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# **UNDERSTANDING THE TERM ACCEPTANCE AS DEFINED UNDER ICA, 1872**

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## **ABSTRACT**

From the point of view of law, it is extremely important to understand each and every intricacy in detail when it comes to the formation of a contract. Given the fact that acceptance leads to the formation of an agreement which further materialises into a contract after fulfilling certain criteria, it becomes mandatory to analyse various sections dealing with acceptance as mentioned under the Indian Contract Act, 1872<sup>1</sup> (hereafter known as ICA) and the related case laws to understand their application.

The relevant sections which deal with the meaning and essentials of a valid acceptance are Sections: 2, 7, 8, 9 and 10 of the Indian Contract Act, 1872<sup>2</sup> and the same have been addressed and discussed in this article.

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<sup>1</sup> This law was passed by the legislature and received its ascent on 25th April, 1872. It was enforced on 1st September, 1872. This law is responsible for regulating and defining the terms of a contract in India.

<sup>2</sup> Indian Contract Act, 1862, Acts of Parliament, (India)

## Introduction

As per § 2(b) of the Indian Contract Act, 1872, “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.”<sup>3</sup>

From the quoted definition it can be inferred that for creation of a valid acceptance an act or an omission of the same is mandatory. This is to say that mere intention or a state of mind of the acceptor is not enough to constitute acceptance. It is only complete when an act is done in furtherance of representing the same. Such an act can be done in writing, through speech or by any other form of conduct.

It is important to note that a mere acceptance of any given proposal will not result in the formation of a valid contract but only an acceptance, given that the criteria mandated for a valid acceptance have been met which are specified under § 10 of the ICA which states that, “All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.”<sup>4</sup>

The ICA further specifies a lot of conditions, in detail, that an acceptance must fulfil to be considered ‘valid’ in the eyes of law which this article deals in detail along with the effect of place and time of acceptance upon the jurisdiction of a contract.

## Proposal

To understand the term acceptance it is essential to first understand everything that precedes it and that primarily is what a proposal is. It is, in its essence, the starting point of any agreement or contract. As per the ICA’s § 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”.<sup>5</sup>

To put it simply, a proposal ascertains the proposer’s (person making the proposal) intent to perform or abstain from performing a particular act in exchange for the acceptor’s (person to whom the proposal is being made) consent to perform or abstain from performing another act, which forms the consideration of the agreement.

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<sup>3</sup> *Supra* note 2, at 11.

<sup>4</sup> *Id.* at 12, 13.

<sup>5</sup> *Supra* note 2, at 10.

acceptance and essentials for a valid acceptance

As mentioned earlier, an acceptance is made when the acceptor gives his assent to the terms and conditions as mentioned in the proposal. However, there are quite a few technicalities which are mentioned in the Indian Contract Act, 1872 as well as in various case laws which need to be taken care of for there to be a valid acceptance. In case either one of them is not complied with, the acceptance will become invalid. These conditions are as follows -

### **Acceptance must be absolute and unqualified**

To quote the ICA's § 7(1), "In order to convert a proposal into a promise, the acceptance must— (1) be absolute and unqualified"<sup>6</sup>. This is an absolute necessity when we talk about defining valid acceptance. The word absolute here refers to the complete acceptance of the terms and conditions of the contract. The acceptor cannot accept the proposal partially. In the same manner, he/she must not change or alter the terms of the proposal and hence their acceptance should be unqualified as that will be considered a counter offer.

A counter offer arises when the offeree makes any sort of changes in the terms or conditions of the proposal made by the offeror. If a counter offer is proposed by the offeree, then the original offer by default lapses.

This concept of counter offer was used in the case of *Hyde v Wrench*<sup>7</sup>. The defendant had offered the plaintiff to sell his farm for 1200 euros. This first offer was declined by the plaintiff. The defendant then decided to write another letter to the plaintiff and this time he proposed to sell his farm at 1000 euros and also mentioned in the letter that this would be his final offer. As a reply to his letter the plaintiff wrote back asking the defendant whether or not he was willing to sell the farm at 950 euros. This new offer was then declined by the defendant. The plaintiff then wrote back to the defendant saying that he did accept the earlier offer of 1000 euros but by that time according to the defendant the offer had already lapsed and he therefore refused to sell his farm. The plaintiff, under the belief that the earlier proposal hadn't lapsed, sued the defendant for breach of contract. The court here held that in this case a counter offer was made by the plaintiff when he wrote that to the defendant asking him to sell the farm for 950 euros. And since a counter offer was made the earlier offer had lapsed. Therefore, it was

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<sup>6</sup> *Supra* Note 2, at 12

<sup>7</sup> *Hyde v. Wrench*, (1840) 49 ER 132

not afterwards competent for him and was not under his power to revive the proposal or communicate his acceptance for the same.

### **Acceptance should be expressed in prescribed manner**

Another necessity regarding acceptance mentioned in the ICA's § 7(2) is that it must "be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted."<sup>8</sup>

Here, reasonable manner refers to any form of communication which would be accepted for that given proposal by a prudent person. For example, if the proposal was made via post and the acceptance could not have been made by performing condition or receiving consideration, in that case a post would be considered reasonable manner for the communication of acceptance.

The Act further states that, "If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance."<sup>9</sup>

This means that if the acceptance is not made in the specified manner the onus of rejecting, accepting or insisting that the acceptance be made in the prescribed manner within a reasonable time, lies on the proposer. The reasonable time can differ from case to case depending upon its facts.

### **Acceptance can be either expressed or implied**

As per ICA's § 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."<sup>10</sup> Hence, the acceptance can be made in written or spoken words and it will then be considered expressed. But if it is made in any other form, i.e., performing a condition which is mentioned in the proposal or by accepting the consideration given in lieu of performance of the contract,<sup>11</sup> the acceptance will be considered to be implied.

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<sup>8</sup> *Supra* note 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 6.

<sup>11</sup> *Id.*

To understand its working better, we can take the example of *Carlill v. Carbolic Smoke Ball Company*.<sup>12</sup>

Carbolic Smoke Ball Company issued an advertisement for The Carbolic Smoke Ball stating that if used three times a day for two weeks it would prevent cold and influenza. It also offered 800 pounds as a reward to the person catching cold or influenza after using their product in the prescribed manner. To show their sincerity they also deposited 1000 euros in Alliance Bank which ascertained their intention to form a binding contract. Seeing this, the defendant used the smoke ball as per the prescribed manner for weeks and still ended up catching the flu. She then asked the company to pay her 100 euros that was meant to be the reward in the given scenario, which the defendant denied saying that there wasn't a legal contract between the company and the plaintiff. But in the judgement, it was held that, since the offer was general in nature, i.e., it was made to public at large; the acceptance could have been done by performing the conditions mentioned in the offer. And hence, mere performance of the consideration would be considered a valid acceptance on the part of the offeree.

In another case, a fire broke out in the defendant's farm and so he called the Upton fire brigade to put out the fire<sup>13</sup>. Now he was in the misconception that he was entitled to free services by the fire brigade department but then it so turned out that the defendant's farm didn't come under the purview of the free service zone and so he was charged by the fire department for their services. The defendant refused to pay the same stating that there was no contract because he didn't promise to pay for the same. The court here held that regardless of the fact whether or not the defendant thought his farm came under the free service area, since the defendant asked for the services of Upton fire brigade which were rendered by them duly; it created an implied promise to pay for the same. The request for the performance of the act was enough to imply the promise to pay for it on its completion.

### **Acceptance must be communicated by the offeree himself or his authorized agent**

It is essential that acceptance is communicated by the acceptor or his authorized agent otherwise inconsistencies and complications may arise.

For better understanding this, one can refer to *Powell v Lee*.<sup>14</sup> In this case the plaintiff had

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<sup>12</sup> *Carlill v. Carbolic Smoke Ball Co.*, (1893) 1 QB 256 (CA)

<sup>13</sup> *Upton -on-Severn Rural District Council v. Powell*, (1942) 1 All ER 220 (CA)

<sup>14</sup> *Powell v Lee*, (1908) 24 TLR 606

applied for the position of headmaster in a school where the defendant worked as a director. The defendant also headed the managing committee which was responsible for the recruitment of staff members for the school. The managing committee decided in one of its meetings to appoint Mr Powell as the headmaster but at that time it didn't communicate the same to him formally. Later a member of the committee, while talking to Mr well in his own personal capacity, told him that he had been chosen for the post of the headmaster. But, the committee subsequently due to some change in circumstances decided to change its earlier decision. When the plaintiff got to know about this he brought a case against them for the breach of contract. But, in the judgement it was held that since there was no official communication made by the board members, and the member who had confirmed his appointment didn't do so in his official capacity, there did not arise any binding contract.

### **Place and time of acceptance**

Before bringing any case in a court of law it's essential to decide which court will have jurisdiction over that particular case. In the case of contract the jurisdiction of a particular case is decided on the basis of the mode through which the contract has been made. It is relatively simple if the contract has been made in real time with the presence of both the parties i.e., in the form of direct communication. In that case, the jurisdiction will lie with the court where the contract has been made. For example, if X and Y enter into a contract in Mumbai then the Bombay High court will have a jurisdiction over the same.

However, if the communication has been made via letter or through post, then there are a few things which have to be taken into consideration while deciding the jurisdiction. Of these, the most important is the postal rule. It says that when the acceptance has been made through letters, posts, etc. then the place and the time of the contract will be decided on the basis of when and where the acceptance was put into the course of transmission by the acceptor. The validity of this rule was upheld in *Adams v. Lindsell* case.<sup>15</sup>

Here, the defendant sent a proposal in the form of a letter on 2nd September 1817 to the plaintiff offering to sell wool. Due to certain mishap the letter reached Adam on 5th September 1817 and he further communicated his acceptance for the same through a post which we posted on 5th September. The defendant got the post on 9th September. Given that the defendant wasn't aware of the delay in the delivery of the first post, he presumed that the plaintiff did not intend

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<sup>15</sup> *Adams v. Lindsell*, (1818) 106 ER 250

on entering into the contract and so not having received the letter by 8 September the defendant decided to sell the v to some other party. Subsequently, the plaintiff brought a suit against them for the breach of contract. The issues that arose here was -

**A. Was there a contract between the parties? And**

**B. If so then when was it concluded?**

In the judgement it was held that there in fact was a contract between the parties which arose on 5th September when the acceptance was put in the course of transmission by the plaintiff. Since the defendant had not mentioned in the contract a particular time after which the contract would lapse they were bound by the terms of their offer until it was accepted.

This judgement has since been used as a precedent in the cases where postal rule can apply, i.e., scenarios where the communication was not made instantaneously.

However, postal rule is not applicable in case the communication is made instantaneously when the parties are not in direct contact with each other for example through telephone, text messages, etc. Here, the place and time of the conclusion of the contract will depend upon when and where the acceptance is received by the proposer. The same was held in *Entores Ltd v. Miles Far East Corporation*<sup>16</sup>. Here, the plaintiff, who was based in London, sent an offer to Miles Far East Crop, which was based in Amsterdam, to purchase 100 tons of copper cathodes. The offer was communicated by Telex (considered an instantaneous form of communication). The acceptance was also communicated via Telex. Later, the defendants failed to fulfil their obligation and the plaintiff sued them for damages. The issue that arose was whether the jurisdiction would lie with the English court or the Dutch court. After deliberation it was held that since it was an instantaneous form of communication, postal rule didn't apply here and the contract would deem to be accepted when and where the proposer was made aware of the acceptance, i.e., when and where he received it. And hence it was ruled that the contract was created in London.

Similar judgement was given by the Supreme Court in the case of *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas*<sup>17</sup>. In this case the plaintiff was from Ahmedabad and he made a proposal to the defendant who was at the time in Khamgaon. This was done via

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<sup>16</sup> *Entores Ltd v. Miles Far East Corporation*, (1955) 2 QB 327

<sup>17</sup> *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*, AIR 1966 SC 543

telephone for purchase of cotton seeds. The proposal was accepted by the defendant and communicated to the plaintiff through telephone as well. Later, when a dispute arose due to the non-performance of the contract, another issue came up relating to the jurisdiction of the given case subsequently it was held that the postal rule wouldn't apply in the given case due to the mode of communication being instantaneous and hence it was ruled that the contract came into existence in Ahmedabad.

### **Conclusion**

After analysing the above mentioned sections and the case laws, we can finally conclude that every acceptance cannot be considered a valid acceptance and similarly, not every valid acceptance will be enough for the formation of a contract (S.7, S.10). Further, acceptance can be made in various ways which include performing a specific condition for accepting the consideration (S.8) and it can be either expressed or implied (S.9). Also, the mode of communication with which acceptance has been made is very important as it decides the jurisdiction of the contract and the time of formation of the contract which we have studied in cases like *Adams v. Lindsell*, *Entores Ltd v. Miles Far East Corporation* and *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas*.