***Question # 3***

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**OFFER/PROPOSAL** **(Hand 0ut)**

**Preamble:** The first essential of a valid contract is an agreement, i.e. Offer and Acceptance.An Agreement arises when one party makes an offer and the other party accepts it. In the following lines we are going to discuss the valid essential and requisites of a valid offer. These lines will also elaborate how an offer meets the lawful requirements.

**Relevant Provision/Law:** Section: 2a & 6 (OFFER)

**According to Contract Act:**

“When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal**”. (Sec 2a)**

**Example:**D promises to sell his Nokia N-95 to K for 8000 Rupees. D makes an offer to K.

Following are the lawful essentials of a valid offer/proposal:

**Essentials of a Valid Offer/Proposal**

1. It may be express or Implied
2. It must create legal Relations (Case Law: Simpkins Vs. Pays)
3. It must be definite and Clear (Case Law: Taylor Vs Portington)
4. It is different from invitation to Offer

(Case Law: Haris Vs Nickerson) **9**. It must not contain Cross Offer

**1.** **It may be express or Implied**

**5**. It may be Specific or General

(Case Law: Carlill Vs Carbolic Smoke Balls Co)

**6**. It must be Communicated to the Offeree(Case Law: Lalman Vs Gauri Datt)

**7**. It should not contain Negative Condition

**8**. It may be subject to any Conditions

An offer may be made by words or by the conduct of the person. A Proposal which is made by words spoken or written is known as Express offer while implied offer appears from the conduct of the parties.

**Example: 1** Mobeen offers to Naveed to sell his car for 5Lac Rupees. Mobeen hasmade an express offer.

**Example**: **2** A railway Coolie carries the luggage of B without asking him to do so and

A doesn’t object to his action, A makes an Implied Offer.

**2.** **It must create legal Relations**

An offer made without an intention to create legal relations shall not form any agreement. An offer which doesn’t give rise to legal obligations or responsibilities is an invalid offer.

**Example: 1** A invites B to a lunch at Q’s Restaurant and B accepts it. It doesn’t create legalrelations because it’s a social agreement and doesn’t create rights or duties to any of the parties.

**Example**: **2** A agrees to sell his house for 56 Lac Rupees to T and T agrees. An intention ofcreation of legal relation by both of the parties makes it a valid agreement.

**Case Law Reference:** Simpkins Vs. Pays

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**3.** **It must be definite and Clear**

An offer must be definite (not vague or doubtful) and clear. If the terms of an offer are not clear, it cannot be treated as a valid offer. And if such offer is accepted it doesn’t create a binding relation of contract.

**Example**: Ali has two cars and ready to sell one of the cars to Waseem at a price of 6 Lac

Rupees, it’s not a valid offer since it’s not clear that which car Waseem wants to sell.

**Case Law Reference**: Taylor Vs Portington

**4.** **It is different from invitation to Offer**

An offer is totally different from an invitation to offer. In an invitation to offer the person making an invitation doesn’t makes an offer but just invites the others.

**Example 1:** X displays certain goods in an auction sale. It’s not an offer because offerwill come from the buyer in the form of a bid.

**Example 2:** H hangs a price list in his shop for different commodities. It’s not anoffer;it’s an invitation to interested people to buy the goods from that particular shop.

**5.** **It may be Specific or General**

When an offer is made to a specific person or a group of specific persons, it is called a specific offer because it is to be accepted by the same specific person or group to whom it is made.

**Example**: R makes an offer to F to sell his motorbike for 35,000 Rupees. Now F is thespecific person, no other person has been offered. Therefore F can only accept or reject the offer made by R.

**6.** **It must be Communicated to the Offeree**

An offer is valid and effective only when it is properly communicated to the Offeree. When offer is not communicated to the other party it never creates a legal relation since it never meets acceptance.

**Example:** A wants to sell his house to his friend M, but doesn’t communicate hisoffer to M. it’s not a valid offer since M has not been notified about the offer of A.

**Case Law Reference:** Lalman Vs Gauri Datt

**7.** **It should not contain Negative Condition**

Offer shall not specify the condition that if acceptance is not communicated in the next 3 days, the offer would be taken as accepted. Since the obligation of the replying such offer is against the grounds of justice.

**Example:** P wrote to M to sell his books while adding that if M didn’t reply his offer within 2days, the offer would be considered as accepted. There is no legal contract because a negative condition in the offer is there.

**8.** **It may be subject to any Conditions**

An offeror may have any condition in his offer. It is said that until and unless conditions of a contract are accepted contract doesn’t come into existence. But all such offers shall not contain any negative condition.

**Example:** K makes an offer to J to sell his motor bike and asks him to reply by a call or by

SMS. But J sends reply by a letter. K may reject such acceptance since it doesn’t meet the required mode of acceptance.

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**9.** **It must not contain Cross Offer**

When two parties make a similar offer to each other but that too in ignorance (lacking knowledge) of each other, such offers are called Cross Offers.

**Example:** A wrote b to sell him 1 ton of iron for Rs 5 Lac. On the same day the same offerwas made by B to A. Hence cross offer is there and doesn’t form a contract.

**REVOCATION OF OFFER**

**Literal Meaning:** End of validity or operation, cancellation

**Relevant Provision:** Section 6

An offer can be revoked by any of the following means:

**1. Notice of Revocation**

An offer can be revoked/cancelled by sending a notice of revocation to the other party. It means that offeror can cancel his offer at any time but before the acceptance.

**Example:** A at an auction sale gives the highest bid to buy B’s Corolla Car Model 1986.

Later on he withdraws his offer before the fall of the hammer of the Judge. The offer is said to be revoked.

**2. Lapse of Time ( Expiry of Time)**

If an offer is subject to be accepted up to a specified time, it terminates (gets revoked) if it is not accepted by that time. Reasonable time for revocation of an offer varies with circumstances of each case.

**Example:** A offers to sell his car to any one at a price of 9 Lac Rupees with a condition thatoffer to be accepted up to 23rd of August, 2010. If the same offer is accepted by D on 25th of August, 2010 this acceptance cannot bind A to sell his car to D since time of offer has lapsed or expired.

**3. Failure to Fulfill the Condition**

The offer of an offeror gets cancelled if the conditions mentioned in his offer are not fulfilled. In the other words the acceptor didn’t comply with his given conditions.

**Example:** A offered to B to sell his motorbike to him for Rs 35,000 if B got admission in **Superior College**. B fails to have an admission, offer of A terminates/revokes.

**4. Death or Insanity of the Offeror**

An offer is revoked by the death or insanity of the offeror if the fact of his death comes to the knowledge of the acceptor before acceptance. If the Offeree doesn’t know about the death or insanity of the offeror and gives his acceptance, it’s a valid acceptance and the legal representatives of the offeror are bound by the contract.

**Example:** X offered to sell his house to B and B accepted his offer to purchase the samehouse at 18 Lac Rupees and paid X an amount of 1 Lac Rupees as advance money. Later on X died. Now the representatives of X are bound to continue the contract.

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**5. Revocation of offer by Offeree**

Once the offer has been rejected or refused by the Offeree before the last date to be accepted, the offer terminates.

**Example:** W offers to sell his car to D and keeps the offer open for ten days. D refuses after6 days. Offer terminates though 4 days are yet there.

**6. Counter Offer by the Offeree**

When an offer is accepted with some changes in the terms of the actual offer, such acceptance is called counter offer which immediately terminates the offer.

**Example:** A offers to sell his house to B for 5 Lac Rupees, B counter offers Rs

45, 0000. Later on if B is ready to pay Rs 5 Lac Rupees, the original offer is terminated.

**7. Death or Insanity of the Offeree**

An offer can only be accepted by the Offeree and not by his legal representatives in case of his death or on insanity but that too before acceptance.

**Example:** A offers to sell his Camera to B. B dies before acceptance. Offer of X terminatesat the death of Y.

**8. Subsequent Illegality**

An offer also terminates before meeting acceptance due to subsequent (A later on) change in terms of law.

**Example:** A offers to sell 20 bags of white cement to B. But before acceptance a change inlaw bans the sale of white cement. The offer revokes or gets terminated.

1. **Destruction of Subject Matter**

An offer gets terminated when the subject matter of offer destroys before being accepted. **Example**: Hamid Agrees to sell his horse to Faisal but horse dies before the acceptance ofFaisal. The offer terminates.

1. **Failure to Accept According to Manner Specified**

If the Offeror has prescribed the manner of acceptance in his offer, the offer terminates if the Offeree has not accepted it in the prescribed way.

**Example:** A offers to sell his Mobile to B and request B to intimate his acceptance through email. B sends his acceptance by Post Letter. The offer terminates.

**Conclusion:**

Law requires that whenever an offer is to be made by the parties it shall fulfill all above mentioned requisites. An absence of any of the lawful requirement cancels the offer before it meets acceptance. An offer gets terminated in various ways and terminates the relation of parties before its maturity.

**Expected University Questions:**

**1.** Define offer. What are its various essentials? (OR)

1. Define the term Offer. How an offer stands revoked? (OR)
2. Define & discuss the rules regarding a valid offer? When an offer is said to be complete? Explain in detail.