

CHAPTER – 7

CONSIDERATION

Consideration constitutes the very foundation of the contract. Ordinarily, an agreement without consideration is void.

MEANING:

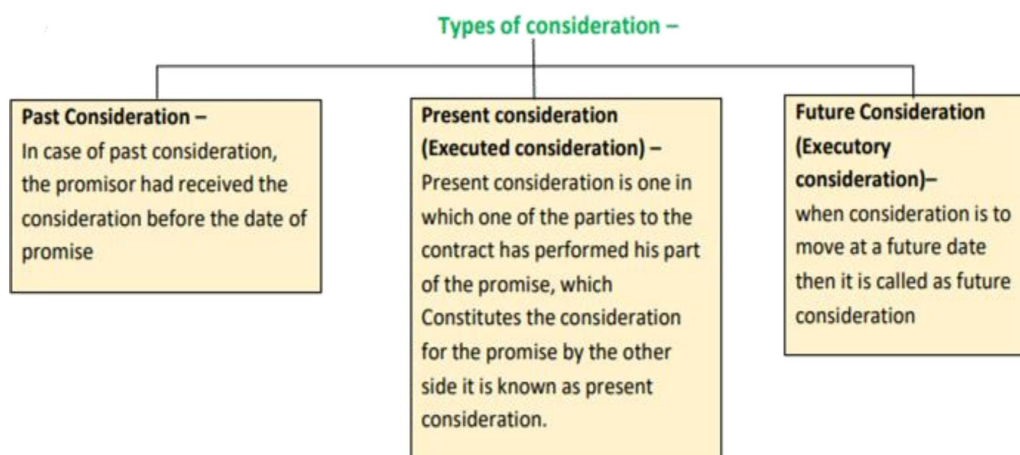
Section 2 (d) of the Indian Contract Act, 1872, defines the term Consideration as follows:

“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 to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise”.

Please Note: Consideration is identified as “quid pro quo” i.e., “something in return”.

Illustration: Mr. Shivam agrees to sell his bike to Mr. Yash for Rs.1,00, 000 here Mr. Yash’s Promise to pay Rs 1,00, 000 is the consideration for Mr. Shivam’s promise and Mr. Shivam’s promise to sell the bike is the consideration for Mr.Yash’s promise to pay Rs. 1,00,000.

TYPES OF CONSIDERATION



Please Note: Under English law, past consideration is no consideration.

ESSENTIALS OF VALID CONSIDERATION:

1. Consideration must move at the desire of the promisor

It is prerequisite that the consideration moves at the desire of promisor. It should not be moved voluntarily or at the instance of third party. If it

is moved at the desire of third party, it will not amount to valid consideration.

Illustration: Mr. X rushes to Mr. Y’s help whose house is on fire, there is no consideration but a voluntary act. But if Mr. X goes to Mr. Y’s help at Mr. Y’s request, there is good consideration as Mr. X did not wish to do the act gratuitously.

Case law: Durga Prasad v. Baldeo

Facts in brief: D constructed a market at the instance of District collector. Occupants of shops promised to pay D a commission on articles sold through their shops.

Held: There was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the contract was void.

2. Consideration may be given by Promisee or any other person

According to the Indian Contract Act, 1872, the promisee or any other person may give consideration.

Case law: Chinnayya v. Ramayya

Facts in brief: A lady by a deed of gift made over certain property to her daughter directing her to pay an annuity to the donor's brother as had been done by the donor herself before she gifted the property. On the same day, her daughter executed in writing in favour of the donor's brother agreeing to pay the annuity. Afterwards the donee (the daughter) declined to fulfil her promise to pay her uncle saying that no consideration had moved from him.

Held: The uncle could sue even though no part of the consideration received by his niece moved from him. The consideration from her mother was sufficient consideration.

Case law: National Bank of Upper India v. Bansidhar

Facts in brief: A owed Rs.20,000 to B. A persuaded C to sign a Pro Note in favour of B. C promised B that he would pay the amount. On faith of promise by C, B credited the amount to A's account.

Held: The discharge of A's account was consideration for C's promise.

3. Consideration must be real: Need not be adequate

Consideration should be real and not illusory. Illusory consideration renders the transaction void consideration is not valid if it is.

A contract is not void merely because of the fact that the consideration is inadequate. The law simply requires that contract should be supported by consideration. So long as consideration exists and it is of some value, courts are not required to consider its adequacy.

Illustration: Mr. X agreed to sell his house worth Rs.5000000 for Rs.200000, Mr. X's consent to the agreement was freely given. The consideration, though inadequate. Will not affect the validity of

the contract. However, the inadequacy of the consideration can be considered in order to know whether the consent of the promisor was free or not.

4. Privity of Contract

It is a doctrine of contract law which says that contracts are only binding on the parties to a contract and that no third party can enforce or sue under it. The doctrine is rooted in the famous case of *Tweddle v. Atkinson* [1861] 123 ER 762.

Exceptions to Privity to Contract: Trust or charge; Marriage Settlement, Partition or other family arrangement; Acknowledgement or Estoppel; Covenants running with land; and Assignee in insurance policy.

5. It must not be unlawful

The consideration or object of an agreement is lawful, unless-

- It is forbidden (prohibited) by law; or
- is of such a nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another; or
- the Court regards it as immoral, or opposed to public policy.

EXCEPTIONS WHEN AGREEMENT WITHOUT CONSIDERATION IS VALID

An agreement without consideration is valid in the following cases:

1. If it is expressed in writing and registered and is made out of natural love and affection between parties standing in a near relation to each other.
2. If it is made to compensate a person who has already done something voluntarily for the promisor, or done something which the promisor was legally compellable to do.
3. If it is a promise in writing and signed by the person to be charged, or by his agent, to pay a debt barred by the law of limitation.
4. Consideration is not required to create an agency.
5. In the case of gift actually made, no consideration is necessary.