

Unit-2: Consideration

Section 2(d) :- When at the desire of the promisor or any other person, ~~the~~ promisee has done or abstain from doing, or does or abstain from doing or promises to do or abstain from doing something, such act or abstinence or promise is called consideration - to such promise.

→ In terms of law either consist of profit, interest, benefit to one party, or some forbearance, loss, detriment, responsibility given, suffered or undertaken by other..

eg 1 Ajay guarantees Bhuvan for payment of price of goods which he wanted to sell on month credit to Chaitanya. Here selling of goods on credit by Bhuvan to Chaitanya is consideration for A's promise.

eg 2 X college promises students, who will score 95% ~~will~~ get Job in MNC. (Consideration need not to be mandatory)
→ Here promise for recruitment is consideration for act of students scoring above 95%.

Consideration is an Act of Doing something
→ abstinence - abstain from doing something

eg 3 A promises B not to file case if she ^{should} pay 1,00,000 him. Here abstinence on part of A would constitute consideration against B's payment of 1 Lakh to A.

eg 4 ABC has shop of electric items. XYZ wishes to open a shop next to his shop. XYZ co. offers 200,000 to ABC for shifting his shop.
Here consideration is given for abstaining XYZ from opening his shop nearby.

Promisor - who makes promise

Promisee - a person to whom promise is made

→ Legal Rules of Consideration

(Quid pro quo - Something in Return)

1. Consideration ~~must~~ move at the desire of promisor. It can be offered by the promisee or third party at the desire of promisor. The consideration is a 'Return element'. The contract of marriage in consideration of promise of Settlement is binding contract and enforceable.

(Devga Basad vs. Baldeo)

2. Consideration may proceed from promisee or other party. Consideration may move from promisee or other party who is not the party to contract. The Section 2(d) makes that proposition clear that when at the desire of ~~the~~ promisor, the promisee or any third party does something to such act is consideration.

Moreover, there can be stranger to consideration but not the stranger to a contract.

(Chinnaya vs. Ramayya) Refer sticky note

3. Executed and executory consideration! - When the consideration which consists in the ~~prom~~ performance of an act it is said to be executed. It means that both the parties has performed certain obligation of consideration to a contract. Where when consideration which consists in ~~prom~~ promise to such act it is said to be executory. It means one of the party's consideration is still outstanding and has to be performed.

eg- A pays ₹5000/- to B where B promises to deliver goods within a week. A has performed his consideration where B merely makes a promise. The consideration paid by A is executed and B's promise is executory consideration.

4. Consideration need not to be adequate! - It need not to be adequate value/particular value. It should ~~not~~ need not to be approximately of equal value with the promise which it is exchanged but it should be something which law regards as some value. Furthermore it need not to be equal to ~~the~~ given something.

Section 25 states that an agreement to which consent is freely given by promisor ~~is~~ is not void merely because consideration is inadequate.

eg- A promises to sell ~~house~~ for house worth ₹6 lacs for ₹2 lacs. The adequacy of price in itself shall not ~~render~~ a transaction void, unless party pleads that transaction takes place under coercion, undue influence or fraud.

5, Performance of what one is legally bound to perform:-

- The consideration must not be for the performance of existing duty. The performance for an act which is already bound to perform the same cannot be the consideration.
- A promise to pay ₹1,00,000 to witness is void as it is without consideration.
 - A payment by client to his counsel, after the latter engaged, the over or above the fee, in the event of success of case is void.
 - If someone performs more what he is legally bound to do, such promise is not opposed to public policy. It is a good consideration.

6, Consideration must be real and not illusory. It must not be illusory.

The consideration must be something which law attaches some value. It is legally or physically possible to perform, it is considered as valid consideration.

Eg. - A promises to discover ^{to} by magic, it is impossible itself to perform.

7, Consideration must not be opposed to public policy, immoral, unlawful

The only presence of consideration is not enough in a contract, it must be legal which is bound to the offer/contract. Consideration should not arise a term of illegality and does not oppose to public policy.

Also, the consideration for unlawful subject matter is void agreement.

eg. - A offers B to give job against payment of ₹1,00,000 in government bank.

→ Suit by third party to a contract

In the Indian contract act 1872, stranger to a contract cannot sue the other party, only party to a contract can sue in Court of Law.

Thus, stranger to a consideration is valid but stranger to a contract is not valid.

The aforesaid rule, stranger to a contract cannot sue is known as 'Doctrine of privity of contract'.

Exceptions, even stranger to a contract can claim in the following cases:

1, In the case of trust, even the beneficiary can sue and enforce his right under the trust if though he was not the party to the contract (Refer chimney vs Ramayya) stickynotes (Refer PPT)

2, In the case of family settlement: The members who originally are not parties to the contract may enforce the agreement.
eg- X and Y agreed to pay allowance of ₹20,000 each month. Next month they denied. Held their mother although stranger to contract can sue in the court (Refer stickynotes)

3, In case of marriage contract/agreement, stranger to contract can enforce the agreement. (Refer stickynotes PPT)

eg- Mr X ill treating his wife. He promised his wife's father to treat her well or pay her monthly. But Mr X again ill treating her. Held his wife can file a case and she has all right to sue though she is not the party to contract.

4, In the case of assignment of a contract - (Refer PPT 147) benefits
assignment - contract which a person transfer his rights to someone

assignee - (isko benefit transfer hote)

assigned - transferred

The assignee can enforce contract when he has benefit under has been assigned. Assignee can enforce contract unless such assignment involves any personal skill

eg- A endorsed his bill to Y on maturity Y can sue B for in the case of dishonour against all prior parties Y as the assignee of contract. If no prior parties Y can sue drawee (B) (holder in due course)

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5, Acknowledgement or estoppel: where A promises or acknowledges himself as the agent of third party which enforces enforceable and binding contract. He acts as an agent of third party.
eg - where A holds money to be given to B. He then tells B that he has £20,000 received by X. Afterwards he denied to give. B can sue him and entitled to get money where X gives £20,000 to A.

6, Covenant/Condition attached with Land: The person who purchases the land with the covenant attached with land, he is bound by certain duties affecting the land may be enforced by the successor of land.

eg - A has 2 lands, one was agriculture land and he sold 2nd land to X with the covenant attached with land that that land will not used for industrial work in order to prevent his agricultural land.

All the successors of land will be bound by it / Successor of land has to abide by it.

All the successors are bind to restrictive covenants.

7, Contract entered into through an agent: Principal can enforce his contracts through an agent where the agent has acted within the scope of his authority and in the name of principal. Though the principal was not the party but bound by certain duties of contract.

Validity of contract without consideration

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C3 No Consideration No Contract? Comment?
The general rule states that there is no contract with the absence of consideration. The contract without consideration is void (Section 25). It can't be enforceable.

→ However, the Indian Contract gives certain exceptions which makes the contract enforceable, valid and binding.

Exceptions:

- ① Natural love and affection
- ② ^{promise to pay} Time barred debt
- ③ ^{compensation} payment for past voluntary services
- ④ Charity
- ⑤ Bailment
- ⑥ Agency
- ⑦ completed gift

Learning trick (Refer sticky notes)

① Natural love and affection: Conditions given under Section 25(1)

1. It must be made out of Natural love and affection
2. Parties must stand near relationship to each other
3. It must be writing
4. It must be registered in court

→ A written and registered agreement based on natural love and affection between parties stand near to relationship to each other is enforceable without consideration.

eg. A out of Natural love and affection promised to give his newly daughter-in-law a necklace worth ₹ 5,00,000. He made in writing and registered. (Valid agreement)

② Time barred debt: Where a promise in writing signed by the person making it or by authorized agent, is made to pay debt barred by limitation without consideration. Section 25(3)

eg. A has to pay debt ₹ 1,00,000 to C but it is barred by limitation. Act 1963. Now A ^{sign a written} promises to pay ₹ 1,00,000 in settlement of debt without consideration. (1.49) PPT

→ If no legal action is taken to recover debt within 3 years, then it will be categorised into time barred debt. If later X pays the debt then it will be valid.

③ Compensation for past voluntary services: - A promise to compensate whole or in part, a person who has already done voluntarily something for promisor, is enforceable under Section 25(2)

→ In order that a promise to pay for past services be binding, the following essential factors must exist:

1. The services must have been rendered voluntarily
2. The services must have been rendered for the promisor
3. The promisor must be in existence at that time when services were rendered
4. The promisor must have intention to compensate the promisee

eg. P find K's wallet and gives to him. K promises to pay ₹10,000 to him (valid)

Mr X helped his nephew K to fight a case using his knowledge. Now K won the case, he promises to compensate.

④ Agency: - If a promisee undertakes liability on the promise of the promisor to contribute the charity, there will be a valid contract (Kadamath vs. Girdle)

(Refer PPT)

⑤ Bailment: - According to Section 148 of ICA, bailment is defined as delivery of goods from one person to another for some purpose. For this there is no consideration required to affect the contract of bailment.

After the accomplishment of purpose, the goods either, returned or disposed off, according to the direction of person delivering them.

eg. Mr X hand over the keys of godown to Y to deposit goods. After that Mr Y will return the keys.

⑥ Agency: - According to Section 185, there is no consideration necessary to create a agency.

Agency is something when a person works on your behalf.

eg. To appoint a property dealer there is no consideration necessary.

⑦ Completed gift: The principle 'No consideration no contract' does not apply here between donor and donee, if any gift actually made. No consideration in the gift will not affect validity of contract.