

Consideration

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INTRODUCTION

Learning outcomes

The overall objective of the syllabus is to give students an understanding of the legal system and commercial laws; and build a knowledge base of corporate laws.

Consideration

LO	On the successful completion of this paper, candidates will be able to demonstrate knowledge of laws relating to consideration of a contract.
LO 2.4.1	Define consideration and identify essentials of consideration
LO 2.4.2	Understand rules relating to consideration
LO 2.4.3	Identify agreements which are valid without consideration.

References to Legal Acts

Section number references embedded in the learning materials refer to the following legal acts unless otherwise stated:

Act	Chapters
Contract Act 1872	3-16
Partnership Act 1932	17
Negotiable Instrument Act 1881	18
Companies Act, 2017	19-27
Securities Act 2015	22

1 CONSIDERATION

Section overview

- Definition of consideration
- Essential elements of consideration
- Agreement, the consideration or object of which is partly unlawful
- Stranger to contract
- Agreements without consideration

1.1 Definition of consideration



Definition: Consideration [Section 2(d)]

When at the desire of the promisor, the promisee or any other person who 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.

When a party to an agreement promises to do something, he must get something in return. This something in return is consideration. The analysis of the above definition reveals that a consideration may be the value by which promise is bought. Consideration may be following:

- ☐ An act i.e. doing of something
- ☐ An abstinence or forbearance i.e. abstaining or refraining from doing something.
- ☐ A return promise

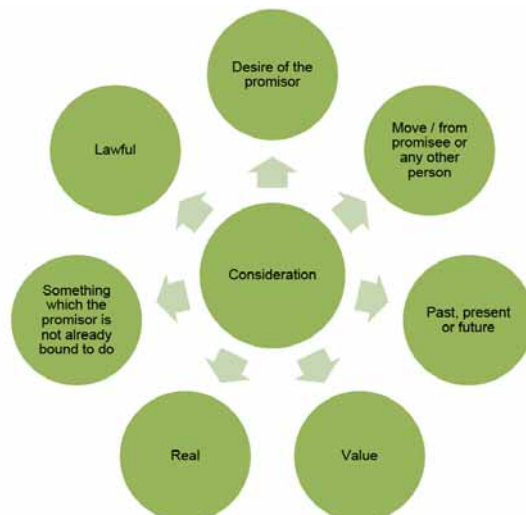


Example: Consideration

- ☐ A promises B to guarantee payment of price of the goods which B sells on credit to C. Here selling of goods by B to C on credit is consideration for A's promise.
- ☐ A asks B not to sue C for a year for his debts and promises in case of default of C, A would be liable. Here B not filing a suit for a year is abstinence, which is a sufficient consideration for A.
- ☐ A promises to deliver iPhone to B and B promises to pay Rs. 85,000 on delivery. Here the consideration for A will be Rs. 85,000 on delivery and consideration for B will be delivery of goods

1.2 Essentials elements of consideration

The essentials of consideration are shown below:



These are discussed below.

Desire of the promisor

An act or abstinence of promise constituting consideration must have been done or made at the desire or request of the promisor. Thus, an act done at the desire of a third party or without the desire of the promisor cannot constitute a valid consideration.



Example: Desire of the promisor

A saves B's goods from fire without being asked to do so. A cannot demand payment for his services.

Move / from promisee or any other person

In return consideration may be from the promisee himself or by any other person even by stranger.



Example: Move / from promisee or any other person

X transferred certain property to her daughter Y with a direction that Y should pay Z annuity. On the same day Y executed a deed in writing in favour of Z and agreed thereby to pay the annuity. Later, Y refused to pay the annuity on the plea that no consideration had moved from Z.

Here Z is entitled to maintain suit because a consideration not necessarily move from the promisee, it may move from any other person (by X in this case).

Consideration may be past, present or future

The consideration may be past (done or abstained from doing), present (does or abstains from doing) or future (promises to do or to abstain from doing).

The consideration which has moved before the formation of agreement is said to be **past consideration**.

The consideration which moves simultaneously with the promise is called **present consideration**.

The consideration which moves after the formation of agreement is called **future consideration**.



Example: Consideration may be past, present or future

- ☐ A renders some service to B in the month of August. In September B promises to compensate A an amount of Rs. 10,000 for the services he rendered to him. Past services amount to past consideration. A can recover Rs. 10,000 from Y.
- ☐ A sells his car for Rs. 1 million and delivers the car at the time of payment. Here the consideration is moving simultaneously with the promise and is called present consideration.
- ☐ A promises to deliver certain goods to B after 5 days and B promises to pay after 5 days from the date of delivery. Consideration in this case is future.

Consideration to have some value

There is no requirement for the adequacy of consideration but it should have some value. There should be something in return and this something in return need not necessarily be equal in value to something given.

Consideration must be real

The consideration must be real and not illusory.



Example: Consideration must be real

- ☐ A engages B to work as an accountant in his office and promises to make him happy. This promise is not enforceable because the consideration is not real but illusory.
- ☐ A promises to put life into B's dead wife and B promises to pay Rs. 1 million. This agreement is void because consideration is impossible to perform and not real.
- ☐ A engages B to work as an accountant in his office and promises to pay him Rs. 75,000 per month. This is a real consideration for both the parties.

Something which the promisor is not already bound to do

The 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.

Lawful

The consideration must neither be unlawful nor opposed to public policy.

**Example: Lawful**

- ☐ A promises B to pay Rs. 100,000 to beat C. B beats C and claims Rs. 100,000 from B. A refuses to pay. B cannot recover because the agreement is void on the ground of unlawful consideration.
- ☐ A promises B to obtain an employment in the public service and B promises to pay Rs. 100,000 to A. The agreement is void on the ground of unlawful consideration.

1.3 Agreement, the consideration or object of which is partly unlawful

If a party of a single consideration for one or more objects, or any one or any part of any one of several conditions for a single object, is unlawful, the agreement is void. [Section 24]

**Example: Agreement, the consideration or object of which is partly unlawful**

A promises to superintends, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay salary to A of Rs. 10,000 per month. The agreement is void as the object of A's promise and the consideration for B's promise being in partly unlawful.

1.4 Agreements without consideration

According to Section 25 of the Contract Act, an agreement without consideration is void except under the following cases:

Natural love and affection [Section 25(1)]

Agreements made on account of natural love and affection without consideration will be valid if it is:

- ☐ expressed in writing,
- ☐ registered under the law,
- ☐ made on account of natural love and affection, and
- ☐ between parties standing in a near relation to each other.

Example: Natural love and affection

A, for natural love and affection; promises to give his son, B, Rs. 10,000. A puts his promise to B into writing and registers it. This is a contract.

Promise to compensate past voluntary services [Section 25(2)]

Such promise made without consideration is valid if:

- ☐ it is a promise to compensate and
- ☐ the person who is to be compensated has already done something voluntarily or has done something which the promisor was legally bound to do.

Example: Promise to compensate

- ☐ A finds B's purse and gives it to him. B promises to give A Rs.5,000. Now this promise of B is a contract.
- ☐ A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

Time barred debt [Section 25(3)]

A promise to pay time barred debt is enforceable if:

- ☐ it is made in writing,
- ☐ it is signed by the debtor or his agent, and
- ☐ it relates to a debt which could not be enforced by a creditor because of law of limitation.

Gifts

The gifts which are accepted by the donee are called completed gifts and are valid.



Example: Gift

X transferred some property to Y by a duly written and registered deed as a gift. This is a valid contract even though no consideration given by Y.

Contract of agency

A consideration is not necessary for a contract of agency. [Section 185]

Contract of bailment

A consideration is not necessary for a contract of bailment i.e. gratuitous contract of bailment.



Example: Gratuitous bailment

Zaheer lends an IPAD to Imran for his work without any charge.

Charitable subscription

Where the promise on the strength of the promise makes commitments i.e. changes his position to the detriment.

Contract of guarantee

Consideration received by the principal debtor is sufficient for the surety and it is not necessary to result in some benefit to the surety himself. [Section 127]



Example: Contract of guarantee

B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is sufficient consideration for C's promise.

2 CHAPTER REVIEW

Chapter review

Before moving on to the next chapter check that you now know how to:

- Define consideration and essentials of a valid consideration
- Discuss the contracts where there is no consideration

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