

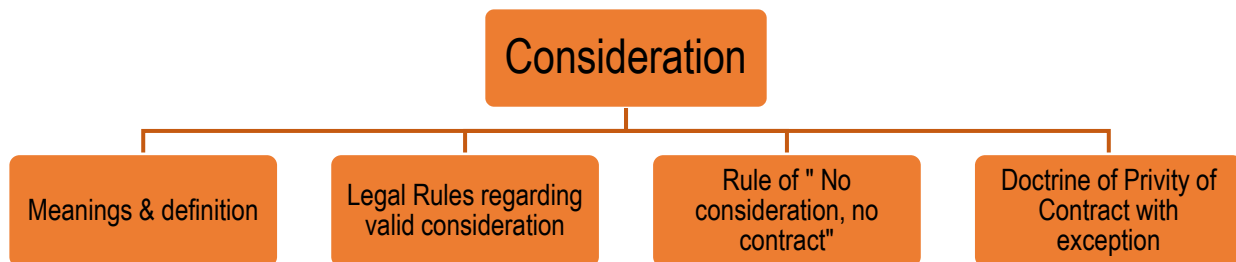
UNIT-2: CONSIDERATION

LEARNING OUTCOMES

After studying this unit, you would be able to understand-

- ◆ 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 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) ₹ 1,00,000. Here abstinence on the part of Abhishek would constitute consideration against Bharti's payment of ₹ 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.**

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 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.

- (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 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)*]

- (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 7: 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 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.

- (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 10: 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 11: 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.

- (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 12: 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.



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 13: 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.

Example 14: 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/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.

Example 15: 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.

- (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.

Example 16: 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.

Example 17: 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.



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

Example 19: 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, 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 20: P finds R's wallet and gives it to him. R promises to give P ₹10,000. This is a valid contract.

Example 21: 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 22: A is indebted to C for ₹60,000 but the debt is barred by the Limitation Act. A sign 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 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

Example 23: 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*)

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) Anything 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
6. Past consideration means
- (a) Consideration and promise should move together
 (b) Executed consideration
 (c) Consideration is provided prior to the making of the contract
 (d) Invalid consideration
7. A contract without consideration under Section 25 is:
- (a) void (b) voidable
 (c) valid (d) illegal

Answers to MCQs

1.	(c)	2.	(a)	3.	(d)	4.	(b)	5.	(a)
6.	(c)	7.	(c)						

Descriptive Questions

1. "To form a valid contract, consideration must be adequate". Comment.
2. Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2020 for ₹ 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, 2020, Mr. Sohanlal died leaving behind his son and wife. On 15th October, 2020 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?

Answers to the Descriptive Questions

1. 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.
2. 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 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. Mohanlal for execution of contract.