

Unit 2 :-



shutterstock.com · 1781003204

Summary notes  
By CA Ankita Patni

# Consideration

- Consideration is an essential of a valid contract
- It is a term used in the sense of **quid-pro-quo** i.e. 'something in return'



## What is consideration?

Consideration is the price agreed to be paid by the promisee for the obligation of the promisor.

**Section 2(d)** defines consideration as follows-

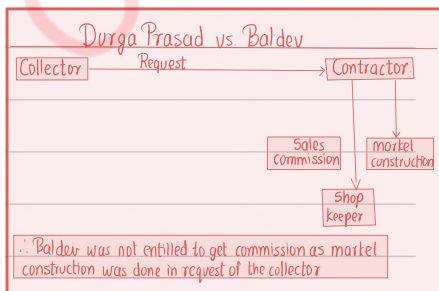
"When at the desire of the promisor, the promisee of any other person has done or abstained from doing, or does or abstains to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise".

## Legal rules regarding 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.

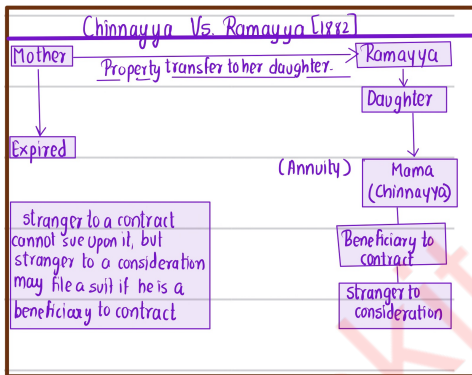
### Case law:- **Durga Prasad v. Baldeo**



② Consideration may move from promisee or any other person:-

- consideration may proceed from the promisee or any other person who is not a party to the contract.
- There can be stranger to the consideration but not stranger to a contract

Case law:- Chinnayya Vs. Ramayya



③ Executed or executory consideration:-

- 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.

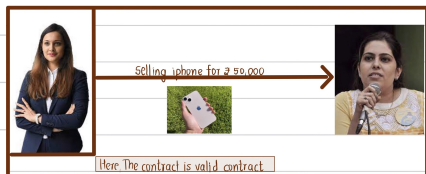
④ Consideration may be present, past and future:-

⑤ Consideration need not be adequate:-

- Consideration need not be of any particular value.
- It need not be 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.

eg:- Ankita mam selling iphone for ₹ 50,000 to Pooja Mam



But if the other party alleges that his consent was not free than this inadequate consideration can be taken as an evidence in support of this allegation.

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

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

⑦ Consideration must be real and not illusory:-

- Consideration must be real and must not be illusory.
- If it is legally or physically impossible it is not considered valid consideration

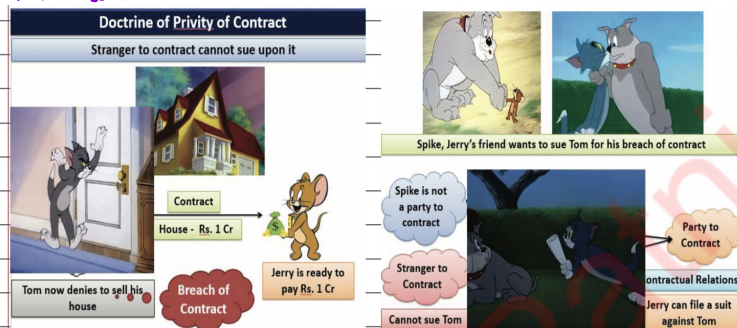
⑧ Consideration must be unlawful, immoral or opposed to public policy:-

- Only presence of consideration is not sufficient it must be lawful



## \* Suit by a third party to a contract:-

- Only a person who is party to a contract can sue on it.
- Stranger to a contract cannot sue is known as "Privity of contract"



## \* Exceptions to Privity of Contract :-

### ① 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.

### ② In case of family settlement :-

- If the terms of the settlement are reduced into writing, the members of the family who originally had not been parties to the settlement, may enforce the agreement

### ③ In case of certain marriage contracts/agreements:-

- 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

#### ④ In the case of assignment of a contract:-

- When the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.

#### ⑤ Acknowledgement of estoppel:-

- 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.

#### ⑥ 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.

#### ⑦ Contracts entered into through an agent:-

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

#### \* Validity of an Agreement without consideration:-

- The General rule is that an agreement made without consideration is void.
- However, The Indian Contract Act contains certain exceptions to this rule.

## ① Natural love and Affection:-

- 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 writing.
- iv) It must also be registered under the law.

## ② Compensation for past voluntary services:-

- In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:-
- The services should have been rendered voluntarily.
- The services must have been rendered for the promisor.
- The promisor must be in existence at the time when services were rendered.
- The promisor must have intended to compensate the promisee

## 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

## ④ Agency:-

- No consideration is necessary to create an agency.

## ⑤ Complete Gift:-

- In case of complete gifts, the rule no consideration no contract does not apply.
- Thus, gifts do not require any consideration

## ⑥ Bailment:-

- No consideration is required to affect the contract of bailment.
- Bailment as the delivery of goods from one person to another for some purpose.

## ⑦ Charity:-

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

CA Ankita Patil