

The Indian Contract Act, 1872

Unit -2 Consideration

Q1: What is Consideration? Explain the legal rules regarding valid consideration.

(Nov. 2019)

OR

What is Consideration? Explain the essentials of a valid consideration.

Ans; A) **Introduction:**

When a party to an agreement promises to do something, he must get 'something' in return. This something is defined as consideration. Consideration is based on the term "quid-pro quo" which means "something in return". When a person makes a promise to another, he does so with an intention to derive some "advantage" from him. This act to do or to refrain from doing something is known as consideration.

Thus, every contract consists of two parts, viz., promise and consideration for the promise.

Section 2(d) defines consideration as follows:

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

B) **Legal Rules regarding Consideration / Essentials of a Valid Consideration:**

The following are the essentials of a valid consideration.

1. **Consideration must move at the desire of the promisor:**

Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration. An act done at the desire of a third party is not a consideration.

Case Law: In *Durga Prasad v. Baldeo*, D (defendant) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market. Market was constructed by P at the desire of the C (Collector), and not at the desire of the D. D was not bound to pay as it was without consideration and hence void.

2. **Consideration may move from promisee or any other person:**

Consideration may move from promisee or if the promisor has no objection from any other person. According to the definition of consideration as given in section 2 (d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration.

Case Law:

In **Chinnayya vs. Ramayya**: 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. 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.

3. **Consideration can be executed or executory :**

A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.

Example: A pays ₹ 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, whereas the consideration promised by B is executory.

4. **Consideration may be past, present or future:**

The consideration may be past, present or future. This is clearly indicated by the words, used in the definition of consideration given in the Act. The words used are:-

"..... has done or abstained from doing (past), or does or abstains from doing (present), or promises to do or to abstain from doing (future), something"

When consideration for the present promise is given in the past it is the past consideration.

Example: 'A' performed some services to 'B' at his desire. After a week, 'B' promises to compensate 'A' for the work done by him. It is said to be past consideration and A can sue B for recovering the promised money.

5. **Consideration need not be adequate :**

Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. Something in return need not be equal to something given.

The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

6. **Consideration must be real and not illusory :**

Consideration must be real and must not be illusory. It must be something to which

the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.

Examples: A man promises to discover treasure by magic, bringing the dead person to live again. This transaction can be said to be void as it is illusory.

Consideration must not be unlawful, immoral or opposed to public policy:
Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

Example: ABC Ltd. promises to give job to Mr. X in a Government bank against payment of ₹ 50,000 is void as the promise is opposed to public policy.

Consideration for an act which a person is legally bound to perform is not a valid consideration :

The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence, such a contract is void for want of consideration. Similarly, an agreement by a client to pay to his counsel after the latter has been engaged, a certain sum over and above the fee, in the event of success of the case would be void, since it is without consideration.

But where a person promises to do more that he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration. It should not be vague or uncertain.

Q2: **Stranger to contract cannot sue, but a stranger to a consideration can sue. Explain**

OR

Write a note on Doctrine of Privity of Contracts.

Ans: **Doctrine of Privity of Contracts:**

Since a contract is a private relationship between parties who make it. The rights and obligations under such a contract are strictly confined to them. This is known as doctrine or privity of contract. It is a general rule of law that a person who is not a party to the contract cannot sue. The rule is **Stranger to contract cannot sue, but a stranger to a consideration can sue.**

Example: P who is indebted to Q, 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.

The aforesaid rule, that **stranger to a contract cannot sue** is known as a "**doctrine of privity of contract**", is however, subject to certain **exceptions**. In other words, even a stranger to a contract may enforce a claim in the following cases:

1. **Beneficiaries in case of trust:**

A beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee. For example if there is an agreement

between A and B whereby to secure some benefit, the party to the agreement can enforce it.

2. **Written family settlements:**

In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.

Example: Two brothers X and Y agreed to pay an allowance of ₹ 20,000 to mother on partition of joint properties. But later they denied to abide by it.

Held: Their mother although stranger to contract can require their sons for such allowance in the court of law.

3. **In case of certain marriage contracts :**

In the case of certain marriage contracts / arrangements, a provision may be made for the benefit of a person, he may file the suit though he is not a party to the agreement.

Example: Mr. X's wife deserted him for ill-treating her. Mr. X promised his wife's father Mr. Puri that he will treat her properly or else pay her monthly allowance. But she was again ill-treated by her husband. Held, she has all right to sue Mr. X against the contract made between Mr. X and Mr. Puri even though she was stranger to contract.

4. **Assignment of Contract :**

In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract for various benefits that would accrue to him, on account of the assignment. For example in case of death or insolvency an assignee can enforce the contract.

5. **Acknowledgement or estoppels :**

Where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.

Example: If L gives to M ₹ 20,000 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 i.e. M.

6. **Covenants with land :**

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: One owner of the land having two lands 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 successor are bind to it.

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Contracts made by agent :

The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Q3: **"No consideration, No Contract" Comment. State the exceptions to this rule.**
OR

Discuss "Agreements made without consideration are void." Are there any exceptions to this rule? (May 2018, Jan. 2021, Dec. 2022)

Ans: **A) No Consideration No Contract:**

Consideration is one of the essential elements to support a valid contract. When a party to an agreement promises to do something, he must get 'Something' in return. If he does not get something in return, the contract is not valid. This 'Something' is defined as consideration. Therefore, an agreement without consideration is void and cannot become a contract. This law is described in the phrase : "No consideration No contract" or in Latin phrases as "Nudum Pactum" or "Ex Nudo Pacto non oritur action" i.e. Agreements without consideration are void.

(B) **Exceptions to the rule of consideration :-**

However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. **An agreement made on account of Natural love and affection section 25 (1) :**

When an agreement is made in writing and registered under the law and is made out of natural love and affection between the parties standing in a near relation to each other, no consideration is required in such a case E.g. an agreement between a father and his son, or between a husband and wife.

Conditions to be fulfilled under section 25(1)

- (i) It must be made out of natural love and affection between the parties.
- (ii) Parties must stand in near relationship to each other.
- (iii) It must be in writing.
- (iv) It must also be registered under the law.

Example: A out of natural love and affection promises to give his newly wedded daughter-in-law a golden necklace worth ₹ 5,00,000. 'A' made the promise in writing and signed it and registered. The agreement is valid.

2. **Compensation paid for past voluntary services :**

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that 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: P finds R's wallet and gives it to him. R promises to give P ₹ 10,000. This is a valid contract.

3. **Promise to pay time barred 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.

The debt is barred by limitation if it remains unpaid or unclaimed for a period of three years.

Example: A is indebted to C for ₹ 60,000 but the debt is barred by the Limitation. A sign a written promise now to pay ₹ 50,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

4. **Creation of agency :**

According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.

5. **In case of completed gift :**

In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.

6. **In case of Bailment :**

Bailment is a contract where goods are delivered for a particular purpose and once the purpose is served, goods are to be returned back. There are two parties bailor and bailee. No consideration is required to affect a contract of bailment

7. **In case of Charity :**

If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid