

CONSIDERATION

A black silhouette of Lady Justice, the personification of the Roman goddess Iustitia. She is depicted standing, wearing a blindfold, holding a pair of scales in her left hand and a sword in her right hand. The figure is surrounded by a laurel wreath, and at the bottom, there are three vertical bars. The word "CONSIDERATION" is written in large, bold, blue capital letters across the center of the image.

Module I
Chapter IV

What is Consideration

- *Section 2d of the Indian Contract Act defines Consideration as :*
 - a) when at the desire of the promisor,*
 - b) the promisee or any other person,*
 - c) has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something,*
 - d) such act or abstinence or promise is called consideration for the promise.*

- *Anil promises Dolly that he will guarantee the payment for 15 computers if she sells them to Dev who is his uncle. The selling of computers by Dolly to Dev is consideration for the promise given by Anil.*
- When we say that consideration is abstinence or forbearance it becomes negative in form because one party agrees to accept less in order to help the other. Thus one party is able to benefit due to the abstinence of another who refrains from some gain.
- *Sunil promises his friend that he will not file a suit against him if he gives him 5 cameras and Rs 10,000. Sunil's abstinence is consideration for his friend's articles and money.*

Meaning



- *The term consideration is used in the sense of **quid pro quo** i.e. **something in return***
- Under basic principles of contract law, consideration is the answer to the question, "Why are you entering this contract?" or "What are you receiving for being a party to this contract?"
- In order for any agreement to be deemed legally binding, it must include consideration on the part of every person or company that enters the contract.

Essentials of valid consideration

1. It must move at the desire of the promisor : The act or the abstinence must have been done at the desire of the promisor. Any act performed at the desire of the third party cannot be consideration.

- Leena has a small boutique in Tilak Nagar market. A fire broke out in the market and some people got trapped. A person went into her boutique and saved the people. Can that person demand money for the services rendered as 5 people were saved and many bales of cloth were removed to a safe area. No payment can be demanded, but as a courtesy Leena may give some reward if she so wishes to do. She cannot be compelled as consideration was not moved by the promisor.

*2. It must move from the promisee or any other person : As long as there is a consideration for a promise, it is immaterial who has given it. It may move from the promisee or if the promisor has no objection, from any other person.
(Chinnaya v. Ramayya)*

3. *It may be past, present or future :*

Past consideration : *When the consideration for a present promise was given before the date of promise, it is said to be past consideration.*

Present consideration : *When the consideration for a promise is given simultaneously with the promise it is called present consideration.*

Future consideration : *A future or executory consideration is a promise to do or give something in return in future for the promise then made.*



4. Consideration must be real: Consideration must be real and not illusory. It must be competent. If it is physically impossible, vague or legally impossible, the contract cannot be enforced.

An agreement is made with a dead man to buy a house. There is physical impossibility in the promise.

5. Consideration must be lawful: An agreement is void if it is based on unlawful object. An agreement is considered unlawful if:

a) it is forbidden by law

b) is of a nature that if permitted it would defeat the provisions of any law

c) is fraudulent

d) involves or implies injury to the person or property of another

e) the court regards it as immoral or opposed to public property

6. It must be something which the promisor is not already bound to do: A promise to do what one is already bound to do, either by general law or under an existing contract, is not a good consideration for a new promise.

Leading Case

CHINAYYA Vs. RAMAYYA

Facts:

Laxmi Rani gifted her property to her daughter Ramayya with the direction to pay a certain sum of money annually to chinayya, her maternal uncle.

Same day Ramayya executed an agreement with Chinayya agreeing to pay the amount annually.

Later, Ramayya refused to honor agreement on the ground that there is no consideration.

Chinayya sued for the recovery of the annuity.

Decision of the court :

The court held that there was sufficient consideration i.e. the property given to her by the sister of Chinayya.

Stranger to Consideration

Under the Indian Contract Act 1872

Stranger to a consideration can also enforce the contract.

Stranger to a contract cannot sue upon it

Under the English law

Stranger to a consideration as well as contract cannot enforce the contract

Exceptions where stranger to a contract can sue

- *Trust* : In case of trust, the beneficiary may enforce the contract even though he is stranger to the contract creating trust.
- *When provision is made in a marriage settlement.* : Where an agreement is made in connection with marriage and a provision is made for the benefit of a person he may take advantage of that agreement although he is not a party to it.
- *When provision is made in a partition or family settlement* : A mother promised to pay her younger son in case the elder son fails to pay the amount which fell short of the younger son's share in the assets left by his father. Hence, the promise was valid creating a liability for mother under the family arrangement.
- *Where a charge is created in favour of a stranger on a specific immovable* : A stranger to a contract can sue for the money made payable to him by it where the money is charged on immovable properties.

- *Where a promisor has by his conduct created privity of contract with the stranger: If 'A' admits to 'C' that he had received money from 'B' for the payment to 'C', he constitutes himself as the agent of 'C' who can successfully recover the amount from 'A'.*
- *Contract entered into by an agent can be enforced by the principal: The principal can enforce the contract entered by his agent where the agent has acted within the scope of his authority and in name of the principal.*
- *Covenants running with the land: In this case, the person who purchases the land with the 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.*

No Consideration No Contract : Exception

- *Natural love and affection* : A written or registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.
- Naina promised Maina that she would give her Rs 5000 to buy books for her research work. The promise was made out of natural love and affection .It was in writing and registered.
This is an enforceable contract even though there is no consideration.
- *Time barred debt* : Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by the limitation it is valid without consideration.
- Sita took a loan of Rs 5000 from Geeta. She could not pay it back in time and it became time barred under the Limitation Act. She made a signed and written promise to Gita that she would return Rs 3000 on account of the debt. This is a valid contract. No new consideration is required.

- *Compensation for services rendered*: In order that a promise to pay for the past voluntary services be binding, the following essentials must exist
 - a) the act must be done voluntarily
 - b) for the promisor or it must be something which was the legal obligation of the promisor
 - c) the promisor must be in the existence at the time when the act was done
 - d) the promisor must agree now to compensate the promisee
- **A thief snatched Leela's gold chain. Meera, an onlooker, rushed to help, retrieved the chain and gave it back to Leela. On receiving the chain Leela gave Meera Rs 2000/-. This is a valid contract even without consideration.**

- **Completed gifts:** *In this case the rule “No consideration, No contract” shall not affect the validity as between the donor and the donee, of any gift actually made. Thus gifts do not require consideration.*
- **Agency:** *According to section 185 of the Indian Contract Act, no consideration is required to create an agency. (**‘A’ in Bangalore appoints a friend ‘B’ in Chennai to find a buyer for his house in Chennai. ‘B’ adorns a role of a agent.**)*
- **Remission:** *No consideration is required for an agreement to receive less than what is due. This is called remission in the law.*