

The word consideration was popularised after the case *Misa vs Mier*.

Unit - 2

* Consideration

- As per section 2(d):

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

* Rules for consideration

① Consideration must be moved at the desire of the promisor.

- Consideration must be offered by promisee at the desire of promisor.
- Act done at the desire of third party $\neq$ consideration

Case Law :- *Durga Prasad Vs. Baldev*
(P) (D).

Facts :- D promised to pay commission on the sale in the market constructed by P at the desire of C (collector).

Held :- As C is third party to the contract, agreement is void as the consideration is moved by third party.

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

- consideration can be moved by third party to a contract.
- There can be strangers to a consideration but not strangers to a contract.

Write in *
doctrine of
privity of contract.

Base Law :- Chinnayya Vs. Ramayya.

Facts :- Old Lady (L) gifted her property to D. with direction to pay her ~~that~~ monthly.

- ~~Old Lady~~ D made contract with L.
- D failed to pay.
- P sued D.

Held :- Uncle^{CP} can recover from D.

(3) Consideration can be executed or executory.

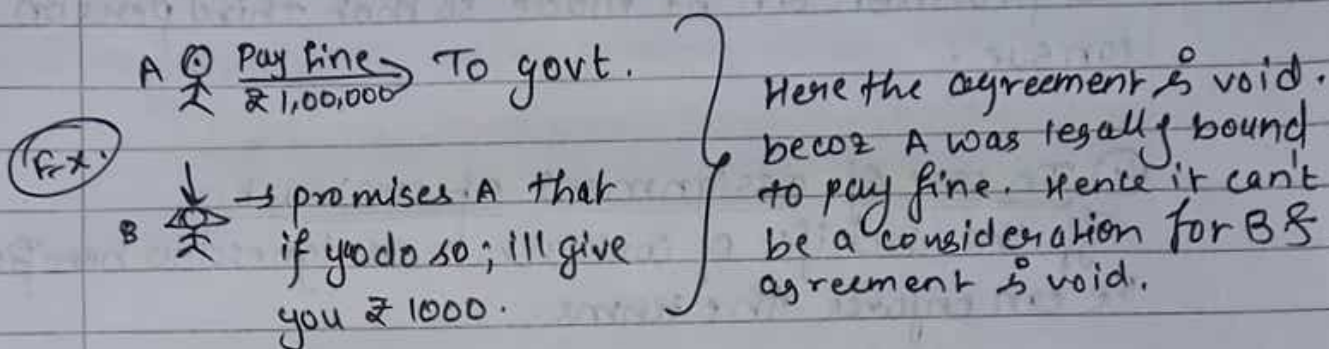
(4) Consideration can be past, present or future.

(5) Consideration need not to be adequate.

- Quid pro quo $\Rightarrow$ something in return.
 $\neq$ Something equal in return.

- If consideration is shockingly less and the other party alleges that consent wasn't free then this may not be applicable.

⑥ Performance of what one is legally bound to perform



- But if a person does more than he was bound; it can be a consideration.

⑦ consideration must be real not illusory

- Act must be possible to perform.

⑧ consideration must not be unlawful / illegal / immoral

IMP * Doctrine of privity of contract

- According to this rule:
"Strangers to a contract cannot sue"
- Exceptions for doctrine of privity of contract:-

① Trust:-

- In case of trust; beneficiary can sue even though he is not party in contract b/w trustee & settler.

② Family settlement:-

- If terms are in writing, any one can enforce them from family.

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③ Certain marriage agreements:-

- a provision can be made so that third person can sue.

④ In case of assignment of contract:-

- If the benefit of contract is assigned to beneficiary, he can enforce the terms.

⑤ Acknowledgement or estoppel:-

- Where promisor acknowledge him self as agent of third party, it's binding on him.

⑥ In case of covenant running with the land:-

- If a person purchases a land and promises something to seller, then successors of seller also can enforce it.

⑦ Contract entered by an agent:-

- Principal can enforce if agent has done contract within scope of his authority.

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* Validity of agreement without consideration.

- According to section 25;
"Agreement without consideration is void".

- Following are exceptions:-

① Natural Love and affection [25(1)]

conditions i) Must be made out of natural love.
ii) Near relationship.
iii) Must be in writing.
iv) Must be registered.

② Compensation for past voluntary services [Section 25(2)]

conditions i) Service should be voluntary.
ii) Must rendered for promisor.
iii) Promisor must exist at the time of service.
* iv) Promisor must have intention to compensate.

③ Promise to pay time barred debt:- [25(3)]

- If a debt is barred by limitation act; promise to pay it is enforceable without any consideration.

④ Agency:- [25(4)]

- As per section 185; no contract is necessary to create an agency.

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⑤ Completed gift :- [25(5)]

- Completed gifts doesn't require any consideration.

⑥ Bailment :- [25(6)]

- Bailment :- According to section 148
"Delivery of goods from one person to another is bailment."
- No consideration is required for contract of bailment.

⑦ Charity :- [25(7)]

- If a promisee makes contract for charity; it can be enforceable without consideration.

Case Law :- Udannaath vs. Gorie Mohammad.
(K) (A)

Facts :- A promised K a sum as a charity.
- On faith of promise; K incurred some amount.

Held :- K can claim from A.

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