

# CONSIDERATION

Agreement = promises or a set of promises forming consideration for each other.

Examples -

A	—————→	B
Promisor		Promisee
BOOK		₹ 1000

A की promise ⇒ B की consideration

B की promise ⇒ A की लिए consideration

# What is Consideration :-

1.) Consideration is an essential element of a valid contract

→ It is normal <sup>basic</sup> badge of enforceability of promises.

→ Subject to certain exceptions, an agreement is not enforceable unless each party to agreement gets something.

→ Something in return is known as "Quid-Pro-Quo" or "consideration"



2.) Promises — without consideration is known as  
'Nudum Pactum'  
↓  
also known as bare promise or mere promise  
↓  
चरम promise

★ If there is not promise + support consideration then there is no contract.

3.) As per Pollock,  
Consideration is Price  
↓  
Bought Promises

★ Also known as element of exchange of promises.

4. Case Law :- Curie v. Misa

Benefit	—	Determinant
Income	—	Loss
Right	—	Obligation
Interest	—	forbearance to Act

In simple words :-

Benefit = Determinant

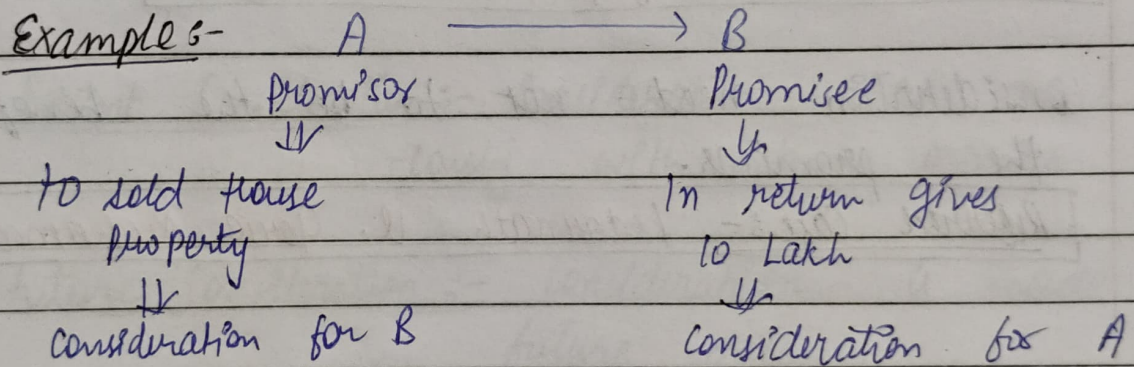
5.) Consideration is defined under Sec 2(d) of Indian Contract Act 1872 as :-



• when at the desire of the promisor promisee or any other person on the behalf of promisee.

- has done or abstained
- does or abstains
- Promises to do or to abstain

to such Act  
or  
abstinence ] = consideration for the promisor



Ques A की इच्छा से  
Then 10 lakh is consideration for A

A की इच्छा से  
Then 10L is not consideration for A.



# Essentials of a Valid Consideration are :-

1.) Consideration must move at the desire of the promisor :-

→ The act or abstinence must be done at the desire of the promisor.

→ If it is done at the instance of a third party or without the desire of the promisor, then it is no consideration.

★ Referred case:- Durgaprasad v. Baldew

★ Consideration need not to be the benefit of the promisor.

Referred case:- Kedarnath v. Gorie Mohamed

2.) Consideration may move from promisee or any other person

→ Consideration may be proceed from the promisee or any other person who is not a party to the contract.

★ → The stranger to the consideration will be able to sue only if he is a party to the contract. but not stranger to a contract.



### 3.) Executed and 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 past, present or future

- Past Consideration :- Consideration for a promise given by a party before the promise is made is known as past consideration.
- Present Consideration :- Consideration which moves simultaneously with the promise.
- Future Consideration :- Consideration is made on future date.

### 5.) Consideration need not to be adequate

- Consideration need not to be equal to something given. It can be considered a bad bargain if the party.
- However Sec 25 provides that inadequacy of the consideration may be taken into AC by the court in determining the ques whether the consent of the promisor was freely given.



(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 can't be consideration for a contract

→ Such a contract is void for want of consideration.

7.) Consideration must be real and not illusory

→ Consideration must be real or of some value in the eyes of law.

→ It should not be physically impossible or illegal or illusory. [e.g. to make a dead man alive].

8.) Consideration must not be unlawful, immoral or oppose to public policy.

→ Only the presence of consideration is not sufficient, it must be lawful

→ Anything which is immoral or oppose to public policy also cannot be valued as valid consideration.



## # Doctrine Of Privity Of Contract :-

- According to doctrine of privity of contract, only a party to a contract is entitled to enforce a right created by the contract.
- A third party (stranger) has <sup>no existence</sup> no locus standi in a contract, he is <sup>मना किया</sup> debarred from interfering with the contractual rights of the parties.
- The doctrine of privity of contract prevent imposition of contractual obligations upon a person without his consent.

## # Difference b/w right of a stranger to a contract and of a stranger to the consideration :-

A stranger to a contract i.e. one who is not a party to it, cannot file a suit to enforce it.

And

A stranger to the consideration can sue to enforce it provided that he is a party to the contract.



## # Suit By A Third Party To A Contract :-

Only a person who is party to a contract can sue it, third party cannot sue on contract.

However there are certain exceptions, in which third party can sue on contract are:-

### (i) In the case of trust

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

### (ii) In the case of a family settlement

When family dispute are settle by mutual agreement & the terms of the settlement are written down in a document called family settlement.

Such agr. can be enforced by members of the family who were not originally parties to the settlement.

### (iii) Assignment of a contract

When the benefit under a contract <sup>has been</sup> assigned the assignee can enforce the contract



means obligation assign or देना (liability)

#### (iv) Acknowledgement of estoppel

If the promisor acknowledges his liability to the third person, then such a person can file a suit to recover the benefit.

#### (v) Certain marriage contracts | agreements

→ A provision may be made for the benefit of a person, he may file a suit though he is not a party to the agreement.

restrictions (शर्तें)

#### (vi) Covenant running with the land

The person who purchases land with the notice that owner of the land is bound by certain duties affecting the land, the covenant affecting the land may be enforced by the successor of the seller. (e.g. घर की जमीन में शर्तें)

#### (vii) Contracts entered into through an agent

The principal can enforce the contracts entered by his agent provided the agent acts within the scope of his authority & in the name of the principal. (Ex:- Haldiram case)



# # Validity of An Agreement without Consideration

## 1.) Natural love and Affection [Sec 25(1)]

An agreement is enforceable without consideration when :-

- Made on A/c of Natural love & affect
- B/w parties standing in near relation to each other
- It must be expressed in writing
- Registered under the law.

Related case law :- Rajlaxmi Deb v. Bhadrath Mukerjee

## 2.) Compensation for Past Voluntary Service [Sec 25(2)]

In order that a promise to pay for the past voluntary service be bind the following essential must exists :-

- Service should rendered voluntarily
- Service must rendered for the promisor
- Promisor must be in existence when services were render.
- Promisor must intend to compensate promisee

## 3.) Promise to Pay time Bawed debt [Sec 25(3)]

Where there is an agreement  
→ Must made in writing



- signed by his authorised agent
- To pay wholly or in part of debt barred by the law of limitation is valid even without consideration.

### (vi) Agency [Sec 185]

As per Sec 185, no consideration is needed to create an agency.

### (v) Completed Goods

- Gift is transfer of property without consideration.
- Exp 1 to Sec 25, once a gift has been actually given, the donor can't demand it back on the ground of no consideration.

### (vi) Bailment [Sec 148]

As per Sec 148, no consideration is need in case of bailment.

### (vii) Charity

If a promisee undertakes the liability on the promise to contribute to charity, here the contract shall be valid.

Related Case law :- Kadarnath v. Gorse Mohammad