(17)

(a) offer must intend to (a) create legal relations (i.e intention to create legal relationship)

An offer must be made with the intention to create legal relations. If offer has not been made with the intention to create legal relationship than it will not result into valid contract.

An offer will not become a promise even after it has been accepted unless it is made with a view to create legal relationship. It is so because the purpose of entering into an agreement is to make it enforceable. Thus enforceability of a contract in court of law or inter parties primarily depends on its legal sanctity.

Promise in the case of social engagements is generally without an intention to create legal relationship. Such an agreement, therefore, cannot be considered to be a contract. Thus, an agreement to go for a walk, to go to movie, to play some game, or entertain another person with dinner

The case on the point of intention to create legal relationship is,

Balfour v. Balfour (1919)

(18)

In this case, the defendant, who was employed on a government job in Ceylon, went to England with his wife on leave. For health reasons, the wife was unable to accompany the husband again to ceylon. The husband promised to pay £30 per month to his wife as maintenance for the period she had to live apart. The husband having failed to pay this amount, was sued by the wife for the same. It was held that in this case, there being no intention to create legal relationship, the husband was not liable.

In case of other close relationships also e.g; the ~~husband~~ parents and their children, the same rules are applicable as are applicable to the husband & wife.

The case of Jones v. Padavatton (1969), is the illustration of the agreement between

Facts:- Mrs (19) jones herself lived (10) in Trinidad. Her daughter, who had been divorced and had a young son, lived in washington and was serving in the Indian Embassy there. Mrs. jones persuaded her daughter, to leave her job in washington and study for the bar in England to become a barrister. Mrs jones offered to pay her daughter a monthly allowance during her studies for the bar in England. The daughter reluctantly agreed to the suggestion, left the job, and went to England in 1962. In 1964, Mrs. jones bought a house in England. The daughter was allowed to stay in a part of the house whereas the other part was let out. The rent received from the part of the house was given to the daughter to cover her expenses. In 1967, some differences had arisen between Mrs. jones and her daughter and Mrs. jones brought an action to evict her daughter. Till that time the daughter had not completed her studies for the bar. The daughter contended that in view of the

(20) It was held by the court that there was nothing to indicate that there was an intention to create legal relationship between the parties, as is evident from the fact that neither the agreement was reduced to writing nor the duration for which she was to be maintained had been mentioned. The mother's action against the daughter for eviction succeeded.

(2) Terms of offer must be certain, definite and not vague :⇒

No contract can be formed if the terms of the offer itself is uncertain or vague, it will not be a valid contract if it is not clear as to what exactly the parties intend to do. A vague offer does not convey what it exactly mean.

Sometimes, the parties agree to enter into an agreement on some future date. Such agreement is not valid because the terms of the terms of the offer are uncertain and they are yet to be settled.

(21) → Recently in Punit Barewala v. Siraj Sangal (AIR 1998), it has been held, a mere agreement to agree is not enforceable in court of law. Further it is definite law, that in order to enforce an agreement the same must constitute a contract, within the meaning of sec. 2(g) of the Indian Contract Act, 1872.

(3) Offer must be distinguished from invitation to offer

(OR)

offer and invitation to treat (offer) distinguished

A proposal or an offer has to be distinguished from an invitation to treat. Sometimes a person may not offer to sell his goods, but may make some statements or give some information with a view to inviting others to make offers on that basis. e.g., a book-seller sends a catalogue of books indicating prices of various books to many persons, price list, advertisements in newspaper for sale, calling for tenders etc. This sending of catalogue of books, price list,

Invitation to offer or (11) invitation to threat is just an invitation to make offer, on the other hand, offer is a final expression of willingness by the offeror to be bound by his promise, should the other party choose to accept it. (22)

By sending catalogue of books, if any person is interested in purchasing the book or books mentioned in the catalogue, he may make an offer and the person circulating the catalogue has a discretion to accept or not to accept the offer.

Similary when the goods are sold by auction, it is not the offer but invitation to offer, and the persons making bids are making the offer. The auctioner is free to accept or reject the bid even he cannot accept a highest bid. An an auctioner is also free to cancel an auction sale announced by him.

In Harris v. Nickerson (1873), the defendant advertised a sale by auction. The plaintiff travelled to the advertised place of auction to find that the defendant had cancelled the auction sale. He brought

(13)

Ψ ⇒ Types of offer OR Proposal ?

(01) Cross offers

29

when the offers made by two persons to each other containing similar terms of bargain cross each other in post, they are known as cross offers. e.g; on Ist march, 'A' offers to sell his watch to 'B' for Rs 800/= through a letter sent by post. on the same day, 'B' als writes to 'A' making an offer to purchase A's watch for Rs 800/=. These letters cross in post, it is known as cross offer. In case of cross offers even though both the parties intend the same bargain, there arises no contract. A contract could arise only if either 'A' or 'B', after having the knowledge of the offer, had accepted the same.

In Tinn v. Hoffmann (1873), 'A' wrote to 'B' indicating his willingness to sell 800 tons of iron at 69 sh. per ton. on the same

'B' brought an action against A for supply of iron contending that a valid contract had been created between the two parties. It was held that in this case there were only two cross offers and the offer of neither of the parties having been accepted by the other, there was no contract which could be enforced.

(02) Specific and General offers :⇒

When the offer is made to a specific or an ascertained person it is known as a specific offer, but when the same is not made to any particular person but to the public at large, it is known as general offer. E.g; an offer to give reward to anybody who finds a lost dog is a general offer. This general offer will be deemed to be accepted by anyone who actually finds the lost dog.

According to **section 8**, "Performance of the conditions of a proposal is an acceptance of the proposal".