

Unit 2 : Consideration

Section 2 (d) :

When at desire of promisor, promisee or any other has done or abstain from doing does or abstinence from doing or promises to do or abstain to doing something, such act or abstinence or promise is called consideration.

* Legal Rules Regarding Consideration.

1. consideration must move at desire at promisor :

- consideration must be offered by promisee or any other person at desire of promisor only.
- Act done ~~or~~ at desire of 3rd party is not consideration.

case law : Durga Prasad vs Baldev

2. Consideration may move from promisee or any other person

- In India consideration may proceed from promisee or any other person who is not a party to contract.

Case law : Chinnaya vs Ramaiya

3. Executed and Executory Consideration

- consideration which consist performance of act is said to be executed
- when it consist of promise it is executory
- promise by one party may be consideration for an act, other party in lieu of performance of act.

4 Consideration may be past, present future

- consideration may be past - but must move at desire of promisor, It cannot be real consideration of a subsequent promise
- where consideration is payable for present act it is present

consideration.

→ When it is payable for future promise then it is future consideration

5 Consideration need not be adequate

- consideration ^{need} ~~should~~ not be of any particular value.
- It need not be approximately of equal value with the promise for which it is exchanged but it should be of some value which law would regard.
- ~~consideration need not~~
- contract would not be treated as voidable merely because because inadequate consideration. but if other
- But if other party alleges that consent was not free and consideration is shocking less then it can be taken as evidence in support of allegation.

6. Performance of what one is legally bound to perform :

- Performance of an act by a person who is legally bound to perform the same cannot be consideration to contract.

- Promise to pay witness is void.

- But where a person promises to do more than what he is legally bound to do, such promise is valid if not appose to public policy.

7. Consideration must be real and not illusory.

- It must be something which law attaches some value.

- If it is physically or illeg. legally impossible then it is void.

8. Consideration must not be unlawful immoral or appose to public policy.

* Suit by third party to contract

1. Consideration in contract can proceed from person or two to person who is not party to contract
2. However a person can sue another only if he is party to contract.

→ It is known as doctrine of Privity of contract.

* Following are exception to the rule:

1. In case of trust

→ Beneficiary can enforce his right under trust though he is not a party to contract between settler and trusty

2. In case of family settlement.

→ If terms of contract are reduced in writing members of family though not a party to contract can enforce rights

3. In case of certain marriage contract and arrangements

→ A provision may be made for benefit

of person he may file suit though not party to contract.

4. In case of assignment of contract

→ When benefit under contract has been assigned, assignee can enforce contract provided it do not

INVOLVE PERSONAL SUIT

5 Acknowledgement or Estoppel:

→ Where promisor by conduct acknowledges or himself as agent of third party, it would result in obligation towards third party.

6 In case of covenant running with land:

→ A person who purchases land with notice that owner of land is bound to perform certain duties affecting land, the covenant affecting land may be enforced by successor of seller.

7. Contract through agent:

→ Principal can enforce contract entered

by agent where agent has acted within his scope.

Validity of an agreement without consideration.

• Since consideration is essential element of contract if no consideration then no contract comes into existence.

• Rule is NO CONSIDERATION NO CONTRACT

Following are exception to Rule :-

1. Natural love and affection

(i) following condition need to be fulfilled.

→ It must be made out of natural love and affection between parties

→ Parties must be in near relation to each other.

→ It must be in writing

→ It must be registered under law.

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2. Compensation for past voluntary services :

- A promise to compensate, wholly or in part, another person who has already performed for promisor is enforceable if following conditions are fulfilled :

1. Services - should be rendered voluntarily.
2. Services must be rendered for promisor.
3. Promisor must be in existence at time of when services were rendered.
4. Promisor must have intention to compensate promisee.

3. Promise to pay time based debt:

→ Where promise is made in writing signed by person making it or by authorised agent - is valid.

4. Agency :

→ No consideration is required to create contract of agency.

5 Completed Gift:

- In case of completed gift, no consideration is required. Provided gift is actually made.

6. Bailment :

- It is a contract where goods are delivered to other person for some specific purpose.
- One per purpose is over, one has to return it.
- In case of voluntary bailment, no consideration is required.

7. Charity :

- If promisee undertakes the liability of contributing some to charity, then such contract is valid.