

Some Sample Lectures from the book '99 Lectures on Business Law'

The Institute of Chartered Accountants of Pakistan (**ICAP**) has recently recommended this book as suggested reading and commented, '**the book is written in lecture form and will be very beneficial for the students'**

Sample lectures are given to prove the substance of the book.

The book is '**a self explanatory book'**'; book for CA Foundation, Module B, Paper a book that teaches like a teacher.

It is a true book.

This book layout is entirely a different as it not only gives information but also makes the reader understand the difficult concepts of law.

It minimizes the need of a teacher.

About 700 dictionary meanings provided with great accuracy.

All learning tools have been made the part of the book. It is written on the frequency of lectures as are delivered by a teacher in a classroom.

Statutory definitions have been bifurcated in such a way that nothing is left unexplained.

*The book is very good for BCOM;CSS;CA;BBA. ACMA & LLB students .
It teaches as a teacher teaches his students in a class room. It talks to students.*

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Introduction to Law

Before studying different statutes, it is recommended that students must know about the following basic concepts of law:

What is 'Law'?

To answer the question the following definitions are discussed:

Simple definition

“Law is the **right** of one, **obligation** of the other, maintained by law **enforcing authority**”

Right (= Sheltered and recognized interest)

Obligation (=Duty)

Maintained (=Managed)

Enforcing authority (= Implementing power.)

Thus it may be stated that law is the sheltered and recognized interest of one, duty of the other managed and controlled by law implementing power.

Austinien's definition of law

“Law is the **command** of the **sovereign**”

Command (=Order)

Sovereign (= Ruler)

Thus it may be stated that law is the order of the ruler.

Additional information

Kinds of sovereign:

(1) de-jure sovereign (Constitutional ruler)

(2) de-facto sovereign (Unconstitutional ruler)

Aristotle defines constitution as, “A constitution denotes not only an arrangement of office, but, a manner of life.

Aristotle's definition of law.

“Law is the **experience**, developed by **reason** and reason, **tested** by experience”.

Experience (=Knowledge)

Reason (= Rationale)

Tested (=Checked)

Thus it may be stated that law is the knowledge, developed by rationale and rationale, checked by knowledge.

Relevant quotation.

Experience is a very hard teacher she gives the test first, the lesson afterwards.

Classical definition of law

Law is the ‘**dispassionate reason**’ and its **content** is the same as that of morality.

Dispassionate (=Unemotional)

Reason (= Rationale)

Content (=Substance)

Why laws are made?

Laws are made to regulate human actions.

Who makes laws?

Laws are made by super human wisdom. In modern political state they are made by Parliament.

Advantage of law

The supreme advantage of law is peace and harmony. Law governs both the ruler and the ruled.

Concept of supreme law

“Salus est populi suprema lex” (Latin Maxim)

Salus (= welfare)

est (=is)

Populi (= People)

Suprema (=Supreme)

Lex (=Law)

Thus it means welfare of people is the supreme law.

What is justice?

Justice means every man given his legal right.

Relevant quote on relationship of law and justice

“Justice is an **ideal** like truth just as a sculptor tries to achieve **beauty** with his **mallet** and **chisel**, so law is the **tool** of a judge in the **pursuit** of justice.”

Ideal (=Model)

Beauty (=Splendor or Prettiness)

Mallet (=Hammer)

Chisel (=Shape)

Tool (=Instrument)

Pursuit (=Search)

Thus justice is a model like truth just as a sculptor tries to achieve prettiness with his hammer and a shape so law is the instrument of a judge in the search of justice.

{Law is the command of the sovereign (Austin)}

Lecture # 3

Offer & Acceptance

Introduction

An offer expresses the willingness of the offeror to enter in to a contractual agreement regarding a particular subject. It may be an **act** or forbearance.

Act (= To do something)

Forbearance (=Stop from doing something)

Parties

Offer is made between the following two:

(1) Offeror

A person who makes an offer is called an offeror.

(2) Offeree

A person to whom an offer is made is called the offeree.

Meaning of the term ‘offer’ according to Black’s Law dictionary (6th edition)

“A **proposal** to do a thing usually accompanied by an expected acceptance, **counter offer.**”

Proposal (=Offer)

Counter offer (=Offer in response to offer)

Definition of offer [Section 2 (a)]

“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.”

Signify (=Show)

Willingness (=Readiness)

Abstain (=Refrain)

With a view (= With the intention)

Obtain (=Gain)

Assent (=Consent)

Abstinence (=Restraint)

Thus it may be said that when one person shows to another his readiness to do or to refrain from doing anything with the intention to gain the consent of that other to such act or restraint, he is said to make a proposal.

Further elaboration

The definition of offer contains the following two opposite portions:

Offer to do something and

Offer not to do something

Portion of definition indicating offer to do something

“When one person signifies to another his willingness to do with a view to obtain the assent of that other to such act, he is said to make a proposal.”

Portion of definition indicating offer not to do something

“When one person signifies to another his willingness to abstain from doing something with a view to obtain the assent of that other to such abstinence, he is said to make a proposal.”

Understanding the definition by replacing the general words with the specific words:

(1)

Table of replaced words.

Replaced word	Replacing words
One person	Bashier
Another	Nazier
To do	Sell a car
That other	Nazier
Such act	Buying the car
He	Bashier

The following is the case in which replacement of words have been made:

“When one person signifies to another his willingness to do something
(Bashier) (Nazier) (Sell his car)
 with a view to obtain the assent of that other to such act.
(Nazier) (Buy the car)
he is said to make a proposal.”
(Bashier)

Thus by replacing the words this portion of definition may be read as under:
“When Bashier signifies to Nazier his willingness to sell his car with a view to obtain the assent of Nazier to buy the car, Bashier is said to make a proposal.

(2)

Table of replaced words.

Replaced word	Replacing words
One person	Bashier
Another	Nazier
To abstain	Restraint to sell a car
That other	Nazier
Such abstinence	Restraint
He	Bashier

“When one person signifies to another his willingness to abstain from doing something
(Bashier) (Nazier) (Sell his car)
 with a view to obtain the assent of that other to such abstinence,
(Nazier) (Not to sell the car)
he is said to make a proposal.”
(Bashier)

Thus by replacing the words this portion of definition may be read as under:
“When Bashier signifies to Nazier his willingness to restraint Bashier from selling his car with a view to obtain the assent of Nazier about the restraint, Bashier is said to make a proposal.

Essentials of a valid offer

1. It may be express or implied

The offer may take the following forms:

- (a) express i.e. by written or spoken words
- (b) implied i.e. by conduct of the party

The concept of implied offer may be understood by going through the following example:

Example.

Mr. Touqeer stands on a bus stop and waits for the Daewoo Bus. In a short while, the bus appears and stops on the bus stop and immediately opens its door for Mr. Touqeer. He quietly enters and pays the fare. Later, he leaves the bus quietly when the bus stops at his required destination. This relationship is a kind of implied contract between Daewoo Company and Mr. Touqeer. In this contract nothing has been communicated in verbal or written form between the contracting parties. Mr. Touqeer’s act to stand on the bus stop is his implied offer to enter in to a contractual relationship with the Daewoo Company. On

the other hand, the act of taking stop by Daewoo bus on the stop is the implied acceptance of Daewoo Company to enter in to contractual relationship with Mr. Touqeer.

2. Contractual intention

To make an offer, the offeror must have an intention to create a binding obligation. Existence of intention is determined by objective standards. The intent may be shown by conduct, for example, when one party signs a written contract and sends it to the other party, the action is an offer to enter into a contract.

There is no contract when a social invitation is made or when an offer is made in jest or excitement. A reasonable person would not regard such an offer as indicating a willingness to enter into a binding contract. It is not every loose conversation that is to be turned into a contract, although the parties may seem to agree.

The case **Balfour v Balfour** has become well known as an illustration of this essential. The defendant and his wife were enjoying leave in England. When the defendant was due to return to Ceylon, where he was employed, his wife was advised by reason of her health, to remain in England. The defendant agreed to send her an amount of 30 dollars a month for the probable expenses of maintenance. He did send the amount for some time, but differences afterwards arose and resulted in their separation and the allowance fell in to arrears. The wife's action to recover the arrears was dismissed.

3. It must create legal relationship

The proposal must be made to create legal relations; otherwise, it will not be a valid proposal. A proposal not made with the intention of creating legal relationship between the offerer and the offeree, is not an offer to create a valid contract.

Example

Ali Jan offers Bad shah Khan to smuggle narcotics from Pakistan to Afghanistan. The intention of Ali Jan is to create an illegal relationship.

4. Definiteness

An offer, and the resulting contract, must be definite and certain. If an offer is

Indefinite or vague or if an essential provision is lacking, no contract arises from an attempt to accept it. The reason is that courts cannot tell what the parties are to do. Thus, an offer to conduct a business for as long as it is profitable is too vague to be a valid offer.

Definite (= clear cut)

5. It may be specific or general

When an offer is made to a specified person, it is called specific offer and the offer can only be accepted by the person to

whom it is made. When an offer is made to general public, it may be accepted by any person who fulfills the relevant terms and conditions.

Relevant case law [Carlill v Carbolic Smoke Ball Co (1893) 1 QB 256

The plaintiff used the smoke balls according to the directions, but she nevertheless subsequently suffered from influenza. She was held entitled to recover the promised reward.

6. Communication of offer to the offeree

An offer is effective only if it is communicated to the offeree

Relevant case law

[Lalman v Gauri Dutt (1913 11 ALL LJ 489)]

Gauri's nephew was missing from home. He asked his servant, Lal Man, to search him. After the servant had left, he announced a reward of Rs 501 to anyone who would give information about the boy. The servant found the boy and informed Gauri. Later, after reading the notice, the servant claimed reward from Gauri. His action was dismissed on the ground that he could not accept the offer, unless he had the knowledge of it.

7. It should not contain negative condition

An offer should not have a negative condition. Offeror cannot prescribe that if acceptance is not communicated within specified time, it will be considered accepted by the offeree.

Example

Rashid offers to sell his car to Bashier for Rs. 3 lac with the condition that if he does not reply within 7 days, it will be considered that the offer has been accepted by him.

8. It may be subject to any or some terms and conditions.

A condition may be included in the offer that there will not be a contract between the parties unless the offeree sends the acceptance through TCS only. If the offeree sends the acceptance through any other mode, there will be no contract between the parties.

9. It must not contain cross offer.

When the both intending parties to a contract make similar offer to each other in such a manner, the both are ignorant of the fact, they are offering the same proposal to each other. Their offers are called cross offers. In the presence of cross offers, no contract comes in to existence.

Example

Usman by post offers to sell 20 bags of cement (Mepal Leaf Brand) to Jehanzeb for Rs.230 per bag on 12.03.2009. On the same date Jehanzeb also sends offer to Usman by post the same offer in ignorance of Usman's offer. The offers made by both the parties are cross offer and results in nothing but cancellation of the both.

10. It is different from an invitation to offer or treat or negotiate

An invitation to negotiate is not an offer but seeks an offer. In many instances, there may be a preliminary discussion or an invitation by one party to the other to negotiate or to make an offer, for example, an inquiry by a school whether a teacher wished to continue the following year was merely a survey or

invitation to negotiate and was not an offer that could be accepted. Therefore teacher's affirmative response does not create a contract.

Ordinarily a seller sending out circulars or catalogues listing prices is not regarded as making an offer to sell at those prices, the seller is merely indicating a willingness to consider an offer made by a buyer . The reason for this rule is, in part, the practical consideration that a seller does not have an unlimited supply of any commodity, the seller cannot possibly intend to make a contract with everyone who sees the circular.

The same principle is applied to merchandise displayed with price tags in stores or store windows and to the most advertisements. A "For Sale" advertisement in a news paper is merely an invitation to negotiate and is not an offer which can be accepted by a reader of the paper.

Quotations of prices, even when sent on request, are likewise not offers unless there have been previous dealings between the parties or unless a trade custom exists to give the recipient of the quotation reason to believe that an offer was actually made.

In some cases, the fact that important terms are missing indicates that the parties are merely negotiating and that an oral contract has not

been made. When a letter or printed promotional matter of a party leaves many significant details to be worked out later, the letter or printed matter is merely an invitation to negotiate. It is an offer that may be accepted to make a contract.

Exam oriented question.

Define offer. What are the essentials of a valid offer?

Lecture 5

**What Is Acceptance?
What Is Effect Of Acceptance?
What Are The Essentials Of A Valid Acceptance?**

What is acceptance?

An acceptance is the consent of the offeree to the terms of the offer. No particular form of words or mode of expression is required, but there must be a clear expression that the offeree agrees to be bound by the terms of the offer. If the offeree reserves the right to reject the offer, the action is not an acceptance.

Definition of acceptance according to Section 2 (b) of the Contract Act 1872

“When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted .A Proposal when accepted becomes a promise.”

This definition can only be understood, if we study them in the following sequence.

- (1) First study definition of offer
- (2) And then study definition of acceptance

Definition of offer [Section 2 (a)]

Definition of Acceptance [Section 2 (b)]

<p>“When <u>one person</u> signifies to <u>another</u> his <i>(Bashier)</i> <i>(Nazier)</i> willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence <i>(Nazier)</i> <u>he</u> is said to make a proposal <i>(Bashier)</i>”</p>	<p>“When <u>the person</u> to whom the proposal <i>(Nazier)</i> is made signifies his assent <u>thereto</u> the <i>(related to the offer made to</i> <i>him)</i> the proposal is said to be accepted a proposal when accepted becomes a promise”</p>
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Effect of acceptance

When an offer is accepted, a binding contract is created, assuming all the other elements of valid contract are present... Neither party can, subsequently, cancel the contract without the consent of the other party

Essentials of a valid acceptance

Following are the essentials of a valid acceptance:

- (1) It must be communicated by the offeree.
- (2) It must be absolute and unconditional.
- (3) It must be in a prescribed manner.
- (4) It must be communicated to the offeror
- (5) It may be express or implied.
- (6) It must follow the offer.
- (7) It must be given within the reasonable time.

It must be given by the offeree

An offer can be accepted only by the person to whom it is made

Relevant Case law

Powell V. Lee (1908) 24 TLR 606

The plaintiff was an applicant for the headmastership of a school. The managers passed a resolution for his appointment, but the

decision was not communicated to him. One of the members, however, in his individual capacity informed him about the decision. The managers cancelled their **resolution**, and the plaintiff sued for breach of contract. Rejecting the action, the court observed: there must be notice of acceptance from the contracting party in some way. Information by an unauthorized person is, as insufficient as, over hearing from behind the door.

Resolution (=decision)

It must be absolute and unconditional.

Section 7 provides the following:

- (1) To convert a proposal into a promise, the acceptance must be absolute and unqualified.
- (2) To establish a valid contract the acceptance must be absolute and unconditional. In response, if the offeree makes some addition or deletion in the offer, it is not a valid acceptance but a counter offer only.

Relevant case law

Neale v. Merret (1930) WN 189

Mr. Merret offered to sell a piece of land to Neale at 280 Ce. Neal accepted and enclosed 80 cue with a promise to pay the balance in monthly installments of 50

cue each. It was held that there was no contract between Merret and Neale, as the acceptance was not unconditional.

It must be in a prescribed manner

When the offeror prescribes in his offer that the acceptance must be given in a prescribed form, the acceptance must be made accordingly.

Relevant Case Law

Eliason vs Henshaw (1819) 4 Wheaton 225

Henshaw offered to buy flour from Eliason on the condition that acceptance must be sent by the wagon. Eliason sent his acceptance by post, thinking it would reach the offeror more speedily, but the letter reached after the time of the wagon. It was held, Henshaw was not bound by the acceptance.

It must be communicated to the offeror.

The following rules are applied in relation to communication of acceptance:

(a)

Communication of an acceptance is not necessary, if the offer is to make a unilateral contract.

(b)

If the offer **pertains** to a bilateral contract, an acceptance is not effective unless communicated. The acceptance must be communicated directly to the offeror or the offeror's agent.

Pertain (=relate)

It may be express or implied.

When an acceptance is given by words spoken or written, it is an express acceptance. When it is given by conduct, it is an implied acceptance.

Relevant Case law—

Rao v Rao (1916) 30 MAD 509

A widow promised to give some immovable property to her niece, if she promised to stay with her. The niece stayed in her residence till her death. It was held, the niece was entitled to the property.

It must follow the offer.

Acceptance must be given after receiving the offer. It should not **precede** the offer. Acceptance always follows the offer.

Precede (=lead)

It must be given within a reasonable time

To be a valid acceptance requires that it must be given within the specified time allowed by offeror. Where no time limit is mentioned acceptance is made within reasonable time.

Reasonable (=Practical)

Communication of offer

Section 4 of The Contract Act 1872 states, the communication of a proposal completes when it comes in to the knowledge of the person to whom it is made.

Example

Raja, by post, made an offer to sell his Pentium computer to Mr. Usman, the communication of offer completed, the time Usman received the letter.

Communication of acceptance

Section 4 of The Contract Act 1872 states, an acceptance is considered complete:

- (1) As against the proposer when it is put in the course of transmission to him, so as to be out of the power of the acceptor.
- (2) As against the acceptor, when it comes in to the knowledge of the proposer.

Relevant Case Law

(H.F Insurance Co. v. Grant)

By post Grant offered to purchase shares of the company. The letter of allotment posted by the company never reached to Grant. It was held, the acceptance completed as the letter of acceptance was posted.

Communication of revocation

Communication of revocation is complete

- (a) as against the person who makes it when it is put in course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it.
- (b) As against the person to whom it is made when it comes to his knowledge.

Revocation (=cancellation)

Exam oriented question

- (1) Define acceptance. What are the essentials of a valid acceptance?
- (2) Discuss briefly the law regarding communication of offer, acceptance and revocation

Lecture 6

Consideration or Value for Value

Introduction

For an agreement to be regarded as a contract, it is necessary that it must be supported by consideration. Consideration is described as an exchange of **value** for value

Value (=price)

Meaning of the term consideration according to Black's Law dictionary (6th Edition)

The **cause** or **motive** or **price**, or **impelling or influence** which **induces** a contracting party to enter in to a contract.

Cause (=foundation)

Motive (=reason)

Price (=value)

Impelling (= force)

Influence (=power)

Induce (=encourage)

Thus it may be said that consideration is the foundation, reason, or forcing power which encourages a contracting party to enter in to a contract.

Definition of consideration

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[Conscience is so called from Con and Scio, to know, as it were, with God]

Lecture 11

FREE CONSENT OR REALITY OF CONSENT

What is consent?

According to Black's Law dictionary edition 8th 'Consent' is permission as to do some act or purpose.

Synonyms of the term 'Consent'.

Acquiescence; agreement

Definition of consent according to Section 13 of The Contract Act 1872.

Two or more persons are said to consent when they agree upon the same thing in the same sense.

Relevant maxims

1----"Consensus facit legem" (=Parties to contract are legally bound to do what they have agreed to do.)

2 ---"Consensus tollit errorem" (=A person cannot object to something he has consented)

Definition of Free consent (Section 14)

Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation and mistake.

Right to repudiate the contract

When consent is not free, the contract becomes void able at the option of the **aggrieved** (= upset) party.

What is void-able contract

An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other or others is a void-able contract.

Void-able Contract=Agreement + Enforceability at the option of aggrieved party

Definition of Coercion

Section 15

Coercion is the **committing** or **threatening** to commit, any act, **forbidden** by The Pakistan Penal Code, or the unlawful **detaining** or threatening to detain any **property** to the **prejudice** of any person whatever with the **intention** of causing any person to enter in to an agreement.

Committing (=Commencing)

Threatening (=Bullying or harassing)

Forbidden (=Banned)

Detaining (=Holding)

Property (=Belongings)
Prejudice (=Unfairness or wrongness)
Intention (=Objective or idea)

Thus it may be stated that coercion is the commencing or harassing to commence any act banned by The Pakistan Penal Code or the unlawful holding or harassing to hold any belonging to the wrongness of any person with the idea of causing any person to enter into an agreement.

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[Suffering is the sole origin of consciousness]
(Dostoeusky)

Lecture 15

Quasi or Constructive Contract

Meaning of the term ‘Constructive’ according to Osborn’s law dictionary
A **right, liability** or **status** created by the law without **reference** to the **intention** of the parties.

Right (= a legally protected interest)
Liability (=a burden)
Status (=position)
Reference (=to take in to consideration)

Intention (=aim or objective)
Thus it may be stated that the term ‘constructive’ means a legally protected interest, a burden or position **created by law** without taking in to consideration the aim or objective of the parties.

Meaning of the term ‘Constructive’ according to Black’s Law dictionary (Edition 6th)

That which is **established** by the **mind** of the law in its act of **construing** facts, **conduct**, circumstances, or **instruments**. That which has not the **character assigned** to it in its own **essential nature**, but **acquires** such character in **consequence** of the way in which it is regarded by a **rule** or **policy** of law; hence **inferred, implied**, or made out by legal **interpretation**;

Established (=recognized)
Mind (=intellect)
Construe (=understand)
Conduct (=behavior)
Instrument (= document)

Character (=spirit)
Assign (=allocate)
Essential (=necessary)
Nature (=character)
Acquire (=attain)
Consequences (=in result)
Rule (=regulation)
Policy (=strategy)
Infer (=gather or surmise or concluded)
Implied (=indirectly understood)
Interpretation (=analysis)

Thus it may be stated that a constructive contract is a kind of contract which is **recognized** by the intellect of the law in its act of **understanding the** facts, **behavior**, circumstances, or **documents**. That which has not the **spirit allocated** to it in its own **necessary character**, but **attains** such character in **result** of the way in which it is regarded by a **regulation** or **strategy** of law; hence **gathered**, **understood**, or made out by legal **analysis**.

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