

to whom they are addressed.

Definition of a Proposal :

Section 2 (a) defines a proposal as "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 an act or abstinence, he is said to make a proposal".

When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted. A proposal when accepted becomes a promise [Section 2 (b)]. The person making the proposal is called the promisor. He is also called offerer or proposer. The person who accepts the proposal or offer is called the promisee or the offeree or proposee or acceptor of proposal.

An offer or a proposal consists of two parts which are as follows :

- (a) A promise by the promisor to do or abstain from doing something, and,
- (b) A request to the promisee for giving his acceptance. Until and unless the promisee accepts the promise unconditionally, the promisor is not bound by his promisee.

Following three conditions must be fulfilled to become an offer to be a lawful offer.

- (1) There must be at least two persons or parties who are competent to contract.
- (2) One of them must express or signify his willingness to another to do or to abstain from doing a particular thing.
- (3) The another person or party expressing willingness must have an intention to get the consent of the person to such act or abstinence.

Illustration :

X offers to sell his motor car to Y for Rs. 1 lakh. This is nothing but a proposal, X is the promisor or the offerer and Y is the offeree. When Y accepts the proposal and agrees to purchase the car at the price quoted by X, Y becomes the promisee or the acceptor and the contract is said to be entered into between X and Y. Here as all the three conditions are fulfilled, an offer of X to sell his motor car to Y for Rs. 1 lakh is a lawful offer.

Types of Proposals or Offers :

An offer may be express or implied and specific or general.

When an offer is made by express words, written or spoken, it is called as an express offer. e.g. if X says to Y, "Will you purchase my car for Rs. One lakh ?" there is an express offer. When an offer is implied from the conduct of a person or persons or from the circumstances of the case, it is known as an implied offer. e.g. a transport company runs buses on particular routes. There is always an offer by the company to carry passengers at scheduled times and fares. The acceptance of the offer is complete as soon as a passenger gets into the bus.

A specific offer refers to an offer made by an offerer to a definite person or a definite class of persons. When the offer is made to the world at large, it is termed as a general offer.

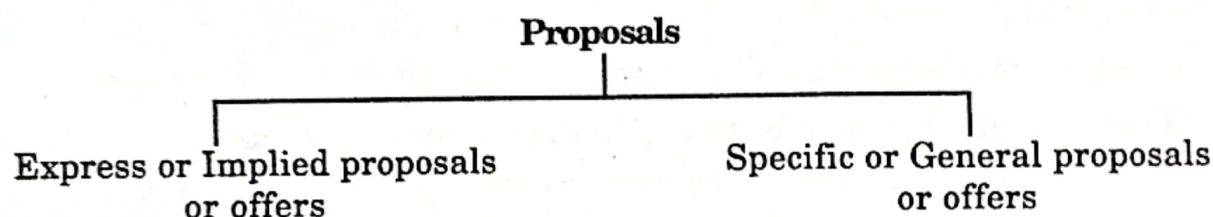
Illustrations :

(1) When a transport company runs buses or cars on particular routes, there is always a general offer by the company to carry passengers at scheduled times and fares. The acceptance of the offer is complete as soon as a passenger gets into the bus or car, as the case may be.

(2) If Mr. A offers to sell his furniture to Mr. B at the price of Rs. 7,500. This is an offer or proposal. Here, Mr. A is the promisor or the offerer while Mr. B is the offeree. If Mr. B accepts the proposal of purchasing the furniture of Mr. A at the said price, Mr. B becomes the acceptor or the promisee and there is a contract. This is the example of specific offer.

When two parties make identical offers to each other, not knowing about each others' offers, such offers are called cross offers. In such cases the court does not construe one offer as the other offer and the other as the acceptance and as such there cannot be any concluded contract. [Tinn V. Hoffmann (1873) 29 LT 271].

The types of the proposals or offers are shown below in the chart.



2.3.2 Essentials or Rules of a Valid Offer

The Indian Contract Act, 1872 contains certain legal rules or essentials regarding proposals or offers which are as under :

- (a) Terms of an offer must be clear, specific or definite, certain and no loose or vague.
- (b) An offer must create legal relationship.
- (c) An offer must be communicated to the person to whom it is made.
- (d) Intention of offer must be to obtain the consent or assent.
- (e) Offer may be express or implied; general or specific. It may also be positive or negative.
- (f) An offer should not include any term or terms of non-compliance which may be assumed to lead acceptance.
- (g) A statement of price is not an offer.
- (h) An offer is different from an invitation to an offer.

- (i) Two identical cross-offers do not constitute a contract.
- (j) An offer can be made subject to any terms and conditions.

Now, let us discuss the above mentioned points in detail.

(a) Terms of an offer must be clear, specific or definite, certain and not loose or vague : The terms of an offer made must be clear and specific and must not be based on a condition which is not certain or not capable of performance. e.g. a promise to purchase a more lucky-stone if the lucky-stone previously bought proves lucky, cannot be binding and therefore enforceable for being vague and also loose. Thus, if the terms of an offer are loose, vague or indefinite, the acceptance of such offer cannot create contractual relationship. However, if there is some machinery to ascertain vague terms or terms of an agreement, such agreement cannot be considered as void on the ground of its being vague or loose or indefinite.

(b) An offer must create legal relationship : An offer must be such that it would create a valid contract if accepted. An offer to perform social, moral or religious acts, without an intention to create legal relations, will not be a valid offer e.g. an invitation to a dinner or to attend some cultural programme without any intention to create legal relationship is not an offer.

(c) An offer must be communicated to the person to whom it is made : An offer made by the proposer must be communicated to the proposee. Unless it is communicated, there can be no acceptance of the offer and it will not confer any right on the acceptor. An offer may be communicated to the offeree or offerees by words of mouth, by writing or even by conduct.

(d) Intention of offer must be to obtain the consent or assent : The offer must be made with a view to secure the assent of the party to which the offer is made and its intention should not be mere to disclose particular thing.

(e) Offer may be express or implied; general or specific. It may also be positive or negative : As already noted, an offer may be expressed by words spoken of mouth or written or may be implied by conduct. When it is made only to a particular person or persons, it is a specific offer and when made to the world at large, it is called a general offer. When a person expresses his willingness to do something or to abstain from doing something it is termed as a positive or negative offer as the case may be.

(f) An offer should not include any term or terms of noncompliance which may be assumed to lead to acceptance : We have already seen that an offer must be certain and unambiguous and not loose or vague. It should not contain any term because of which it may be assumed to amount to acceptance. Thus, it should not include a term that if the acceptance is not communicated within a certain period, the offer would be considered as accepted. e.g. If X informs Y writing a letter that "I will sell my car to you for Rs. 50,000 and if you don't reply within ten days, I will assume that you have accepted this offer". It is obvious that there cannot be any contract if Y does not reply.

(g) A statement of price is not an offer : In the case of Harvey V. Facey, it was held that a mere statement or quotation of price is not construed as an offer to sell. In that case,

Harvey sent a telegram to Facey, enquiring "Will you sell us Bumper Hall Pen ? Telegraph lowest cash price". Facey replied, "Lowest price for Bumper Hall Pen is £900". Harvey, on receipt of the telegram from Facey, again sent telegram, "We agree to buy Bumper Hall Pen for £900 asked by you". Facey neither replied the telegram nor supplied Bumper Hall pen.

Harvey filed a suit in the court of law for non-delivery of the pen. It was held that there was no contract between the parties as Facey only stated the price of the pen and replied the inquiry made by Harvey, but did not state anything regarding the offer. There was only a proposal or offer but no acceptance of the same. Thus, mere answer to a question or query or an inquiry is not an offer.

(h) An offer is different from an invitation to an offer : Mere invitation to an offer is not an offer. Quotations, catalogues of goods to be sold, advertisements for tenders, a prospectus of a company, advertisements inviting applications for various jobs, display of goods with printed price thereon are mere invitations to offer and not actual offers. Newspaper advertisements are also not offers. There is an exception to this rule. When a general offer of reward to the public is made by giving advertisement in a newspaper, it amounts to an offer in the eyes of law. Thus, when somebody gives advertisement in the newspaper that he would give some prize to any person who finds and returns the commodity lost to the owner, obviously this is the offer made to the first person who acts on that with the knowledge of the offer of prize and it creates an agreement.

When in response to an invitation of submitting a tender and a tender is submitted it becomes an offer. Such an offer or a tender can be of two types :

- (1) A definite offer, and (2) A standing offer.

✓ **1. A definite offer :** Many times, tenders are invited for the supply of certain or specified goods and/or services, each such tender submitted in response is considered as an offer. Of course, it is left to the party who invites the tenders whether to accept such offers or not. But if the concerned party accepts any tender, it becomes a binding contract. Suppose Ramesh invites tenders for supplying 200 tables and 400 chairs. Pravin, Arvind, Rama and Govinda submit their tenders in response to the invitation. But Ramesh accepts the tender submitted by Rama rejecting other tenders. Here, there is a binding contract between Rama and Ramesh.

✓ **2. Standing Offer :** A standing offer is a continuing offer as the tenders are invited for the supply of goods or services over a certain period of time on the condition that the goods or services will be supplied as and when required. Therefore, an order is placed with the supplier of goods or services whose tender was accepted, whenever goods or services are required, and each time a separate contract is entered into. In *Great Northern Railway Company V/s Witham Case*, [1873, LR 9 C. P. 16], the railway company accepted the tender submitted by Witham for supplying certain goods which the company might require over a period of year. Accordingly he supplied goods to the company as per orders placed by the company for some months. But later on, he refused to supply the goods as per orders placed during the remaining period of the tender. It was held in that case that Witham could not so refuse to supply the goods. Thus, it was binding on him to supply the goods as per contract during the currency of the tender.

(i) **Two identical cross-offers do not constitute a contract :** When identical offers are made by two parties to one another without knowing anything about each other's offer, such offers are called cross-offers. Suppose X offers B to sell him his building for Rs. 2 lakhs on 1st August 1999 by dropping a letter and on the same day, B also writes a letter to X and offers to buy X's building for Rs. 2 lakhs. They do not know anything about each other's offer. The offers by X and B are cross-offers. The cross-offers are not considered as the acceptance of one's offer by the other and therefore, there cannot be any agreement merely because of the cross-offer.

(j) **An offer can be made subject to any terms and conditions :** An offeror is always at liberty to state his own terms and conditions while making an offer. Even he may prescribe the mode of accepting the offer. Unless offeree accepts all the terms and conditions stipulated by the offeror, there can not be a valid acceptance. According to Section 7, in order to convert a proposal into a promise, the acceptance must be absolute and unqualified. Section 7 further states that, *"if the proposal prescribes a manner in which it is to be accepted and the acceptance is not made in such manner, the proposer may insist that his proposal shall be accepted in the prescribed manner"*.

Thus, an offer can be made subject to certain conditions and all such conditions must be clearly communicated to the offeree. But if a person accepts an offer without the knowledge of conditions, the offeror cannot claim for the fulfilment of conditions. However, if the conditions are clearly expressed or written and have been made known to the offeree and he accepts them, he cannot plead ignorance of the conditions. Suppose Mr. Rilesh Furia agrees to buy books from Mr. Jignesh and signs an order form given by Mr. Jignesh containing a number of clauses in small print without reading them. All the clauses are binding on Mr. Rilesh Furia. This implies that if the contracting party signs a document without reading the clauses, terms, etc., he is bound by its terms or clauses. This is known as the rule in *L' E strange V. Graucob Ltd.* [1934 All. E. R. 16]. In *L' Estrange V. Graucob Ltd.* case, a buyer signed on an agreement for buying a cigarette vending machine without reading the terms of the agreement. There was a term in the agreement which excluded the liability for all kinds of defects in the said machine. The machine which was supplied to the buyer was defective one. It was held in that case the supplier was not liable.

However, if it is proved that an acceptor does not know that the document contains certain terms of contract and reasonable notice of such terms are not given to him, he is not bound by such terms. In *Richardson Vs. Rowntree* case [(1894) A.C. 217], R, a passenger who booked her passage on a ship and received a ticket folded and stamped across it in red ink in such a way that no writing was visible. As she suffered injuries, she filed a suit against the steamship company. The court held that the passenger did not know about the printed conditions as they were not clearly visible and her suit for damages was allowed.

Thus, when all the above mentioned essentials or legal rules are satisfied, an offer or a proposal is said to be valid.

2.3.3 Lapse of an Offer

Many times an offer lapses and therefore, becomes invalid under various circumstances following are some of such circumstances in which an offer lapses and becomes invalid.

(a) **An offer lapses if not accepted in the mode prescribed by an offeror :** If an offeree does not accept the offer according to the mode prescribed by an offeror, it may lapse. However, it does not lapse automatically. If an offeror does not insist that the offer made by him must be accepted in the particular manner or mode, the offer does not lapse. Suppose, if the offeror asks to accept the offer by sending the telegram and the offeree accepts the same by sending him a letter, the offeror may reject that acceptance by giving the offeree due notice within a reasonable time. But if he does not do so, he is deemed to have accepted the deviated acceptance.

(b) **An offer lapses after stipulated or reasonable time :** Section 6 (2) lays down that 'a proposal is revoked by the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, by the lapse of a reasonable time, without communication of acceptance.'

Thus, if an acceptance is not communicated, it is obvious that an offer is lapsed. But such acceptance must be communicated within the time prescribed in the offer by the offeror and if no such time is prescribed, within a reasonable time, it must be communicated. Of course, what is a reasonable time is always a question of fact and depends upon the circumstances of each case.

(c) **An offer lapses by revocation :** Section 6 (1), (3) and (4) makes provisions so far as the lapse of an offer by revocation. A proposal is lapsed on account of following reasons.

1. If the proposer communicates or gives the notice of revocation of an offer to the party concerned, the offer is lapsed [Section 6 (1)]. But if it is agreed to keep the offer open for a particular period, it can be lapsed only after the expiry of such period. Suppose Suresh offers to buy Milind's flat for Rs. 2 lakhs on the condition that Suresh will pay the price of the flat to Milind within one month and if Milind agrees to that, Milind cannot revoke the offer before the expiry of that period. If Milind does so, he can be sued for that breach of option contract.
2. If the offeree or acceptor fails to fulfill conditions, if any, precedent to acceptance, the offer is lapsed. [Section 6 (3)]. Suppose Milind offers to sell his flat to Suresh for Rs. 2 lakhs on the condition that Suresh will donate Rs. 50,000 to the Relief Fund within a week. If Suresh does not donate Rs. 50,000 to that fund within a week, the offer is lapsed.
3. In the case of the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance, the offer is lapsed. [Section 6 (4)]. Thus, the death or insanity of the proposer or offeror puts an end to the offer and even his heirs cannot be held liable for such offer.

(d) **An offer lapses because of subsequent illegality or destruction of subject matter :** It is obvious that if an offer becomes illegal after it is made but before it is accepted either because of passing new enactment or other such reason or even because of the destruction of subject matter, such offer lapses. Suppose, Madhav offers to sell his flat to Milind for Rs. 2 lakhs. But before Milind accepts the offer, there was earthquake and the flat was destroyed or the Government bans the sale of the flat, the offer automatically lapses.