

CHAPTER 3

CONSIDERATION

MEANING

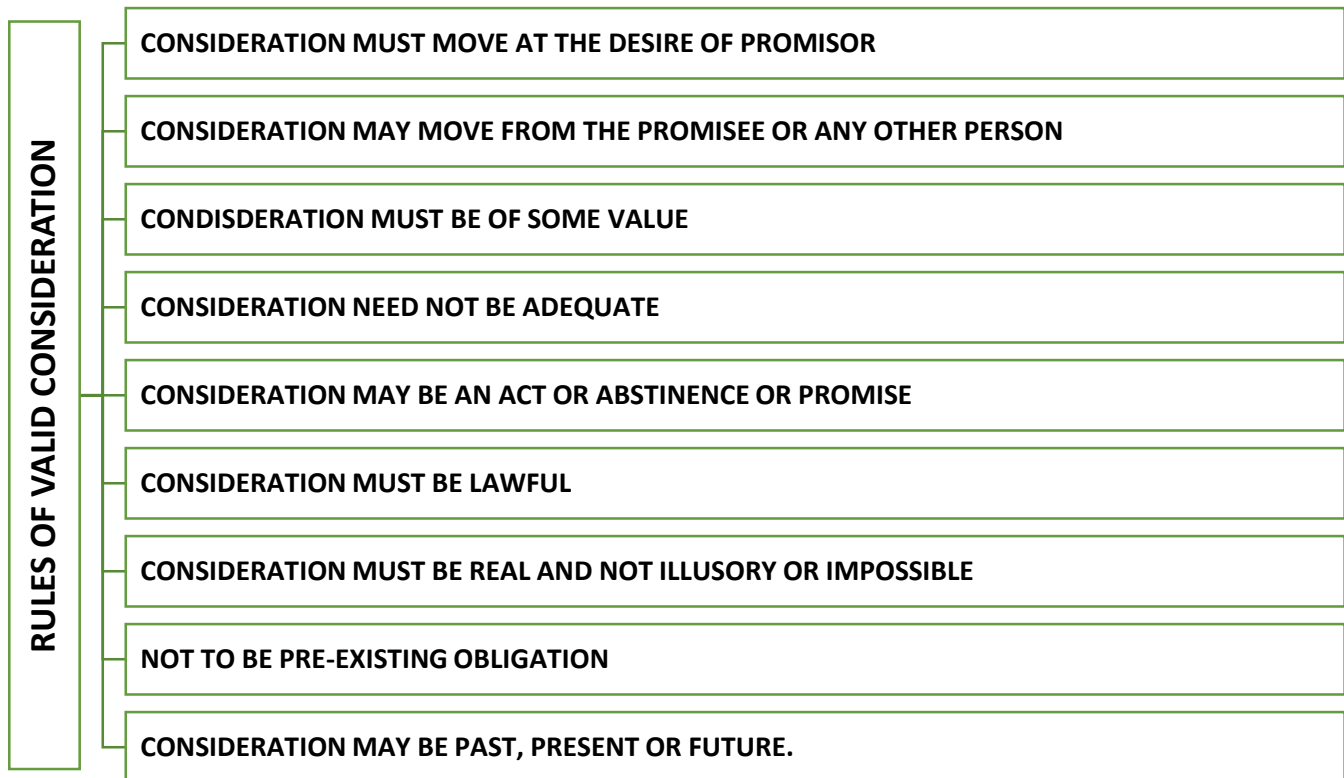
Consideration is one of the essential elements of valid contract. It is derived from a Roman Phrase “**quid pro quo**” which means something in return.

Consideration can be defined as “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 act or abstinence or promise is called a consideration for the promise.”

EXAMPLE

A agrees to sell his house to B for Rs 10,000. Here, B’s promise to pay the sum of Rs. 10,000 is the consideration for A’s promise to sell the house and A’s promise to sell the house is the consideration for B’s promise to pay Rs 10,000.

ESSENTIAL ELEMENTS OF VALID CONSIDERATION



A. CONSIDERATION MUST MOVE AT THE DESIRE OF PROMISOR

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

EXAMPLE

A's son is lost and B goes in search for him. Can he claim remuneration from A, (a) if B does this act at the request of A, (c) if B does this act at the request of C?

Case	Decision
(a) If B does this act voluntarily	<i>B cannot claim remuneration from A because he has not done at A's request.</i>
(b) If B does this act at the request of A	<i>B can claim remuneration from A because he has done at A's request.</i>
(c) If B does this act at the request of C	<i>B cannot claim remuneration from A because he has not done at A's request.</i>

B. CONSIDERATION MAY MOVE FROM THE PROMISEE OR ANY OTHER PERSON

An act constituting consideration may be done by the promisee himself or any other person (i.e. stranger to consideration). Thus, it is immaterial who furnishes the consideration and therefore, may move from the promisee or any other person who maybe stranger to the contract.

EXAMPLE

X, by a deed of gift transferred certain property to her daughter Y with a direction that Y should pay Z an annuity. On the same day, Y executed a deed in writing in favor 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. It was held that Z was entitled to maintain suit because a consideration need to not necessarily move from the promisee, it may move from any other person (i.e. X in the present case).

C. CONSIDERATION MUST OF SOME VALUE.

Consideration must have some economic value. Natural affection or sentimental motive is not a valid consideration.

D. CONSIDERATION NEED NOT BE ADEQUATE

As discussed earlier, consideration must be of some value. However, its adequacy or inadequacy does not invalidate the contract. It is open to the parties to fix their own price.

EXAMPLE

A agrees to sell his house worth Rs 50 lakhs to B for Rs 5 lakh. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of consideration.

E. CONSIDERATION MAY BE AN ACT OR ABSTINENCE OR PROMISE

Consideration may be a promise to do something or not to do something. So it may either be positive or negative. Consideration need not always be doing act. It can be not doing act also.

EXAMPLE

A promises to teach B's son for Rs 10,000 per month. Here teaching is a consideration by A to C.

A promises not to file a suit against B if B pays him Rs 1, 00,000. The abstinence of A is the consideration of B's Payment.

F. CONSIDERATION MUST BE LAWFUL

The consideration of contract should be lawful. The consideration is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of other or is immoral or opposed to public policy.

EXAMPLE

X promises Y to pay Rs.1,000 to beat Z, Y beats Z and claims Rs.1,000 from X, X refuses to pay. Y cannot recover because the agreement is void on the ground of unlawful consideration.

G. CONSIDERATION MUST BE REAL AND NOT ILLUSORY OR IMPOSSIBLE

Real consideration is one which is not physically or legally impossible.

EXAMPLE

A promise to pay Rs 5,00,000 to B if B brings life to dead person. Here, consideration for A's promise to pay Rs 5,00,000 to B is to bring life to the dead person. The contract is void as the consideration is illusory and practically impossible to perform.

H. CONSIDERATION SHOULD BE SOMETHING OTHER THAN PRE EXISTING OBLIGATION

The act constituting 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.

EXAMPLE

X promises Y, his advocate, to pay an additional sum if the suit was successful. The suit was declared in favor of X but X refused to pay additional sum. It was held that Y could not recover additional sum because the promise to pay additional sum was void for want of consideration as Y was already bound to render his best services under the original agreement.

I. CONSIDERATION MAY BE PAST, PRESENT OR FUTURE

PAST CONSIDERATION	<p>The consideration which has already moved before the formation of agreement.</p> <p>EXAMPLE</p> <p><i>X renders some service to Y at Y's request in the month of May. In June, Y promise to pay X Rs.1,000 for his past services. Past services amount to past consideration. X can recover Rs.1,000 from Y.</i></p>
PRESENT CONSIDERATION	<p>The consideration which moves simultaneously with the promise, is called present consideration.</p>

	<p>EXAMPLE</p> <p><i>In case of cash sale, promise to pay the price and promise to deliver the goods are performed simultaneously.</i></p>
FUTURE CONSIDERATION	<p>The consideration which is to be moved after the formation of agreement is called future consideration. The liability is outstanding against both the parties.</p> <p>EXAMPLE</p> <p><i>X promises to deliver certain goods to Y after 10 days and Y promises to pay after 10 days from the date of delivery.</i></p>

CONTRACT WITHOUT CONSIDERATION

The General rule is that an agreement made without consideration is void. In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there. However there are certain exception to the general rule. In following cases, the agreement though made without consideration will be valid and enforceable.

1. NATURAL LOVE AND AFFECTION

Such agreement made without consideration is valid if:

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

Note: Mere Nearness of relation by itself does not necessarily imply nature love and affection.

EXAMPLE

A Hindu husband by a registered documents promised to pay his wife Rs. 1,000 per month as her pin- pocket money. This agreement is valid.

A Hindu husband by a registered document, after referring to quarrels and that this agreement was void because there was no natural love and affection.

2. PROMISE TO COMPENSATION FOR PAST VOLUNTARY SERVICES

Such promise made without consideration is valid if:

- It is promise to compensate (wholly or in part); 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

X finds Y's purse and gives it to him. Y promises to give Rs.500 to X. This is a valid contract even though the consideration did not move at the desire of Y, the promisor.

X, a neighbor helped putting down the fire in Y's house. Afterwards, Y promised X to give Rs.1,000. This is a valid contract even though the consideration did not move at the desire of the promisor.

X, supported Y's infant son. Y promised to pay X's expenses in so doing. This is valid contract. Here, X has done that act which Y was legally bound to do.

3. PROMISE TO PAY TIME BARRED DEBT

Such promise made without consideration is valid 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 limitation.

4. COMPLETED GIFT

The gifts actually made by a donor and accepted by the donee are valid even without consideration. Thus, a completed gift needs no consideration.

EXAMPLE

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

5. AGENCY

No consideration is required to create an agency.

6. BAILMENT

No consideration is required for gratuitous bailment.

SUIT BY A THIRD PARTY TO A CONTRACT

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

P who is indebted to Q, sell 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"**.