

Indian Contract Act, 1872Unit:-2. ConsiderationConsideration (Sec. 2(d).)

- ⇒ Consideration means something in return.
- ⇒ "When at the desire of the promisor,
 - ⇒ the promisee or any other person.
 - ⇒ has done or abstained from doing something,
 - ⇒ such act or abstinence or promise.
 - ⇒ is called a consideration for the promise".

* Analysis of Definition:-

- ⇒ Consideration may be an act, i.e. doing of something.

Example 1:- A guarantees B for payment of price of the goods which B wanted to sell on one month credit to C. Here selling of goods on credit by B to C is consideration ~~for the act of~~ ~~students scoring above 95%~~. A's promise.

Example 2:- A College promises Students for the job in MNC, all who will score above 95%. Here the promise for recruitment of candidate will be considered as consideration for the act of students scoring above 95%.

⇒ Consideration may be an abstinence or forbearance.

Example 3:- 'C' promises his debtor 'D' not to file a suit against him if he agrees to pay Rs. 10,000 more on the principal amount. Here the abstinence of 'C' is the consideration for 'D' promise to pay.

⇒ Consideration may be a return promise.

Example 4:- A promises to maintain B's child, and B promises to pay A Rs. 1000 yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party.

* Legal Rules regarding Consideration:-

(i) Consideration must move at the desire of the promisor. An act done at the desire of a third party, is not a consideration.

Example 5:- R saves S's goods from fire without being asked to do so. R cannot demand any reward for his services, as the act being done voluntary.

(ii) Consideration from promisee or any other person :- Consideration may proceed from the promisee or any other person who is not a party to the contract.

In other words, there can be a stranger to a consideration but not stranger to a contract.

Example 6 :- An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed a writing in favour of the brother agreeing to pay annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it. It was held that there was sufficient consideration for the uncle to recover the money from the daughter. [Chinnayya vs. Ramayya].

(iii) Executed (Present) and executory (future) consideration

Example 7 :- A pays Rs. 5,000 to B and B promises to deliver to him a certain quantity of wheat within a month.

- ⇒ In this case A pays the amount, whereas B merely makes a promise.
- ⇒ Therefore, the consideration paid by A is executed (Present).
- ⇒ Whereas the consideration promised by B is executory (future).

(iv) Past Consideration:-

Example 8:- 'A' teaches 'B' at his desire. After a week, 'B' promises to pay fees of Rs. 2000. A can sue B for recovering the promised money.

(v) Adequacy of Consideration:- "Something in return" need not necessarily be equal in value to "something given".

Example 9:- A agrees voluntarily to sell his motorcycle for ₹2,000 to B. It is a valid contract despite the inadequacy of consideration.

Example 10:- X promises to sell a house worth Rs. 6 lacs for Rs. 1 lac only, the adequacy of the price in itself shall not render the transaction void, unless the party pleads that transaction takes place under coercion, undue influence or fraud.

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

- ⇒) Consideration must not be performance of existing duty.
- ⇒) The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract.

Example 11:- A promise to pay Rs. 1000 to a doctor over the fees is invalid as it is the duty of a doctor to give a treatment for his normal fees.

(vii) Consideration must be real and competent:-

- ⇒) It must be something to which the law attaches some value.

Example 12:- A man promises to discover treasure by magic. This transaction can be said to be void as it is illusory.

Example 13:- A agrees with B to put life in his head wife. The agreement cannot be enforced as it is not possible to be performed.

(viii) Consideration must not be unlawful, immoral, or opposed to public policy:-

Example 14:- A asks B, "I will give you Rs. 1,00,000, if you kill C." Consideration is illegal.

Example 15:- A asks B, "I will give you a bottle of wine if you do work for me." Contract is invalid as consideration is immoral.

Example 16:- A asks B, "I will purchase your car for something." There is no contract as consideration is uncertain.

Suit by third party to a contract

⇒ A stranger to contract cannot sue is known as a "doctrine of privity of contract".

Example 17:- P has taken a loan from Q. P sells his property to R and R promises to pay off the debt amount to Q. If R fails to pay, then in such situation Q has no right to sue, as R is a stranger to contract.

Exception to Rule, "Doctrine of privity of contract."

⇒ Even a stranger to a contract may enforce a claim in the following cases:

(1) In the case of trust:- a beneficiary can enforce his right under the trust, though though he was not a party to the contract between the settler and the trustee.

Example 18:- Mr. X transfers his property to his friend in trust in favour of his son. On the death of Mr. X friend refuses to give the benefits to son. Now son claim from Mr. X's even if he was not a party to contract.

(2) In the case of family settlement:- if the terms of the settlement are in writing, the members of family who ordinarily had not been parties to the settlement may enforce the agreement.

Example 19:- A father has transferred all his property to his sons on the condition that each of them will pay Rs. 10,000 to their mother. Son refused to pay. Now mother can claim from them.

(3) In the case of certain marriage contracts:- a female member can enforce a provision for marriage expenses, made on the partition of the Hindu Undivided family.

(4) In the case of assignment of a contract:- When the benefit under a contract has been assigned, the assignee can enforce the contract.

Example 20:- Mr. A has assigned his insurance policy to his son. Now son can claim even if he was not a party to contract.

(5) In the case of an estoppel by acknowledgement of liability or part performance thereof, that is when, one admits the liability.

Example 21:- L gives to M Rs. 2,000 to be given to N, and M informs N that he is holding the money for him, but afterwards M refuses to pay the money. N will be entitled to recover the same from the former.

(6) Contracts made by the agent:- Principal can enforce the contracts entered by

his agent where agent has acted within the scope of his authority and in the name of principal.

Example 22:- P appoints A as his agent to sell his house. A sells house to T. Now P has right to recover the price from T.

(7) In the case of Covenant running with the land:- the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

Example 23:- One owner of the land having two land adjacent to each other. One was agricultural land. He sold the other land containing a condition that it can never be used for industrial purpose so as to protect the other agricultural land from pollution. Such condition is attached with the land so who so ever is the successor of land has to abide by it. Such are called restrictive covenants and all successors are bind to it.

* Validity of an agreement without Consideration:

⇒ The general rule is that an agreement made without consideration is void (Sec 25).

⇒ However, in the following cases, the agreement though made without consideration, will be valid and enforceable.

1. Natural Love and Affection:- A written and registered agreement

- ⇒ based on natural love and affection
- ⇒ between the parties standing in near relation to each other.
- ⇒ is enforceable even without consideration.

Example 24:- A husband, by a registered agreement promised to pay his earnings to his wife. Held the agreement though without consideration, was valid.

2. Compensation for past voluntary services (Past Consideration):- A promise to pay for the past voluntary services

be binding, the following essential factors must exist:

- (i) The services should have been rendered voluntarily.
- (ii) The services must have been rendered for the promisor.
- (iii) The promisor must be in existence at the time when services were rendered.
- (iv) The promisor must have intended to compensate the promisee.

Example 25: P finds R's purse and gives it to him. R promise to give P Rs. 1000. This is a valid contract.

Example 26: Mr. X had helped his nephew Mr. Y to fight a case in the court of law using his knowledge and intellect. After Mr. X won the case, he promised Mr. Y to pay Rs. 10,000. Held, this is a valid contract as it is compensation to past services.

3. Promise to pay time based debt: Where a promise in writing signed by the person making it or

by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration.

Example 27: A is indebted to C Rs. 6,000 but the debt is barred by the limitation Act. A signs a written promise now to pay Rs. 5,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

4. Agency: According to section 185 of the Indian Contract Act, no consideration is necessary to create an agency.

5. Completed gift: In case of completed gifts, the rule no consideration no contract does not apply.

Example 28: Mr. A has gifted a car to his friend on his marriage. Now Mr. A cannot take back his car even if there was no consideration.

6. Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, then the contract shall be valid.

Example 29: Mr. A promised the secretary of committee of temple to donate Rs. 10,00,000 for renovation of that temple. On the faith of his promise, secretary had incurred some cost for renovation. Now secretary can claim from Mr. A even the contract was without consideration.

7. Bailment:- No consideration is required to affect the contract of bailment. Section 148 of the Indian Contract Act, 1872 defines A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned ~~or~~ or otherwise disposed of according to the directions of the person delivering them.

Example 30:- lending of a book to a friend for his use, without charge.