

(10) when the acceptance is made in faster mode than proscribed, such acceptance is also valid. e.g; proscribed manner was post but made through telephone. when the acceptance is made in slower mode than proscribed manner than ~~again~~ such acceptance is invalid e.g; if proscribed manner was telephone but made through post.

(5) Acceptance should be made while the offer is still subsisting ⇒

The acceptance must be made while the offer is in force. once an offer has been withdrawn or stands lapsed, it cannot be accepted. Acceptance after the lapse of the offer cannot give rise to a contract.

Q → Communication of offer and Acceptance?

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The matter of communication of offer and acceptance arises only when the parties are at a distance from each other. It is the communication of offer and acceptance that binds the party.

→ communication of offer ⇒

→ section 4 of Indian Contract Act

defines the communication of offer.

According to sec. 4, "the communication of an offer is complete when it comes to the knowledge of the person to whom it is made".

→ Communication of Acceptance ⇒ (Sec. 4)

ⓐ Acceptance by Post ⇒

The communication of an acceptance is complete:

(a) 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, and

(b) As against the acceptor, when it comes to the knowledge of the proposer.

e.g.; 'B' accepts A's proposal by a letter sent by post.
The communication of the acceptance is complete —

(2) Acceptance by Telephone or Telex :- (19)

(42) In Bhagwandas v. Girdharilal & Co.

(1966), the s/c has held that in the case of telephonic conversation the position is the same as in the case where the parties are in the presence of each other, and the rule of contract through post does not apply to such contracts. In case of acceptance ~~contract~~ ~~particular~~ by phone, the contract is deemed to be complete when the offeror hears the acceptance at his end rather than when the acceptor speaks the words of acceptance.

The facts of the case were, that the plaintiff made an offer on phone from Ahmedabad for the purchase of cotton seed cake from the defendants. The defendants accepted this offer on phone at Khamgaon. The defendants having failed to supply the cake were sued by the plaintiff to pay compensation amounting to Rs, 31,150 for breach of contract. The suit was filed at Ahmedabad. The

defendants contended that, the Ahmedabad court had no jurisdiction because the contract was completed by the acceptance

(43)

(43)

on the other hand, the plaintiff plead that the contract was struck when the acceptance was communicated to him (he heard the acceptance) at Ahmedabad, and therefore the said suit was in the jurisdiction of the Ahmedabad court.

It was held that the contract was made at Ahmedabad where the acceptance was communicated and the part of cause of action for an action for the breach of contract in this case had arisen within the jurisdiction of Ahmedabad court.

→ In England also a similar view was taken by the Court of Appeal in Entores Ltd. v. Far East Corporation (1955),

regarding the contract entered into by telephone or Telex.

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1 ⇒ Revocation of offer and Acceptance

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Revocation of offer

According to Sec. 5;

"A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards".

⇒ It can be discussed as:

→ Can offer be revoked?

Yes it can be revoked.

→ who can revoke it?

offeror can revoke the offer.

→ when offeror can revoke the offer?

offeror can revoke the offer at any time before the communication

of acceptance is complete as against him and latter on

i.e. after the communication of acceptance is complete against

45 ⇒ Modes of Revocation of Offer

Section 6 mentions various modes of revocation of offer as under:

- ① A proposal is revoked by the communication of notice of revocation by the proposer to the other party.
- ② A proposal is revoked by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by lapse of a reasonable time, without communication of the acceptance.
- ③ A proposal is revoked by the failure of the acceptor to fulfill a condition precedent to acceptance.
- ④ A proposal is revoked by the death or insanity of the proposer, if the ~~death~~ fact of his death or

(1) By notice of Revocation ⇒ Sec. 6(1) (21)

(46) A proposal may be revoked by the communication of notice of revocation by the proposer to the other party. To be effective, the notice of revocation has to be communicated by the proposer or his agent and not by anybody else.

on this point, English law is different from Indian law. In India, the notice of revocation has to be communicated by the proposer only, whereas in England, the offer stands revoked even though the offeror comes to ~~know~~ know about revocation of offer through some other sources and not by a notice by the offeror himself.

Dickinson v. Dodds (1976) is an authority of English law on this point.

(2) By Lapse of time ⇒ Sec. 6(2)

A proposal is revoked by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time without communication of the acceptance,

(47)

Sometimes the parties may expressly

fix the time upto which the offer will remain open. Such an offer lapses automatically if it remains unaccepted till the stipulated time and the same cannot be accepted thereafter.

Even if no time has been prescribed within which the acceptance can be made, the offer stands revoked on the lapse of a reasonable time.

(3) By failure to fulfill a condition precedent

sec. 6(3)

when the offer is subject to some condition precedent, such a condition has got to be fulfilled by the acceptor before making the acceptance. If the acceptor fails to fulfil the condition precedent to acceptance, the offer stands revoked.

e-g; if the offer requires the deposit of some earnest money, or the execution of some document etc; these conditions must be fulfilled

case State of M.P. v. Gobardhan Das (1973)