

Unit 2. Consideration. Aspect of Contract

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- It is used in sense of quid pro quo. "something in return"
- Consideration is the price agreed to be paid by the promisee for the obligation of promisor.

(Caselaw: Misa vs Currie)

Legal Rules regarding Consideration →

a) Consideration (must) move at the desire of promisor →

→ Consideration must be offered by promisee or the third party at the desire or request of promisor only.

→ Act done at desire of 3rd party is not consideration.

(Caselaw: Durga Prasad vs Baldeo)

b) Consideration may move from promisee or any other person:

→ There can be a stranger to a consideration but not stranger to contract.

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

(Caselaw: Chinnayya vs. Ramayya (1882))

(Mango → property → Nodi)

c) Executed & Executory Consideration:

→ A consideration which consist in the performance of an act is Executed. When it consists in a promise, it said to be Executory

→ The promise by one party may be the consideration for other party in lieu of performance an act by some other party & vice versa.

d) Consideration may be past, present or future:

→ In order to support a promise, a past consideration must move by a previous request.

→ It is general that consideration is given & accepted in Exchange for promise.

✓ Definition of Consideration as per Section 2(d) →

When at the desire of the promisor, the promisee or any other person does something such an act is consideration

Executed → Done

Executory → Pending

When at desire of promisor or any other person has done or abstains from doing, does or abstains from doing or promises to do or abstains from doing something, such as act or assistance or promise is called consideration.

→ The consideration if past may be the motive but can't be the real consideration of a subsequent promise.

→ Where consideration is payable for present act it is present

→ when it is payable for future promise than it is future consideration.

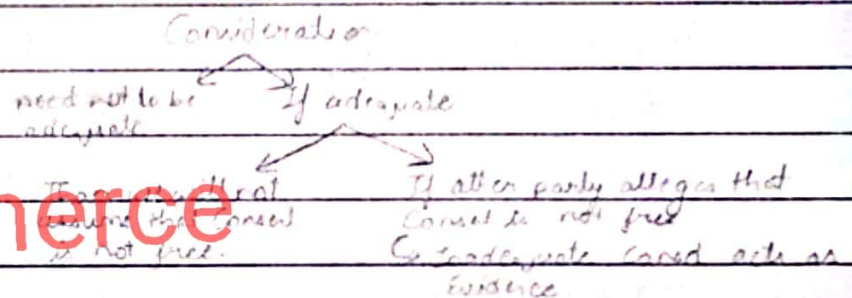
e) Consideration need not be adequate: (FUM)

→ Consideration need not to be of any particular value.

→ It need to be approximately of equal value with the promise for which it is exchanged but it should be of some value which law would regard.

→ Contract would not be treated as voidable merely becoz of inadequate consideration.

→ But if other party alleges that consent was not free and consideration is shockingly less that it can be taken as evidence in support of allegation.



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(f) Performance of what one is legally bound to perform:

→ Performance of an act by a person who is legally bound to perform same can't be consideration to contract.

→ Promise to pay witness is void.

→ But where person promises to do more than what he is legally bound to do. Such promises is valid if not opposed to public policy.

(g) Consideration must be real & not illusory:-

→ It must be something which law attaches some value.

→ If it is physically or legally impossible, than it is void.

h) Consideration must not be unlawful, immoral or apposes to public policy →

Suit by third party to Contract →

→ Consideration in contract can proceed from or to person who is not party to contract.

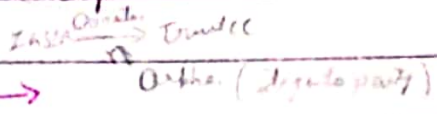
→ However a person can sue another only if he is party to contract.

→ It is also known as *(doctrine of Privity of Contract.)*

only b/w two parties
3rd party can't sue *Stranger to contract can't sue*

✓ followings are Exception to the rule →

(i) In case of trust →



→ Beneficiary can enforce his right under trust though he is not a party to contract b/w settler & trustee.

(ii) In Case of family settlement →

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

(iii) In Case of certain marriage contract & arrangements →

→ A provision may be made for benefit of person, he may file suit through not party to contract.

(iv) In case of assignment of contract →

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

assignment holding of right

(v) Acknowledgement or Estoppel → 3rd party.

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

Condition attached to land-

vi) 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 may be enforced by successor of seller.

vii) Contract through agent →

→ Principal can enforce contract entered by agent where agent has acted within his scope.

'Section 25'

Validity of Agreement without Consideration →

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

"No Consideration, No Contract"

No Consideration still contract

following are (Exception) to Rule →

1) Natural love & affection → Section 25(1)

following conditions need to be fulfilled →

- It must be made out of natural love & affection b/w parties.
- Parties must be in a near relation to each other.
- It must be in writing.
- It must be registered under law.

2) Compensation for past voluntary services → Section 25(2)

A promise to compensate wholly or in part, other person who has already performed for promisor is enforceable.

If following conditions are fulfilled →

- Services must be rendered for promisor.
- Services should be rendered voluntarily.
- Promisor must have intention to compensate promisee.
- Promisor must be in existence at time when services are rendered

(Debt paid within time period)

iii) Promise to pay time Barred Debt → Section 25 (3)

→ Where promise is made in (writing, signed) by person making it or by authorised agent is valid. → imp element.

iv) Agency: — Section 185

→ No Consideration is required to Create Contract of Agency.

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v) Completed Gift: —

→ In case of Completed gift, no Consideration is required. Provided gift is actually made.

(vi) Bailment → (Section 148)

→ It is a Contract where goods are delivered to other person for some special purpose.

→ Once purpose is over, one has to return it.

→ In Case of voluntary bailment, no Consideration is required.

vii) Charity →

→ If promisee undertakes the liability of Contributing sum to charity, then such Contract is valid.

(Caselaw... Kedarnath vs Gorie Mohammed)