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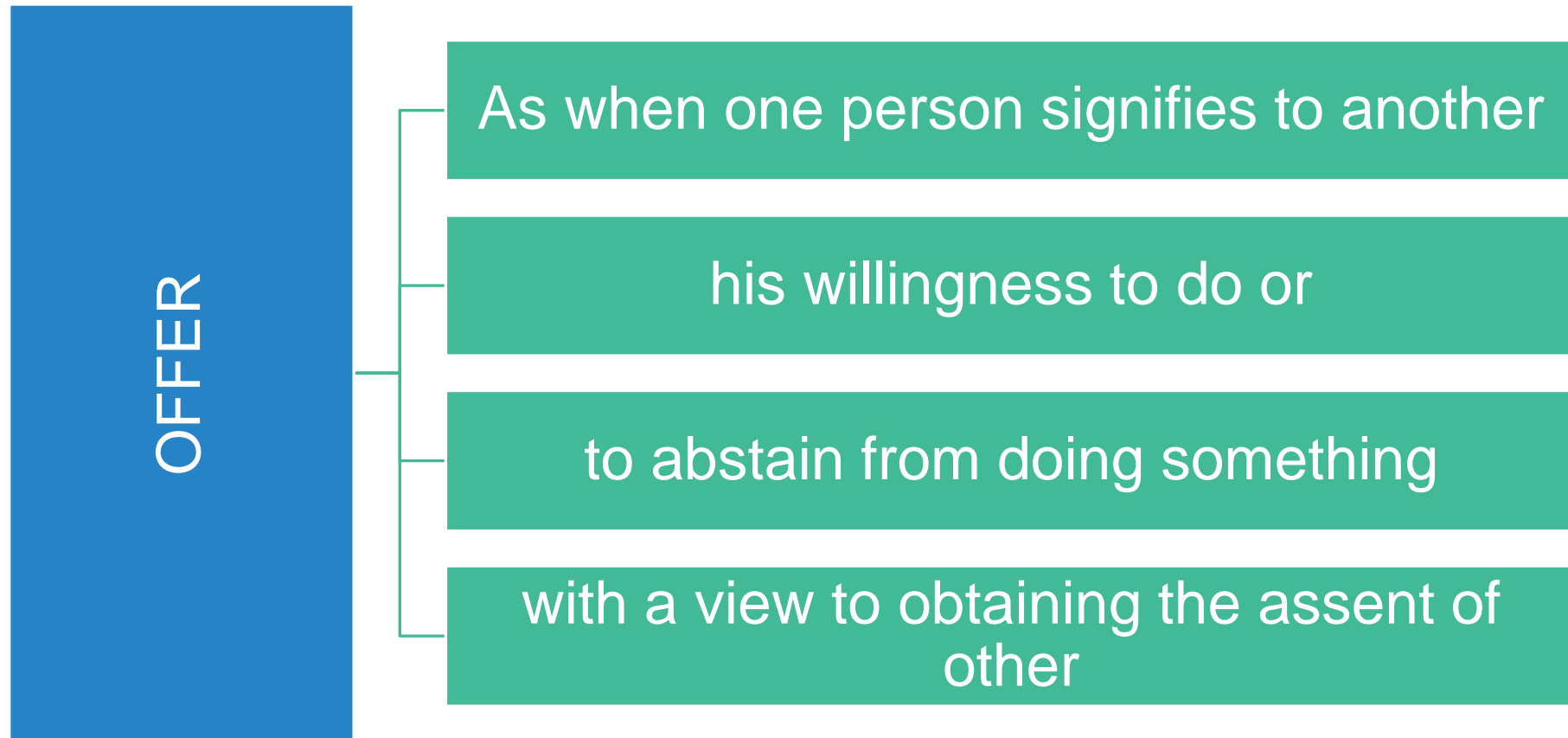
# **VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI**

## **FOUNDATION LEVEL PAPER 2A: BUSINESS LAWS**

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# Offer/Proposal – Section 2(a)



# Offer/Proposal – Section 2(a)

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Offeror

- Person making the offer



Offeree

- The person to whom the offer is made



Acceptor

- the person accepting the offer



# Legal Rules regarding Valid Offer

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- May be express or implied
- Give rise to legal consequences and be capable of creating legal relations
- The term of the offer must be certain
- Subject to any terms and conditions
- Should be made with an intention to obtain the assent of the other
- Should not contain a term the non compliance of which would amount to acceptance
- Two identical cross offers do not make a contract.
- An invitation to offer is not an offer.



# Invitation to offer

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Display of goods by a shopkeeper in his window, with prices marked on them, is not an offer but merely an invitation to the public to make an offer to buy the goods at the marked prices.

**Example:** A sees an article marked 'price rupees twenty' in B's shop. He offers B Rs. 20 for the article. B refuses to sell saying the article is not for sale.

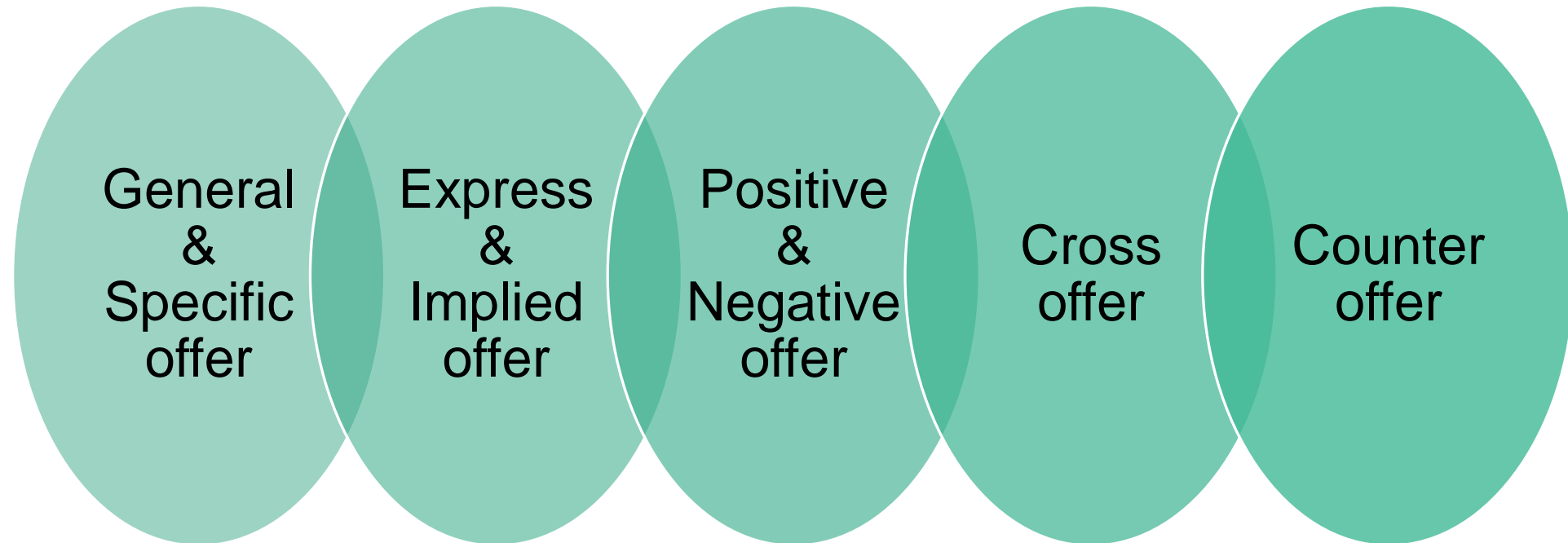
Held, A cannot force B to sell him the article at Rs. 20. Marking of price of an article amounts to an invitation to offer and not an offer.

**Case Law - *Harvey Vs. Facie***



# Types of Offers

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# General and Special offers

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**General Offer** – made to the whole world. General offer can be accepted by any person having notice of the offer by doing what is required under the offer

**Special offer** – made to some specific person. Special offer can be accepted only by the person to whom it was made. **Carlill Vs. Carbolic Smoke Ball Co.**



# ***Carlill Vs. Carbolic Smoke Ball Co.***

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Carbolic smoke ball company advertised in the newspaper that whosoever would take smoke balls manufactured by it, according to the printed instructions would not contract influenza. The company offered a reward of \$100 to anyone who contracted influenza after taking its smoke balls according to the printed instructions. It was added that \$1000 was deposited with alliance bank to show the sincerity of the company. Once Mrs. Carlill used the smoke balls according to the directions given but contracted influenza. It was held the offer was general one, and Mrs. Carlill had accepted it by acting according to the advertisement and therefore the company could not get away from the responsibility by saying that it was a mere puff. She was entitled to get reward.





# ***Lalman Shukla Vs. Gauri Dutt***

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It was held that the reward for the missing child cannot be claimed by a person who traced the child without any knowledge of the announcement. There was no contract between the two in the first place because the proposal never came to the knowledge of the person who found the child and thus he could never accept it.



# Express and Implied Offers

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**Express offer** - When an offer is expressed by words spoken or written it is termed as an express offer.

**Implied offer** - means an offer made by conduct.

**Example** – A bid at an auction is an implied offer to buy. Similarly consuming eatables at a self service restaurant, both create implied promise to pay for the benefits enjoyed

**Positive and Negative offers-** A person may express his willingness to do something or to abstain from doing something e.g. it may be an offer to construct a wall to provide privacy or not to construct a wall so that free passage of light and air may that free passage of light and air may not be obstructed.



# Cross Offer

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**Cross Offer** - Two offers similar in all respects, made by one party to the other, in ignorance of each other's offer, are termed as cross offers. They should not constitute acceptance of one's offer by the other.

**Example** - Sham made an offer to Ram to sell his car for Rs. 20,000 through post. On the same time, Ram made an offer to buy Sham's car in Rs. 18,000 through post, without information of the offer of Sham. Such an offer is known as cross offer and offer of Ram does not constitute acceptance. Hence when persons make an offer to each other, it cannot be treated as mutual acceptance.



# Counter Offer

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**Counter Offer** - Instead of accepting an offer, the offeree makes a counter offer, i.e., accepts the same subject to certain conditions or qualification. Counter offer amounts to rejection of the original offer. It is also called conditional acceptance.

**Example** – A offers to sell his plot to B for Rs. 10 Lacs. B agrees to buy it for Rs. 8 Lacs. It amounts to counter offer and may result in termination of the original offer made by A.



# Acceptance- Section 2(b)

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Section 2(b) states that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

## Legal Rules regarding Acceptance

- must be given only by the person to whom the offer is made (***Boulton Vs. Jones***)
- must be absolute and unqualified
- should be communicated by the acceptor
- should be given within reasonable time or time stipulated
- must be expressed in some usual and reasonable manner
- must succeed the offer



# Mere Silence is not Acceptance

The acceptance of the offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

## Case Law - *Felthouse Vs. Bindley*

F (uncle) offered to buy his nephew's horse for 30 Pound saying that "If I hear no more about it I shall consider the horse is mine at 30 Pound". The nephew did not reply to F at all. He told his auctioneer, B to keep the particular horse out of sale from his farm stock as he has reserved it for his uncle. By mistake, the auctioneer sold the horse. F sued him for conversion of his property. **It was held that F could not succeed as his nephew had not communicated the acceptance to him.**



# Lapses and revocation of offer

After stipulated or reasonable time

Not being accepted in the mode

By rejection

By the death or the insanity of the offeror or the offeree before acceptance

By revocation before acceptance

By subsequent illegality or destruction of subject matter



# When communication is complete

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1. **Communication of offer-** The communication of offer is complete when it comes to the knowledge of the person to whom is made.

**Example** – A makes a proposal to B by Post to sell his car for Rs. 5 Lacs on 10<sup>th</sup> March and if the letter reaches B on 12<sup>th</sup> March, the offer is said to have been **communicated on 12<sup>th</sup> March**. But if B receives it on 12<sup>th</sup> March and actually reads the letter on 15<sup>th</sup> March, in this case offer is said to be **communicated on 15<sup>th</sup> March**.





# When communication is complete

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## 2. Communication of acceptance

- **As against the proposer**-when it is put into course of transmission to him so as to be out of the power of the acceptor to withdraw the same;
- **As against the acceptor**- when it comes to the knowledge of the proposer.

Hence, the **Golden Rule** is proposer becomes bound by the contract, the moment acceptor has posted the letter of acceptance and the acceptor becomes bound by his acceptance only when the letter of acceptance has reached the proposer.



# Time of revocation of offer and acceptance

**Revocation of offer** - A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards

**Revocation of acceptance** – An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

**Example:** A proposes by a letter sent by post to sell his car to B. The letter is posted on the 1<sup>st</sup> of the month. B accepts the proposal by letter sent by post on 4<sup>th</sup>. The letter reached A on 6<sup>th</sup>. A may revoke his offer at anytime before B post his letter of acceptance i.e. 4<sup>th</sup> but not afterwards. B may revoke his acceptance at any time before the letter of acceptance reaches A i.e. 6<sup>th</sup> but not afterwards.



# Revocation of the offer by the offeror

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The offeror can revoke his offer before it is accepted “the bidder at an auction sale may withdraw (revoke) his bid (offer) before it is accepted by the auctioneer by using any of the customary method e.g. fall of hammer.



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**THANK YOU**