetical question:

“Suppose, for instance, that I shout an offer to a man across a river or a courtyard but I do not hear his reply because it is drowned by an aircraft flying overhead. There is no contract at that moment. If he wishes to make a contract, he must wait till the aircraft is gone and then shout back his acceptance so that I can hear what he says. Not until I have his answer am I bound.”

Ans: If the offeree realizes that his acceptance has not got through, it remains the responsibility of the offeree to communicate his acceptance to the offeror.

- Another hypothetical case-

“I make an offer to a man by telephone and, in the middle of his reply, the line goes "dead" so that I do not hear his words of acceptance. There is no contract at that moment. The other man may not know the precise moment when the line failed. But he will know that the telephone conversation was abruptly broken off: because people usually say something to signify the end of the conversation. If he wishes to make a contract, he must therefore get through again so as to make sure that I heard. Suppose next, that the line does not go dead, but it is nevertheless so indistinct that I do not catch what he says and I ask him to repeat it. He then repeats it and I hear his acceptance. The contract is made, not on the first time when I do not hear, but only the second time when I do hear. If he does not repeat it, there is no contract. The contract is only complete when I have his answer accepting the offer.”

- Telex example of Denning J.

“Lastly, take the Telex. Suppose a clerk in a London office taps out on the teleprinter an offer which is immediately recorded on a teleprinter in a Manchester office, and a clerk at that end taps out an acceptance. If the line goes dead in the middle of the sentence of acceptance, the teleprinter motor will stop. There is then obviously no contract. The clerk at Manchester must get through again and send his complete sentence. But it may happen that the line does not go dead, yet the message does not get through to London. Thus the clerk at Manchester may tap out his message of acceptance and it will not be recorded in London because the ink at the London end fails, or something of that kind. In that case, the Manchester clerk will not know of the failure but the London clerk will know of it and will immediately send back a message "not receiving." Then, when the fault is rectified, the Manchester clerk will repeat his message. Only then is there a contract. If he does not repeat it, there is no contract. It is not until his message is received that the contract is complete.”

- Denning J.
- Message of acceptance should reach and it should be attempted until it reaches.
- What if the offeree reasonably believes that his acceptance has got through when it has not

“suppose that he does not know that his message did not get home. He thinks it has. This may happen if the listener on the telephone does not catch the words of acceptance, but nevertheless does not trouble to ask for them to be repeated: or the ink on the teleprinter fails at the receiving end, but the clerk does not ask for the message to be repeated: so that the man who sends an acceptance reasonably believes that his message has been received. The offeror in such circumstances is clearly bound, because he will be estopped from saying that he did not receive the message of acceptance. It is his own fault that he did not get it. But if there should be a case where the offeror without any fault on his part does not receive the message of acceptance - yet the sender of it reasonably believes it has got home when it has not - then I think there is no contract.”

Final Decision

- The contract is only complete when the acceptance is received by the offeror: and the contract is made at the place where the acceptance is received.

Similar Indian case

- Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co. (1966)
- Plaintiffs made an offer to purchase certain goods from Ahmedabad
- Defendants were at Khamgaon. Defendants accepted the offer.
- Whether the contract was made at Ahmedabad or Khamgaon?
- Breach of contract suit was filed at Ahmedabad? So the question of jurisdiction arises
- Which section of ICA is applicable?

Sec 4 of ICA

- Does it extend to conclusion of contract by Telephone?
- When ICA was drafted, telephone was not even invented.
- So will it be applicable?
- Decision:
- Majority Judgment- Applied Entores principle
- Majority Judgment-Sec 4 is applicable only if postal communication is used.
- Ratio- since the communication is instantaneous, the contract immediately arises

Revocation

- Section 5 and Section 6
- Revocation- proposal-anytime before the communication of acceptance
- Revocation- acceptance- before the acceptance is received
- Section 6- How can revocation be made?
- By notice
- By lapse of time
- Failure to fulfil condition precedent to acceptance
- Death or insanity

Consideration

Sec 2(d)

- When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

Kedarnath Bhattacharji v Gorie Mahomed (1886)

- Plaintiff is the Municipal Commissioner of Howrah.
- It was decided to build a Town Hall at Howrah provided there was public funds.
- So funds were collected from interested persons.
- When the subscription list reached a certain number, the plaintiff contacted a contractor.
- Plan of the building was approved, and the subscription list also increased, the original cost also increased from Rs 26,000 to Rs. 40,000.

- One person, the defendant in this case has subscribed to Rs. 100 but did not pay.
- Can the Plaintiff sue the defendant for this money?
- There were earlier instances where subscription money cannot be recovered when a person puts the name down for a subscription to some charitable object but the same cannot be recovered as there is no consideration.
- In this case- Persons were asked to subscribe knowing the purpose- to build town hall
- Only on the basis of the subscription, an obligation to pay the contractor was taken
- Under these circumstances, the contract raises:
- “In consideration of your agreeing to enter into a contract to erect or yourselves erecting this building, I undertake to supply the money to pay for it up to the amount for which I subscribe my name. ”

Doraswamy Iyer vs Arunachala Ayyar And Ors (1935)

- Similar facts
- Trustees of a temple sought to recover a contribution promised by a subscriber to a subscription list for the repairs of a temple
- Before going for subscription, the fund was allotted from village funds and there was a contract with the plaintiff and the “maistry” of the contractor in February 1928.
- As the work proceeded, more money was required, and subscriptions were invited.
- Defendant promised Rs 125. The suit was filed to recover this money.
- Plaintiff’s argument- Relying on the promise of the subscriber they incurred liabilities in repairing the temple.
- The question before the court- Was there consideration?
- Plaintiff cited a case in their favour. Can you guess which case?

- Plaintiff cited Kedarnath case.
- Cornish J- “ I think, it cannot now be accepted that the mere promise to subscribe a sum of money or the entry of such promised sum in a subscription list furnishes consideration. There must have been some request by the promisor to the promisee to do something in consideration of the promised subscription.”
- He then gives an example of English case

In re Hudson case

- A person promises a large sum of money to pay chapel debts.
 - Large portion of promised money was also paid. But he died.
 - So the promise brought an action against promisor's executors.
-
- Court- The contention was that on the strength of the promise the Committee of the Union had incurred liabilities and that this amounted to consideration. It was held that the claim was unsustainable inasmuch as the promisee had not undertaken any liability as part of the bargain with the promisor.

Applying Hudson principle in present case

- “In the present case it is not pleaded nor is there evidence that there was any request by the subscriber when he put his name in the list for Rs. 125 to the plaintiffs to do the temple repairs or that there was any undertaking by them to do anything. In my opinion this was a bare promise unsupported by consideration, and the suit ought to have been dismissed.”

What is the difference?

- Liability

“Has done or abstained from doing”

- When consideration for a present promise is given in the past, “has done or abstained from doing” in the past- it is called past consideration.
- English position
- Consideration should be contemporaneous with the promise.
- Ex: A lost his purse, B finds it and gives it to him. A promises to pay some money to him but doesn't. Can B sue him for the money?
- Ans- In English law, no.

Indian position

- Differs from English position
- Illustration to Sec 25
- Sec 25- past consideration for voluntary acts
- Ex: You buy Kachori for your friend. Then next day, teacher gives an assignment. You ask your friend to write the assignment for the past consideration of Kachori.

Should the consideration to be of some value?

- Elon Musk and his friend are sitting together.
- He tells his friend- Fetch me a water bottle, please.
- Friend says: Fetch it yourself.
- Elon Musk- I will give you my 1% of my shares in X if you fetch the bottle
- Does that result in a binding agreement?
- Can the act of fetching be equated with shares in X?
- English position- Consideration must be of some value in the eyes of the law.

- Indian position:

- Kulasekaraperumal v Pathakutty Thalavanar (1961), court stated that:

“Though the Indian Contract Act does not in terms provide that consideration must be good or valuable to sustain a contract it has always been understood that consideration means something which is of some value in the eyes of law. It must be real and not illusory, whether adequate or not So long as the consideration is not unreal it is sufficient if it be of slight value only.”

Should the value be adequate?

- I will sell my iphone 14 for Rs 5,000.
- Doing project and Rs.10 Kachori? Can it considered equal?
- It is not for the courts to compare the value. It is upto the parties.
- But later when it is contested by party that his consent to the promise was coerced, the inadequacy of consideration will help his case.
- Read explanation 2 of sec 25

Performance of existing duties

- English position
 - Performance of legal obligations
 - Performance of duties preexisting under a contract with the promisor

Performance of legal obligations

- Consideration must be something more than what the promise is already bound to do.
- Collins v Godefroy (1831)
- Godefroy had brought an action against an attorney for negligence.
- For that case, Godefroy wanted Collins to give evidence.
- He was subpoenaed.
- Godefroy really wanted Collins evidence so he promised to pay him one guinea per day he was at court.
- Collins demanded six guineas. When he was not paid, he brought a suit against the defendant.

- Issue: Whether the agreement between the plaintiff and the defendant was supported by valuable consideration?
- Decision: The agreement was not supported by consideration.
- The Plaintiff was under a public duty to attend court anyway since he was subpoenaed. Therefore, law will not allow a person to recover expenses incurred in performance of a duty which that person is obliged to do anyway by law.
- Lord Tenterden-

“If it be a duty imposed by law upon a party regularly subpoenaed, to attend from time to time to give his evidence, then a promise to give him any remuneration for loss of time incurred in such attendance is a promise without consideration. We think that such a duty is imposed by law.”

- In India, even before ICA was enacted, this was applied.
- This is made evident by Madras High Court in P.Sashannah Chetti v P. Ramasamy Chetti (1868).
- Similar facts- Plaintiff was summoned to give evidence in a different case. The defendant executed a promissory note to pay some money for his troubles and did not pay. It was held there is no consideration.
- But there are English cases where such compensation was allowed provided the promisee did something more than official duty.

Pre-existing contract with the promisor

- There is a contract already between the parties.
- One person has pre-existing duties under the contract.
- Can subsequent promise be made to do the pre-existing duty? Will there be consideration in that case?
- Eg: *Stilk v Myrick* (1809)
- A ship was returning from the Baltics to London and was in peril.
- Two of the crew members abandoned the ship. They were supposed to receive E5 per month during the voyage.
- The captain offered the other crew members to pay the deserted persons salary in equal shares if they help to sail the ship to London with reduced crew.
- The ship returned to London but the additional payments were not made.
- Issue: Was there fresh consideration for the promise of additional payment?
- Decision:

Lord Ellenborough CJ held that the agreement was void for want of consideration.

Reasoning: It was the duty of the mariners who remained in the ship to bring the ship to safety to her destined port and the desertion of some crew members was definitely an emergency of the voyage.

Indian position

- Ramachandra Chintaman v Kalu Raju (1877)
- Plaintiff accepted Vakalatnama from the defendant to act as a lawyer for him in certain suit for his usual fee.
- Later, the Defendant offered him inam (reward) if the suit was decided in his favour.
- The suit was decided in his favour and the inam was not paid.
- Westroppe CJ-

“The Plaintiff, having accepted a Vakalatnama was already bound to render his best service as a pleader. There was no fresh consideration proceeding from the plaintiff when he obtained the agreement”

Williams v Roffery Bros & Nicholls (Contractors) Ltd. (1991)

- The pragmatic approach of the court is evident from this case.
- Roffey Bros were builders.
- They got a contract from a housing corporation to refurbish 27 flats belonging to the housing corporation.
- This contract between Roffery Bros and housing corporation had a penalty clause for late completion.
- Roffery Bros had a subcontract with Williams, a carpenter for doing some work on the flats.

- Williams was falling behind on his work.
- Roffery Bros offered him bonus payment to finish on time.
- Williams was working on time for the bonus. But the bonus payment stopped so he sued Roffery Bros for the same.
- Defendant's argument- The agreement to pay extra was unenforceable as Williams had provided no consideration.
- William was agreeing to do what he was already bound to do
- Cited Stilk v Myrick

Decision

- After *Stilk v Myrick*, the decision was refined- doing extra than the legal duty.
- Gildwell LJ- Promise to make bonus payment to complete work on time is enforceable.
- Reasoning: The promisor obtained a “practical benefit” to complete work on time and the promise was not given under duress or by fraud. It was defendant’s idea to offer the extra payment. They got a practical benefit of avoiding the penalty clause.
- Russel LJ remarked that the court took “a pragmatic approach to the true relationship between the parties”.

- In *Stilk v Myrick* also, the sailors did not demand the money, it was offered to them recognizing the extra work they had to do.
- Wasn't there a practical benefit to the Ship captain that the ship was returned to London as opposed to being docked somewhere?
- But at the time of decided *Roffery's* case- the court categorically stated that that *Stilk v Myrick* remains “unscathed”.

- So the question of performance of existing obligations for a fresh consideration, in reality, is considered on a spectrum.
- Factors considered:
 - practical benefits

Promises extracted

Promises voluntarily made

Was there improper pressure

Was it a result of genuine negotiations

Exceptions to the general rule about want of consideration making agreements void

- Natural love and affection
 - Sec 25 is very clear that the parties should be standing in a near relation to each other.
 - Any other conditions mentioned in Sec 25?

- Should be in writing and registered.
- But who is a near relative? Most of the cases are between the family members.

- No guidance in the ICA about who can be considered as near relative.
- Courts have to decide that on case to case basis.
- Rajlukhy Dabee v Bhotnath Mookerjee (1900)
- There was a registered agreement where the husband promised to pay some amount for maintenance. No consideration moved from the wife. Later husband does not pay.
- Can this agreement be enforced?

- This agreement was signed because of frequent quarrels and disagreement between the husband and wife and the same was mentioned in the agreement.
- Decision- Calcutta High Court held that the agreement was void for want of consideration as the court did not find trace of love and affection between the parties.

Compensation for past service

- We already discussed this.
- Voluntary past acts cannot be dismissed for want of consideration in Indian law.

Time-barred Debt

- Even when legally a debt cannot be enforced, the same may be enforced provided-
- What are the conditions? See Sec 25(3)

- In writing and signed by the debtor

Capacity to Contract

Contract for necessities- Sec 68

- Ans to previous slide- Yes
- Sec 68- Claim for necessities supplied to person incapable of contracting or on his account
- “Necessaries suited to his condition in life”
- “reimbursed from the property” of incompetent person
- A buys bicycle to a minor boy to go to school. Is A entitled to get reimbursed from minor’s property?
- What if the minor is a disabled boy? Then?

- First example- Yes as it may be considered as a necessary
- Second example- no
- Not personally liable but only liable to pay from the property

- Meaning of necessities not defined in the Act
- So matter reached courts as to whether a particular falls under Sec 68 or not.
- English Sale of Goods Act 1893 defines necessities in Section 2 as “goods suitable to the condition in life of such infant or other person and to his actual requirement at the time of sale and delivery”

What is a necessary?

- To be decided on case by case basis
 - Circumstances of the minor
 - Usage of societies
 - Rank of that minor

Answer if the following can be considered as necessary or not

1. Wedding presents bought for minor's bride.
2. Money borrowed for father's funeral expenses by a minor
3. A pair of jewelled solitaires and an antique goblet for a minor who moved in high societies
4. Fancy waist coats for a minor who was a student at Cambridge University
5. Money borrowed to fight a court case regarding minor's property
6. Money borrowed to fight a criminal case against minor

Where it was held to be a necessary

Wedding presents bought for minor's bride.	Jagon Ram Marwari v Mahadeo Prosad Sabu (1910)
Money borrowed for father's funeral expenses by a minor	Bechu Singh v Baldeo Prasad (1933)
Money borrowed to fight a court case regarding minor's property	Kedar Nath v Ajudhia Prasad (1883)
Money borrowed to fight a criminal case against minor	Shyam Chandra Mal v Choudhary Debya Singh Pahraj (1894)

Where it was not held to be a necessary

- Ryder v Woombwell (1868)
- Pair of Jewelled solitaires and an antique goblet for a minor who moved in high societies was not held to be necessities as the plaintiff could not prove that the articles were specially necessary for the minor.
- Nash v Inman (1908)
- An undergraduate at Cambridge University who was amply supplied with proper clothes according to his position was also supplied by the plaintiff
- Plaintiff supplied 11 fancy waistcoats.
- Court- Not a necessary so the amount is not recoverable

- Sec 10 of ICA while talking about Valid contract mentions that parties competent to contract
- Sec 11 lays down who are competent to contract.
- Very simple section and easy to understand.

Who cannot contract?

- Minors
- Persons of unsound mind
- Persons disqualified by law

Minors

- Who can be considered as a minor?
- Sec 11 says according to the law to which he is subject.
- What is the Indian law?
- Indian Majority Act, 1875

- As per IMA, 1875- 18 years
- But Sec 3 lays down that-
- Where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act 1890 or
- Where the superintendence of a minor's property is assumed by a court of wards- then 21 years

Why should minors be excluded from contract?

- Law should protect minors against their own inexperience and prevent exploitation by experienced.
- Law should protect minors from their own ignorance and immaturity
- Minor may show poor judgment

Person of unsound mind

- Sec 12
- English position- Voidable
- Indian position – Void

Persons disqualified by law

- Alien enemies
- Foreign sovereigns and ambassadors
- Convict
- Insolvents