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FROM PROPOSAL TO ENFORCEABILITY: THE JOURNEY OF A CONTRACT

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A uses an application to book a taxi. He clicks on ‘confirm booking’ after seeing the fare, service terms and other relevant information on the app. This factual situation raises several contractual questions concerning the nature and timing of proposal and acceptance, the formation of a binding agreement, and when does a mere digital interaction mature into a legally enforceable contract?

In order to answer these questions, it is necessary to break the contractual relationship into different stages, and trace the progression step by step, from proposal to acceptance, then to agreement, consideration, and finally enforceability.

As per Section 2(h), a contract is an enforceable agreement. In turn, an agreement¹ is a combination of promises supported by consideration. A promise² is formed when a proposal is accepted. Therefore, the contractual relationship begins with a proposal. Upon acceptance, it results in a promise, such promise or promises, when supported by consideration, constitute an agreement. Finally, if the agreement is enforceable, it becomes a contract.

1. PROPOSAL: THE BEGINNING OF THE LEGAL RELATIONSHIP

¹ The Indian Contract Act, No. 9 of 1872, § 2(e) (Ind.).

² The Indian Contract Act, No. 9 of 1872, § 2(b) (Ind.).

At the first stage, A intends to travel to his office. He opens the taxi app and views the available rides, estimated fare, and service terms. The display of information on the app is an expression of willingness by the platform and/or driver to provide transportation services. This display operates as a communication of proposal through the app interface. Upon viewing the app interface, the communication of proposal is completed, as it comes to the knowledge of A.

Having identified the proposal in the set of facts, it is necessary to understand its legal meaning. A proposal is in one word an expression. An expression of willingness to do something or to avoid doing something.³ Under Section 2(a), such willingness must be signified, i.e., declared. The purpose of this expression is to obtain the assent of the offeree. The process of making a proposal is over, when the act of communication to offeree is completed, and the communication of a proposal is complete when it comes to the knowledge of the offeree.⁴ So long as the communication has the effect of laying before the offeree the willingness to act or abstain from acting, it is immaterial whether it is made orally, in writing or by conduct.

2. ACCEPTANCE: TRANSFORMING PROPOSAL INTO PROMISE

A selects the ride and confirms the booking, thereby indicating assent. The communication of A's acceptance is complete from the point of view of the offeror (driver/platform) when it comes to their knowledge, and from the point of view of the acceptor (A) when the communication of acceptance is complete the moment A clicks on the "confirm booking" option on the application.

In legal terms, acceptance is the assent given to a proposal. Such assent has the effect of transforming a proposal into a promise. Under Section 3 assent should be signified. It may be signified by an act or omission which has the effect of communicating it.

For acceptance to convert proposal into a promise, two essentials must be satisfied.

- a. Acceptance must be absolute & unqualified.

³ The Indian Contract Act, No. 9 of 1872, § 2(a) (Ind.).

⁴ The Indian Contract Act, No. 9 of 1872, § 4 (Ind.).

- b. Where proposal does not prescribe a manner of acceptance, it should be signified in usual and reasonable manner.⁵

The communication of acceptance is complete from the point of view of the offeror when it comes to the offeror's knowledge. From the point of view of the acceptor, it is complete when communication is sent.

3. PROMISE: FOUNDATION OF AGREEMENT

Once A accepts the proposal of the platform/driver, the proposal is transformed into a promise. As a consequence, A is bound to pay the fare, while the service provider/driver is bound to provide transportation. These obligations are reciprocal in nature. Accordingly, each promise serves as consideration for the other.⁶

Upon acceptance of a proposal, the proposal becomes a promise.⁷ However, a promise alone does not constitute an agreement. For an agreement to arise, the promise must be supported by consideration.⁸

4. CONSIDERATION: THE PRICE OF THE PROMISE

The promises identified in the previous stage here perform as per Section 2(e) and 2(f) another function: they constitute consideration for one another. Consideration of A is the promise to pay the fare, and the driver's consideration is the promise to provide transportation. Each promise is given in exchange for the other.

Consideration is the price for which the promise of the other is bought and the promise thus given for value is enforceable.⁹ The concept has also been explained more broadly by Lush J, in terms of benefit and detriment. Consideration consists either in some right, interest, profit or

⁵ The Indian Contract Act, No. 9 of 1872, § 7 (Ind.).

⁶ The Indian Contract Act, No. 9 of 1872, § 2(f) (Ind.).

⁷ The Indian Contract Act, No. 9 of 1872, § 2(b) (Ind.).

⁸ The Indian Contract Act, No. 9 of 1872, § 2(e) (Ind.).

⁹ Sir Frederick Pollock, *Principles of Contract* 133 (13th ed. 1950).

benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other.¹⁰ The Indian Contract Act defines consideration as an act or abstinence (or promise thereof) done, being done, or promised to be done at the desire of the promisor, by the promisee or any other person.

5. AGREEMENT: UNION OF PROMISE AND CONSIDERATION

Section 2(e) defines agreement as every promise and every set of promises, which form consideration for each other. Therefore, the reciprocal promises between A and the service provider, being supported by consideration, constitute an agreement within the meaning of Section 2(e).

However, the formation of an agreement does not necessarily mean that it is a contract. Section 2(g) provides that an agreement is void if not enforceable by law, whereas Section 2(h) provides that an agreement is contract if enforceable by law.

6. ENFORCEABILITY: WHEN LAW STEPS IN

Even though consideration results in an agreement, not every agreement is a contract. An agreement becomes a contract only when it is enforceable. This follows from Section 2(h), wherein contracts are defined as enforceable agreements. Accordingly, for an agreement to attain the status of a contract the following conditions must be fulfilled.¹¹

- a. Agreement must be made with free consent, i.e., consent must be free from coercion, undue influence, fraud, misrepresentation and mistake.¹²
- b. Parties must be competent to contract, i.e., they must be sound, of the age of majority and not disqualified by any law.¹³
- c. Consideration & object must be lawful. Unlawful consideration and objects are those which are forbidden by law, or which defeats the provisions of law, or are fraudulent or

¹⁰ Currie v. Misa, (1875) L.R. 10 Ex. 153.

¹¹ The Indian Contract Act, No. 9 of 1872, § 10 (Ind.).

¹² The Indian Contract Act, No. 9 of 1872, § 14 (Ind.).

¹³ The Indian Contract Act, No. 9 of 1872, § 11 (Ind.).

causes injury or are regarded by court as immoral or against public policy.

Consequently, agreements founded upon such consideration or objects are void.¹⁴

d. Agreement must not be void.

If A and the service provider/driver satisfy these requirements, the agreement arising from the taxi booking becomes a legally enforceable contract.

¹⁴ The Indian Contract Act, No. 9 of 1872, § 23 (Ind.).