Subject: - Law , Ethics and management

BBA Sem- V

Unit - 6

Q.1 Differance between offer and acceptance

Points	Offer	Acceptance
Definition	"an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed", the "offeree". An **offer** is a statement of the terms on which the offeror is willing to be bound.	“When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise.”
Express and implied	Offer may be express or implied	Acceptance may be express or implied
Types	There is two type in offer 1. Specific and 2. General	There is no type in case of Acceptance.
Outcome	outcome of offer is acceptance.	Outcome of acceptance is agreement.
Step	Offer is first step for agreement	Acceptance is last step for agreement
Nature	An offer is an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed, the “offeree”.	Acceptance is a final and unqualified expression of assent to the terms of an offer.

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Offeror and offeree	Person who presents something to another for acceptance or rejection is called offeror	Person to whom an offer is made is called offeree
Communication	Offer must be communicate with offeree	Acceptance must be communicated with offeror
Obligation	Obligation of offeror in offer is to give something which is offer	Obligation of accepter is to give consideration according to the manner stated by offer
Example	1. M says to N that he is willing to sell his motorcycle to him for Rs 20,000. This is an express offer. 2. A shoe shiner starts shining some one's shoes, without being asked to do so, in such circumstances that any reasonable man could guess that he expects to be paid for this, he makes an implied offer. 3. M makes an offer to N to sell his bicycle for Rs 200, there is a specific offer and N alone can accept it.	1. M says to N that he is willing to sell his motorcycle to him for Rs 20,000. This is an express offer. In this example If N accept offer then become agreement 2. Mr. A have 3 car and want to sell Red car at the rate of 500,000 to B and if B accept it and give consideration 500,000 to A then it is call acceptance.

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Q.2 Classification of Contracts

(A) Classification of Contracts according to formation

According to the mode of formation of contracts, contracts may be classified into three namely,

1. **Express Contract,**
2. **Implied Contract, and**
3. **Quasi – Contract.**

We shall now discuss them briefly.

1. Express Contract

A contract is said to be an express contract, if the terms of a contract are expressly agreed upon between the parties (either by words spoken or written) at the time of formation of the contract. An express promise results in express contract. A promise is said to be an express promise, when the offer or acceptance of any promise is made in words.

2. Implied Contract

An implied contract is one for which the proposal or acceptance is made otherwise than in words. Where the proposal or acceptance of any promise is made otherwise than in words, the promise is known as implied promise. Implied contracts are inferred from the circumstances of the case and conduct of the parties.

For example, when A takes a cup of milk in a hotel, there is an implied contract.

3. Quasi – Contract

A quasi-contract is one, which is created by law. In the quasi-contract, there is no intention on either side to make a contract. In a quasi contract, rights and obligations arise not by an agreement but by operations of law.

For example, where certain letters are delivered to a wrong addressee, the addressee is under an obligation to return the letters.

(B) Classification of Contracts according to performance

According to the extent of performance of contracts, contracts may be classified as

1. **Unilateral Contract, and**
2. **Bilateral Contract.**

1. Unilateral Contract

It is also called as one-sided contract. In a unilateral contract, only one party has to satisfy his obligation at the time of the formation of it, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

For example, A takes a public auto to go to Mount Road. A contract comes into existence as soon as A was dropped in Mount Road. By that time, auto man has fulfilled his obligation, only A has to fulfill his obligation i.e. paying the auto- man.

2. Bilateral Contract

A contract is said to be a bilateral contract where the obligations of both the parties to the contract are pending at the time of formation of the contract. In this type of contract, a promise on one side is exchanged for a promise on the other.

For example, A promises to stitch a blouse and 0 promises to pay Rs.30. Here A promises to stitch the blouse and 0 promises to pay. Thus each party is both a promisor and a promisee.

(C) Classification of Contracts according to execution

According to the execution of the contracts, contracts are classified into 2 as

1. **Executed Contract, and**
2. **Executory Contract.**

1. Executed Contract

A contract is said to be executed contract when both the parties to contract have performed their share of obligation.

2. Executory Contract

An executory contract is one, which is either wholly unperformed, or something remains in there to be done by both the parties to contract. Sometimes, a contract may be partly executed and partly executory.

Q.3 Explain Creation and termination of Agency

Agency system is very popular in the current business scenario. There are two parties in the agency system one is the principal and another the agent. An agent is a person acting on behalf of his principal. It's a connecting link between the principal and the third party. Herein we will discuss the creation of agency under the Indian Contract Act, 1872.

Meaning and Definition of Agency -

Agency is the legal relationship between an agent and principal to bring the principal into legal relationship with the third party.

Section 182 of the Indian Contract Act 1872 defines agent and principal - " An agent is a person

employed to do any act for another or to represent another in dealing with third persons. The person for whom such act is done or who is so represented is called the principal" There are Different types of Agents **(See... Classification of Agents).**

(A)Creation of Agency

A contract of agency may be express or implied. Consideration is not an essential element in the agency contract. Agency contract may also arise by estoppel, necessity or ratification.

Types of an Agency Contract

1. Express Agency

A contract of agency can be made orally or in writing. Example of a written contract of agency is the Power of Attorney that gives a right to an agency to act on behalf of his principal in accordance with the terms and conditions therein.

A power of attorney can be general or giving many powers to the agent or some special powers, giving authority to the agent for transacting a single act.

2. Implied Agency

Implied agency arises when there is any conduct, the situation of parties or is necessary for the case.

a. Agency by Estoppel (Section 237)

Estoppel arises when you are precluded from denying the truth of anything which you have represented as a fact, although it is not a fact.

Thus, where P allows third parties to believe that A is acting as his authorized agent, he will be estopped from denying the agency if such third-parties relying on it make a contract with an even when A had no authority at all.

b. Wife as Agent

Where a husband and wife are living together, we presume that the wife has her husband's authority to pledge his credit for the purchase of necessaries of life suitable to their standard of living. But the husband will not be liable if he shows that:

(i) he had expressly warned the tradesman not to supply goods on credit to his wife; or

(ii) he had expressly forbidden the wife to use his credit; or

(iii) he already sufficiently supplies his wife with the articles in question; or

(iv) he supplies his wife with a sufficient allowance.

Similarly, where any person is held out by another as his agent, the third-party can hold that person liable for the acts of the ostensible agent, or the agent by holding out. Partners are each other's agents for making contracts in the ordinary course of the partnership business.

c. Agency of Necessity (Sections 188 and 189):

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity.

For example, a sent a horse by railway. On its arrival at the destination, there was no one to receive it. The railway company, is bound to take reasonable steps to keep the horse alive, was an agent of the necessity of

A wife deserted by her husband and thus forced to live separate from him can pledge her husband's credit to buy all necessaries of life according to the position of the husband even against his wishes.

d. Agency by Ratification (Sections 169-200):

Where a person not having any authority act as agent, or act beyond its authority, then the principal is not bound by the contract with the agent in respect of such authority. But the principal can ratify the agent's transaction and accept liability. In this way, an agency by ratification arises.

This is ex post facto agency— agency arising after the event. By this ratification, the contract is binding on principal as if the agent had been authorized before. Ratification will have an effect on the original contract and so the agency will have effect from the original contract and not on ratification.

(B) Agency may be terminated two ways -

1) By the Act of the Parties -

2) By Operation of Law -

1) By the act of the parties -

i) By agreement - The Contract of Agency can be terminated at any time by mutual agreement between the principal and agent

ii) By revocation of the principal - The Principal revoke agency at any time by giving notice to the agent

iii) By Renunciation of an agent - Renunciation which means withdrawing from responsibility as Agent. Like Principal, Agent can also renounce the agency. According to Section 206 of the Indian Contract Act 1872, the agent must give to his Principal reasonable notice of renunciation. Otherwise, he will be liable to make good for the damage caused to the principal for want of such notice.

2) By operation of law -

Agency can be terminated by operation of law

i) By the completion of agency -

Agency can become to an end after the completion of work for which the agency is created.

ii) By expiry of the time –

Agency can also be terminated by the expiry of time. if the agency is created for the specific period, it is terminated after the expiry of the time.

iii) Death or insanity of principal or agent -

Section 209 of the Indian Contract Act 1872 imposes an agent, duty to terminate the contract of agency on the death of the principal. In other words, Agency comes to an end on the death or insanity of the principal or agent.

iv) Insolvency of principal –

According to Section 201 of the Indian Contract Act 1872, an insolvent or bankrupt is a person who is unable to run the business due to Excess of liabilities over assets. In this way, if the principal becomes an insolvent agency can be terminated.

v) Destruction of the subject matter –

If this subject matter of the agency is destroyed agency comes to an end.

For example - Any agency is created for sale of an Airplane if the Airplane caught fire before the sale the agency comes to an end. In this contract Airplane is the subject matter.

vi) Principal becoming an alien enemy –

If the Principal becomes an alien enemy the contract of agency comes to an end.

vii) Dissolution of company or firm –

A Firm or company may be regarded as a Principal in the contract of Agency. If the company or firm is dissolved the agency comes to an end

Q.4 Explain Benefit of insurable employee under ESI Act.

Medical Benefit:

As per the information available on ESIC website, full medical care is provided to an Insured person and his family members from the day he enters insurable employment. There is no ceiling on expenditure on the treatment of an insured person or his family member. Medical care is also provided to retired and permanently disabled insured persons and their spouses on payment of a token annual premium of Rs120.

Sickness Benefit:

Sickness Benefit in the form of cash compensation at the rate of 70 per cent of wages is payable to insured workers during the periods of certified sickness for a maximum of 91 days in a year. In order to qualify for sickness benefit the insured worker is required to contribute for 78 days in a contribution period of 6 months. There is also a provision for extended sickness benefits and enhanced sickness benefits. Visit the website to know more.

Maternity Benefit:

Maternity Benefit for confinement/pregnancy is payable for 26 weeks, which is extendable by further one month on medical advice at the rate of full wage subject to contribution for 70 days in the preceding Two Contribution Periods.

Disablement Benefit:

For temporary disablement, benefit is given from day one of entering insurable employment at the rate of 90 per cent of wage is payable so long as disability continues. This is irrespective of having paid any contribution in case of employment injury. For permanent disablement, the benefit is paid at the rate of 90 per cent of wage in the form of monthly payment depending upon the extent of loss of earning capacity.

Dependents' Benefit:

It is paid at the rate of 90 per cent of wage in the form of monthly payment to the dependents of a deceased insured person in cases where death occurs due to employment injury or occupational hazards.

(Extra)

Key Features and Benefits of ESI:

There are a number of attractive features and benefits that are offered by the Employee State Insurance Corporation. Not only does it provide medical benefits but it also comes with a level of financial security in times of financial hardship like unemployment, etc. Some of these are listed below:

Medical Benefits:

The Employee State Insurance Corporation takes care of an individual's medical expenses by providing reasonable medical care. This cover comes into effect from day one of the individual's employment.

Disability Benefit:

In case an employee is disabled, ESIC ensures that the employee is paid their monthly wages for the period of the injury in case of a temporary disablement or for the remainder of the employee's life in case of a permanent disablement.

Maternity Benefit:

ESIC helps an employee welcome their baby to a household which has been showered with benefits. ESIC provides a total of 100% of the average daily wages for a period of to 26 weeks from the time of going into labor and 6 weeks in case of a miscarriage. 12 weeks of pay is provided in the case of an adoption.

Sickness Benefit:

ESIC ensures that there is a flow of cash coming into the employee's household during medical leave. 70% of the average daily wages of an employee is paid during medical leave for a maximum period of 91 days in two successive benefit periods.

Unemployment Allowance:

ESI provides a monthly cash allowance for a maximum period of 24 months in case of permanent invalidity due to a non-employment injury or due to involuntary loss of employment.

Dependent's Benefit:

In case the employee meets with an untimely death due to an injury at the place of employment, ESIC will provide monthly payments apportioned among the surviving dependents.

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Q.5 Difference between the Payments of Wages Act, and the Minimum Wages Act,

The Payment of Wages Act, 193:

1. Section 2 (VI) of the Payment of Wages Act, 1936 defines “Wages”.

2. The Act is intended to regulate the payment of wages, to certain classes of persons employed in industry. Its object is to ensure payment of wages, in a particular form, at regular intervals without any unauthorized deductions.

3. House rent allowance is not included in wages.

4. Any additional remuneration payable under the terms of employment whether called a bonus or by any other names does not include “Wage”.

5. “Wages” includes for overtime work, or holidays or leave period.

6. Wage includes any remuneration payable under any award, settlement or orders of a court.

7. Any sum which by reason of the termination of employment of the person employed is payable under any law, etc. is included in wages.

8. Any sum to which the person employed is entitled under any scheme framed under any law shall include in wages.

9. It applies to all the areas in the country.

10. The primary purpose and object of this Act is to prevent the delay in payment of wages to the workers.

The Minimum Wages Act, 194:

1. Section 2 (h) of the Minimum Wages Act, 1948 defines “Wages”.

2. The Act is intended in setting up of the minimum wage fixing machinery in industries in which no arrangement exists for the effective regulation of wages by collective agreements or otherwise and wages are exceptionally law. It avoids exploitation against employees.

3. House rent allowance is included in wages.

4. Such additional remuneration is not included in wages.

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5. It does not include such remunerations,

6. It does not include any remuneration payable under any award, settlement or order of a court.

7. It does not include in “Wages” of Act XI/1948.

8. It does not include wages.

9. The application of this Act may vary from area to area, State to State.

10. The primary purpose and object of this Act is to fix at least the minimum wages for the needs of the employees and to avoid explanation of labour.

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