

Indian Contract Act, 1872

Section 38 - Effect of Refusal to Accept Offer of Performance

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for nonperformance, nor does he thereby lose his rights under the contract.

Every such offer must fulfill the following conditions:

- (1) it must be unconditional;
- (2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;
- (3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.
- (4) An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration

A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.
