PROPOSAL AND ACCEPTANCE

PROPOSAL:

General:

1) Proposal is the first step towards formal offer of contract. It is defined in sec. 2(a). One who makes a proposal is called a proposer. A person to whom the proposal is made is called proposee. The proposee or acceptor may be a natural or artificial person.

2) A proposal is made with a definite purpose and with a clear intention. Its purpose is to elicit the assent of the proposee. A proposal is at liberty to give or not to give his assent. He can even remain quite. No proposee can imply an obligation to accept upon the proposal.

3) Intention to contract or animus contrahendi is objective. It may be inferred from the facts and circumstances of the case.

4) Proposal may be express or implied. It may be specific or general.

LEGAL RULES OF PROPOSAL:

1) Terms of offer must be definite, unambiguous and not loose and vague: If the terms of an offer are vague or indefinite, its acceptance cannot create any contract relationship.

Case: (Taylor vs. Postington, 1855)
2. **Intention to create legal relations:**

- Whether an intention to create legal relations is an essential requirement of a valid proposal?

Or

- Can an agreement not result into contract in the absence of intention to create a legal relationship?

Lawyers are not unanimous on this issue. Here following statements and observations may be referred to:

(a) **LORD STOWELL in DARLYMPLE vs. DARLYMPL-LE, 1911**

  Held, "Contracts must not be the sports of an idle hour, mere matters of pleasantry and badinage never intended to, by the parties to have any serious consequence what so ever..."

(b) **COSTIGAN:**

  "Every loose conversation is not to be turned into a contract notwithstanding the parties may seem to agree."

(c) **LORD ATKIN: BALFOUR VS. BALFOUR, 1919, KINGS BENCH.**

  Held, "There are certain agreements between the parties which do not result into a contract. An agreement to walk..."
together between two parties is an agreement to that kind. Such agreements are not contrary because the parties "here to do not have any intention to create legal relation."

(c) C.W.T VS. ABDUL HUSSAIN MULLA MD. ALI, 1988, S.C

Held, it was observed "intention to contract is a necessity of those system where consideration is not a requisite of enforceability."

(c) PROFF. WILLISON: "separate element of intention is foreign to common law. It was imported from the continent by academic influences in the 19th century. Separate element of intention is useful in only those systems which lack the test of consideration to determine the boundaries of contract."

3) Mere intention is not enough. Similarly, a mere statement of intent made in the course of conversation will not constitute a binding promise, even though acted upon by the party to whom it was made. Thus, A says to B, in conversation, that he intends to give 100 pounds to anyone who marries his (i.e., A's) daughter with his consent. B marries A's daughter with A's consent. In these circumstances, there will be no contract between A or B, because A's statement was not an offer. [WEEKS V. TYBAld] As the court observed in that case, it is not reasonable that the person
3) Communication of offer: - It is to be remembered that there is no offer that it is communicated to the offeree. Thus, if A promises something if an act is done, and B does that act not knowing about the offer, there will be no contract (Lalman v. Gauri Dutt). Similarly, if A does some work without the knowledge or request of B, A cannot claim payment for the work done.

Case: Powell v. Lee, 1908: - x applied for the post of a headmaster in a school. At its meeting, the managing committee passed a resolution appointing him to that post. x did not receive any official intimation of his appointment, but one of the members of the committee privately informed him about it. The resolution was subsequently rescinded. x sued the managing committee for breach of contract.

Held, there was no official communication, hence there was no contract.

Communication of proposal must be made to the proposer or his authorised agent. If the proposal contains one or more condition, all the conditions must be communicated. If that is not so the other party shall not be bound by those terms.

Cases: (1) Henderson v. Stevenson, 1875
(2) Govt. of Rajasthan v. V. V Raman, 1984.
(3) Parker v. S. Erly Co. 1877.
4) An offer may be distinguished from—

(i) A declaration of intention and an announcement

A declaration by a person that he intends to do something gives no right to action to another. Such a declaration only means that an offer will be made or invited in future and not that an offer is made now.

Cases
(a) Harris vs. Nickerson (1873)
(b) Rooke vs. Dawson (1895)

(ii) An invitation to make an offer or do business:

Display of goods by a shopkeeper in his window with prices marked on them is not an offer but merely an invitation to the public to make an offer to buy the goods at the marked price. Likewise, quotations, catalogues, advertisements in a newspaper for sale of an article, or circula sent to potential customers do not constitute an offer.


5) Offer must be made with a view to obtaining the assent. 

The offer to do or not to do something must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclose the intention of making an offer.
6) Offer should not contain a term the non-compliance of which may be assumed to amount to acceptance. Thus a man cannot say that if acceptance is not communicated by a certain time, the offer would be considered as accepted. Example: Where A writes to B, "I will sell you my horse for Rs 5000 and if you do not reply, I shall assume you have accepted the offer, there is no contract." If B does not reply, B is under no obligation to speak. However, if B is in possession of A's horse at the time, the offer is made and B continued to use the horse thereafter. B's silence and his continued use of horse amount to acceptance on his part of the terms of A's offer.

7) A statement of price is not offers. — [Harvey v. Facey (1893)].

COUNTER OFFER:

1) At times, the person to whom the proposal is made indicates his willingness to buy at a lesser price than what he is offered.

2) A counter proposal brings the proposal to an end. Therefore no contract resulted.

3) Case: McPherson vs. Appana, 1951, SC

Plaintiff offered 6000 Rs. for defendant's property through his agent. The agent told the defendant about the offer. Defendant clarified that
The shall not sell at less than 10,000. Plaintiff sent his acceptance at $10,000.

 Held, no contract resulted between the parties. Desire to purchase for $10,000 was a new proposal and the defendant was at liberty to reject it.

CROSS-OFFER

When two parties make identical offers to each other, in ignorance of each other's offer, the offers are cross offers. In such a case, the court will consider one offer as the offer and the other as the acceptance and as such there can be no concluded contract.

CASE: TINN V. HOFFMAN (1873)

INVITATION TO PROPOSAL OR INVITATION TO TREAT:

A proposal and an invitation to proposal are two different things. By proposal a final expression of desire to be bound by the proposal is made. In invitation to a proposal there is no final expression of desire to be bound. In an invitation to treat, the person making invitation only declares the conditions on which he desires to negotiate.

In short, every statement that seems to be an offer may not be an offer, and may not create legal obligations. Very often, such state-
Examples of invitation to proposal:

(i) Price list or quotation;
(ii) Sale by auction.
(iii) Standing proposal: Tender notice.

Price list or quotation → Price list or quotation displayed is only an invitation to proposal. Thus, a book-seller's catalogue, with prices stated against the name of the books, does not contain a number of offers, but constitutes simply an invitation to the purchasers.

1. Harvey v. Facte (1893):

Sale by auction:

(i) In an auction bids are invited. Bid is a proposal. Before acceptance, bid (proposal) may be revoked. The proposer may or may not accept the bid (Proposal). He may even reject the highest bid also.

(ii) The auctioneer may stipulate that the acceptance of the highest bid shall be subject to confirmation by the higher officials. In such cases only provisional acceptance of bid.

(iii) The auctioneer may reserve the power of making a final agreement to him even after acceptance is made by full of kommer. In such cases, stage of proposal continued even after full of kommer.
Standing proposal:

1) Standing proposal relates to tender sometimes. A tender stipulates that goods are to be supplied whenever demands are placed. Such a tender or acceptance becomes a standing proposal.

2) When specific orders are placed for supply of goods, actual acceptance takes place and the parties become bound by a contract.

3) Government, Railways, and other bodies, who require stores in large quantities, often invite tenders for the supply of goods.

Cases:

(i) Bengal Coal Co. Ltd. vs. Home & Wadia and Co.:
- Defendant consented to supply coal for next 12 months whenever a plaintiff placed specific orders for supply of coal. The supply was made accordingly, before 12 months had expired. The defendant declared that henceforth he will not make any supplies.

Held:
- Before a new order is placed, defendant could revoke his proposal.
R. v. DEEMERS:—The govt. and a printer agreed that the printer should supply the articles during the next 8 yrs whenever order was placed. The govt. decided in the very 1st year not to take any supplies from the printer. The printer claimed compensation for breach of contract.

**Held**: There was only a standing proposal between the parties. No contract ever came into existence between the parties. No suit payable.
Acceptance:

General:

1) Acceptance is the second step towards formation of contract. It is defined in sec 2(b).
   Signifying of assent to the proposal constitutes acceptance.

2) Proposers alone can make an acceptance. One who is a stranger to proposal cannot accept.
   Acceptance may be express or implied. Sec 8 provides for two forms of implied acceptance.
   Communication of implied acceptance is not necessary.

3) An acceptance converts a proposal into a promise. In other words, accepted proposal is called a promise.

4) An acceptance gives finality to the proposal.
   A proposal becomes irrevocable at the moment it is accepted. Anson has stated the same in a very interesting manner. He says—
   "Acceptance is to offer what a lighted match is to a train of gunpowder. Both do something which cannot be undone."
1. **Definition: Sec. 2(b)**
   
   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.

2. **Legal Rules:**
   
   a) acceptance of the proposal must be absolute (Sec. 7)
   
   Further it must be unqualified. Still further, it must be expressed in some usual and reasonable manner.
   
   If the proposal prescribed any particular mode for acceptance it must be made in that manner.
   
   If acceptance is made in some other manner the proposer may insist within reasonable time that acceptance be made in the manner prescribed.
   
   Failure to insists will constitute waiver, and a valid acceptance will be presumed.

   b) Acceptance may be implied as well. Sec. 8 provides for implied acceptance. Sec. 8 lays down following modes of acceptance:

   i) Acceptance by performance of condition of proposal.

   ii) Acceptance by accepting a consideration for a reciprocate promise offered with a proposal.

   **Cases:**
   
   a) Gaddarmal vs. Tota Ind. Bank Ltd. (1927)
   
   b) Amrit Vanaspati Comp. Ltd. vs. UOI (1966)
c) Offeror cannot impose burden of refusal —
A person making an offer cannot impose on the other party, the burden of expressly refusing the offer, by saying that he will assume acceptance if he receives no answer within a stated time. The proposer has the right to prescribe the manner in which the proposal may be accepted, but not the manner in which it may be refused.

Ex: A person cannot say if within 2 days, acceptance is not communicated, the offer would be considered as accepted.

Case: Hanji Md. vs Spinner. (Bom)

d) Mental Acceptance — No acceptance —
At the stage when the offeree makes up his mind to accept the offer, the agreement obviously does not come into being. This acceptance has then to be communicated to the proposer. In other words, there must be some external manifestation of assent or some act which the law can regard as communication of the acceptance to the proposer. Mental Acceptance therefore would not be enough.

Case: Felt Horse vs Bindley — F offers by letter.
to buy his nephew's horse for 30 pounds, saying
'here no more about him, I shall consider it
horse mine at 30 pounds' 30. Nephew does not reply,
but instructs B (auctioneer) with whom her horses
are for sale not to sell. The B/no B sells horse by
mistake. F sues B' in the circumstances F's suit against
B will not succeed because there was no concluded
contract between F and nephew. Nephew's silence
cannot amount to acceptance, and mere uncommunicated
or mental acceptance by an N as indicated by his
directing B not to sell horse, is not enough.

It has been observed, and rightly so, that
in this case, if the nephew had clearly manifested
his intention to accept his uncle's offer, but had not
communicated such acceptance to the uncle, as the latter
had told him "not to bother" there would have been
a contract in the eyes of law.

Case 2: Bhagwandas Kedia vs. Girishnalal, Parsottamdas
and Co. (1960) S.C.

Case 3: Bregden vs. Metropolitan Rail Co. (1877)

e). The person to whom proposal is made, may or may
not be definite -
It is to be noted that the person or persons to whom
a proposal is made, may be either one or more, definite
or indefinite. It may be made to an unascertained
number of persons or to the world at large. But
no contract can arise until it has been accepted by
an ascertained person, only when anyone accepts the
offer a contract comes in existence!
(c) It must be given within a reasonable time. If any time limit is specified, the acceptance must be given within that time. If no time limit is specified, it must be given within a reasonable time.

Case: Ramsgate Victoria Hotel Co. v. Montefiore (1886)

(f) It cannot be precede an offer. If the acceptance precedes an offer, it is not a valid acceptance and does not result in a contract.

Example: In a company, shares were allotted to a person who had not applied for them. Subsequently, when he applied for shares, he was unaware of the previous allotment. The allotment of shares prior to the application is invalid.

(g) It must be given before the offer lapses or before the is withdrawn.