Advanced Contracts, Tendering and Public Procurement

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Lecture 7 - Formation of Contract – Revocation of Offer

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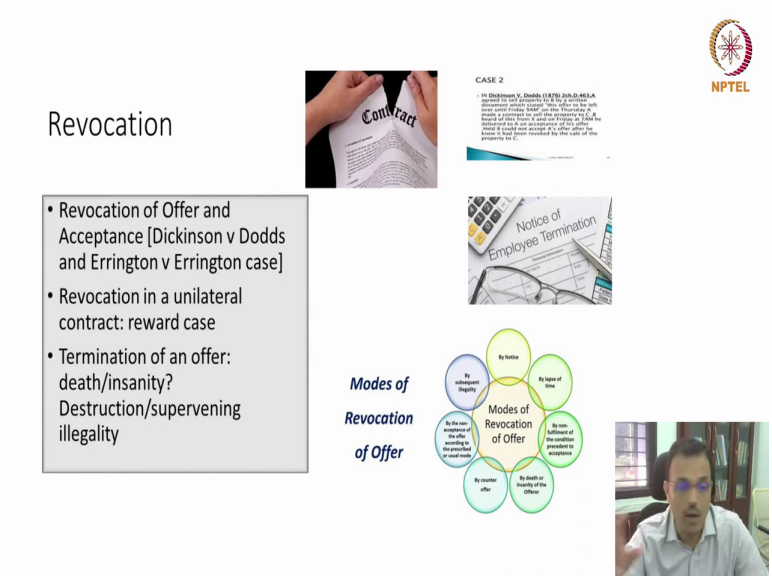

Revocation is an important aspect to understand in contracts. Once an offer is made and accepted, it creates a legally binding obligation that cannot be withdrawn or called back. However, in practicality, there may be instances where parties reconsider the offer or acceptance, and this is where the concept of revocation comes into play.

Revocation means to call back or withdraw an offer. It is essential to communicate the revocation, just as the offer and acceptance need to be communicated. The offeror must inform the offeree about their intention to revoke the offer. This communication can be done through various means such as written notice, oral notice, email, or any other mechanism.

Another way an offer can be revoked is through the lapse of time. Every offer is open for a reasonable amount of time, which may vary depending on the subject matter, the parties involved, and customary trading practices. If a specific time is mentioned in the offer, such as "the offer is valid until this evening," the offer will lapse and no longer exist after that time has passed.

Furthermore, an offer can be revoked by the occurrence of certain events. For example, if the offeror dies or becomes insane before the acceptance is made, the offer terminates automatically. This is because many contracts are based on the personal character of the offeror and offeree, and their absence or incapacity affects the validity of the offer.

Non-fulfillment of a condition precedent to acceptance can also lead to the revocation of an offer. If the offer includes a condition that must be met before acceptance, such as paying an advance amount, failure to fulfill that condition renders the offer invalid. In such cases, no valid acceptance can take place, and the offer loses its legal existence.

A counteroffer is another way in which an offer can be revoked. If the offeree responds to the original offer by making a counteroffer instead of accepting it, the original offer no longer exists. The counteroffer becomes a new offer, and the original offeror can either accept or reject it.

Additionally, the offer can be revoked by non-acceptance in the prescribed or usual mode. The offeror has the right to prescribe the mode of acceptance and set the terms and conditions of the contract. If the offeree does not follow the prescribed mode or contravenes the conditions of the offer, it is considered a counteroffer, and the original offer expires.

It is important to note that an offer remains valid until it is revoked or any of the events occur. Once an offer is revoked or terminated, it ceases to exist, and no further obligations or enforceable contracts can be created based on that offer.

In terms of acceptance, it can also be revoked, although the conditions for revoking acceptance are different. Acceptance can be revoked before it reaches the offeror. Communication and knowledge play a crucial role in acceptance. If the offeror is not aware of the acceptance, it is as if no acceptance has occurred. The offeree can revoke their acceptance by using faster means of communication, such as phone calls, emails, faxes, or other instantaneous methods, before the communication of acceptance reaches the offeror.

In conclusion, revocation is an important aspect of offer and acceptance in contracts. An offer can be revoked through communication, lapse of time, occurrence of certain events, non-fulfillment of conditions, or the presence of a counteroffer. Acceptance can also be revoked before it reaches the offeror. Understanding the concepts of revocation and its various modes is crucial in comprehending the dynamics of offer and acceptance in contract law.

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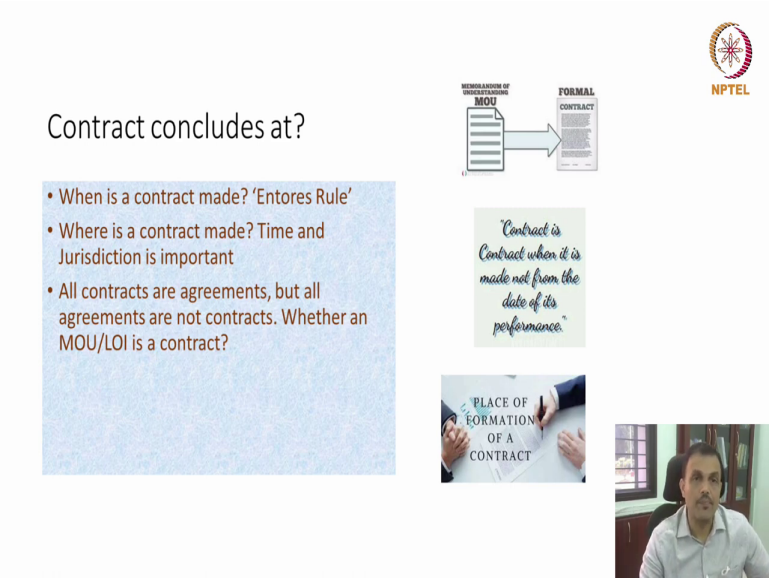

As we delve into the final part of our discussion, it becomes evident that offer and acceptance are the fundamental ingredients necessary to form a contract. When both parties engage in the process of offer and acceptance, the obligations under the contract come into effect. Referring to the earlier example of Bangalore and Delhi, an important question arises: When is a contract considered made? A contract is only established when acceptance is communicated and reaches the offeror. The act of dispatching the acceptance alone does not signify the completion of the contract. It is only when the dispatched acceptance reaches the offeror that the acceptance is deemed complete.

Completion of acceptance results in a binding contract, establishing a legal obligation. It is crucial to determine when and where the contract is made as it facilitates the resolution of potential disputes in the appropriate jurisdiction. While parties have the freedom to choose the dispute resolution location in modern contracts, certain rules and considerations apply. The court's jurisdiction depends on various factors, such as the choice of jurisdiction and the convenience of the court, as defined by the Civil Procedure Code.

Was it at the offeror's location or the place of acceptance? The conclusion of the contract determines the jurisdiction of the local courts to handle matters like offer revocation, validity of acceptance, contract enforcement, breaches, and more. Therefore, the contract's place is determined by the location where acceptance is finally communicated. For instance, if an offer originates from Bangalore, and the acceptance is posted from Delhi, the contract is made only when the acceptance reaches the offeror in Bangalore. Prior to that, the contract is

not valid, and obligations between the parties do not arise. The place also defines the jurisdiction where courts may need to intervene.

It is crucial to note that unless the parties have explicitly agreed to a different jurisdiction or timeframe, the rule stands that the contract is made at the place where the offeree receives the acceptance. This is also the time when the contract is considered made. However, in modern contracts, parties may agree to sign the contract today but specify that its obligations will commence in the future. This flexibility is possible when the place and time of the contract are agreed upon. Otherwise, the place where the acceptance is received determines the jurisdiction, and that is where and when the contract is made.

In conclusion, it is essential to understand which agreements can be treated as contracts, considering the importance of a valid offer and acceptance. Whether an agreement, such as a memorandum of understanding (MOU) or a letter of intent, constitutes a contract depends on the intention of the parties. Intention plays a significant role in reaching a contract. Without a valid offer and acceptance, an agreement like an MOU or a letter of intent may be considered a plain agreement without enforceability in a court of law. However, it may result in private obligations. Therefore, intention, expressed either positively or negatively, is a crucial aspect to establish a contract. With this, we conclude the discussion on offer and acceptance and move on to the next important topic: capacity to contract. Capacity to offer, accept, and make contracts is highly relevant in determining who can enter a contract.

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Now, moving forward, let us examine Section 10 of the Indian contract, which specifies that only certain categories of people should be granted contractual rights (29:02). Therefore, not everyone in society can freely enter contracts. There are certain individuals who need to be excused from contractual obligations due to the nature of the contract, which creates responsibilities and obligations for the other party. The legal system needs to trust that you can shoulder these legal responsibilities, and if that trust is lacking, you may not be qualified to enter a contract.

Let us consider the example of child labor in labor law. We have restrictions on child labor for various reasons, primarily to protect the interests of children. Children should be attending school instead of engaging in labor. We do not trust children to have the mental capacity to understand contracts, so minors are excluded from entering contracts, including in labor law. However, there are exceptions in place, particularly regarding hazardous activities. Minors should not be allowed to participate in hazardous industries as it can adversely affect their health. But between the ages of 14 and 18, there may be certain non-hazardous activities where minors could be allowed to enter contracts. This exception is made due to socioeconomic circumstances in the country. Even in labor law, while striving for fairness in labor conditions, the legal system aims to protect the innocence and infancy of the child, ensuring they are not exploited.

When discussing the capacity of parties, we can generally categorize it into two types: mental and physical. While physical incapacities are a consideration, I will focus on mental capacity,

which primarily relates to age and the maturity of one's mind. Since dealing with contracts involving minors can be a major challenge, the Indian Contract Act does not explicitly address it. It simply states that minors are excluded, and one must exercise caution. The age of maturity is not specified in the Indian Contract Act itself; instead, we refer to another legislation called the Indian Majority Act. This complementary legislation determines the age of majority, which is currently set at 18, as per the Indian Constitution's requirement for voting rights.

Earlier, the Indian Majority Act stipulated the age of majority as 21, even for voting, but it was later reduced to 18. The Indian Majority Act governs the age qualification for exercising certain rights and is applicable to inter-contracts. Minors are excluded for reasons of protecting their interests and ensuring they are not burdened with commercial transactions or obligations. Can we clearly state that minor contracts are not enforceable? Well, in the case of *Mohoribibi v. Dharmodas Ghose*, the court declared minor contracts as void ab initio.

A void contract holds no legal recognition whatsoever. The court went even further and declared it void ab initio, which means it has no existence from the very beginning. It is not just a matter of invalidity or unenforceability; it is completely void ab initio. The intention behind this ruling in the Mohoribibi case was to protect the innocence of minors, as they could be vulnerable to exploitation in commercial bargains where one party usually holds a stronger position and can take advantage of the minor. The court was firm in its stance, treating every minor contract as void ab initio. Consequently, the parties involved would not receive any relief under the Indian contract law. The law would not recognize the contract from its inception.

It is important to understand the distinction between void and void ab initio because, in the case of a void contract, such as this, Section 65 of the Indian Contract Act can still apply the principle of unjust enrichment. Even if the contract is void, the principle of unjust enrichment allows for the recovery of any unjustly received benefits.