

# Consideration and Kinds of contract

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# Discussion points

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- 1. Consideration
- 2. Exception - consideration



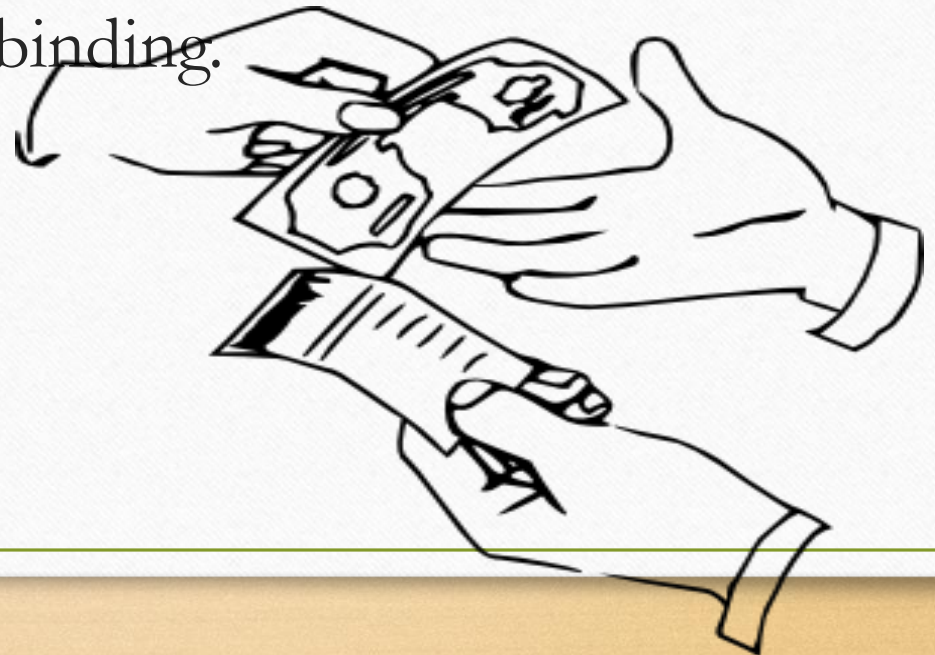


# CONSIDERATION

# Consideration

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- **Foundation** of every contract.
- In the absence of consideration a promise or undertaking is **purely gratuitous**- creates no legal binding.





# Definition of Consideration

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- **Pollock** “ Consideration is the **price** for which the promise of the other is bought and the promise thus given for value is enforceable”.
- It is something which is of **some value** in the eyes of law.
- It may be **some benefit** to the plaintiff or some detriment to the defendant.
- Also called **Quid- pro-quo** i.e. something in return

# Essentials of Consideration

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Section 2(d) of the Contract Act 1872 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 , **does** or abstains from doing, or **promises to do** or abstain from doing,
- D) something, **such act or abstinence** or **promise** is called a **consideration** for the promise.

# Essentials of a Valid Consideration

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## 1. It must move at the desire of the promisor

- An act constituting consideration must have been done at the desire or request of the promisor ,if it is done at the desire of the third party or without the desire of the promisor it will not be a good consideration.
- **E.g.,** A saves B goods from fire without being asked to do so. A cannot demand consideration for his services.



## Selected case on Consideration

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### It must move at the desire of the promisor

B spent some money on the improvement of a market at the desire of the Collector of the district. In consideration of this D who was using the market promised to pay some money to B.

**Held: The agreement was void being without consideration as it had not moved at the desire of D.**



# Essentials of a Valid Consideration

## 2. It may move from the Promisee or any other Person:

Even a stranger. This means that as long as there is a consideration for a promise it is immaterial who has furnished it.

But a stranger to the consideration will be able to sue only if he is a party to the contract.

# Types of Valid Consideration

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- **Past Consideration:** When the consideration of the one party given before the date of the promise.
- **Present consideration:** when consideration is given simultaneously with promise, i.e., at the time of the promise, it is said to be present consideration. E.g., [cash sale](#).
- **Future consideration:** when consideration for one party to the other is to pass subsequently to the making of the contract, it is future consideration.



# Essentials of a Valid Consideration

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## 4. **It need not be adequate:**

Consideration as said “some thing in return” and something this some thing in return need not be equal in value to “Something given”.

The law requires that the contract must be supported by consideration and not the adequate consideration.

The adequacy of the consideration is to be determined by the parties to the contract at the time of entering into it, but the court has no right to determine the adequacy of the consideration.

# Essentials of a Valid Consideration

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5. **It must be real:** although consideration need not be adequate, it must be real and of some value in the eye of law. **There is no real consideration in the following cases:**
- **Physical impossibility:** A promises to put life into B's dead wife on the consideration of BDT. 1 Lac. A's promise is physically impossible to perform.



# Essentials of a Valid Consideration

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## ❑ Legal impossibility:

A owes BDT. 500 to B. he promises to pay BDT.50 to, C the servant of B, who in return promise to discharge A from the liability. This is **legally impossible**, because C cannot discharge A from the debt due to B.

## • Uncertain consideration:

A engages B for doing a certain work and promises to pay a “Reasonable some”. There is no recognized method of ascertaining the “**Reasonable Some**”. The promise is unenforceable due to uncertainty.

# Essentials of a Valid Consideration

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## **6. It must be lawful:**

The consideration given for an agreement must not be unlawful. A consideration to the contract must not be against Public Policy, Immoral and illegal.

## **7. 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 the new promise, since it adds nothing to the pre-existing legal or contractual obligation.



# CONTRACT WITHOUT CONSIDERATION IS VOID -EXCEPTIONs

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- Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law



# CONTRACT WITHOUT CONSIDERATION IS VOID - EXCEPTIONs

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- An agreement made without consideration is void, unless –
  - **Love and Affection:** where an agreement is expressed in writing and registered under the law for the time being in force for the registration of the documents and is made on account of **natural law and affection** between parties standing to the **near relation** to each other, it is enforceable even if there is no consideration (**Ram Dass vs. Krishan Dev**)



# CONTRACT WITHOUT CONSIDERATION IS VOID - EXCEPTIONs

**Promise to pay a time-bared debt:** A promise to pay a time-bared debt by the debtor is enforceable provided it is made in **writing and signed by the person to be charged** therewith or by his agent generally or specially authorised in that behalf, to pay wholly or in part debt.



Thank You

Any Question?