



CA Nikesh Agrawal

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BUSINESS LAW

EXAM ORIENTED FREE

FASTRACT BATCH

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Details

Time : 4:30 pm to 6:15 pm daily

Source : ICAI Module

Batch Completion : Upto 15th April



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Chapter: 2 - Indian Contract Act, 1872

Unit: 2 - Consideration

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

10 - Mr. A was running an orphanage. His friend Mr. S, a Philanthropist agreed to who suffering from was donate 2 lakh for treatment of a child, cancer. On emergency Mr. A incurred 1.5 lakh on treatment of child. Now Mr. S refused to pay. Whether Mr. A can claim 1.5 lakh from Mr. S with reference to provisions of The Indian Contract Act, 1872?

1)a)i)3m,MDTP8,10, 1)a)i)3m,MTP2,Jan2025, 1)a)iii)2m,Sept2024

Ans - The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872).

However, in the following case, the agreement though made without consideration, will be valid and enforceable.

Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. In the instant case, Mr. A can claim 1.5 lakh from Mr. S.

09 - What are the conditions need to be fulfilled to make the following agreements valid without consideration as per the provisions of the Indian Contract Act, 1872 ?

(A) Agreement made based on natural love and affection

(B) Promise to pay time-barred debts

6)b)6m,MDTP2,7,10, 5)c)ii)3m,MTP1,Jan2025, RTP,Jan2025, 3)c)ii)3m,Sept2024,
6)a)5m,MTP1,Dec2023, 2)a)7m,Dec2022

Ans - i) **Agreements made out of love and affection are valid agreements:** A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. The various conditions to be fulfilled as per Section 25(1) of the Indian Contract Act, 1872:

- a) It must be made out of natural love and affection between the parties.
- b) Parties must stand in near relationship to each other.
- c) It must be in writing.
- d) It must also be registered under the law.

Hence, the agreements made out of love and affection, without consideration, shall be valid, if the above conditions are fulfilled.

ii) **Promise to pay a time barred debt cannot be enforced:** According to Section 25(3) of the Indian Contract Act, 1872, 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 is valid without consideration.

Hence, this statement is not correct.

Note: The above statement can be correct also on the basis of the "Discharge of Contract by Lapse of time" as per Limitation Act, 1963, and accordingly it can be mentioned that contract should be performed within a specified period as prescribed by the Limitation Act, 1963 and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

08 - Mr. Om Kashyap was a big businessman of Pune City having two sons and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident, and both of them died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

4)a)i)MDTP5, 4)a)i)4m,MTP1,Sept2024, RTP,June2024, RTP,June2023,
1)a)4m,MTP1,Dec2022, RTP,Dec2021

Ans - Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other. In other words, a written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.

In the instant case, the transfer of house made by Mr. Om Kashyap on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable.

07 -Mr. Y has given loan to Mr. G of ` 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable as per the Indian Contract Act, 1872?

1)a)ii)2m,MDTP3, 1)a)ii)2m,MTP2,June2022, 3)c)ii)2m,Dec2020

Ans - Promise to pay time-barred debts - Section 25 (3): 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 [Section 25(3)].

In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, Mr. G agreed to make payment of full amount to Mr. Y.

Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, Mr. G is bound to pay the agreed amount to Mr. Y provided the above mentioned conditions of section 25 (3) are fulfilled.

Q6 -Mr. Sooraj sold 10 acres of his agricultural land to Mr. Murli on 25th September 2019 for Rs. 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chander, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2019, Mr. Sooraj died leaving behind his son and wife. On 15th October, 2019 Mr. Murli started construction of an auditorium on the whole 10 acres of land and denied any land to Mr. Chander.

Now Mr. Chander wants to file a case against Mr. Murli and get a suitable remedy. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chander's plan of action? 1)a)4m,MTP1,June2020, 1)a)4m,June2019, Sim,ICAI Module

Ans - Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the Chinnaya Vs. Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Sooraj has entered into a contract with Mr. Murli, but Mr. Chander has not given any consideration to Mr. Murli but the consideration did flow from Mr. Sooraj to Mr. Murli on the behalf of Mr. Chander and such consideration from third party is sufficient to enforce the promise of Mr. Murli to allow Mr. Chander to use 1 acre of land. Further the deed of sale and the promise made by Mr. Murli to Mr. Chander to allow the use of 1 acre of land were

executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller."

In such a case, third party to a contract can file the suit although it has not moved the consideration.

Hence, Mr. Chander is entitled to file a petition against Mr. Murli for execution of contract.

Q5 - As per the general rule, "Stranger to a contract cannot file a suit in case of breach of contract". Comment and explain the exceptions to this rule as per the provisions of the Indian Contract Act, 1872.

3)c)6m,MDTP2, 2)a)7m,MTP2,Dec2023, 2)a)7m,June2023, RTP,June2020, RTP,June2018

Ans - Under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party; but the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

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) **In the 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 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.
- 3) **In the case of certain marriage contracts/arrangements**, a provision may be made for the benefit of a person, who may file a 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 or 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 where the agent has acted within the scope of his authority and in the name of the principal.

Q4 - "The general rule is that an agreement made without consideration is void." State the exceptions of this general rule as per the Indian Contract Act, 1872.

2)a)7m, June2022, RTP, Dec2019, RTP, June2019, 2)a)5m, June2018,
6)a)5m, MTP2, June2019, 6)a)5m, MTP1, June2018, 6)a)5m, MTP2, Dec2018

Ans - An agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872): In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there. 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.

Exceptions:

1. **Natural Love and Affection:** 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.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

2. **Compensation 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.
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 [Section 25(3)].
4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
5. **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. **Bailment:** No consideration is required to affect the contract of bailment. Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them. No consideration is required to affect a contract of bailment.
7. **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. (Kadarnath v. Gorie Mohammad)

Q3 - "To form a valid contract, consideration must be adequate". Comment.

2)b)3m,MTP1,Dec2022, RTP,June2021, RTP,Dec2020, 6)a)5m,MTP1,Dec2019,
6)a)5m,MTP1,Dec2018, ICAI Module

Ans - The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. 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 (Bolton v. Modden). Consideration must, however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

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.

02 - Define consideration. State the characteristics/rules of a valid consideration under the Indian Contract Act, 1872.

5)c)6m,MDTP6, 3)c)6m,MDTP4, 5)c)6m,MTP2,Sept2024, 3)c)6m,MTP3,June2024,
6)a)5m,MTP1,June2023, 6)a)5m,MTP2,June2021, 2)a)7m,Dec2019,
6)a)5m,MTP1,June2019, RTP,Dec2018

Ans - Consideration [Section 2(d) of the Indian Contract Act, 1872]

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

The essential characteristics of a valid consideration are as follows:

- (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.
- (2) **Consideration may move from promisee or any other person:** In India, consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration 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. The promise by one party may be the consideration for an act by some other party, and vice versa.
- (4) **Consideration may be past, present or future:** It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.
- (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.
- (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.

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.

- (7) **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.
- (8) **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

01 - Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of ` 20, 000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant. On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action.

Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid? RTP, Dec2018

Ans - In India, consideration may proceed from the promisee or any other person who is not a party to the contract. 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. In other words, there can be a stranger to a consideration but not stranger to a contract.

In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.

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