

CONSIDERATION



PRESENTED BY
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CONSIDERATION - Meaning

- * Is what a Promisor demands as the price for his promise.
- * A 'quid pro quo' – something in return.
- * Consideration is a legal evidence of the intention of the parties to effect a legal relation.
- * Every simple contract must be supported by valuable consideration otherwise it is formally void subject to some exceptions.

CONSIDERATION - Definition

Section 2(d):

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

ESSENTIALS OF A VALID CONSIDERATION

CONSIDERATION MUST MOVE AT THE DESIRE OF THE PROMISOR:

Consideration must move at the desire or request of the promisor. This means that whatever is done must have been done at the desire of the promisor and not voluntarily or not at the desire of a third party.

Eg: If A rushes to b's help whose house is on fire, there is no consideration but a voluntary act.

ESSENTIALS OF A VALID CONSIDERATION

CONSIDERATION MAY MOVE FROM THE PROMISEE OR ANY OTHER PERSON:

English law: consideration must move from the promisee, so that a stranger to the consideration cannot sue on the contract.

Indian law: consideration may move from the promisee or any other person, so that a stranger to the consideration may maintain a suit.

ESSENTIALS OF A VALID CONSIDERATION

*CONSIDERATION MAY BE PAST, PRESENT
OR FUTURE:*

***Past Consideration – consideration wholly done before the making of agreement – eg. A found B's lost purse and B promises to pay A.**

***Present Consideration – Executed Consideration – Cons. Moves simultaneously with the promise – eg. Cash Sales.**

ESSENTIALS OF A VALID CONSIDERATION

***Future Consideration – Executory
Consideration – Consideration will pass
subsequent to the making of the Contract –
eg. A agrees to sell his car after 2 weeks at
Rs.200,000 and B agrees to pay on delivery.**

ESSENTIALS OF A VALID CONSIDERATION

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.
- *the law only insists on the presence of consideration
- *the adequacy of consideration is to be considered by the parties at the time of making the agreement and not by the court when it is enforced.

ESSENTIALS OF A VALID CONSIDERATION

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.

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.

ESSENTIALS OF A VALID CONSIDERATION

CONSIDERATION MUST BE SOMETHING WHICH THE PROMISOR IS NOT ALREADY BOUND TO DO:

Performance of what one is legally bound to perform is not a Consideration (consideration must not be performance of existing duty) The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract.

Eg. a promise to pay money to a witness is void, for it is without consideration.

ESSENTIALS OF A VALID CONSIDERATION

*CONSIDERATION MAY BE EITHER
POSITIVE OR NEGATIVE:*

**Promise to do or abstain from doing
something – negative or positive*

PRIVITY OF CONSIDERATION

- *Stranger to Consideration*
 - occurs when a third person other than the Promisee gives the Consideration
 - * the Promisee becomes the S.T.C.
- * Eng. Law – if the Promisee is STC – he can't enforce the Promise
- * Indian Law – even if the Promisee is STC – he can sue.

PRIVITY OF CONTRACT

- *Stranger to Contract* – a person who is not a party to the contract

* Eng. Law & Indian Law – a Stranger to the Contract can't sue or claim rights even if the contract is for his benefit.

EXCEPTIONS TO THE DOCTRINE OF PRIVITY OF CONTRACT

BENEFICIARIES IN THE CASE OF TRUST

If a contract is made between the trustee of a trust and another party, then the beneficiary of the trust can sue by enforcing his right under the trust, even if he is a stranger to the contract.

EXCEPTIONS TO THE DOCTRINE OF PRIVITY OF CONTRACT

MARRIAGE SETTLEMENT, PARTITION AND OTHER FAMILY ARRANGEMENT

If a contract is made under a family arrangement to benefit a stranger (person not a party to the contract), then the stranger can sue in his own right as a beneficiary of the contract.

EXCEPTIONS TO THE DOCTRINE OF PRIVITY OF CONTRACT

ACKNOWLEDGEMENT OF LIABILITY

If a contract requires that a party pays a certain amount to a third-party and he/she acknowledges it, then it becomes a binding obligation for the party to pay the third-party. The acknowledgment can also be implied.

EXCEPTIONS TO THE DOCTRINE OF PRIVITY OF CONTRACT

ASSIGNMENT OF CONTRACT

If a contract is made for the benefit of a person, then he can sue upon the contract even though he is not a party to the agreement.

*Nominees of a LIFE INSURANCE policy do not have this right.

EXCEPTIONS TO THE DOCTRINE OF PRIVITY OF CONTRACT

CONTRACT THROUGH AN AGENT

If a person enters into a contract through an agent, where the agent acts within the scope of his authority and in the name of the person (principal).

EXCEPTIONS TO THE 'NO CONSIDERATION NO CONTRACT' RULE

NATURAL LOVE AND AFFECTION

If an agreement is in writing and registered between two parties in close relation (like blood relatives or spouse), based on natural love and affection, then such an agreement is enforceable even without consideration.

EXCEPTIONS TO THE 'NO CONSIDERATION NO CONTRACT' RULE

PAST VOLUNTARY SERVICES

If a person has done a voluntary service in the past and the beneficiary promises to pay at a later date, then the contract is binding provided:

the service was rendered voluntarily in the past
it was rendered to the promisor

the promisor was in existence when the voluntary service was done (especially important when the promisor is an orgn)

the promisor showed his willingness to compensate the voluntary service

EXCEPTIONS TO THE 'NO CONSIDERATION NO CONTRACT' RULE

PROMISE TO PAY A TIME-BARRED DEBT

If a person makes a promise in writing signed by him or his authorized agent about paying a time-barred debt, then it is valid despite there being no consideration. The promise can be made to pay the debt wholly or in part.

EXCEPTIONS TO THE 'NO CONSIDERATION NO CONTRACT' RULE

CREATION OF AN AGENCY

According to section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.

GIFTS AND CHARITY

The rule of no consideration no contract does not apply to gifts.

THANK YOU