

## CONSIDERATION

Consideration is one of the essential elements of a valid contract. The term “Consideration” means something in return. Consideration is the price for which the promise of the other is bought. Consideration must result in a benefit to the promiser, & a detriment or loss to the promisee or a detriment to both. Without consideration a contract is void .

### **Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows**

“ When, at the desire of the promiser ,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 act or abstinence or promise is called a consideration for the promise.”

### **ESSENTIAL ELEMENTS OF A VALID CONSIDERATIONS:-**

- 1) **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.
- 2) **It may move from the promisee or any other person:** An act constituting consideration may be done by the promisee himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that **even a stranger to the consideration can sue on a contract, provided he is a party to the contract (Case Chinayya V/s Ramayya)**
- 3) **It may be Past , Present or Future:**
  - Past Consideration: The consideration which has already move before the formation of agreement.
  - Present consideration: The consideration which moves simultaneously with the promise.
  - Future Consideration: The consideration which is to be moved after the formation of agreement.
- 4) **It must be of some value:**
  - a. The consideration need not be adequate to the promise but it must be of some value in the eye of the law.
  - b. **It must be real & not illusory:** Ex. A promise to put life into the B’s dead wife & B promises to pay Rs 10,000. This agreement is void because consideration is physically impossible to perform.
  - c. **Must be Something other than the promisor’s Existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
  - d. **It must not be illegal, immoral or opposed to public policy.**

**A CONTRACT WITHOUT CONSIDERATION IS VOID**

The general rule is “**An Agreement made without consideration is void**”. Sec 25 & 185 deals with the **Exceptions** to this rule. These cases are:

1) **Love & Affection:** A written & registered agreement based on natural love & affection between near relatives is enforceable even if it is without consideration.

Ex: X, for natural love & affection, promises to give his son, Y, Rs 1000. X puts his promise to Y in writing & registers it. This is a contract.

2) **Compensation for voluntary services:** A promise to compensate wholly or partly, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

Ex: A finds B's purse & gives it to him. B promises to give Rs 50 to A. This is a contract.

3) **Promise to pay a Time barred debt:** A promise by a Debtor to pay a time-barred debt if it is made in writing & is signed by the debtor or by his agent is enforceable.

4) **Completed gifts:** There need not be consideration in case of completed gifts.

5) **Agency:** No consideration is necessary to create an Agency.

#### 6) **Contribution to Charity**

#### **STRANGER TO A CONTRACT CAN NOT SUE**

Though a stranger to consideration can use because the consideration can be furnished or supplied by any person whether he is the promises or not, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship subsisting between the parties to a contract. Which explains that a person may be a stranger to the consideration but he should not be a stranger to the contract . so privity of contract is essential for enforcing any of the rights arising out of contract.

#### **EXCEPTIONS:-**

- 1) Where an express or implied trust is created
- 2) When the defendant constitutes himself as the agent of third party
- 3) Family settlement
- 4) In case of agency
- 5) In case of assignment of rights under a contract

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