UNIT 2 : OFFER, ACCEPTANCE AND CONSIDERATION

UNIT STRUCTURE

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2.1 LEARNING OBJECTIVES

After going through this unit you will be able to

- explain the concept of offer
- discuss the legal rules to offer
- describe the concept of acceptance
- explain the legal rules to acceptance
- explain the modes of communication, acceptance and revocation
- describe the concept of consideration
- discuss the legal rules of consideration

2.2 INTRODUCTION

In the previous unit we have discussed that to be a contract there must be a ‘lawful offer’ made by one party and a ‘lawful acceptance’ of the

offer by the other party. Another essential condition of a valid contract is the presence of lawful consideration. Consideration forms foundation of a contract. For example, if Mr. A offers to sell his house to Mr. B for Rs. 20,000 and Mr. B accept the offer, a contract came into existence. In this contract, Mr.A made the offer, Mr. B accepted the offer. The 'house' is the consideration for Mr. B and Rs. 20, 000 is the consideration for Mr. A.

In this unit, we will discuss the legal rules regarding offer, acceptance and consideration.

2.3 CONCEPT OF OFFER

The words 'proposal' and 'offer' mean one and the same thing and are used interchangeably. According to Section 2(a) of the Indian Contract Act, "when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal". The definition reveals the following three essential ingredients to an offer:

(i) It must be an expression of the willingness to do or to abstain from doing something;

(ii) The expression of willingness to do or to abstain from doing something must be to another person. There can be no proposal by a person to himself;

(iii) The willingness must be expressed with a view to obtain the assent of the other party to whom the proposal is made.

The person making the *proposal* or *offer* is called the *promisor* or *offeror*, the person to whom the offer is made is called the *offeree*. After accepting the offer, the offeree is called the *promisee* or *acceptor.*

2.4 RULES REGARDING A VALID OFFER

A valid offer must keep conformity with the following rules:

a. An offer may be express or implied: An offer may be either by words or by conduct. When an offer is expressed by words, spoken or in writing, is called an express offer and the one which is inferred from the conduct of a person or the circumstances of the case is

called an 'implied offer.' Thus stepping into a taxi creates implied promise to pay for service availed.

b. **Creating legal relations:** The offer should create a legal relation. If the offer does not intend to give rise to legal consequences, the offer is not valid in the eyes of law. An offer to a friend to dine at the offeror's place, or an offer to one's wife to show her a movie is not a valid offer and as such cannot give rise to a binding agreement, even though it is accepted and there is consideration, because in social agreements or domestic arrangements the presumption is that the parties do not intend legal consequences to follow the breach of agreement.

c. **Terms of an offer must be definite and certain:** The terms of an offer should not be vague or indefinite. If the terms of the offer are not definite and certain, it does not amount to a lawful offer.

d. **Offer may be specific or general:** A specific offer is one which is made to a particular person or persons. Such an offer can be accepted only by the person or the persons to whom it is made. On the other hand, a general offer is made to the world at large. Therefore, it can be accepted by any person.

e. **Offer must be communicated to the offeree:** An offer must be communicated to the person to whom it is made. A person can accept the offer only when he knows about it. Until the offer is made known to the offeree, there can be no acceptance.

f. **An invitation to offer is not an offer:** An offer is different from an 'invitation to receive offer.' In the case of an 'invitation to receive offer' the person sending out the invitation does not make an offer but only invites the other party to make an offer. His object is merely to circulate information that he is willing to deal with anybody who, on such information, is willing to open negotiations with him. Such invitations for offers are therefore not offers. Quotation, catalogues of price, or display of goods with price marked there on do not constitute an offer. The shopkeeper in such cases is not making an offer so that you can accept it. He is on the other hand, inviting you to make an offer which he may or may not accept.

g. **Offer should not contain a term the non- compliance of which would amount to acceptance:** An offer cannot say that if acceptance is not communicated up to a certain date, the offer would be assumed to have been accepted. In such a case if the offeree does not reply, there is no contract, no obligation to reply can be imposed on him, on the ground of justice.

h. **Offer can be made subject to any terms and conditions:** The offeror may attach any terms and conditions to the offer he makes. The offeror may even prescribe the mode of acceptance. The offeree will have to accept all the terms of the offer. As regards mode of acceptance, it must be noted that in case of deviated acceptance, for example, if the offeror asks for sending the acceptance 'by telegram' and the offeree sends the acceptance 'by post' the offeror may decline to treat that acceptance as valid acceptance.

i. **Two identical cross- offers do not make a contract:** Sometimes two parties make similar offers to each other, in ignorance of each other's offer, these are called cross offers. In such a case, no binding contract will be created as no one has accepted the offer made by the other. For example- X of Guwahati by a letter makes an offer to Y of Jorhat to sell his car for Rs. 20,000. At the same time Y of Jorhat makes a similar offer to X of Guwahati to buy his (X's) car for Rs. 10,000. Offers of both X and Y cross each other in the post. These offers are called cross offers. Such offers do not constitute acceptance of one's offer by another.

CHECK YOUR PROGRESS



Q. 1: What is an offer?

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Q. 2: What is meant by express offer?

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2.5 LAPSE AND REVOCATION OF OFFER

In the following circumstances an offer lapses and become invalid.

a. **By lapses of time:** When the proposer prescribes a time limit within which the proposal must be accepted, the proposal lapses as soon as the time expires or if no time is prescribed, within a reasonable time. What is reasonable time is a question of fact depending upon the circumstances of each case.

b. **By death or insanity:** An offer lapses by the death or insanity of the offeror, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance [Sec.6(4)]. From the above line, it may be inferred that an acceptance in ignorance of the death or insanity of the offeror, is a valid acceptance, and give rise to a contract.

c. **By rejection**: An offer lapses if it has been rejected by the offeree. The rejection may be express i.e., by words spoken or written, or implied. Implied rejection is one: (a) where either the offeree makes a counter offer, or (b) where the offeree gives a conditional acceptance.

X offered to sell his car to Y for Rs 90,000. Y offered Rs 80,000 for which price X refused to sell. Subsequently Y offered to purchase the car for Rs 90,000. X declined to adhere to his original offer. Y filed a suit to obtain specific performance of the alleged contract. Dismissing the suit, the court held that X was justified because no contract had come into existence, as Y, by offering Rs 80,000, had rejected the original offer.

A, offered to sell his motorcar to B for Rs 85,000. B said that he accepted the offer if he was appointed as General Manager of A's factory. B's acceptance is a 'conditional acceptance' which amounts to rejection of A's offer and there is no contract.

d. **By revocation**: An offer is revoked when it is retracted back by the offeror. An offer may be revoked, at any time before acceptance, by the communication of notice of revocation by the offeror to the other party [Sec. 6(1)]. For example, at an auction sale, A makes the highest

bid. But he withdraws the bid before the fall of the hammer. There cannot be a concluded contract because the offer has been revoked before acceptance.

e. **Revocation by non-fulfillment of a condition precedent to acceptance: According to** Section-6(3) an offer stands revoked if the offeree fails to fulfill a condition precedent to acceptance. Thus, where A, offers to sell his car to B, for Rs 4 Lakh, if B joins Lions Club within a week. If B fails to join the Lions Club, the offer stand revoked and cannot be accepted.

f. **An offer lapses by subsequent illegality or destruction of subject matter**: An offer lapses if it become illegal after it is made, and before it is accepted. Thus, where an offer is made to sell 20 bags of sugar for Rs 8000/ and before it is accepted, a law is enacted which prohibit selling of sugar by private individuals, the offer comes to an end. An offer may lapse if the thing, which is the subject matter of the offer, is destroyed or substantially impaired before acceptance.



LET US KNOW

Cross offer and Counter offer

Where two parties formulate identical offer to each other by ignoring offer of each other, this offer is called cross offers. Cross offers are identical. In the case of cross offers, the court cannot construe one offer as the offer and the other as acceptance and as such there is no contract.

A counter offer is an offer made in response to a previous offer by the other party during negotiations for a final contract. It is a new offer made in response to an offer received. Making a counter offer automatically rejects the prior offer, and requires an acceptance under the terms of the counter offer or there is no contract.

For example: if X asks Y, Will you buy my car for Rs. 80,000? and Y says No, but for Rs. 50,000 he can buy the car from Y. There is said to be counter offer.

2.6 CONCEPT OF ACCEPTANCE

According to Section 2 (b) of the Indian Contract Act, "A proposal when accepted becomes a promise" and define acceptance as "when the person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted."

Example: M offers to sell his car for Rs. 1, 50,000/- to N. N agree to purchase the car at Rs. 1,50,000 from "M". Here N accepts the offer made by M.

2.7 LEGAL RULES OF A VALID ACCEPTANCE

Following are the legal rules which are immensely important to make a valid acceptance.

- **Acceptance must be given only by the person to whom the offer is made:** An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract. It cannot be accepted by another person without the consent of the offeror. The rule of law is clear that "if you propose to make a contract with A then B can't substitute himself for A without your consent." An offer made to a particular person can be validly accepted by him alone. Similarly an offer made to a class of persons (i.e., teachers, lawyers) can be accepted by any member of that class. An offer made to the world at large can be accepted by any person who has knowledge of the existence of the offer.
- **Absolute and Unconditional:** To make a valid acceptance, it must be unconditional as well as unqualified. According to the Section 7 (1) an acceptance to be valid must be absolute and unqualified. It will be not a contract, if there is any difference between the terms and conditions of offer and the terms and conditions of acceptance. Example: A offered to sell a plot of land at Rs. 5, 00,000 to B. B replied accepting the offer of A and enclosing Rs. 2, 00,000 and promises to pay the remaining Rs. 3, 00,000 by monthly payment of installments of Rs. 50,000 each. It is not an acceptance. Because, B

accepted the offer of A subject to payment in installments, which was not in the offer.

- **Acceptance must be communicated by the acceptor:** For an acceptance to be valid, it must be communicated to the offeror. No contract can be formed if the offeree(acceptor) fails to communicate the acceptance to the offeror.
- **Acceptance must be given within a reasonable time and Before the offer lapse or revoked:** Acceptance must be given within a reasonable time limit. Generally, this time is given by the offeror. But, if there is no specific time given by the offeror, then it must be within a reasonable time because an offer cannot be kept open indefinitely. Acceptance must be given before the offer is revoked. It implies that acceptance must be made while the offer is in force, i.e. before the offer is revoked or lapsed. If the offer lapse then there is nothing to accept.
- **Acceptance according to mode:** According to the Section 7(2) of the Indian Contract Act 1872, when the offeror prescribes a particular mode of acceptance, then the acceptor should follow that mode. Where no mode of acceptance is prescribed by the proposer, the acceptance must be communicated according to some usual and reasonable mode. Example: “M” sends an offer to “N” by posting a letter of proposal. Where M does not mention about the mode of acceptance, then N should make the acceptance in the “usual and reasonable manner”. That usual manner may be posting a letter of acceptance within a reasonable time.
- **Acceptance must succeed the offer**: Acceptance must be given after receiving the offer. It should not precede the offer. In a company shares were allotted to a person who had not applied for them. Subsequently he applied for shares being unaware of the previous allotment. It was held that the allotment of shares previous to the application was invalid.



CHECK YOUR PROGRESS

Q. 3: Define acceptance.

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2.8 COMMUNICATION OF OFFER, ACCEPTANCE AND REVOCATION

When the offeror and offeree are face to face and negotiated in person, there is direct communication of offer and acceptance. The moment the offeree gives his absolute and unqualified acceptance to the proposal made by the offeror, a valid contract comes into existence.

But where services of the post office are utilized by the offeror and offeree for communicating among themselves because of distance from one another, it is not always easy to ascertain the exact time at which an offer or an acceptance is made or revoked. In these cases the following rules, as laid down in section 4 and 5, will be applicable;

a) **Communication of an offer:** The communication of an offer is complete when it comes to the knowledge of the person to whom it is made, i.e., when the letter containing the offer reaches the offeree.

b) **Communication of an acceptance:** The communication of an acceptance has two aspects, viz., as against the proposer and as against the acceptor. The communication of an acceptance is complete (a) as against the proposer, when it is put in a course of transmission to him, so as to be out of power of the acceptor, and (b) as against the acceptor, when it comes to the knowledge of the proposer i.e., when the letter of acceptance is received by the proposer.

c) **Communication of revocation:** The communication of an acceptance has two aspects, (a) as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of power of the person revoking. i.e. when the letter of revocation is posted, and (b) as against the person to whom it is

made, when it comes to his knowledge i.e. when the letter of revocation is received by him.

2.9 CONCEPT OF CONSIDERATION

Consideration is one of the essential elements of a valid contract. The term 'consideration' means something accepted or agreed upon, as a return or equivalent for the promise made in contract. According to Pollock "Consideration is the price for which the promise for other is bought and the promise thus given for value is enforceable." Moreover, consideration is defined in the famous English case "Currie Vs Misa" as some right, interest, profit or benefit accruing to one party or some forbearance, detriments, loss or responsibility, given suffered or undertaken by the other. In the word of Justice Patterson, "Consideration means something which is of some value in the eye of law…. It may be some benefit to the plaintiff or some detriment to the defendant."

Under section 2 (d) of the Indian Contract Act, consideration is defined as "When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise".

Consideration can be defined as the price paid by the promisee for the obligation created. Consideration can be used in the sense of "quid pro quo", which implies something in return. It is the price for which a promise is bought.

Example: M agrees to sell his house to N for Rs. 1, 00,000. In this case, for M's promise the consideration is Rs. 1, 00,000/- and for N's promise the consideration is the house.



CHECK YOUR PROGRESS

Q. 4: Define consideration.

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2.10 LEGAL RULES OF CONSIDERATION

To be a valid consideration following legal requirements should be fulfilled.

- **At the desire of the promisor*:*** In order to constitute legal consideration the act or abstinance forming the consideration for the promise must be done at the desire or request of the promisor. Thus acts done or services rendered voluntarily, or at the desire of the third party, will not amount to valid consideration so as to support a contract.

  Example: 'A' sees that B's house is on fire and helps in extinguishing it. 'B' did not ask for his help. 'A' cannot demand for the payment (consideration) of his service.

- **Consideration must be real:** From the legal point of view, the consideration must have some value. Consideration must not be illusory or non-existing goods. If consideration is physically impossible, illegal, uncertain or illusory, it is not real and therefore shall not be a valid consideration.

- **Public duty:** In case of promise, which is already under the public duty, express promises to perform such duty will not a consideration.

  Example: X promise to Y for the construction of a particular road against the payment of Rs. 50,000/- to X, which has been already planned for construction by the PWD. So, there will be no consideration and hence no contract.

- **Promise to stranger:** In case of a promise, which is made to a stranger or unknown person to perform contract is enforceable because of the fact that the promisor undertakes a new obligation upon himself which can be enforced by the stranger.

  Example: X promise to Y to pay Rs. 1, 00,000, if Y marries Q. The fulfillment of Y's contract with Q was considered to support X's promise to Pay Rs. 1, 00,000/-.

- **Consideration need not be adequate:** Under Section 20 of the Indian Contract Act, 1872, an agreement to which the consent of the party is freely given is not void merely because the consideration is

inadequate. But the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.

Example: "A" agrees to sell his motor car worth of Rs. 1, 00,000 for Rs 100. If A's consent to the agreement was freely given, then this agreement will be a contract notwithstanding the inadequacy of the consideration.

- **Consideration must not be illegal, immoral or opposed to public policy*:*** To make a contract valid, the consideration for the agreement must be lawful. Unlawful consideration makes the agreement void. In the following cases the consideration of an agreement is treated as unlawful:
  a. If it is forbidden by law.
  b. If it is of such nature that permission made to it would defeat the provision of any law.
  c. If it is fraudulent.
  d. If it involves or implies injury to the person or property of other.
  e. If the court regards it as immoral or opposed to public policy.

  Example: X promises to offer an opportunity of employment to Y in the public service and Y promises to pay Rs. 1, 00,000 to X. The agreement will be void. The consideration of Rs. 1, 00,000 is unlawful.
- **Consideration may be past, present or future:** According to the Indian Law, there may be three types of consideration, such as- past, present and future. Consideration can be defined as, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstain from doing or promises to do or abstain from doing something. Here the words "has done or abstained from doing "means that the consideration is an act which has already been done at the desire of the promisor i.e. for the present promise the consideration already taken place. It is termed as past consideration.

On the other hand, the word "does or abstains from doing "means the consideration is an act which a promisee or any other person does in present at the desire of the promisor. Here the promisor receives

consideration simultaneously with his promise. It is termed as present promise. The words, "promises to do or to abstain from doing" means an act which a promisee or any other person promises to do at some future time. It is termed as future consideration.

Past consideration: When something is done or suffered before the date of agreement, at the desire of the promissor, it is called past consideration. Past consideration is good consideration only if it is given by the promisee at the desire of the promisior. E.g. A teaches the son of B at B's request in the month of February, and in March B promises to pay a sum of Rs.2000 for his service. The service of A will be past consideration.

Present consideration: Consideration which moves simultaneously with the promise, is called present consideration or executed consideration. It should, however, be noted that consideration is said to be present consideration when at the time of the agreement it is executed on one side and executor on the other. For example, A sells and delivers a mobile to B, upon B's promise to pay for it at a future date. The consideration moving from A is present consideration since A has done his act of delivering the mobile simultaneously with the promise of B.

Future consideration: When the consideration on both sides is to move at a future date the consideration is called future consideration. For example, A promises to sell and deliver 5 bags of Rice to B for Rs.5000 after a week, upon B's promise to pay the agreed price at the time of delivery. The promise of A is supported by promise of B and the consideration is executory on both sides.

- **Consideration may move from the promisee or from any other person: -** According to the Indian Law, consideration may move from the promisee or any other person. It indicates that inspite of the consideration that moved from the third party, a person can sue on a contract.

  Example:- X has granted his property to his wife Y and directs her to pay an annual allowance to his brother Z. Y also entered into an agreement with promising to pay the allowance to Z. This can be enforced by X even though no part of consideration is received by X

moved from Y.

- **Consideration must be of some value in the eye of law: -** Consideration must be something to which law attach a value. Consideration must be of some value in the eye of law. It must be real and competent.

  Example:- "A" promises to pay a sum of money to a police officer for investigation into a crime will be without consideration because he is already bound to do so by law.

2.11 EXCEPTION TO THE RULE "NO CONSIDERATION, NO CONTRACT"

"An agreement made without consideration is void." But there are a few exceptions to the rule, where an agreement without consideration will be perfectly valid and binding. These exceptions are as follows:

- Agreement made on account of natural love and affection[Sec 25(i)] : An agreement made without consideration is enforceable. If it is:
  (i) Expressed in writing
  (ii) Registered under the law for the time being in force for the registration of documents
  (iii) Is made on account of natural love and affection
  (iv) Between parties standing in a near relation to each other.
- **Agreement to compensate for past voluntary service (Sec.25 (2)].** A promise made without consideration is also valid, if it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or done something which the promisor was legally compelled to do.

  For example, A found B's purse and gaven it to him. B promises to pay a reward of Rs. 50 to A. Later on, B cannot refuse payment on the ground that there was no consideration.

In order to attract this exception, the following points should be noted:

(i) The service should have been rendered voluntarily for the promisor. If it is not voluntary but rendered at the desire of the promisor, then it is covered under 'past consideration' [as per Sec. 2(d) and not under

this exception].

(ii) The promisor must be in existence at the time the service was rendered. Thus where services were rendered by a promoter for a company not then in existence, a subsequent promise by the company to pay for them could not be brought within the exception. (Ahmedabad Jubilee Spinning Co. vs Chhotalal).

(iii) The promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor. Thus, where B treated A during his illness but refused to accept payment from A; they being friends; and A in gratitude promises to pay Rs 1,000 to B's son D, the agreement between A and D is void for want of consideration as it is not covered under the exception.

(iv) The intention of the promisor ought to be to compensate the promisee. A promise given for any motive other than the desire to compensate the promisee would not fall within the exception. (Abdulla Khan vs Parshottam)

(v) The promisor to whom the service has been rendered needed competence to contract at the time the service was rendered. Thus a promise made after attaining majority to pay for goods supplied voluntarily to the promisor during his minority has been held valid and the promisee could enforce it ,(Karam Chand vs Basant Kaur).

(vi) The service rendered must also be legal. Thus past cohabitation will not make a promise to pay for it enforceable under this exception (Sabava vs Yamanappa).

- **Agreement to pay a time-barred debt** Sec. 25 (3): Where there is an agreement, made in writing and signed by the debtor or by his authorized agent, to pay wholly or in part a debt barred by the law of limitation, the agreement is valid even though it is not supported by any consideration. A time barred debt cannot be recovered and therefore a promise to repay such a debt is without consideration, hence the importance of the present exception.

  For example**:** *A* owes *B* Rs 1,000, but the debt is barred by the

Limitation Act. *A* signs a written promise to pay *B Rs* 500 on account of the debt. This is a valid contract.

- **Completed gift.** Any gift actually made is valid. A gift does not require consideration in order to be valid. In order to attract this exception there need not be natural love and affection or nearness of relationship between the donor and done. The gift must, however, be complete.
- **Contract of agency.** Section 185 of the Contract Act lays down that no consideration is necessary to create an agency.



2.12 LET US SUM UP

In this unit we have discussed the following aspects-

- An offer is an expression of the willingness to do or to abstain from doing something.
- There can be no proposal by a person to himself;
- Offer is made to obtain the assent of the offeree to accept or reject the offer.
- There are two parties to an offer- offeror and the offeree. After accepting the offer, the offeree is known as the *promisee* or *acceptor.*
- The legal rules to an offer like, the offer must be express or implied, intention to create a legal relationship; terms of an offer must be definite and certain etc.
- The offer may become invalid on account of lapse of time, death or insanity, rejection or revocation
- The legal rules to acceptance like, acceptance must be given only by the person to whom the offer is made, it must be absolute and unconditional, it must be communicated by the acceptor etc.
- Consideration means something accepted or agreed upon, as a return or equivalent for the promise made in contract.
- Legal rules to consideration like, consideration must be real, consideration need not be adequate, consideration must not be illegal,

immoral or opposed to public policy, consideration may be past, present or future etc.



2.13 FURTHER READINGS

1) Kuchnal, M.C. & Prakash, D. 3rd ed. "Business legislation for Management", Vikas Publishing House Pvt. Ltd.
2) Kapoon, N.D. "Mescuntile Law" Sultan Chand & Sons, New Delhi.
3) Mahuhwari, R.P. & Maheshwari S.W. "Principles of Mercantile Law", Vikas Publishing House Pvt. Ltd.



2.14 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No.1: The words 'proposal' and 'offer' mean one and the same thing and are used interchangeably. According to Section 2(a) of the Indian Contract Act, "when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal".

Ans. to Q. No.2: When an offer is expressed by words, spoken or in writing, is called an express offer.

Ans. to Q. No. 3: "when the person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted."

Ans. to Q. No. 4: The term 'consideration' means something accepted or agreed upon, as a return or equivalent for the promise made in contract.



2.15 MODEL QUESTIONS

Q. 1: Define offer.

Q. 2: What is meant by acceptance?

Q. 3: Define consideration.

Q. 4: Discuss the legal rules to an offer.

Q. 5: Discuss the exceptions to the rule “No Consideration, No Contract”.

Q. 6: Discuss the legal rules to consideration.

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