The emphasis, here, is upon the requirement that the willingness to make a proposal should be "*signified*". The term signify means to or communicate to make known.[1] It thus requires that the offer must be communicated to the other person, *i.e.*, the *offeree*.

Offer—How Communicated

The question as to how an offer is communicated is explained in Section 3 of *the Act*, 1872. This Section says that the communication of proposals is—

> deemed to be made by any act or omission of the party proposing... by which he intends to communicate such proposal... or which has the effect of communicating it.

It, thus, follows that an *offer* may be communicated by the offeror —by any act or omission by which the offeror—

(a) intends to communicate such offer; or

(b) which has the effect of communicating the *offer.*

Thus, an *offer* may be made by words of mouth, or by writing or conducting in a manner, which has the effect of communicating the offer to the offeree.

An *offer* may, therefore, be an *express offer, i.e.*, which is made by some positive act on the part of the offeror, or it may be *implied offer*, which is inferred from the conduct of the offeror.

Express and Implied Offers

Section 9 of *the Indian Contract Act, 1872* says :

> *In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.*

An offer would be an *express offer* when it is made by words of mouth or by writing.

Implied Offer

As explained in Section 9 above, an offer made otherwise than in words, is said to be an *implied offer.* It is an offer inferred from the conduct of the party. For example, a bid at an auction is an *implied offer.* In such a case the conduct may take the place of written or spoken words in the offer and the intention of the party is a matter of inference from his conduct and the inference is more or less easily drawn according to the circumstances of the case.[2] For

1. The Concise Oxford Dictionary, 1166.
2. Anson's *Law of Contract*, 2002, 30.

example, where a tramway company runs trams on a particular route, the company is said to make an offer to carry intending passengers over the route at scheduled fares. The offer of the company is an *implied offer*. Likewise, a person who boards a bus or who hires a taxi, thereby he undertakes to pay the fare to his destination, even though he makes no express promise to do so.[1] Or where a person who puts a coin in an automatic machine enters into a contract with the supplier although no words have been used.

In **Haji Mohd. Ishaq v. Mohd. Iqbal**,[2] on the orders of a go-between man, certain goods were supplied by the plaintiff on his own account to the defendants. The defendants clearly and unerringly accepted the goods and paid to the plaintiff, a part of the price. A liability to pay the balance was held to have arisen. The Apex Court ruled that the defendants by their clear conduct of accepting the goods and never repudiating any of the numerous letters and telegrams of the plaintiff demanding the money from them, clearly showed that a direct contract which in law was called an *implied contract by conduct* was brought about between them.

In **Upton Rural District Council v. Powell**,[3] fire broke out in the defendant farm. Believing that he was entitled to the free services of the Upton Fire Brigade, summoned it. The Brigade put out the fire and claimed compensation for the services. It then turned out that the defendants' farm was not within the free service zone of the Upton Council, he was held bound to pay. The Court said :

> The truth of the matter is that the defendant wanted the services of Upton; he asked for the services of Upton and Upton, in response to that request, provided the services. Hence, the services were rendered on an *implied promise* to pay for them.

Communication of Offer—When Completes

As discussed above, an offer, to be valid, must be communicated. Further, it must be communicated to the person or persons, to whom it is made.

Section 4 of *the Indian Contract Act, 1872* says that *"the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made."*

1. See *Wilkie* v. *London Passenger Transport Board*, (1947) 1 All. E.R. 258, quoted in Anson's *Law of Contract*, 30.
2. (1978) 2 S.C.C. 493. See also *Ramji Dayawala & Sons* v. *Invest Import*, (1981) 1 S.C.C. 80.
3. (1942) 1 All ER 220 (Emphasis added). See also *Clarke* v. *Earl of Dunravan*, (1897) AC 59; *Steven* v. *Browley & Sons*, (1919) 2 K.B. 722; *Haridas* v. *Mercantile Bank of India*, (1920) 47 IA 17.

It, thus, follows that an offer cannot be accepted unless and until it has been brought to the knowledge of the person to whom it is made. To put it otherwise, *A* cannot be said to make an offer to *B* unless *A* brings the offer to the knowledge of *B*. *B* cannot be said to have accepted the offer, even if he acts according to the term of the offer. Thus, acting in ignorance of an *offer* does not amount to acceptance of the *offer*.

In **Lalman Shukla** v. **Gauri Dutt**,[1] the defendant's nephew absconded from home. The plaintiff, who was defendant's servant, was sent to search for the missing boy. After the plaintiff had left in search of the boy, the defendant issued handbills announcing a reward of Rs. 501 to anyone who might find out the boy. The plaintiff, who was ignorant of this reward, was successful in searching the boy. When he came to know of the reward, which had been announced in his absence, he brought an action against the defendant to claim this reward. It was held that since the plaintiff was ignorant of the offer of reward, his act of bringing the lost boy did not amount to the acceptance of the offer, and, therefore, he was not entitled to claim the reward.

If a person has the knowledge of the offer, his acting in accordance with the terms thereof amounts to the acceptance of the same. In such a case, it is immaterial that at the time of accepting the offer, the acceptor does not intend to claim the reward mentioned in the offer.

In **Williams** v. **Carwardine**,[2] the plaintiff, who knew that reward had been announced to be given to anyone who gave information leading to the conviction of an assailant for murder, gave the necessary information. While giving the information, the plaintiff mentioned that she had given the information 'to ease her conscience.' At that time, she did not intend to claim the reward. She, however, subsequently brought an action to claim the same. It was held that since the offer had been accepted with its knowledge, there was a valid contract and, therefore, she was entitled to claim the reward.

Cross Offers

When the offers made by two persons to each other containing similar terms of bargain cross each other in post, they are known as *cross offers*. For example, on 1st January, *A* offered to sell his watch to *B* for Rs. 2,000 through a letter sent by post. On the same date *B* also wrote to *A* making an offer to purchase *A*'s watch for Rs. 2,000.

1. (1913) 11 All. L.J. 489.
2. (1833) 4 B. & Ad. 621.

When *A* or B sent their letters, they did not know about the offer which was being made by the other side. In these cross offers, even though both the parties intended the same bargain, there would arise no contract. A contract could arise only if either *A* or B, after having the knowledge of the offer, had accepted the same. In **Tinn v. Hoffmann,**[1] *A* wrote to *B* indicating his willingness to sell 800 tons of iron at 69 sh. per ton. On the same day, *B* also wrote to *A* offering to buy 800 tons of iron at the same rate of 69 sh. per ton. The two letters crossed each other in post. *B* brought an action against *A* for the supply of iron contending that a valid contract had been created between the two parties. It was held that there were only two cross offers and the offer of neither of the parties having been accepted by the other, there was no contract which could be enforced.

Specific and General Offers

When the offer is made to a specific or an ascertained person, it is known as *a specific offer*, but when the same is not made to any particular person but to the public at large, it is known as *general offer*. For instance, an offer to give reward to *anybody* who finds a lost dog, is a *general offer*. This general offer will be deemed to be accepted by anyone who actually finds the lost dog. The person, who accepts this offer, generally by performing the condition of the proposal, can bind the person making the offer. Although a general offer is made to the public at large, the contract is concluded only with that person who acts upon the terms of the offer, *viz.*, who accepts the offer.

It is settled that two manifestations of a willingness to make the same bargain do not constitute a contract unless one is made with reference to the other.[2]

In **Carlill v. Carbolic Smoke Ball Co.,**[3] the defendants advertised their product "Carbolic Smoke Ball", a preventive remedy against influenza. In the advertisement they offered to pay a sum of £ 100 as reward to anyone who contacted influenza, cold or any disease caused by taking cold, after having used the Smoke Ball three times a day for two weeks, in accordance with the printed directions. They also announced that a sum of £ 100 had been deposited with the Alliance Bank to show their sincerity in the matter. The plaintiff (Mrs. Carlill) relying on the advertisement purchased a Smoke Ball from a chemist, used the same in accordance with the directions of the defendants, but still caught influenza. She sued the defendants

1. (1873) 29 L.T. 271.
2. Anson's *Law of Contract*, 2002, 36.
3. (1893) 1 Q.B. 256 at 268.

to claim the reward of £ 100 advertised by them. It was held that this being a general offer addressed to all the world had ripened into a contract with the plaintiff by her act of performance of the required conditions and thus accepting the offer. She was, therefore, entitled to claim the reward. The following observation by Bowen, L.J., may be noted :[1]

> It is an offer made to all the world, and why should not an offer be made to all the world which is to ripen into a contract with anybody who comes forward and performs the condition? It is an offer to become liable to anyone who, before, it is retracted, performs the conditions, and, although the offer is made to the world, the contract is made with that limited portion of the public who come forward and perform the condition on the faith of the advertisement.

It has been noted above that performance of the conditions of the offer amounts to the acceptance of the offer. It may be further noted here that unless the person performing those conditions has got the knowledge of the offer, there is no question of his act amounting to acceptance.[2] On the other hand, if the plaintiff knows that the defendant has announced a reward of Rs. 500 to be paid to anyone who finds the defendant's son, the plaintiff can claim this amount when he is successful in finding the defendant's son.[3] Similarly, if the plaintiff knows that a reward has been announced to be given to anybody giving information leading to the conviction of an assailant for murder, she would be entitled to the reward on supplying the necessary information.[4]

Standing, Open or Continuing Offer

An offer which is allowed to remain open for acceptance over a period of time is known as a *standing*, open or a *continuing offer*. For example, an offer to supply 1,000 bags of wheat from 1st January to 31st December, in accordance with the orders which may be placed from time to time, is a *standing offer*. As and when the orders are placed that amounts to acceptance of the offer to that extent. In the above stated illustration if an order for the supply of 100 bags of wheat is placed on 15th January, there is acceptance of the offer to that extent and the offferor becomes bound to supply those 100 bages of wheat. So far as the remaining quantity is concerned, this offer can be revoked just like any other offer.

1. See Section 8, *Indian Contract Act, 1872*. Also see, *Ibid.*, at 268.
2. See *supra*, 12, *Lalman Shukla* v. *Gauri Dutt*, (1913) 11 All L.J. 489.
3. *Har Bhajanlal* v. *Harcharan Lal*, A.I.R. 1925 All. 539.
4. *Williams* v. *Carwardine*, (1833) 4 B. & Ad. 621.

an action before something else or that form an introduction to something

Letters of Intent

A *letter of intent* simply speaking is a prelude to a contract. It is merely a charter containing the terms and general conditions subject to which a contract would be governed.[1]

Reaching an agreement and agreeing upon the terms subject to which an offer is to be made and accepted is itself a complicated and time consuming process. After these terms and conditions are finalized, a contract is concluded by placing an order or asking a party to perform his part of the contract.

It is now well settled that *a letter, of intent* merely indicates a party's intention to enter into a contract with the other party in future. It is not intended to find either party ultimately to enter into any contract.[2]

In **Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram,**[3] the Supreme Court observed :

> The letters merely set out the terms on which the parties were ready to do business with each other if and when orders were placed and executed. As soon as an order was placed and accepted a contract arose. It is true this contract would be governed by the terms set out in the letters but until an order was placed and accepted there was no contract.

A letter of intent, no doubt, may be construed as a letter of acceptance, if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue *a letter of intent* communicating the acceptance of the offer and asking the contractors to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter *is issued though it may be termed as a letter of intent*, it may amount to acceptance of the offer resulting in a concluded contract between the parties, the Apex Court ruled.[4]

The question as to whether *the letter of intent* is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. So stating, the Apex Court in **D.R.S.A. v. M/s. Bindal Agro Chemicals Ltd.,**[5] held that the *letter of intent* providing that it would

1. See *Dresser Rand S.A. v. M/s. Bindal Agro Chemical Ltd.*, A.I.R. 2006 S.C. 871.
2. *Ibid.*
3. A.I.R. 1954 S.C. 236. See also *Rickmers Verwaltung Gmbh v. I.O.C.*, A.I.R. 1999 S.C. 504.
4. See *D.R.S.A. v. Bindal Agro Chemicals Ltd.*, A.I.R. 2006 S.C. 871.
5. A.I.R. 2006 S.C. 871.