

1 (C) Consideration

Subject : Commerce

Lesson : Consideration

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1 (C) Consideration

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The scope of the Unit is given below:

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3.1 Definition of Consideration

Section 2(d) of the Indian Contract Act defines consideration thus: "When at the desire of the promisor, 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 consideration for the promise." Consideration from the above definition is a price paid for the fulfillment of a promise. It consists of some act or abstinence that has legal recognition. Three important aspects form a contract. These are offer, acceptance and consideration.

The reason why only contracts with consideration are valid contracts is because when voluntary promises are made the court believes that voluntary promises are made on the spur of the moment. They are often impulsive rash decisions made without due deliberation. The law also does not consider favorably an exchange of promise without any return to another. Therefore if a person makes an offer to another it is not binding on him/her if there is no consideration. He/she can revoke the offer because there was no consideration attached to the offer.



Figure 3.1 Consideration

Illustration
Manu promised to give Tina money to study. There was no consideration attached to it. Manu can revoke the offer as it is not binding in law.

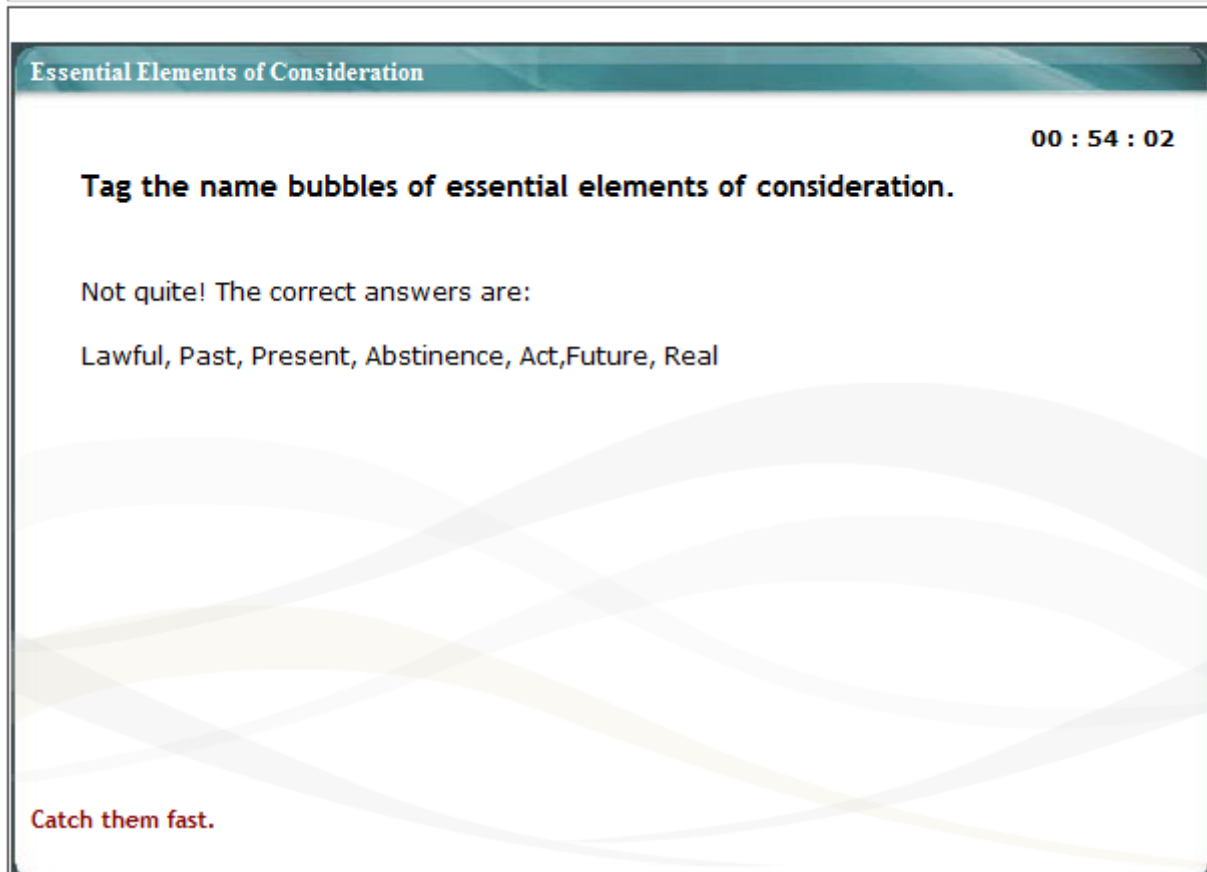
3.2 Essential Elements of Consideration

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There are five essential elements of consideration.

1. It is an Act or Abstinence.
2. It is Moved at The Desire of The Promisor.
3. It may Move from Promisee to Another Person or Persons.
4. It can be Past, Present or Future.
5. There must be Some Consideration in a Contract Even Though it is Inadequate for the Type of Contract being Made.
6. Consideration must be Real and Not Illusory or Impossible.
7. It must be Lawful.

Check your Progress



Essential Elements of Consideration

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Tag the name bubbles of essential elements of consideration.

Not quite! The correct answers are:

Lawful, Past, Present, Abstinence, Act, Future, Real

Catch them fast.

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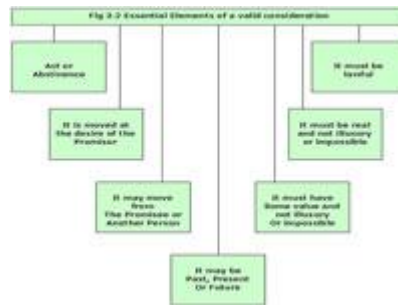


Figure 3.2 Essential Elements of a Valid Consideration

1. Act or Abstinence

Consideration is a promise to do something or to abstain from doing something (according to section 2d). **Lush has Defined** consideration “as the result in a benefit to the promisor and a detriment or loss to the promisee or a detriment to both”.



Figure 3.3 Consideration as Positive

- i. When we say that consideration is an act it acquires an affirmative tone.



Figure 3.4 Consideration as Negative

Illustration

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.

- ii. 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.

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Illustration

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.

Case Law 1

Radha Rani Vs Ram Dass

A.I.R (1941) Pat 282

A wife wanted to sue her husband for a monthly maintenance allowance. The husband agreed to pay the amount. The wife held back from the court. Her very act was considered to be abstinence to sue and thus good consideration.

- iii. A compromise may also be considered to be an act or abstinence.

Illustration

Malik and company requested its creditors to accept 20% less than the total amount due by them as the company had become bankrupt but had the intention to clear off debts as far as it could. The creditors agreed to accept the offer. This is good consideration and a valid contract as a compromise was made and agreed to by all of the parties.

2. It is moved at the desire of the promisor.

The promisor must move the request for consideration. If it is moved at the desire of a third person it will not form good consideration even if the promisor desired it. Therefore the promisor must first give consideration

Case Law 2

Durga Prasad Vs Baldeo (1880) 3 All 221 D

On the order of the collector of a town Durga Prasad built some shops on his own expense in a market. The shopkeepers who occupied these shops promised to pay to Durga Prasad commission on their sales. Durga Prasad sued the shopkeepers when he did not receive the commission. The court held that the promise was not supported by any consideration as the shops were built on the collector's order and not at the request of the shopkeepers. Therefore there could not be a recovery.

Illustration

Seema jumped in an unused dry well before her house. Meena jumped too and was able to draw Seema out of the well. Meena cannot demand any payment from Seema as she was not asked by her to save her life. She jumped on her own without the promisor even requesting her to do so.

Illustration

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

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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.

3. It may be Moved or Move from the Promisee or Another Person

When a promisor gives a promise, the promisee or any other person may provide a valid consideration in return.

Case Law 3

Chinnaya vs Ramaya (1882)4 Mad 137

An old lady, made an agreement with her daughter that she would gift her some landed property but the condition was that the daughter would pay her aunt some amount regularly as maintenance allowance. The daughter promised her aunt (mother's sister), the maintenance money. However, later she stopped paying the money to her aunt. The aunt filed a case against her niece for not paying the money. The decision was in favour as this was a perfectly valid consideration.

Under the English Law consideration must move from the promisee. This is supported by the case of Tweddle vs Atkinson (1861) 1 B&S 392. The Indian Law states that consideration may move from the promisee or any other person. It may even move through a stranger. However the stranger to a contract can only sue if he/she is party to the contract. This means that it is important to have some valid consideration to an agreement to make it a valid contract.

Illustration

Juhi gives jewellery worth Rs.50,00,000 to her daughter-in-law Rani and in return asks Rani to give her daughter Rs 2,00,000 when she inaugurates her new house. Rani promises her mother-in-law to give the amount to her daughter as consideration for the gift that she receives. On the date of the inauguration Rani does not keep her promise. Juhi's daughter goes to court. Can she get relief? Yes, Juhi's daughter can get relief since Rani had promised the money as consideration for the gift received by Juhi.

A person who does not provide consideration in an agreement is a stranger to the agreement. A stranger gets rights in the contract if he/she becomes a party to the contract.

4. Consideration can be Past, Present or Future.

One of the important elements of consideration is that it can be past, present or future.

Past Consideration: When consideration is provided before a person becomes a promisor, it is called past consideration. Such a situation can arise when a person has done some work that is desired by another but is compensated later on. He does not receive the benefit immediately. English Law does not consider past consideration to be good. However it accepts time barred debts as good past consideration.

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Figure 3.5 Past Present or Future Consideration

Illustration

Sonam went to a friend's house where she suddenly has a severe stomachache. A doctor in the neighbourhood examined her and administered some medicine. At that time there was no talk of compensation for services of the doctor. Later Sonam went to the doctor's clinic to express her thanks to him and also gave him Rs 500 as fees for his services. This is past consideration. The doctor received the fees for services that were rendered by him earlier.

Future Consideration: When a promise is to be executed on a future date it is called executory consideration or future consideration. In this the promisor makes an offer for a future date and the promisee promises to accept and execute the contract after that date this is future consideration. In this case both parties move the consideration to a future date. The liability becomes outstanding on both parties on a future date.

Illustration

Ruhi promises to sell and deliver a new wristwatch to Rekha after a week. Rekha accepts the offer and promises to pay after one month of receiving the watch. This is executory or future consideration.

5. Consideration Need not be Adequate.

Consideration means something in return. This may not be equal to the value of the promise that is given. As long as there is some consideration the courts support it and are not concerned about its adequacy. The parties to the agreement should have been satisfied with the consideration when they made the contract. The consideration may not be adequate but it should be lawful. The English Law of Contract states that consideration should be of some value in the eyes of the law. The court does not take the responsibility of repairing any bad bargains made between parties. If the contract was agreed upon between people the court will not interfere in the agreement. However it will ascertain that the consideration was given freely with the consent of the other person without any duress.



Figure 3.6 Unequal Return

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Illustration

Madhu sold her old car to Meera for Rs 25000. The value of the car was Rs 2,00,000. The consideration was lawful and with the free consent of Madhu who knew that the market value was much higher. Therefore it was a valid agreement even though the consideration was not adequate

6. Consideration Must be Real and Not Illusory or Impossible. Real consideration means that the consideration should not be physically or legally impossible. Consideration is not real in the case of physical and legal impossibility or uncertainty. **Physical Impossibility:** If a promise is made to do impossible things that are not possible to do physically, it is not real.

Illustration

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

Illustration

Manu asks Anil to steal money from an industrialist's house. He promises that the stolen money would be shared between them, with a larger share going to Anil for taking the risk. This is an impossible promise and legally impossible consideration.

Uncertain Consideration: Consideration has to be certain; otherwise it is impossible to carry out an agreement.

Illustration

A dentist says he will charge a reasonable sum for his services. This is uncertain consideration and difficult to carry out because of the uncertainty about the exact amount.

Consideration Involving Pre-existing Duty: The court does not recognize an existing duty carried on to the new contract as good consideration. Consideration should be a new obligation. It should be something more than a person is already required to do. Moreover a promise to pay for doing a public duty to a government employee is not good consideration.

Illustration

The pilot of a plane had to land in Jaipur because of technical problems. The pilot asked for money from the passengers to bring the plane back safely to Delhi which was its actual landing destination. This was not a valid consideration as the pilot had to come back to Delhi safely as part of his duty. A higher consideration was not required for doing his duty.

7. Consideration must be Lawful. Consideration should be lawful, otherwise the agreement becomes void.

According to section 23 of the Indian Contract Act consideration is not lawful in the following situations

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Figure 3.7 Lawful Consideration¹ When it is fraudulent

- 2 When it is made of an act forbidden by law
- 3 When it causes injury to a person or property of another person.
- 4 When it is declared as immoral or opposed to public policy.

When a part of the agreement is unlawful the whole agreement will become void except in those cases when the unlawful part can be separated from the lawful one. Then the unlawful part will become void and the other part can be carried out.

3.3 Stranger to Consideration and Stranger to Contract

Under the English Law, consideration has to move from the promisee and if any other person moves it, the promisee becomes a stranger to consideration and cannot enforce the promise.

A person becomes a stranger to a contract when he is not a party to the contract even though it is made for his benefit. He is a stranger to the contract and cannot claim any rights under it.

Stranger to consideration and stranger to contract are called Privity of consideration and Privity of contract. In India Privity of consideration is not applicable because Section 2(d) has the provision that provides that the promisee or any other person can move a contract. Accordingly in India a stranger to consideration can sue and enforce an agreement if he is a party to the contract⁷.



Figure 3.8 Stranger to Consideration or Contract Privity of contract is applicable in India also. According to this principle, only the parties to a contract can sue or be sued in a contract. Third parties/ strangers do not have any rights or obligations to a contract.

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They are not even permitted to sue in a court even if the contract is for their benefit. The Principle of privity was supported by the decisions in the following case laws:

Case law 4

Dunlop Pneumatic Tyre company vs Selfridge and company 915 AC 847

In this case the tyre manufacturer Dunlop Pneumatic company sold tyres to Selfridge and Company. They further sold the tyres to their sub dealer with a promise that they should not sell at a lower price than the price offered by Dunlop. If they did they would have to pay damages of £5 per transaction to Dunlop. The sub dealer undersold two tyres. Dunlop sued him for breach. Dunlop could sue as it was a stranger to the contract.

However since 1969 under the Monopolies and Restrictive Trade Practices Act, the ruling in the Dunlop case does not hold good. According to the ruling in the court a retailer obtaining goods from a wholesaler with restrictions on conditions of sale of goods by the original supplier has to be bound by the conditions even though the conditions were between the wholesaler and the supplier and the retailer was not a party to it.

Illustration

Leela sold an Apple Mac computer to Mona who asked her to take the money from Amulya. Mona instructed Amulya to give the money she owed to her to Leela for the computer that she had purchased. Amulya did not pay the amount to Leela. Can Leela get relief from the court? Leela cannot sue Amulya for recovery because she is a stranger to the contract.

Illustration

Ashok borrowed Rs 40000 from Bonney as security for a loan and he executed a mortgage of his property in his favour. Later, he sold the property to a third person Chandan for Rs 44000. Ashok retained Rs 4000 and permitted Chandan to retain Rs 40,000 to settle with Bonney. Later Chandan refused to pay Bonney. Bonney wanted to sue Chandan for recovery of the money taken by Ashok. Due to privity of contract Bonney cannot claim the amount from Chandan as he is stranger to the contract.

3.4 Exceptions to the Rule of Stranger to Contract

There are certain exceptions to the rule that a stranger cannot sue. In the following cases the court does not prevent a stranger from enforcing a contract that is made for his benefit though he is not a party to it.

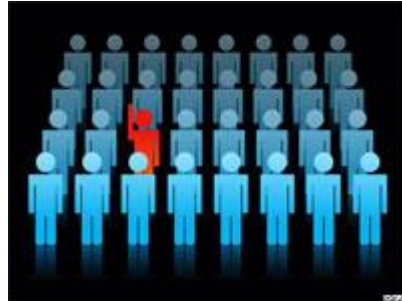


Figure 3.9 Exception to Rule

a) Trust or a Charge In the case of a **trust or a charge** created in favour of another person the beneficiary can enforce the rights conferred upon him by the trust even though he is not a party to the contract between the settler and the trustee.

Case law 5

Rana Uma Nath Baksh Singh Vs Jang Bahadur AIR 1938 PC245

A father had appointed his son as successor for his entire possession provided he gave part of it to his illegitimate son as consideration. The son agreed but later refused to part with the possession. The illegitimate son can claim the part of the estate which was made in his favour.

Illustration

Sunita made a trust for the benefit of her son Sushant and appointed Raja, Mahesh and Arjun to be the trustees. Sushant was not being given the property by the trustees. Can he claim all the property in his favour? He can claim all that was given in his favour even though he was not a party to the benefits created for him by his mother.

b) Marriage Settlement, Partition or Other Family Issues: When an agreement is made relating to marriage, partition or any other family issue with some provision for the benefit of any person, the beneficiary can enforce the agreement. This is possible even though he is not a party to the agreement. An illustration is given to explain this point.

Illustration

Raja promised Mahesh that he would give a house to his daughter Naina after marriage to his son Rohit. After the marriage Raja forgot his promise. Can Naina enforce the promise? This is a family arrangement and so Naina has the right to get the house and she can enforce the promise in a court of law.

Case law 6

Khwaja Muhammead Khan vs Hussaini Begam

1910 37 IA 152

Two parents had made an agreement for their minor children. One had promised to give

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his daughter-in-law, expenses for running a house and marked some of his deposits in favour of the young lady. She was later allowed to recover the amount even though she was a stranger to the contract because it was considered as a family matter.

Case law 7

Commissioner of Wealth Tax vs Vijayaba

A.I.R. (1979) S.C.982

A mother agreed to pay to her younger son in the event of the failure by the elder son to pay to the younger son the amount which fell short of the younger son's share in the assets left by their father. The agreement was made to purchase peace for the family. Held, it was a valid family arrangement and the younger son was entitled to his share even though he was a stranger to the contract

c) Acknowledgement of Payment or Estoppel: This is an agreement between two parties that one of them would give a benefit to a third person. If the promisor expresses or implies by words or actions and acknowledges that he has a liability towards a third person it is sufficient for the third person to recover the benefit as his right.

Illustration

Anu is the subtenant of Prem but she pays the rent directly to Anil. Anu stops paying the rent. Anil has the right to recover the amount from Anu as this is an exception to the law of privity of contract.

Contract Through Agents: The principal can enforce contracts that are entered into by agents on behalf of him if the agent has acted within the scope of his duty and in the name of the principal. The rights of the principal are intact even though he is not party to the contract.

Illustration

Mr. Jaiswal sold television sets on behalf of L.G. company. He sold 35 television sets to Reena and she did not pay the money. L.G. company went to court because they could enforce their rights as Jaiswal had acted as an agent of L.G. even though the company was not directly involved in the contract.

Agreements Relating to Land: When a person purchases land and he knows that certain rights and obligations bind the seller, the buyer has to honour the commitments of any covenants by which the seller is bound. The rule of privity of contract does not apply in this case. The buyer may not be a party to the contract but he is bound by the principles relating to immovable property.

Case law 8

Smith and Snipe Hall Farm Ltd vs River Douglas Catchment Board

(1949) 2 K.B,-500

The board agreed with landowners near the streams to improve the banks of streams and maintain them in good condition. Landowners paid proportionate costs for maintenance. Subsequently the landowner sold the land to someone who further sold it to another person. Due to the negligence of the board the banks of the streams broke and the land got flooded. The subsequent owners filed a suit against the board for

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negligence. Though they were not party to the contract they were entitled to sue because they were bound by the original owners agreement with the board.

Illustration

Reema sold an apartment to Jeena and explained to her that she had an agreement with the developers of the land to pay a maintenance charge of Rs 25000/- for regular water and electricity backup. After Jeena bought the apartment, the developer did not give the requisite backup provisions. Jeena went to court to get the rights enforced even though he was a stranger to the contract.

Check your Progress

Exceptional Cases of Stranger Enforcing a Contract

Land Agreements

Contract via agents

Payment made/estoppels

Family issues

Trust /charge

Land Agreements

The buyer has to honour the commitments of any covenants by which the seller is bound.

Click your mouse on each Layer to view associated description.

3.5 "An Agreement without Consideration Is Void"- Exceptions to the Rule

The general rule is "no consideration no contract" or "an agreement without consideration is void" but there are exceptions to the rule. According to section 25 of the Indian Contract Act, in the following cases the rule does not apply.

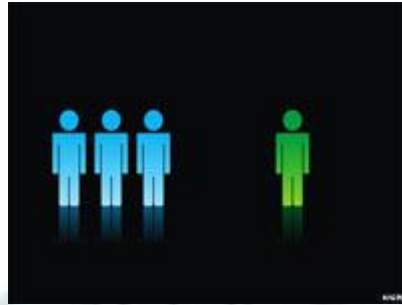


Figure 3.10 Void Consideration

a) Natural Love and Affection: A written and registered contract without consideration, based on natural love and affection by two parties related to each other is a valid contract. [section 25(1)]

Note: Closeness of relationship need not necessary mean love and affection.

Case Law 9

Rajlukhy Vs Bhootnath (1900) 4 Cal WN 408,

A husband agreed to pay a fixed sum and maintenance to his wife for living in a separate residence due to frequent quarrels between them. He registered the written document. Since he did not pay the amount the wife went to court. She was unable to get any relief because the agreement was not made with natural love and affection.

Illustration

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.

a) Voluntary Compensation: A promise to compensate a person wholly or partly for services done voluntarily, or for doing voluntary services that are legally compellable is a valid contract even without consideration. [Section 25 (2)]

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Illustration

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.

b) Time Barred Debt: A written and registered document by the debtor signing himself or his agent with a promise to pay a time barred debt, is a valid contract and does not require any fresh consideration. [Section 25(3)]⁸ The intention should be clearly expressed. It may be the full amount or part of the amount of the debt that is to be returned.

Note: An oral promise is not acceptable.

Illustration

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.

c) Agency: No Consideration is required to create an agency between the principal and agent according to section 185. If a person volunteers to work on behalf of another person as his agent without any remuneration, a relationship of agency will be created even if there is no consideration. The agent can work on behalf of the principal and bind the principal to any contracts that are taken by the agent on his behalf.

Note: Before the execution of the agreement the contract will be void since there is no consideration

d) Completed Gift: No consideration is required between the donor and the donee of any gifts already made. The person who receives the gift becomes its owner. A gift or a donation already given cannot be undone on the grounds that there was no consideration. There is no need for natural love and affection between the parties but there should not be any prior agreement to give a gift.

Note: A promise to give a gift on a future date is void if it does not have any consideration.

Illustration

Vibha has gifted a watch to Nirmalya on his birthday. This is a valid contract even though there is no consideration.

e) Remission of a Promise: A promise by the promisee to the promisor to give a concession (section 63) in the performance of his obligations is called remission. This remission of a promise can be without consideration. This is discussed in detail in the chapter on 'Discharge of Contract'.

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Check Your Progress

Summary

Three important aspects form a contract.

These are Offer, Acceptance & Consideration.

Legal rules regarding consideration

- Consideration must move at the desire of the promisor.
- Consideration may move at the desire of the promisee or any other person.
- There are different kinds of consideration. They may be past present or future.
- Consideration need not be adequate. Contracts are enforceable when there is some consideration. It may not necessarily be equal to the value of the contract.
- Consideration must be real and not illusory. Consideration is not real due to physical impossibility, legal impossibility, uncertainty in consideration and consideration consisting of a pre existing duty or obligation.
- Consideration must be lawful
- Consideration may be either positive or negative.

Exceptions to consideration

Contracts without consideration are void except in the following cases:

- If they are based on natural love and affection.
- When compensation is voluntary.
- In the case of a time barred debt.
- When there is a contract of agency.
- In case of a completed gift.

Stranger to contract is called Privity of contract.

- There are exceptions to privity of contract.

Contracts can be enforced by strangers in the following cases:

- When a trust or charge is created in favour of another.
- When there is a marriage or family settlement.
- By the principle of acknowledgement of payment or estoppe.
- When a contract through agents is involved.
- When agreements are made for land deals.

Stranger to consideration is called Privity of consideration.

- In India, a stranger to consideration can sue and enforce an agreement if he is a party to the contract.
- Third parties/ strangers do not have any rights or obligations to a contract. Only the parties to a contract can sue or be sued in a contract.

References

Aggarwal S.K. and Singhal K (2007): *Business and Industrial Laws*, Chapter 5 Galgotia Publications, New Delhi, India

Bansal G.L. (2006): *Business and Corporate Laws*, Chapter 3, Excel Books, New Delhi, India

Pathak H.S. (1989): *Mulla on The Indian Contract Act* Pages 7-15 11th edition Lexis Nexis Butterworth, New Delhi

