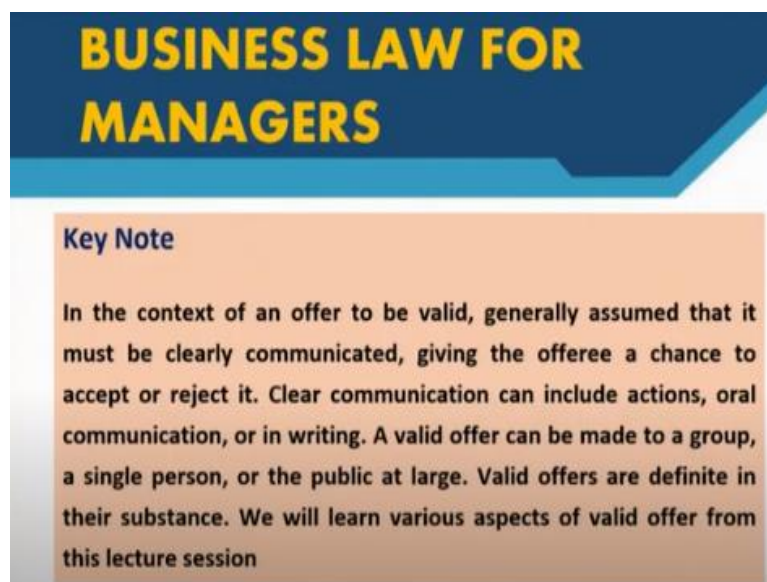


Business Law for Managers
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Module-4: Law of Contract

Lecture - 17
Concept of Offer, Valid Offer and Essentials of Valid Offer

Good afternoon. It is model 4 lecture 17, Concept of Offer, Valid Offer and Essentials of Valid Offer.

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An offer is basically the starting point of a contract. In fact, much before that we have invitation to offer. So, as we go along, we will understand the difference between offer and an invitation to offer but the starting point of a contract is an offer. And then comes the other aspect of offer, which is called acceptance. So, if the offer and acceptance is in place, the contract starts moving, and if that is not in place, the contract is, has not made any start at all.

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KEY POINTS

- Concept of Offer
- Essentials of Valid Offer
- Elements of a valid offer
- Capacity to Contract
- Free Consent

We will see concept of offer, essential for valid offer, elements of valid offer, capacity to contract and free consent.

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Concept of Offer

Introduction

Contracts play an important role in our daily life and living. It may be ranging from insurance policies as well as to employment contracts. In Fact, we enter into contracts even without thinking, and the whole process of contract starts with an offer by one party and acceptance by another party. We may have a brief discussion on the issues relating to offer and acceptance.

Now contracts play an important role that we all know. But you know initially it starts with the process which we called basically offer and acceptance and that is the importance of this module is to understand how the offer and acceptance takes place.

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Concept of Offer

Proposal or Offer

According to the Indian Contract Act 1872, proposal or offer is defined in Section 2(a) as "when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer."

When one person will signify to another person his willingness to do or not to do something, even abstain from doing something, with the view to obtain the assent of such person to such an act of abstinence, act or abstinence, he is said to make a proposal or an offer. Now it is signifying important what one person will signify to another person. So, it is person to person.

The moment it is person to person to a specific person, then it is an offer. But when it is not to a specific person, but to a general then it is actually an invitation to offer. And later on, that person makes a specific offer to the person who originally given the invitation to offer and therefore, that person becomes an offeror.

And the person who has given information to offer becomes an offeree or the acceptor, offeror, offeree. Or person who gives the offer is called offeror, who accepts the offer is called offeree. Acceptance for the one who gives the acceptance. So important thing is signified to another person, his willingness to do or not to do something with a view to obtain an assent of such person, with a view to obtain, it is not a generalized thing.

To obtain the assent, the consent, the eyes of such person or an act of abstinence as well not to do something.

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Concept of Offer

Essentials of a Valid Offer

- ❖ The terms of the offer must be definite, unambiguous and certain or
❖ Capable of being made certain.
- ❖ An offeree must have knowledge of the offer before he can accept it.
- ❖ An offer cannot contain a term the non-compliance of which may be assumed to amount to acceptance.- free credit cards first year no fees – second year huge fees
- ❖ If a person makes a statement without any intention of creating a binding obligation this does not amount to an offer. A made an advertisement for sale of car in the newspaper , B travelled 50 kms to purchase but it was sold off. No compensation is legally payable.

It is important that the terms of the offer is very definite, unambiguous and certain. Unambiguous means no leave, do not leave any scope for interpretation. So, if I am making an offer for selling a house, I should make it very specific, what is that house about? What is the specific area of the house? How old is the house? What is the length of the, I mean the area of the house?

Whether it has a compound or not? Whether it has a garage space or not? Very specific unambiguous certain terms should be given. If that not if that is not the case, then it is not a valid offer really. It is a generalized offer. The offer is not very specific to the property. So, the offer is not complete. Because offeree can only give his acceptance, provided he has knowledge of the offer.

If he does not have the knowledge of the offer, complete knowledge, then that acceptance has got no meaning and there is a scope of the contract not being enforceable. Basically, the example that is given in the next is a free credit cards first year no fees, second year huge fees. This has been a case which has been happening random. Of course, after the Supreme Court intervention, it has got reduced.

Credit cards were sent to the houses without even any offer being made. Without any call being made that we need a credit card. The moment you accept that credit card, first year it is free, next year huge fees are charged. And if you do not pay the fees, then it goes on as your dues. So, it was not at all a healthy practice. Banks were

pushing the credit card sales by not even ignoring the very basic contract of invitation to offer, offer and acceptance.

There was no acceptance. Mayor sending a card to somebody's house by courier and courier delivering the card and signing does not mean it has acceptance, number one. Putting a condition that if you do not accept reject the card send the card back. Otherwise, it will be deemed acceptance is again wrong, utterly wrong. My action will only prove that I have accepted.

My non-action you can never prove that I have accepted. Here the reverse. To prove your non-acceptance, you take an action. And if you do not take an action it will assume to be you have accepted the fact. Total bypass of law, but it was being done rampant by various corporates, I mean banks to sell their credit cards. If you do not accept, you return the card back at this address.

Prepaid envelope whatever is there, but you have to return. You have taken action for that. But if you do not take any action, sit on it, then it is acceptance, that cannot happen. So, it has to be foregone. Same way if an advertisement there in a car for sale of a car in newspaper. A person may travel 50 kilometers, 500 kilometers, 200 kilometers, but cannot come and force you give me the car because I have complied with your offer.

It was not an offer. It was an invitation to offer. He was inviting offers for his car. And it is clearly rated rates are negotiable, terms are negotiable. So, one cannot come and demand that since you have given an invitation to offer, we will take it as an offer and here is my acceptance. Once I have complied with your terms you are bound to give it to me. No, it cannot.

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Concept of Offer

Essentials of a Valid Offer

- ❖ The offer must be made with a view to obtain acceptance thereto.
- ❖ The offer must be made with the intention of creating legal relationship.
- ❖ The offer must be communicated to the offeree before it can be accepted.
- ❖ If no time is fixed by the offeror with in which the offer is to be accepted, the offer does not remain open for an indefinite period. Reasonable time concept. Tenancy agreement , alterations in flat- should not be unreasonably withheld.
- ❖ An offer must be distinguished from a mere invitation to offer.

The offer must be made with a view to obtain acceptance thereto. The offer must be with the intention to create a legal relationship of a buyer and a seller. You become an offeror and offeree. There is a transfer of ownership between the two. The offer must be communicated to the offeree before it can be accepted. So, communication has to be complete. Offer again cannot remain indefinite period.

Though if it is given in advertisement that the offer is given inviting quotations, if it is not mentioned the time, it does not mean you will be indefinite period. Reasonable time concept is always there. Importance is differentiated between an offer and an invitation to offer.

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Concept of Offer

Elements of a Valid Offer

- ❖ There must be two parties.
- ❖ The offer must be communicated.
- ❖ It must create legal relations.
- ❖ It must be certain and definite
- ❖ It may be specific or general.

There must be at least two parties. The offer must be communicated. It must create legal relationship, transfer of owner, ownership. It must be certain and definite, not unambiguous. It should not leave anything; ambiguity should be avoided. It must be specific or it will be it may be specific or even general but in case it is general it is more likely to be an invitation of offer.

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Concept of Offer

Classification of Offer

There are some offers based on the design, timing, purpose, etc. However, it can be classified as follows.

- ❖ Express offer means expression by words, spoken or written.
- ❖ Implied offer is derived from the actions and circumstances of the parties, e.g., transport company to carry passengers for a certain fare is implied offer.
- ❖ General offer is made by public at large
- ❖ Specific offer is made to a specific person/groups can be accepted by the same, not by anyone else.

There are some offers based on design, timing, purpose etc. However, it may be classified as follows. Express offer means expression by words spoken or written. Implied offer means derived from actions and circumstances. Transport companies carrying passengers. Somebody boards, he is an implied offer that he will he has accepted the offer that he will pay the fare.

So, transport company is offering the services. Somebody who is taking their services he is accepting that offer. General offer is something which is made by public at large. General offers can be that we are offering spaces in a particular place. These are the terms and conditions. Well, that is an offer. You have to go comply with the terms and conditions and then you get an acceptance.

Specific offer is made to a specific person or groups can be accepted by the same not by anyone else. So specifically, I am giving an offer. For example, when you are offering shares to a qualified institutional buyer, we call it QIP. So, it is only going to the QIPs, nobody else can buy. Meaning the mutual funds or institutional investors they can buy. But general public cannot buy. So, offer can be made very specific to

groups. But when I am giving an offer to a general public like an IPO, it comes by the public issue. It is a general offer which has been given to all.

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The slide is titled "Concept of Offer" and "Classification of Offer". It contains two bullet points:

- ❖ Cross offer is made between two parties means both make the same offer at the exact time to each other.
- ❖ Counter offer is an answer given to initial offer that means original offer has been refused and replaced by another.

Counter offer is you have made an offer, I do not like that. So, I give another offer. Your price is 40,000. No, I give an offer of 30,000. You give me that price. So that is called a counter offer.

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The slide is titled "Concept of Offer" and "Lapses and revocation of an Offer". It contains six bullet points:

- ❖ An offer lapses after a defined or reasonable time.
- ❖ An offer lapse by not being accepted in the specified mode
- ❖ An offer lapses by rejection.
- ❖ An offer lapses by the offeror or the offeror's death or insanity until acceptance.
- ❖ An offer lapses by revocation before acceptance.
- ❖ An offer lapses by subsequent illegality or destruction of the subject matter.

An offer lapses after defined or reasonable time. Any offer we cannot have a time immemorial kind of acceptance. I mean, it cannot be remained open. An offer lapses by not being accepted in the specified mode. That is also important. You have to accept it in a mode which has been specified there. If it is stated that it has to be accepted in a particular form given by it, it has to be accepted in that form. You just

write a mail and give and I accept the offer, it will not happen. Rejection offers are common.

It may not take place. Nothing is important that you have to give an offer somebody has to accept that offer. Offer can be rejected. There is no compulsion that somebody has to accept. Similarly, and person if he has given an offer and accepted, then it becomes a contract.

But if it is in the nature of an invitation to offer, and it can be shown that it is an invitation to offer, then it can be, the offeror cannot be compelled to accept the acceptance. He will have to you know he has the option to use his discretion to whom to give that, finally to whom with whom to enter into a contract. Offer can lapse by subsequent illegality or destruction of the subject matter.

It is very common; it happens in real estate many times. You have entered into contracts, building up a property, the land is acquired. Now what happens after some years or maybe few months the land is shown to be something which is an acquired land, it requires, government has acquired that land. So that property cannot be built. So, you cannot take the promoter for a cause for that.

It is almost like a force majeure situation. Subsequently illegality has happened in that. The promoter cannot be held responsible for that. He will pay back the money, maybe the interest also. But you cannot be enforced for a specific performance that you have to build at that place the property and give me my quota of two flats because the subject matter, the whole land on which the property will be built is has been acquired by the government.

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Concept of Offer

Capacity to Contract

- ❖ Age of majority
- ❖ Sound mind
- ❖ Not disqualified from contracting by any law.

Can a Minor enter into a contract?

- ❖ Point to note is that : Minor may be a party to the contract but not bound by that contract, however the minor make other party bound by the contract.
- ❖ A minor can be pledgee or mortgagee or payee, can derive the benefit under the contract but he is not bound by that contract.

Capacity to contract. This is another important concept of contract. Anybody cannot enter into a contract. A person who has got majority. And what is that age, 18 years. Somebody below 18 years cannot enter into a contract. It is only after the age of 18 years one can enter into a contract. He has to be of sound mind. What is a sound mind? Person who can make his own decisions.

He should not be dependent on somebody to take his decision then he cannot enter into a contract. And he is otherwise not disqualified from a contract, from contracting by any law. There may be provisions where somebody cannot enter into a contract for certain reasons. Like if you are a whole-time employee of one company you cannot enter into a contract of another employee for employment.

So, you are disqualified from contracting by law. You cannot be an employee of two companies at the same time. That is when you say he is not disqualified for contracting by any law, then that contract cannot be enforceable. That capacity you do not have to enter. You are a full-time employee of one company you cannot be an employee of another company.

Can minor enter into a contract? Minor can be a party to the contract but not bound by that contract. He can be a beneficiary to the contract but he cannot be held liable for the contract. But he can bind other parties by the contract. He cannot be bound.

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Concept of Offer

Capacity to Contract

- ❖ Can an agreement with a minor be legal and enforceable after he/she attains majority ?
- ❖ Is the minor allowed to cheat by falsely stating his/ her age ?
- ❖ Can minor be a partner in a partnership firm ?
- ❖ Can minor act as an agent ?
- ❖ A contract with a minor is void, and a minor, therefore cannot bind himself by a contract. A minor is not competent to contract.

Reference: Mohiri Bibi Vs. Dharmodas Ghosh case.

Can an agreement with a minor be legal and enforceable after he or she attains majority. No. When he entered into a contract if he was a minor, after attaining majority that cannot be enforced because the contract is void ab initio right from the beginning. Minor is never allowed to cheat by falsely stating his or her age. Can minor be a partner in a partnership firm?

No, he cannot be because he cannot take a decision. He is incapable to enter into a contract. So, he cannot be a partner in a partnership firm. Partner in a partnership firm has the capacity to contract. He does not have the capacity to contract. Minor also cannot be an agent. Because he cannot contract. A contract with a minor is void and a minor therefore cannot bind himself by a contract. Minor is not competent to contract. Mohiri Bibi Vs. Dharmodas Ghosh, very famous case. This case is referred almost everywhere.

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Concept of Offer

Capacity to Contract

- ❖ Can a person who is drunk enter into a contract? Definition of drunkard and habitual drunkard . . Test is whether it can be proved that the drunkard was incapable of understanding the contract.
- ❖ Permanently Unsound mind - idiot
- ❖ What is an alien enemy & what is an alien friend?

Benevolent lady, Mohiri Bibi, he helped Dharmodas Ghosh the young boy because he was financially in distress. And he helped her to give some money as loan, quite amount of money as loan for him to use his, you know daily needs, education, many other things she helped her.

And in the process what happened, since it was a quite a sum of money, Dharmodas Ghosh mortgaged the property, whatever he had to Mohiri Bibi. Later on, when he became minor, I mean he became major, then, and he was finally asked to pay the debt he said he is unable to pay the debt. Then Mohiri Bibi tried to enforce the property of the minor, which he has given some point of time when he was a minor.

But he Mohiri Bibi could not enforce the property, because when the property was mortgaged to her, given to her, then that point of time, Dharmodas Ghosh was a minor. So, at the time of minor if he has mortgaged the property that contract is void ab initio. So, it is just a piece of paper, it cannot be enforced. So Mohiri Bibi gave loan, helped Dharmodas Ghosh with all the time during his difficult times, etc.

But when the turn came to repay, he could not repay and she tried to enforce the property, could not enforce the property because contract with a minor is void ab initio. So, when she entered into a contract with him, he was a minor and he mortgaged the property which is of no value, he cannot mortgage. She cannot take a decision on mortgage. So, the decision was considered to be wrong, void ab initio.

And therefore, Mohiri Bibi could not realize the money. So, this is a famous case of the Mohiri Bibi versus Dharmodas Ghosh in a nutshell. Now can a person who is drunk enter into a contract? Well normally a drunkard is somebody who is not in his senses and cannot enter into a contract. But again, it has to be proved, that when he entered into a contract, that the person was incapable of understanding the contract.

The important is drunkard or not is not important, whether he was in his senses or not. If he was not in his senses because of whatever be the reason, then that contract is not enforceable by law. Permanently unsound mind is idiot. Of course, he cannot enter into a contract because he can never use his mind, his senses to enter into a contract.

Foreign company, yes, you can enter into a, with a foreign company you can enter into a contract, with a foreign friend you can enter into a contract, but not with an enemy. So today, you have entered into a contract with a country which is not an enemy country, tomorrow, if for any reason it is declared as an enemy country, all the contract that you have entered into prior would be enforceable, but after that it will not be enforceable.

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Concept of Offer

Free Consent

A consent is said to be free when it is not caused by:-

- ❖ Coercion
- ❖ Undue influence
- ❖ Fraud
- ❖ Misrepresentation
- ❖ Mistake

Example of Coercion:

- ❖ Threatens to kill and threatens to commit suicide

Example of Undue influence :

- ❖ Example of matter given under will.

So, contract during the time of when they declared as enemies are not enforceable. Free consent. This is one concept, which is largely debated in court to prove that a contract is not enforceable by law, because if it can be proved the person has entered into a contract was not in his will, he was not willing to enter into a contract, but you are somewhat forced to enter into a contract.

In that case, the contract will fall flat, it will not be enforceable. Lot of times these case laws this circumstantial evidence are taken to prove before the court that it was entered not with a free consent, but with coercion, with any of this undue influence, fraud, misrepresentation and mistake. Examples of coercion, threatening to kill, threatening to commit suicide.

Examples of undue influence can be example of matters under will where many times after death, when the will is read out or will is disclosed, it is found out among even brothers, that sisters whatever it is, this they try to find out that the father or the parent who has given that property, the will that has been signed was under influence.

This is a very common phenomena which is found in family feuds, that will be not done with free consent, but it was threatened, undue influence, coerced or some kind of influence was there to make that will otherwise this will would not have been done by my whatever it is by father or mother whatever, who has given this, made this will.

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Concept of Offer

Presumption of undue influence in following cases

- ❖ Parent & child
- ❖ Guardian and ward
- ❖ Doctor & patient – Hernia operation suggested by Doctor
- ❖ Spiritual guru & disciple (Great profession – no impact on downturn)
- ❖ Lawyer & client (Derivative transactions – cases in Chennai – corporate heads pleading ignorance and taking plea of undue influence) legal covenants containing clauses of understanding the contract in full
- ❖ Trustee & beneficiary

Now undue influence. Undue influence is something which is there, which cannot be seen, but can be felt from the relationship. A parent and child, there is a presumption of undue influence. A parent will always influence the child. Child will also influence the parent. So, the presumption of undue influence in any contract between them is always there. Guardian and ward. Again, undue influence.

Doctor and patient. Many times, it happens that doctors are now being taken to court by for reasons like you know they have not used their due diligence or they have not done their proper study or they have not done their medical examination properly before taking a decision of asking for some operation or some tests etc. So, the onus is always on the doctor to prove.

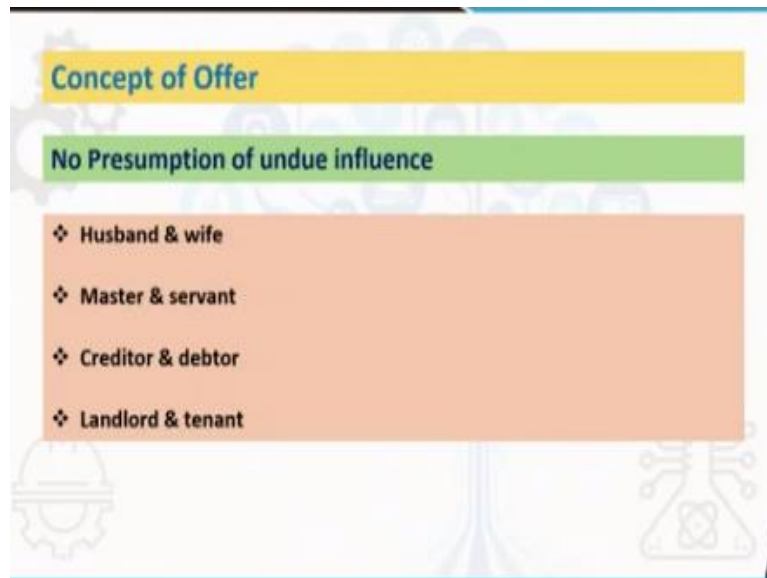
Why it is important? Because doctor sits in a position of undue influence. So, whenever it goes to the court, court assumes that here is a body who is stronger than the other body. Between two contracts one body has a power to influence the other. It is always presumed that a doctor can always influence the patient party. Patient does not know anything, so he can be influenced by the doctor.

Now it is for the doctor to prove that he has not unduly influenced. It was justified, the operation was justified, the investigation was justified. Lawyer and client also. Sometimes this case is to come up where companies take this plea that we have given this, we have taken this decision based on the opinion of the lawyer. So, lawyer does influence the client.

His understanding of law of course is much better than the client and the client comes to him for proper understanding. So, whatever the lawyer says, he goes by that. And sometimes clients take this as a plea and you know present accounts with a note saying that this provision has been done this way or this liability has been disclosed this way, based on an opinion taken by your company solicitors or whatever the legal counsel has advised.

So, this is how, you know companies do at times represent or for the matter even try to take the protection of the opinion of the lawyer because lawyers always have, it is assumed will have a presumption of undue influence over the clients. Trustee, beneficiary same way. The beneficiary will be influenced by the trustee because end of the day, the beneficiary is benefited by the trust.

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However, there is no presumption of undue influence in these relationships. Husband and wife of course not. Who can influence whom? Master, servant. Again, there is no presumption of undue influence. Creditor, debtor. There is no presumption of undue influence. And landlord, tenant also it is taken that there is no presumption of undue influence.

Though they try to show in each of these cases there is some amount of undue influence which is master, servant or for that matter between the landlord and the tenant, but law per se does not presume undue influence. So, it will not be for the court to prove that the landlord has influenced the tenant. It will not ask the landlord to prove that you prove that you have not influenced the tenant.

Rather the law will ask, the judge will ask that you prove that you have been influenced by the landlord. It is the onus on the person who is bringing the allegation and not on the other person. Same with the debtor and creditor. The debtor brings an allegation of undue influence, debtor will have to substantiate. It is not the creditor will have to say that no I have not unduly influenced.

This is the basic difference between presumption of undue influence and non-presumption of undue influence. Where there is a presumption of undue influence, the person bringing the charge does not have to prove. The person on whom the charge has been brought, he has to prove that he has not influenced. Wherever there is no

presumption on undue influence, the person who is bringing the charge has to substantiate where there is undue influence.

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We have taken references to various editions of the books, which are there. You know these are all old books and I mean, all running commentaries are there. Law of contract, I think the best would be the bear act to see. However, references have been taken for illustrations and deliberations.

And in offer and acceptance and in undue influence, free consent, one thing comes out very clearly is that each of them have a in their capacity or right to make or mar a contract. Whether a contract will stand or the contract will fall, each one has his own state. It is not that anyone is more important or less important. Exclusively each one has got important.

Free consent is extremely important. Establishing the act is important. Bringing charge against it depending upon the kind of influence you have, who will prove who will not will prove, that will depend. Capacity is another important thing. To prove whether he has got the capacity to enter into a contract.

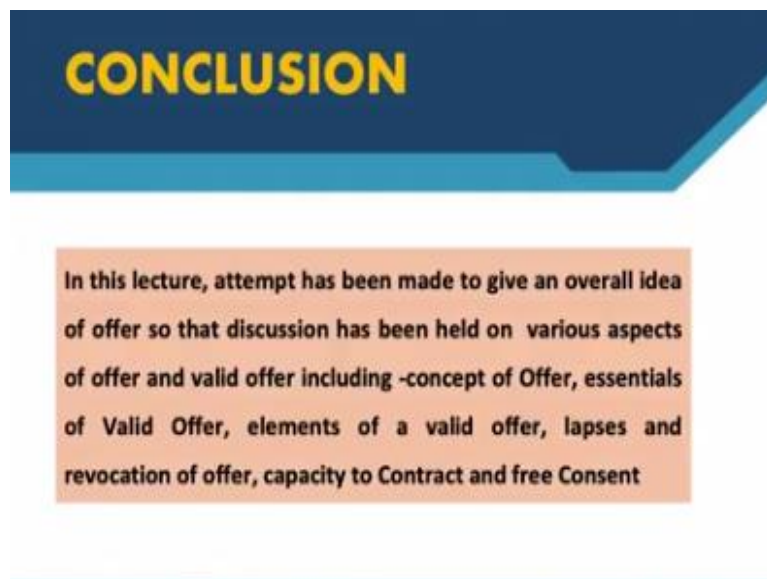
And of course, there are other aspects in a contract which we will see in the next slides like consideration we have discussed in the earlier slide, which is another important of the contract. Then performance of the contract, whether at all the

contract is performable or not. Whether the subject matter is something which is at all doable or not.

One case we saw where the subject matter subsequently has become illegal, it cannot be contained because the promoter has taken a land, the land has been acquired by the government or by the state or for other reason land has become a disputed land. In that case, he cannot be held responsible. Of course, he was taken advance that has to be returned.

So, each one of these in a contract are very essential ingredients to prove that the contract becomes a valid contract. Each of the factors are to be present in a valid agreement to make it a valid contract. We will see in the next slides further, how it unfolds other aspects of the contract.

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CONCLUSION

In this lecture, attempt has been made to give an overall idea of offer so that discussion has been held on various aspects of offer and valid offer including -concept of Offer, essentials of Valid Offer, elements of a valid offer, lapses and revocation of offer, capacity to Contract and free Consent

We will discuss more as we go forward. Thank you.