

## BIFURCATION OF SECTION 2(a) OF INDIAN CONTRACT ACT, 1872

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### **ABSTRACT**

This research paper deals with the concept of the offer as given in section 2(a) of the Indian Contract Act, 1872. This paper bifurcates all the necessary given by the given clause in section 2(a) of I.C.A. 1872. All the important topics like an invitation to offer, the difference between offer and invitation of the offer, types of offers, consensus ad idem, intention to create a legal obligation, etc. Numerous case laws under every topic have been discussed for the better clarity of the concepts.

### **OFFER AS DEFINED IN SECTION 2(A) OF THE INDIAN CONTRACT ACT**

When one person signifies to another person his willingness to do or abstain from doing anything, to obtain the assent of that other to such act or abstinence, he is said to propose.<sup>1</sup>

### **BIFURCATION OF THE ABOVE DEFINITION**

From the above definition, it is clear that a person has to show his readiness to some other person for either to do or abstain. Here it carries two types of acts. Firstly, a “positive act” tells you to do something, and secondly, a “negative action” tells you to abstain from doing something.

It can be best illustrated by these examples:

An offer to sell his car to B for 2 lakh Indian currency. Here the proposer makes a positive act i.e. selling his car. Again, if A offers 20 lakh rupees to B for not starting a sugarcane business in the vicinity of A’s sugarcane factory. Here, A makes a negative act i.e., not starting a sugarcane business near the vicinity of A’s factory. An offer cannot be made to the offeror himself. It must be made to some other person. It must be made to get the assent of the other person to whom the proposal was being made by the proposer.<sup>2</sup> “If it will rain in summer, I

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<sup>1</sup> The Indian Contract Act, 1872, Act No 9 of 1872, Act of parliament, 1872 (India)

<sup>2</sup> Avtar Singh, Agreement, Contract, Proposal and Acceptance, LAW OF CONTRACT AND SPECIFIC RELIEF, sixth edition, Eastern Book Company, Lucknow, 2016

will harvest your farm.”-this is not a proposal as a mere statement of intention may not seem to be a proposal.

“Offeror” or “promisor” is making the offer intending to obtain the assent of some other person(offeree). When the offer is accepted by the person, the offer is said to be “accepted” and the “offeree” will be termed as the “acceptor” or “promise”.<sup>3</sup> For example, Kishore offers to sell all his contract notes to Jay. In this case, Kishore is the “promisor” or “offeror” and Jay is the offeree. When Jay will accept the offeror will signify his assent to that offer, then the offer of selling all the contract notes will be called to be “accepted” and Jay will be called as “Acceptor”

### **INVITATION OF OFFER**

A mere statement of intention which was not made to acquire the acceptance of some other party is known as an “Invitation of offer” or “Invitation to treat”. Invitation of offer or invitation of treatment must be distinguished from “proposal”.<sup>4</sup>

### **DIFFERENCE BETWEEN OFFER AND INVITATION TO OFFER**

Offer is defined in section 2(a) of the Indian Contract Act, 1872<sup>5</sup> whereas Invitation of Offer or Invitation of Treat hasn't been defined anywhere in the Indian Contract Act, 1872.<sup>6</sup> An offer is made with the motive to obtain the assent of the person to whom it was made whereas an invitation of the offer is made to receive the offers for negotiations.<sup>7</sup> Offer is a necessary/essential thing for a contract whereas invitation of the offer is not required to form a contract.<sup>8</sup> When the offeree gives his assent to the offer, then the offer is said to be accepted whereas the invitation of an offer or invitation to treat will become an offer when the party or parties to whom that offer was made have responded to it.<sup>9</sup>

**THE KESHAV SINGH CASE: HISTORIC BUT UNRECOGNIZED HARRIS vs. NICKERSON**<sup>10</sup>: In this case, the auctioneer made an advertisement for the sale of his office

<sup>3</sup> The Indian Contract Act,1872, & 2©, Act No 9 of 1872, Act of parliament,1872(India)

<sup>4</sup> Supra Note 2

<sup>5</sup> The Indian Contract Act,1872, & 2(a), Act No 9 of 1872, Act of parliament,1872(India)

<sup>6</sup> keydifferences.com, Difference Between Offer and Invitation to Offer (Treat),(Last visited: 12th April,2022)  
<https://keydifferences.com/difference-between-offer-and-invitation-to-offer.html>

<sup>7</sup> ibid

<sup>8</sup> ibid

<sup>9</sup> ibid

<sup>10</sup> Harris v Nickerson (1873) LR 8 QB 286(uk)

furniture. A person from a far-off distance came for that auction. But that auction was canceled abruptly resulting in the loss of the expenses and time for that person for traveling a far-off distance.<sup>11</sup> The person filed a case against the auctioneer for the loss of expenses and time.

**Held:** It was held by the court that no suit can be filed against the auctioneer because it was just a declaration of intention to hold the auction; which is not an offer. There was no contract between these parties. Hence the defendant is not liable.<sup>12</sup> Along similar lines, In the case of *Spencer vs. Harding*<sup>13</sup>, it was decided that invitation of tenders will also not amount to an offer. In the case of *pharmaceutical society of Great Britain v. Boots cash chemists ltd*<sup>14</sup>., it was held that the display of goods with price tags attached to them inside the shops will be considered an invitation to offer. The buyer will make an offer to the shopkeeper if he is willing to purchase the goods with that margin. The option is always there for the shopkeeper to either accept the offer or refuse it. He is not bound to accept it.

### **HARVEY VS. FACEY<sup>15</sup>,**

This case clearly distinguishes between a mere declaration of intention and an offer. Harvey is their husband of Facy. Facy is having a property named Bumper Hall Pen. Harvey sent a letter to Facy asking whether she wanted to sell her Bumper Hall Pen. In continuation, he asked for the lowest cash price if she wants to sell.<sup>16</sup> Facy replied to that letter by stating only the lowest minimum price for her house i.e. 900 pounds. Harvey again sent a letter to Facy stating his acceptance to buy the property. But Facy rejected. Harvey filed a case against her in court for breaching the contract and demanded specific performance.<sup>17</sup> The court held that the Facy replied only to the second part of the letter i.e., to quote the cash price for selling the house. And quoting the cash price is not an offer. It's just a declaration of intention. Hence, it was not a valid offer and if it was not a valid offer then there was no binding contract between these two parties.<sup>18</sup>

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<sup>11</sup> *ibid*

<sup>12</sup> *ibid*

<sup>13</sup> *Spencer v Harding* (1870) LR 5 CP 561

<sup>14</sup> *Pharmaceutical Society of GB v Boots Cash Chemists (Southern) Ltd* EWCA Civ 6, [1953] 1 QB 401, [1953] 1 All ER 482, [1953] 2 WLR 42

<sup>15</sup> *Harvey v/s Facey* (1893) AC 552

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

## GIBSON VS. MANCHESTER CITY COUNCIL<sup>19</sup>

In this case, Manchester City Council brought a treat saying the houses where tenants are living can purchase that house if they give an application for the same citing the correct price of the house. The claimant did the same but later on, Manchester City Council denied selling the house. The Court held that this was an offer to offer. It was just an advertisement by the City Council to receive the applications of purchase a house. It is an invitation to treat hence not a valid and binding contract.

### TYPES OF OFFERS

**Implied Offer:** When the offer can be concluded by the conduct of the party it is said to be an implied offer. Section 9 of the Indian Contract Act talks about express and implied offers.<sup>20</sup> In the case of UPTOWN RURAL DISTRICT vs. POWELL<sup>21</sup>, A's farm was caught in the fire. A called the police of the uptown district for help. His farm falls under the area of the Peshawar Fire Brigade. According to the law, he will not have to pay for the services of the Fire Brigade if it falls under his jurisdiction. But the police called Uptown Rural District Fire Brigade for help which does not fall under his jurisdiction. Uptown Fire Brigade, as per its rule, will be getting charges for its services if it is providing services in those areas where it does not have any jurisdiction. This matter was brought to the court of law where it was held that this was the case of an implied offer. The court will consider it the way that Powell asked for the services from the uptown fire brigade. Subsequently, he was liable to pay.

**Express Offer:** As defined in Section 9 of the Indian Contract Act 1872, those offers expressed either by words or expression are called Express offers.<sup>22</sup>

**Specific Offer:** Those offers which are made to a specific person are called specific offers.<sup>23</sup> In the case of Boulton vs Jones<sup>24</sup>, A made a contract with B who was the owner of the Business for certain goods. One day, the ownership of the business got transferred to C and C sent certain goods to A. In ignorance of the fact that the owner has been changed consumed some of the goods. After A got to know about this, he refused to pay C for the goods. C brought an action

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<sup>19</sup> Gibson v Manchester City Council [1979] UKHL 6

<sup>20</sup> The Indian Contract Act, 1872, & 9, Act No 9 of 1872, Act of parliament, 1872 (India)

<sup>21</sup> Uptown Rural District v Powell (1942) 1 All ER 220.

<sup>22</sup> Supra Note 20

<sup>23</sup> Supra Note 6

<sup>24</sup> BOULTON VS. JONES [1857]

in the court against A for not paying for the services. The Court held that the contract was between A and B only. If the contract was made to a specific person only then no one other has the authority to maintain that he was the party whom the parties contracted with.

**General Offer:** Those offers which are made to the general public is called general offer.<sup>25</sup>In the case of the Carbollic Smoke Ball case<sup>26</sup>, after taking its Medicine according to the prescribed instructions, a company called Carbollic Smoke Ball advertised that it would pay 100 pounds to anyone who contracted a growing epidemic of Influenza, colds, or any disease caused by colds. It was also mentioned that 1000 pounds had been deposited in Alliance bank to demonstrate our seriousness about the situation. Mrs. Carlill, a customer, took the medicine and still got the flu, so she sued the corporation for the reward. The Defendants argued that the offer was not made to enter into a legally binding commitment, but rather to Puff the company's sales. They further claimed that an offer should be made to a specific person and that they were not bound to the Plaintiff because the offer was not made to a specific individual. Disregarding the Defendant's arguments, the bench stated that in cases of such offers, i.e. general offers, there is no need for communication of acceptance; anyone who performs the contract's circumstances is said to have conveyed his or her acceptance; furthermore, the money deposited by the Defendant in Alliance Bank demonstrates that they meant to generate a legally binding relationship.

**Cross Offer:** Cross offer refers to similar proposals made between two parties in the absence of knowledge of the offers made to each other.<sup>27</sup> Cross offers rarely result in a contract because both parties are merely making proposals and not accepting them. Assume Venkata from Delhi makes an offer to Jagan to sell his automobile for 12 lakhs, while Jagan makes an offer to buy Venkata's car for 12 lakhs, completely unaware of Venkata's offer. Cross offers are the name for this type of offer. When one of the parties accepts the other's offer, the offer can be turned into a contract.

In *Tinn vs Hoffman*<sup>28</sup>, A proposes to sell his 800 tonnes of iron to B at 69 shillings per tonne. B, unaware of A's offer, makes an identical offer to buy A's iron on the same terms.

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<sup>25</sup> Supra Note 6

<sup>26</sup> *Carlill v Carbollic Smoke Ball Company* [1892] EWCA Civ 1

<sup>27</sup> Upcounsel, Types of Offers in Contract: Everything You Need to Know (Last visited: 13<sup>th</sup> April 2022)

<https://www.upcounsel.com/types-of-offer-in-contract>

<sup>28</sup> *Tinn v Hoffman* (1873) 29 LT 271

The following questions were presented to the court:

- a) Was there a contract between the parties?
- b) Can two simultaneous offers lead to a lawful acceptance?

The court ruled that such offers are known as cross offers since they are made without knowledge of each other's offers and are not legally binding.

**Counter Offer:** When an original offer is rejected and replaced with a new one, the new offer is referred to as a counteroffer.<sup>29</sup> Suppose, Venkata has made an offer to Jagan to sell his horse. Jagan said that he is not interested in buying a horse and would rather buy his cat for the same price. Venkata turned down the counter-offer. When such counter offers are made, the original offer becomes null and void. In the case of *Hyde v. Wrench*<sup>30</sup>, A offers to sell his farm for 1000 pounds to B. B replies he is ready to take the farm for 950 pounds but A rejected it. Then subsequently B agreed to the original offer of selling the farm for 1000 pounds. Again, A rejected. The action was brought by B in the court for the same. The Court held that when B made a counteroffer of buying the farm for 950 pounds instead of 1000 pounds, at that time the original offer lapsed, and B made a new offer to A which he has the option of either accepting or rejecting.

**Standing Offer:** Standing offers are those that are made regularly.<sup>31</sup> The best example of a standing offer is a tender. Organizations or departments, in most circumstances, seek long-term services or services in big numbers regularly, therefore they place advertisements in the newspaper asking for tenders. Tender advertisements are invitations to offer, not offers. The plaintiff in *Percival Ltd. V. London County Council Asylums and Mental Deficiency Committee*<sup>32</sup> sought tenders for commodities supply. The defendant accepted the tender, which required him to furnish the corporation with numerous unique goods for 12 months. In the interim, Defendant failed to supply for a specific consignment. The Court decided that the Tender was a standing offer that was to be turned into a series of contracts by the business's subsequent actions and that an order barred revocation, hence the company was successful in its breach of contract case.

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<sup>29</sup> *ibid*

<sup>30</sup> *Hyde v Wrench* [1840] EWHC Ch J90

<sup>31</sup> *Supra* Note 27

<sup>32</sup> *Percival Ltd. V. London County Council Asylums and Mental Deficiency Committee* (1918) 87 L.J.KB 677

## CONSENSUS AD IDEM

It states that the parties to the contract must agree in the same sense for the same thing. Its literal meaning is, “meeting of the minds.”<sup>33</sup> Suppose, A makes a contract with B for the stocks. A was meant for the stocks of the company. But B understood it for livestock. Here, they both haven’t agreed on the same thing in the same sense. Hence, there is no consensus ad idem. Again, If A contracted with B to provide/supply him oil. But the kind of oil was not determined B supplied cooking oil to A. But A meant for some other oil. Here also, there was no meeting of minds. Subsequently, they don’t have a consensus ad idem. For every contract, there must be a meeting of minds. Parties should agree in the same sense on the same thing. The offer should be made by one party which should be accepted by other after the reasonable consideration. Then, it will constitute a valid contract.

## INTENTION TO CREATE LEGAL OBLIGATION

Whenever the contract is formed, it should be formed to create legal obligation agreements and domestic agreements do not constitute legal obligations.

## BALFOUR VS BALFOUR<sup>34</sup>

Husband and wife both were the citizens of Ceylon, Sri Lanka. They went to England for the holidays. My wife got severely ill so she was not able to come. Husband said he will send some money for her livelihood until she will come back. They both agreed. Husband alone returned to Sri Lanka and wife stayed there only. For some time, the husband sent money but later on, he stopped paying. The wife brought a case against him for the breach of contract. The Court held that it was just a social agreement between husband and wife and it would not amount to a contract. Lord Atkin noted that agreements between husband and wife do not constitute to be a contract because they don’t intend to create a legal relationship.

## MERIT VS MERIT<sup>35</sup>

Husband and wife used to live together unless the husband got separated and went with another woman. Husband and wife were the joint owners of a property that was in the mortgage.

<sup>33</sup> Upcounsel, Consensus Ad Idem in Contract Law: What You Need to Know, (Last Visited: 12<sup>th</sup> April 2022) <https://www.upcounsel.com/consensus-ad-idem-in-contract-law>

<sup>34</sup> Balfour v Balfour [1919] 2 KB 571

<sup>35</sup> Merritt v Merritt [1970] EWCA Civ 6

Husband after the separation just signed in a note which says that if his wife will be able to pay all the amount which are yet to pay for the mortgage for the house, then he will transfer the property solely to her wife. Later on, He refused to transfer the property when his wife paid all the outstanding amount. The wife brought an action against the husband for the breach of the contract. The court held that the parties intended to create legal relations and also when the agreement was made, they both got separated from the relationship of husband and wife. Hence, the husband was told to transfer the property as per the terms of the contract.

## **CONCLUSION**

A contract's offer is a crucial component. As a result, section 2(a) of the Indian Contract Act, 1872 gives it a distinct identity. It can be implied (by behavior) or declared (by words) (by words). Section 9 of the Indian Contract Act, 1872, covers both of these forms. It might be difficult for ordinary individuals, let alone professionals, to comprehend the genuine nature of an offer. Several judicial precedents aided in removing the ambiguity and misunderstandings in the offer. There are seven types of offers: implied, express, cross, counter, standing, specific, and general. Any offer should include a meeting of the minds (consensus ad idem). When the offeree does not comprehend the actual meaning of the offer made by the offeror, he will be unable to decide on the same lines.