

CA Foundation
Paper 2 - Business Law

Chapter 2 - ICA
The Indian Contract Act, 1872

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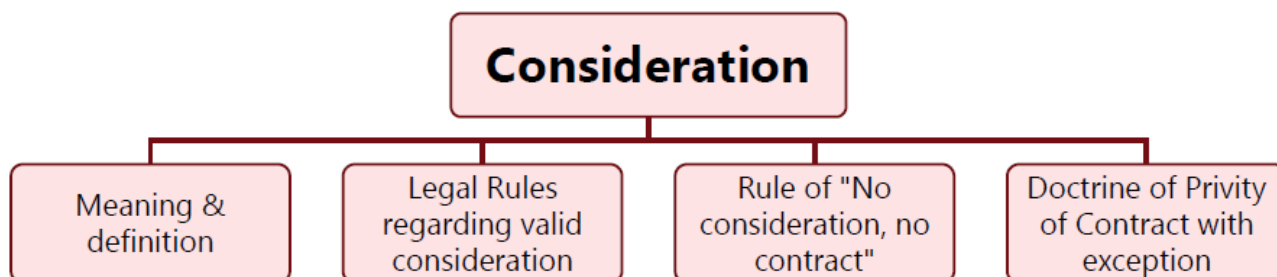
The Indian Contract Act, 1872

Unit 2 - Consideration

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Unit 2 - Consideration



Consideration is an essential element of a valid contract without which no single promise will be enforceable.

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.
- A very popular English case of Misa v. Currie as:
 - A valuable consideration in the sense of law may consist
 - either in **some right, interest, profit or**
 - **benefit** accruing to one party (i.e. **promisor**) or
 - **forbearance, detriment, loss or responsibility given,**
 - suffered or undertaken by the other (i.e., the **promisee**)."

Consideration - Section 2(d)

- When at the **desire** of the **promisor**,
- the **promisee** or any other person
- has **done** or **abstained** from doing, or (PAST)
- **does** or **abstains** from doing or (PRESENT)
- **promises** to do or **abstain** from doing something, (FUTURE)

2.2 ► Consideration

- such an act or abstinence or promise = Consideration for the promise

Analysis of Definition of Consideration

1. Consideration is an act- doing something.

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

Example 2: A college promises students, who will score above 95% for the job in MNC. Consideration need not to be monetary. Here the promise for recruitment of candidate will be considered as consideration for the act of students scoring above 95%.

2. Consideration is abstinence- abstain from doing something.

Example 3: Abhishek promises Bharti not to file a suit against him if she (Bharti) would pay him (Abhishek) Rs. 1,00,000. Here abstinence on the part of Abhishek would constitute consideration against Bharti's payment of Rs. 1,00,000 in favor of Abhishek.

Example 4: ABC has a shop of electric items. XYZ wishes to open another electric shop next to his shop. ABC offers Rs 2,00,000 to XYZ for shifting the same away from 1 km of ABC's shop. Here, consideration is given for abstaining XYZ from opening his shop nearby.

3. Consideration must be at the desire of the promisor.
4. Consideration may move from promisee or any other person.
5. Consideration may be past, present or future.

Consideration = Promise / Performance that parties exchange with each other.

Form of consideration = Some benefit, right or profit to one party / some detriment, loss, or for- bearance to the other.

LEGAL RULES REGARDING CONSIDERATION

Legal Rule	Brief Explanation	Example
1. Consideration must move at the desire of the promisor	The act or forbearance constituting consideration must be done at the promisor's request.	A agrees to sell his car to B because B requested it.
2. Consideration may move from the promisee or any other person	Consideration can be provided by the promisee or by a third party.	C pays A for the house A sells to B.
3. Executed and executory consideration	Consideration can be something already done (executed) or something to be done in the future (executory).	B pays A today (executed); A agrees to deliver goods next month (executory).
4. Consideration may be past, present, or future	Consideration can refer to something done before, at the time of, or after the promise is made.	A helps B move (past), B pays him now (present), A promises to assist in a month (future).
5. Consideration need not be adequate	The law does not require the consideration to be equal in value to the promise; it just needs to be legally sufficient.	A sells his bike worth ₹50,000 to B for ₹5,000.
6. Performance of what one is legally bound to perform	Doing something that one is already legally obligated to do cannot be valid consideration unless something extra is provided.	A police officer cannot claim a reward for catching a criminal as it's his legal duty.
7. Consideration must be real and not illusory	The consideration must be tangible, certain, and not vague or impossible to fulfill.	A promises to give B ₹1,000 if it rains tomorrow—a vague condition.
8. Consideration must not be unlawful, immoral, or opposed to public policy	The consideration should be legal and not involve actions that are illegal, immoral, or against public interest.	A agrees to pay B ₹10,000 to harm C—this is unlawful 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.
- This implies the “return” element of consideration.
- Contract of marriage in consideration of the promise of settlement is enforceable.
- An act done at the desire of a third party is not a consideration.

Carlill v. Carbolic Smoke Ball Co.

2.2 ► Consideration

Facts:

- The Municipal Board of a town requested Durga Prasad to construct certain shops, which he did.
- Later, shopkeepers, including Baldeo, who occupied these shops, promised to pay Durga Prasad a commission on the goods sold in these shops as a form of consideration for building the shops.

Issue:

- The central issue was whether the promise made by the shopkeepers (Baldeo) to pay Durga Prasad a commission was enforceable, given that the consideration (construction of shops) was not provided at their request but at the request of the Municipal Board.

Decision:

- The court held that Durga Prasad could not enforce the promise made by the shopkeepers because
- the consideration for the promise (the construction of the shops) did not move at the request of the promisor (Baldeo and other shopkeepers).
- Instead, it was done at the request of the Municipal Board. The promise by Baldeo to pay a commission lacked consideration and was, therefore, not enforceable.

Key Point:

- If the act or forbearance is done at the desire of someone other than the promisor, it does not constitute valid consideration in the eyes of the law, making the promise unenforceable.

Example 5: R saves S's goods from fire without being asked to do so. R cannot demand any reward for his services, as the act being done voluntary.

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.
- When at the desire of the promisor,
- the promisee or any other person does something
- such an act is consideration.

There can be a stranger to a consideration but not stranger to a contract.

Example 6: An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed a writing in favour of the brother agreeing to pay annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it. It was held that there was sufficient consideration for the uncle to recover the money from the daughter. [Chinnayya vs. Ramayya (1882)]

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.

Example 7: A pays Rs. 5,000 to B and B promises to deliver to him a certain quantity of wheat within a month. In this case A pays the amount, whereas B merely makes a promise. Therefore, the consideration paid by A is executed, whereas the consideration

2.2 ► Consideration

promised by B is executory.

4. Consideration may be past, present or future:

- The words has done or abstained from doing
- are a recognition of the doctrine of past consideration.
- In order to support a promise, a past consideration must move by a previous request.
- 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.

Examples -

Past Consideration:

Imagine you helped a friend, Alex, move into a new house last month. At that time, Alex didn't promise you anything in return.

Normal Rule:

Normally, if Alex later promises to give you ₹1,000 for the help you provided, your past help wouldn't count as valid consideration because it wasn't given in exchange for the promise.

Exception:

However, if Alex had asked you specifically to help him move last month, and then this month promises to pay you ₹1,000, your past help can be considered valid consideration. This is because you helped him at his request, and the promise to pay you later shows that your

help wasn't just a free favor.

Example 8: 'A' performed some services to 'B' at his desire. After a week, 'B' promises to compensate 'A' for the work done by him. It is said to be past consideration and A can sue B for recovering the promised money.

Example 9: A cash sale of goods is an example of present consideration. The consideration is immediately made against delivery of goods.

Aspect	Past Consideration	Future Consideration
Timing	Done before the promise is made.	Will be done after the promise is made.
Definition	An action or benefit already provided before the promise.	A commitment to perform an action or provide something in the future.
Example	You helped Alex move last month; now he promises to pay you ₹1,000.	Alex promises to pay you ₹1,000 if you help him move next week.
Validity	Valid only if done at the request of the promisor.	Typically valid as part of an agreed exchange of promises.
Key Point	Shows that the past act wasn't just a free favor (if requested).	Involves a clear, forward-looking commitment.

5. Consideration need not be adequate -

- Consideration **need not 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.**

Something in return need not be equal to something given. It can be considered a bad bargain for the party.

Explanation 2 to Section 25 -

2.2 ► Consideration

An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate.

- But as an exception -

- If it is shockingly less and
- the other party alleges that
- his consent was not free then
- this inadequate consideration can be taken as evidence
- in support of this allegation.

Example 10: X promises to sell a house worth Rs. 60 lacs for Rs. 10 lacs only, the adequacy of the price in itself shall not render the transaction void, unless the party pleads that transaction takes place under coercion, undue influence or fraud.

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

(सही कार्य और कर्तव्य पूर्ण कार्य करने का क्या एक्स्ट्रा पैसा ??)

- 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. Similarly, an agreement by a client to pay to his counsel after the latter has been engaged, a certain sum over and above the fee, in the event of success of the case would be void, since it is without consideration.

Example 11: A promise to pay ` 2,000 to a doctor over the fees is invalid as it is the duty of a doctor to give a treatment for his normal fees.

(Extra किया - कर्तव्य से ज़्यादा किया - तो ठीक है बस public policy का

ध्यान रखें)

- But where a person promises to do more that
- he is legally bound to do or such a promise
- provided it is not opposed to public policy,
- is a good consideration.
- It should not be vague or uncertain.

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.

Example 12: A man promises to discover treasure by magic, bringing the dead person to live again. This transaction can be said to be void as it is illusory.

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

सिर्फ होना नहीं, सही (Lawful) होना आवश्यक है

Only the 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.

Example 13: ABC Ltd. promises to give job to Mr. X in a Government bank against payment of ₹ 50,000 is void as the promise is opposed to public policy.

SUIT BY A THIRD PARTY TO A CONTRACT

2.2 ► Consideration

- Though -
- The consideration for an agreement may proceed from a third party,
- The third party cannot sue on contract.
- Only a person who is party to a contract can sue on it.

DOCTRINE OF PRIVITY

Thus, the concept of stranger to consideration is valid and is different from stranger to a contract.

Example 14: P who is indebted to Q, sells his property to R and R promises to pay off the debt amount to Q. If R fails to pay, then in such situation Q has no right to sue, as R is a stranger to contract.

BUT subject to certain exceptions.

- In other words, even a stranger to a contract may enforce a claim in the following cases:

Bachelor in FAMily - No CAT fights

- B: Beneficiary (Trust)
- F: Family Settlement (Family Settlement)
- A: Assignment (Assignment of a contract)
- M: Marriage (Certain marriage contracts/assignments)
- C: Covenant (Covenant running with the land)
- A: Acknowledgement or Estoppel (Acknowledgement or estoppel)
- T: Trusted Agent (Contracts entered into through an agent)

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.

Example 15: Two brothers X and Y agreed to pay an allowance of ₹ 20,000 to mother on partition of joint properties. But later they denied to abide by it. Held their mother although stranger to contract can require their sons for such allowance in the court of law.

3. **In the case of certain marriage contracts/assignments**, 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.

Example 16: Mr. X's wife deserted him for ill-treating her. Mr. X promised his wife's father Mr. Puri that he will treat her properly or else pay her monthly allowance. But she was again ill-treated by her husband. Held, she has all right to sue Mr. X against the contract made between Mr. X and Mr. Puri even though she was stranger to contract.

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.

Example 17: Mr. Ankit Sharma has assigned his insurance policy to his son. Now son can claim even if he was not a party to contract.

5. **Acknowledgement or estoppel** – where the promisor by his conduct acknowledges himself as an agent of the third party, it would result in a binding obligation towards the third party.

Example 18: If L gives to M ₹ 20,000 to be given to N, and M informs N that he is holding the money for him, but afterwards M refuses to pay the money. N will be entitled to recover the same from the former i.e. M.

2.2 ► Consideration

6. **In the case of a 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.

Example 19: One owner of the land having two land adjacent to each other. One was agricultural land. He sold the other land containing a condition that it can never be used for Industrial purpose so as to protect the other agricultural land from pollution. Such condition is attached with the land so who so ever is the successor of land has to abide by it. Such are called restrictive covenants and all successor are bind to it.

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.

Example 20: Prashant appoints Abhinav as his agent to sell his house. Abhinav sells house to Tarun. Now Prashant has right to recover the price from Tarun.

VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

The general rule is that an agreement made without consideration is void

(Section 25).

- 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.

Kaal 25 hai (Section 25) - Bina Paise ka Ishq			
Natural Love and Affection (प्यार)	Compensation for past voluntary services (Past की बातें हैं)		Promise to pay time barred debt (Time ने रोक रखा है)
Agency (Age - हमारी उम्र)	Completed gift (उनके लिए है)	Bailment (Jail से बाहर आ जाते)	Charity (सब कुछ दान कर देते)

1. **Natural Love and Affection:** Conditions to be fulfilled under section 25(1)
 - 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**.

Example 21: A husband, by a registered agreement promised to pay his earnings to his wife. Held the agreement though without consideration, was valid.

Example 22: A out of natural love and affection promises to give his newly wedded daughter- in -law a golden necklace worth ` 5,00,000. 'A' made the promise in writing and signed it and registered. The agreement is valid.

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,

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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**.

Example 23: P finds R's wallet and gives it to him. R promises to give P ₹10,000. This is a valid contract.

Example 24: Mr. X had helped his nephew Mr. Y to fight a case in the court of law using his knowledge and intellect. After Mr. Y won the case, he promised Mr. X to pay Rs. 10,000. Held, this is a valid contract as it is compensation to past services.

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)].

Example 25: A is indebted to C for Rs. 60,000 but the debt is barred by the Limitation Act. A signs a written promise now to pay Rs. 50,000 in final settlement of the debt. This is a contract without consideration, but enforceable for Rs. 50,000 only.

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 effect the contract of bailment (Section 148).

Example 26: Mr. A hand over the keys of his godown to Mr. Y as Mr. Y had deposited his goods in the same. Mr. Y gets possession of godown but not the ownership. As soon as Mr. Y lifts his goods from godown he is liable to hand over the keys back to Mr. A.

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)

Example 27: Mr. G promised Mr. K, the secretary of committee of temple to donate Rs. 1,00,000 for renovation of that temple. On the faith of his promise, secretary has incurred some cost for renovation. Now secretary can claim from Mr. G even the contract was without consideration.

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“ PROBLEM KYA HAI ? - Unit 2 ”

Question Bank

ICA

*This section is complied with questions and suggested answers
for the chapter - ICA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

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Question 1

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2022 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.

Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2022, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2022 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.

Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressal. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?

(Module)

Answer 1

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. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration did flow from Mr. Sohanlal to Mr.

Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously and

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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. Chotelal is entitled to file a petition against Mr. Mohan!" for execution of contract.

(RTPs, MTPs, PYQPs)

Question 1

Mr. Shyam Mundra was a big businessman having one son 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 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?

(RTP May 23) (MTP Nov'22 4 Marks)

Answer 1

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.

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In the given problem, the transfer of house made by Mr. Shyam Mundra 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.

Question 2

Mr. Sanjay Kothari was a big businessman 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 an accident, and both 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?

(RTP Jun' 24)

Answer 2

Section 25 of the 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 the instant case, the transfer of house made by Mr. Sanjay Kothari on account of natural love and affection between the parties standing in a near relation to each other is written but not registered. Hence, this transfer is not enforceable, and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

Question 3

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

(MTP Nov'22 3 Marks) (SM) (RTP May' 21)

Answer 3

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

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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.

Question 4

Define consideration. State the characteristics of a valid consideration under the Indian Contract Act, 1872.

(MTP Apr'23 5 Marks) (MTP 5 Marks, Apr'21)

Answer 4

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.
2. It may proceed from the promisee or any other person on his behalf.
3. It may be executed or executory. It may be past, present or future.
4. It must be real and have some value in the eyes of law.
5. It must not be something which the promisor is already legally bound to do.
6. It must not be unlawful, immoral or opposed to public policy.
7. Inadequacy of consideration does not invalidate the contract. Thus, it need not be proportionate to the value of the promise of the other.
8. It may comprise of some benefit, profit, right or interest accruing to one or some loss, detriment, obligation or responsibility undertaken by the other.

Question 5

Explain the following statements in the light of provisions of Indian Contract Act, 1872:

1. "Agreements made out of love and affection are valid agreements."
2. "Promise to pay a time barred debt cannot be enforced."

(MTP Nov'23 5 Marks) (PYP Nov'22 7 Marks)

Answer 5

1. 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.

2. 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.

Question 6

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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.

(MTP Dec'23 7 Marks) (PYP Jun'23 7 Marks)

Answer 6

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.

Question 7

"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.

(PYP 7 Marks, May 22) (PYP 5 Marks, Jan 21)

Answer 7

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)
 - 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.

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:

- a. The services should have been rendered voluntarily.
 - b. The services must have been rendered for the promisor.
 - c. The promisor must be in existence at the time when services were rendered.
 - d. 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,

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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.

there the contract shall be valid. (Kadarnath v. Gorie Mohammad)

7. Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity,

Question 8

Mr. Y has given loan to Mr. G of Rs. 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 in law?

(RTP May 21)

Answer 8

Promise to pay time-barred debts - Section 25 (3): Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and binding even though there is no consideration.

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

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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

Question 9

Mr. Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one 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, his 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?

(RTP Nov'21)

Answer 9

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 the instant case, the transfer of house made by Mr. Ram Lal Birla 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 and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

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