

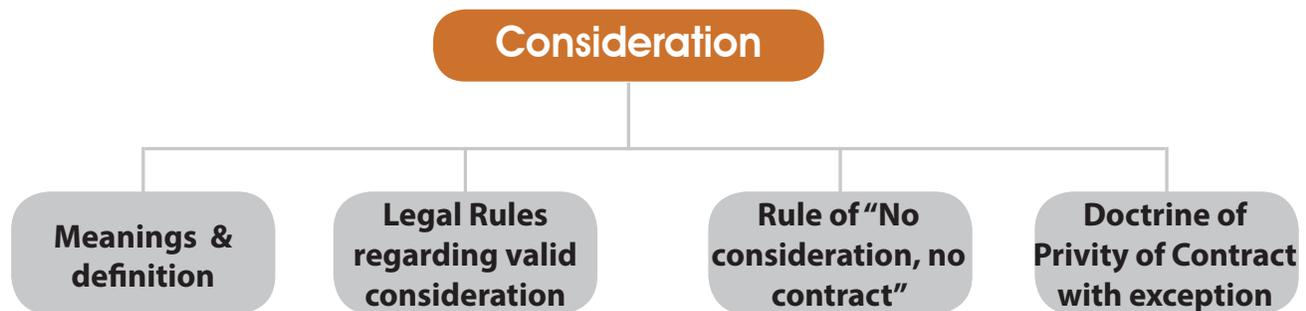
## UNIT 2 : CONSIDERATION

### LEARNING OUTCOMES

After studying this unit, you would be able to:

- ◆ Understand the concept of consideration, its importance for a contract and its double aspect.
- ◆ Clearly understand how consideration may move from a third party and how this makes the contract valid.
- ◆ Learn about the peculiar circumstances when a contract is valid even without consideration.
- ◆ Be aware of the rule 'A stranger to a contract cannot sue' and exceptions thereof.

### UNIT OVERVIEW



Consideration is an essential element of a valid contract without which no single promise will be enforceable. It is a term used in the sense of *quid pro quo*, i.e., 'something in return'. Having a double aspect of a benefit to the promisor and a detriment to the promisee, it has to be really understood in the sense of some detriment as envisaged by English Law. In this Unit, we shall try to understand the concept of consideration and also the legal requirements regarding consideration.

## 2.1 WHAT IS CONSIDERATION?

Consideration is the price agreed to be paid by the promisee for the obligation of the promisor. The word consideration was described in 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)."

**Section 2(d) defines consideration as follows:**

***"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".***

**Analysis of Definition of Consideration**

**(1) Consideration is an act- doing something.**

**Example-** Ajay promises Bhuvan to guarantee 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.

**(2) Consideration is abstinence- abstain from doing something.**

**Example-** Abhishek promises Bharti not to file a suit against him if he (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.

**(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.**

Thus from above it can be concluded that:

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

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

## 2.2 LEGAL RULES REGARDING CONSIDERATION

**(i) 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. Contract of marriage in consideration of promise of settlement is enforceable.

An act done at the desire of a third party is not a consideration.

In *Durga Prasad v. Baldeo*, D (defendant) promised to pay to P (plaintiff) a certain commission on

articles which would be sold through their agency in a market. Market was constructed by P at the desire of the C (Collector), and not at the desire of the D. D was not bound to pay as it was without consideration and hence void.

**Example:** 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.

- (ii) **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. 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.

**Example:** 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)*]

- (iii) **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:** A pays ₹ 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 promised by B is executory.

- (iv) **Consideration may be past, present or future:** The words "has done or abstained from doing" [as contained in Section 2(d)] 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.

**Example:** '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 present consideration and A can sue B for recovering the promised money.

- (v) **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. Something in return need not be equal to something given. It can be considered a bad bargain of the party.

It may be noted in this context that Explanation 2 to Section 25 states that 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 than this inadequate consideration can be taken as an evidence in support of this allegation.

**Example:** X promises to sell a house worth ₹6 lacs for ₹1 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.

**(vi) Performance of what one is legally bound to perform:** (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. 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.

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

**(vii) 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.

**Examples:** A man promises to discover treasure by magic. This transaction can be said to be void as it is illusory.

**(viii) 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.

**Example:** A agrees with B to sell car for ₹2 lacs to B. Here A is under an obligation to give car to B and B has the right to receive the car on payment of ₹2 lacs and also B is under an obligation to pay ₹2 lacs to A and A has a right to receive ₹2 lacs.

## 2.3 SUIT BY A THIRD PARTY TO A CONTRACT

Though under the Indian Contract Act, 1872, 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.

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

**Example:** 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.

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,** a female member can enforce a provision for marriage expenses made on the partition of the Hindu Undivided Family.
- (4) In the case of assignment of a contract / arrangements,** 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.
- (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. For example, 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.

- (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.

## 2.4 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.

### 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.

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

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

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

### 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).
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*)



## SUMMARY

The students may note that:

- (a) Consideration is a price for the promise of the other party and it may either be in the form of ‘benefit’ or some ‘detriment’ to the parties.
- (b) Consideration must move at the desire of the promisor.
- (c) It may be executed or executory.
- (d) Past consideration is valid provided it moved at the previous request of the promisor.
- (e) It must not be something which the promisor is already legally bound to do.
- (f) It may move from the promisee or any third party.
- (g) Inadequacy of consideration is not relevant.
- (h) Consideration must be legal.
- (i) The general rule of law is “No Consideration, No Contract” but there are a few exceptional cases where a contract, even though without consideration is valid.
- (j) “Stranger to a contract can’t sue but in some exceptional cases the contract may be enforced by a person who is not a party to the contract.



## TEST YOUR KNOWLEDGE

### Multiple Choice Questions

1. Which of the following statement is false? Consideration:
 

(a) Must move at the desire of the promisor.	(b) May move from any person
(c) Must be illusory	(d) Must be of some value
2. Consideration must move at the desire of
 

(a) Promisor	(b) Promisee
(c) Any other person	(d) Any of these
3. Consideration may be
 

(a) Past	(b) Present
(c) Future	(d) All of the above

4. Consideration in simple term means:
- (a) Any thing in return (b) Something in return  
(c) Everything in return (d) Nothing in return
5. Which of the following is not an exception to the rule - No consideration, No Contract
- (a) Compensation for involuntary services (b) Love & Affection  
(c) Contract of Agency (d) Gift

#### Answers to MCQs

1	(c)	2	(a)	3	(d)	4	(b)	5	(a)
---	-----	---	-----	---	-----	---	-----	---	-----

#### Theoretical Questions

**Question 1 :** Define consideration. State the characteristics of a valid consideration.

**Question 2 :** "No consideration, no contract" Comment

**Question 3 :** "To form a valid contract, consideration must be adequate". Comment.

#### Answers to the Theoretical Questions

1. **Definition of Consideration-Section 2(d) :** "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.
2. **No consideration, no contract:** Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. A gratuitous promise may form a subject of a moral obligation and may be binding in honour but it does not cause a legal responsibility. For example, A promises to pay ₹100 to B. This promise cannot be enforced by B because he is not giving anything to A for this promise. No consideration, no contract is a general rule. However Section 25 of the Indian Contract Act provides some exceptions to this rule, where an agreement without consideration will be valid and binding. These exceptions are as follows:

- (i) **Agreement made on account of natural love and affection:** Section 25 (1) provides that if an agreement is (i) in writing (ii) registered under the law and (iii) made on account of natural love and affection (iv) between the parties standing in a near relation to each other, it will be enforceable at law even if there is no consideration. Thus, where A, for natural love and affection, promises to give his son, B, ₹ 10,000 in writing and registers it. This is a valid contract.
  - (ii) **Compensation for services voluntarily rendered:** Section 25(2) provides that something which the promisor was legally compelled to do; (iii) and the promisor was in existence at the time when the act was done whether he was competent to contract or not (iv) the promisor must agree now to compensate the promise. Thus when A finds B's purse and gives it to him and B promises to give A ₹ 50, this is a valid contract.
  - (iii) **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. If A owes B ₹ 1,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay ₹ 500 on account of this debt, it constitutes a valid contract.
  - (iv) **Contract of agency (Section. 185):** No consideration is necessary to create an agency.
  - (v) **Completed gift (Explanation 1 to Section 25):** A completed gift needs no consideration. Thus if a person transfers some property by a duly written and registered deed as a gift he cannot claim back the property subsequently on the ground of lack of consideration.
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 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.