
UNIT.5 CONSIDERATION AND LEGALITY OF OBJECT

Structure

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5.0 OBJECTIVES

After studying this unit, you should be able to:

- describe what is consideration
- explain what is lawful consideration and its significance in relation to the validity of a contract
- explain how inadequacy of consideration does not affect the validity of a transaction
- state the exceptions to the rule 'no consideration, no contract'
- explain when the object or the consideration shall be unlawful
- describe the agreements which are considered opposed to public policy.

5.1 INTRODUCTION

In Unit 1 you learnt about the essentials of a valid contract. One such essential, as per Section 10 of the Indian Contract Act, is 'lawful consideration'. In this unit you will learn about the meaning of consideration, rules of a valid consideration, effect of inadequate consideration on the validity of an agreement, enforceability of agreements without consideration and the circumstances under which consideration is regarded as unlawful. You will also study about the agreement which are declared opposed to public policy.

5.2 WHAT IS CONSIDERATION?

In Mercantile law, the term 'consideration' is used in the sense of *quid pro quo* which in turn means 'something in return'. This 'something' may be some benefit, right, interest or profit that may accrue to one party or it may be some forbearance, detriment, loss or responsibility upon the other party. This explanation of consideration was given in a very popular English case of **Currie v. Misa**. Another simple and good description of 'consideration' is available in Sir Pollock's definition. In his book 'Pollock on Contracts', he says, "consideration is the price for which the promise of the other is bought, and the promise thus given for value is enforceable". Section 2(d) of the Indian Contract Act defines consideration 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 to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.*

Examples

- 1 A agrees to sell his house to B for Rs. 10,00,000. Here B's promise to pay Rs. 10,00,000 is the consideration for A's promise to sell the house and A's to sell the house is the consideration for B's promise to pay Rs. 10,00,000.
- 2 X promises his debtor Y not to file a suit against him for one year on Y's agreeing to pay him Rs. 100 more. Here the abstinence of X is the consideration for Y's promise to pay.

Thus, all contracts consist of two clearly separable parts (i) the promise, and (ii) the consideration for the promise. A person who makes a promise to do or to abstain from doing something usually does so as a return for **some loss, damage, or inconvenience** that may have or may have been occasioned to the **other party in** respect of the promise. The benefit so received or the loss, damage or inconvenience so caused is regarded **in law** as the consideration for the promise. It should be noted **that** a promise without consideration is purely gratuitous **and**, however, sacred and morally binding it may be, **it cannot create a legal obligation.** "No consideration, no *Contract*" is the rule of law. The following two cases prove this point.

Abdul Aziz v. Mazum Ali: In this case a person verbally promised the Secretary of the Mosque Committee to subscribe Rs. 500 for rebuilding of a mosque. Cater, he declined to pay the said amount. Held, there was no consideration and hence the agreement was void.

Kedarnath v. Gorie Mohammad; In this Case the defendant had agreed to **subscribe** Rs. 100 towards the construction of a **Townhall** at **Howrah**. **On the faith** of the promise, the Secretary called for plans and entrusted the work to contractors and undertook liability to pay them. Held, the agreement was enforceable being one supported by consideration in the form of a detriment to the Secretary who had undertaken a liability to the contractors on the faith of the promise made by the defendant.

5.3 LEGAL RULES FOR VALID CONSIDERATION

If you analyse the definition of consideration as per Section 2(d), you may notice certain essential features which are necessary for consideration to be valid and **acceptable legally**. These features are also known as the **legal rules for consideration**. Let us now study such rules in detail.

- 1 Consideration must move at the desire of the promisor; To make a contract binding and enforceable, it is not sufficient that there is consideration but also that consideration has been supplied at desire of the promisor. Thus, where an act is done at the desire of a third party and not the promisor, that act cannot constitute valid consideration. For example, D constructed a market at **the** instance **of** the Collector of a district. The occupants of the shops in the said market promised to pay D a commission on articles sold through their shops. Held, there was no consideration because the money was not spent by the plaintiff at the request of the defendants, but voluntarily for a third person and, thus, the contract was void (**Durga Prasad v. Baldeo**).

It does not mean, however, that a promisor must get the benefit **personally**. The consideration may accrue to the third party at the **request** or desire of the promisor. For example, **A**, who owes **Rs. 20,000** to **B**, **persuaded** **C** to pass a promissory note for the amount in favour of **B**. **C** promised **B** that he would pay the amount (by passing on a promissory note), and **B** credited the amount to **A's** Account in his books. The discharge of **A's** account was consideration for **C's** promise (through **C** the promisor had not the received benefit) **National Bank of Upper India v. Bansidhar**.

- 2 Consideration may move **from** the promisee or any other person. The second rule as to consideration is that the act which is to constitute consideration may be done by the promisee himself or by any other person. "Any other person" (that is, a person other than the **promisee**) is technically referred to as stranger to consideration. This is **sometimes** called as doctrine of constructive consideration. It means, that, as long as there is a consideration for a promise, it is immaterial who has furnished it.

The case of Chinnayya v. Ramayya is a good illustration on the point. In this case, A by a deed of gift transferred certain property to her daughter, with a direction that the daughter should pay an annuity to A's brother, as had been done by A. On the same day the daughter executed a writing in favour of the brother, agreeing to pay the annuity. Afterwards, she declined to fulfil her promise saying that no consideration had moved from her uncle (A's brother). The Court, however, held that the words 'the promisee or any other person' in Section 2(d) clearly show that the consideration need not necessarily move from the promisee, it may move from any other person. Hence, A's brother was entitled to maintain the suit.

- 3 Consideration may be past, present or future. The words used in Section 2(d) are "has done or abstained from doing" refer to past. Similarly, the words "does or abstains from doing" refer to present, and the words "promises to do or to abstain from doing" refer to future. Accordingly in India, consideration may be past, present or future.

Past Consideration: Past consideration is something wholly done, forborne or suffered before the making of the agreement.

Examples

1. A, a minor, was given the benefit of certain services by the plaintiff. The plaintiff rendered those services, not voluntarily but at the desire of A. These services were continued even after majority at the request of A who subsequently promised to pay an annuity to the plaintiff. It was held that the past consideration was a good consideration. (Sindh v. Abraham)
2. A renders some services to B at B's request in the month of November. In December B promises to pay A a sum of Rs. 100 for his services. The services of A will be past consideration. A can recover the past amount.

But under English Law past consideration is no consideration'. Thus, if the above promise was made in England, it could not have been enforceable.

Present Consideration : Consideration which moves simultaneously with the promise is called present consideration. 'cash sales' is an excellent example of the present consideration.

Future Consideration : When the consideration is to move at a future date, it is called future or executory consideration. It takes the form of a promise to be performed in the future. For example, A promises B to deliver him 100 bags of wheat at a future date. B promises to pay for it on delivery.

- 4 Consideration must be of some value: Consideration as defined under Section 2(d) of the Indian Contract Act means some act, abstinence or promise on the part of the promisee or any other person which has been done at the desire of the promisor. Should it mean that even a worthless act will be sufficient to make a good consideration if it is only done at the promisor's desire? If, for example, A promises to give his new Maruti car to B, provided B will fetch it from the garage. The act of fetching the car cannot by any stretch of imagination be called a consideration for the promise. Yet it is the only act the promisor desired the promisee to do. Such an act no doubt, satisfies the words of the definition, but it does not catch its spirit. In Chidambara v. P.S. Ranga, Justice Subba Rao of Supreme Court observed that consideration shall be "something" which not only the parties regard but the law can also regard as having some value. Similarly, in Kulasekaraperumal v. Pathakutty, Justice Srinivasan of Madras High Court observed that though the Indian Contract Act does not in terms-so require, consideration must be good or valuable. It must be real and not illusory. For example, A promises to pay an existing debt punctually if B, the creditor, - gives him, some discount. The agreement is without consideration as the discount cannot be enforced as consideration being unreal and illusory.

- 5 Consideration must be Legal: Consideration which is not legal, naturally, has no value in the eyes of the law and, therefore, cannot be a real consideration-

Thus, the main points of Legal Rules for Consideration are as follows:

- 1 Consideration must move at the desire of the promisor
- 2 Consideration may be supplied by the promisee or any other person
- 3 Consideration may be past, present or future
- 4 Consideration must be of some value, i.e., it must be real and not illusory
- 5 Consideration must be legal.

5.4 STRANGER TO A CONTRACT AND STRANGER TO CONSIDERATION

You have learnt that in India, consideration is permitted to be supplied by any person and it need not necessarily be supplied by the promisee himself. Thus, the concept of 'stranger to consideration' is a valid and acceptable concept. However, a stranger to the consideration must be distinguished from a stranger to a contract. A stranger to a contract means a person who is not a party to the contract. Such a person cannot even in India, bring a valid suit. For example, **A** who is indebted to **B**, sells his property to **C** and **C** promises to pay off the debt to **B**. In case **C** fails to pay, **B** has no right to sue **C** being stranger to the contract.

Exceptions

The aforesaid rule that a stranger to a contract cannot sue is, however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

- 1 In the case of trusts, the beneficiary may enforce the contract. In *Khwaja Muhammad v. Mussaini Begum*, **H** sued her father-in-law **K** to recover Rs. 15,000 being the arrears of allowance called *Kharchi-i-Pandan* — betel box expenses (Pinmoney) payable to her by **K** under an agreement made between **K** and **H**'s father, in consideration of **H**'s marriage to **K**'s son **D**. Both **H** and **D** were minors at the time of marriage. The Privy Council held the promise to be enforceable by **H**.
- 2 On the same principle, the provision of marriage expenses of female members of a Joint Hindu Family entitle the female member to sue for such expenses on a partition between male members (*Rakhmanbai v. Govind*).
- 3 In the case of an acknowledgement of liability or by past performance thereof. Where **X** receives money from **Y** for paying it to **Z** and **X** admits to **Z** the receipt of that amount, then **X** becomes the agent of **Z** and will be liable to pay the amount to him.
- 4 In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of the family who originally had not been parties to the settlement, may enforce the agreement. *Shuppu v. Subramaniam*.
- 5 In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract. *Kishan Lal Sadhu v. Pramila Bala Dasi*.

5.5 ADEQUACY OF CONSIDERATION

In fact, adequacy of consideration is always the lookout of the promisor. Courts do not see whether every person making the promise has recovered full return for the promise. Thus, if '**A**' promises to sell a house worth Rs. 8,00,000 for Rs. 80,000 only, the inadequacy of the price in itself shall not render the transaction void. But where a party pleads coercion or undue influence or fraud, inadequacy of consideration will also be a piece of evidence to be looked into. For example, **B** agrees to sell a horse worth Rs. 1,000 for Rs. 10, **B** denies that his consent to the agreement was freely given. The inadequacy of consideration is a fact which the Court should take into account in considering whether or not **B**'s consent was freely given. *Section 25 (Explanation 2) of Indian Contract Act also states that an agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.*

Check Your Progress A

1 What is consideration?

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2 What is quid-pro-quo?

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3 At whose desire should consideration move?

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4 Is past consideration valid?

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5 Can consideration move from a stranger?

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6 Fill in the blanks :

- i) Consideration..move at the desire of.
- ii) Consideration need not be..**but** it must be of some..**in** the eyes of law.
- iii) A contract without consideration is.

7 State whether following statements are True or False.

- i) An act constituting consideration must have been done at the desire or request of the promisor or a third party.
- ii) Consideration must result in a benefit to both the parties.
- iii) Past consideration is no consideration.
- iv) Consideration **may** move from the promisee or any other person.
- v) A stranger to a contract may sue upon it if the contract is for his benefit.
- vi) Consideration must be proportionate to the value of the **promise**.
- vii) A stranger to consideration can sue.

5.6 LEGALITY OF AGREEMENTS WITHOUT CONSIDERATION

As discussed earlier, as per Section 10 of the Indian Contract **Act** consideration is an important element for a contract to be valid. Section 25 echoes this view and declares a contract without consideration as void. However, it also recognises certain **exceptions**, Besides, section 185 also provides for a case where a contract without consideration **shall be** valid. Thus, the circumstances under which a contract, in spite of no consideration, may be enforceable are stated below:

1 Agreements in writing and registered: An agreement made without consideration is valid if it is:

- a) **expressed** in writing,

- b) registered (under the law for the time **being** in force for registration of documents),
- c) made on account of natural love and affection, and
- d) is between parties standing in a near relation to each other. For example, an elder brother, on account of natural love and affection, promised to pay the debts of his younger brother. The agreement was put to writing and was registered. Held, the agreement **was valid**. (Venkataswamy v. Rangaswamy)

You **should** note that for an agreement to be valid under this clause, the agreement must be the result of natural love and affection. **Nearness** of relation by itself does not necessarily import natural love and affection. Thus, where a Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay **his wife** a sum of money for her **maintenance** and separate residence, it was held that the promise was unenforceable **Rajlaxhi Devi v. Bhootnath**.

2 Promise to compensate—Section 25(2): A promise made without consideration is **valid if**

- a) it is a promise to compensate (wholly or in part).
- b) the person to be compensated has already done something **voluntarily**, or has done something which the promisor was legally **compellable** to do.

Examples

- 1 A finds B's purse and gives it to him. B promises to give Rs. 100 to A, This is a valid contract even though A was not engaged for the purpose by B and therefore, consideration did not move at the desire of B, the promisor.
- 2 A supports **B's** infant son without asking. **B** promises to pay A's expenses for so doing. Once again, this is a contract.

3 Promise to pay a debt barred by limitation act—Section 25(3): A **promise** to pay a debt barred by Limitation Act shall be valid without consideration because legally it remains no longer claimable. You should know that a debt becomes barred under the Limitation Act, if the same is not claimed within a period of 3 years. However, a promise to pay a time barred debt (wholly or in part) shall be valid if

- i) the promise is put into writing
- ii) signed by the debtor **or** his agent, and
- iii) **relates** to a debt which the creditor might have enforced payment of but for the law of limitation.

For Example, X owes Y Rs. 800, but the debt is time barred. X signs a written promise to pay Rs. 600 on account of the debt. This is a valid contract (Section 25).

- 4 Completed gifts:** The **rule**, no consideration, no contract does not apply to completed gifts. These need not be the result of **natural** love and affection or near relation, but the gifts must be complete. (Explanation 1 to Section 25). Completed gifts mean gifts made and accepted. However a promise to gift is not valid.
- 5 Agency:** For creation of an **agency**, no consideration is required. You should note that, however, if no consideration has passed to the agent, he is only a gratuitous agent and is not bound to do the work entrusted to him, although if he **begins** the work he must do it to, the satisfaction of his principal (Section 185).
- 6. Charity:** If a person promises to contribute to charity and on this faith the promisee undertakes a liability **to** the extent not exceeding the promised subscription, the contract shall be valid (Kedarnath v. **Gorie** Mohammad).

- 1 If the agreement is in writing and registered resulting from natural love and affection between persons in near relationship.
- 2 If it is a promise to compensate for something voluntarily done for the promisor.
- 3 If it is a written promise to pay a debt barred by the law of limitation.
- 4 If it is a promise with regard to completed gifts, i.e., gifts made and accepted by the other.
- 5 If it relates to creation of an agency.
- 6 If it is a promise to contribute to charity and with this faith, the promisee undertakes a liability.

5.7 LEGALITY OF OBJECT AND CONSIDERATION

In most of the cases, the words 'Object' and 'Consideration' mean the same thing. But in some cases they may be different. For example, where money is borrowed for the purpose of the marriage of a minor, the consideration for the contract is the loan and the object is the marriage. We have already noted that an agreement will not be enforceable if its object or the consideration is unlawful. According to section 23 of the Act, the consideration and the object of an agreement are unlawful in following cases:

- 1 **If it is forbidden by law:** If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act or an undertaking is forbidden by law when it is punishable by the criminal law of the country or when it is prohibited by special legislation derived from the legislature.

Examples

- i) A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered back (**Srinivas v. Raja Ram Mohan**).
 - ii) A promises to drop prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful (**Illustration (h) to Section 23**).
2. **If it defeats the provisions of any law:** If it is of such a nature that if permitted, it would defeat the provisions of any law. In other words if the object or the consideration of an agreement is of such a nature that, though not directly forbidden by law, it would defeat the provisions of the law, the agreement is void. For example, A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon the understanding with A, becomes the purchaser and agrees to convey the estate to A for the price which B has paid. The agreement is void as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law (**Illustration (i) to Section 23**).
 - 3 **If it is fraudulent:** An agreement with a view to defraud others is void. For example, A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void as its object is unlawful.
 - 4 **If it involves or implies injury to the person or property of another.** If the object of an agreement is to injure the person or property of another, it is void. For example, A borrowed Rs. 100 from B. A executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at a very exorbitant rate and the principal amount at once. Held, the contract was void (**Ram Saroop v. Bansi**).
 - 5 **If the Court regards it as immoral or opposed to public policy:** An agreement whose object or consideration is immoral or is opposed to the public policy, is

void. For example, A let a cab on hire to B, a prostitute, knowing that it would be used for immoral purposes. The agreement is void (**Pearce v. Brooks**).

Partial Illegality

Section 24 of the Indian Contract Act provides that if any part of a single consideration for one or more objects, or any one or any part of any one of several consideration for a single object, is unlawful, the agreement is void. For example, A promises to supervise the business on behalf of B, a licensed manufacturer of some permissible chemicals and some contraband items. B promises to pay A a salary of Rs. 10,000 per month. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

It is well settled that if several distinct promises are made for one and the same lawful consideration, and one or more of them be such as the law will not enforce, that will not of itself prevent the rest from being enforceable. The test is whether a distinct consideration which is wholly lawful can be found for the promise called in question. According to Justice Wiles, the general rule is that, where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good.

Check Your Progress B

1 State whether the following statements are True or False.

- i) A promise to gift is enforceable by the donee.
- ii) A verbal promise to pay a debt barred by the Limitation Act is enforceable.
- iii) A promise to compensate a voluntary act done in the past is valid,
- iv) An agent is bound to do a promised act in spite of no quid pro quo.
- v) An agreement to commit fraud is voidable.

2 A agrees for illicit cohabitation with B. B agrees to pay a fixed monthly allowance in consideration of her services.

- i) State whether the agreement is valid or not. Give reasons.

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- ii) Is the agreement valid if the payment is in respect of past cohabitation with a married woman with or without the knowledge of her husband?

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3. A few persons agree to purchase shares of a company in order to induce other persons to believe, contrary to the fact, that there is a *bonafide* market for the shares. Is such an agreement lawful?

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5.8 AGREEMENTS OPPOSED TO PUBLIC POLICY

It is very difficult to define the term 'public policy' with any degree of precision because 'public policy', by its very nature, is highly uncertain and fluctuating. It keeps on varying with the habits and fashions of the day, with the growth of commerce and usage of trade. In England, Lord Halsbury in case of **Janson v.**

Drieftein Consolidated Mines Etd, observed "that categories of public policy are closed, and that no court can invent a new head of public policy." Section 23 of the Indian Contract Act, however, leaves it open to court to hold any contract as unlawful on the ground of being opposed to **public** policy.

In simple words, it may be said that an agreement **which conflicts** with morals of the time and **contravenes** any established interest of society, it is void as being against public policy. Thus, an agreement **which** tends to be injurious to the public or against the **public** good is void as being opposed to public policy. According to Mulla, "Agreements may offend against the public policy, or tend to the prejudice of the State in time of war (trading with the **enemies**, etc.), by tending to the **perversion** or abuse of municipal justice, (stifling prosecution, champerty, maintenance) or in private life by attempting to impose inconvenient and unreasonable restrictions on the free choice of **individuals** in marriage or their liberty to exercise any lawful **trading or calling.**"

Heads of Public Policy

The commonly accepted grounds of public policy include:

- 1 **Trading** with Enemy : All contracts made with an alien (foreigner) enemy, **unless** made with the permission of the Government, are illegal on **the** ground of **public** policy.
- 2 **Agreements for** stifling prosecution: Contracts for compounding or suppressing of criminal charges for offences of a public nature are illegal and void. The Law states "you cannot make a trade of your felony (crime), you cannot convert a **crime** into a source of profit". It is observed in **Sudhindra Kumar v. Ganesh Chandra**, that no court of law can countenance or give effect to an agreement which attempts to take the administration of law out of the hands of the judges and put it in the hands of private individuals. For example, A knowing that B **has** committed a murder, obtains a promise from B to pay him (A) Rs. 1,00,000 in consideration of not exposing B. This is a case of stifling prosecution and the agreement is illegal and void.
- 3 Contracts in the nature of champerty and maintenance: In England agreement of 'maintenance' and 'champerty' are void on the ground of their being opposed to public policy. 'Maintenance' means the promotion of litigation in which a person has no interest of his own. In other words, where a person agrees to maintain a suit, in which he has no interest, the proceeding is known as Maintenance. Thus, maintenance tends to encourage speculative litigation. '**Champerty**' is a bargain whereby one party is to assist another in recovering property and, in turn, is to share in the process of the action. Under English Law, both of these agreements are declared illegal and void. Indian **Law** is different. In **Raja Venkata Subhadrayamma Guru v. Sree Pusapathi Venkatapathi Raju**, the Privy Council held that champerty and maintenance are not illegal in India, and that **Courts** will refuse to enforce such agreements only when they are found to be extortionate and unconscionable and not made with the **bonafide** object of assisting the claims of the person unable to carry on litigation himself. In other words, only those agreements which appear to be made for purposes of gambling in litigation and for injuring or oppressing others, by encouraging unholy litigation, will not be enforced, but not all agreements of champerty or maintenance. Thus, an agreement to render services for the conduct of litigation in **consideration** of payment of 50 per cent of the amount recovered through Court would be legally enforceable. But, where it was found that the value of the part of the estate promised to be conveyed amounted to **Rs. 64,000** in return for Rs. 12,000 which was to be spent by the financier on the prosecution of an appeal in the Privy Council, it was held that although the agreement was **bonafide**, it could not be enforced, the reward being extortionate and unconscionable.
- 4 Agreements for the sale of **public offices** and titles: Traffic by way of sale in **public** offices and **appointments** obviously tends to the prejudice of the public service by **interfering** with the selection of the **best** qualified persons. **Such** sales are; therefore; unlawful and void.

Examples

- 1 A promises to pay B Rs. 5,000 if B secures him an employment in the public service. The agreement is void.
- 2 Similarly, where A promises to pay a sum to B in order to induce him to retire so as to provide room for A's appointment to the public office held by B, the agreement is void (*Saminatha v. Muthusarni*).
- 5 **Agreements** in restraint of parental rights. According to law, the father is the guardian of his minor child. After the father, the right of guardianship vests in the mother. This right cannot be bartered away by any agreement. Thus the authority of a father cannot be alienated irrevocably and any agreement purporting to do so is void. For example, a father having two minor sons agreed to transfer their guardianship in favour of Mrs. Annie Besant and also agreed not to revoke the transfer. Subsequently, he filed a suit for recovery of the boys and a declaration that he was the **rightful** guardian, the court held that he had the right to revoke his authority and get back the children (**Giddu Narayanish v. Mrs. Annie Besant**).
- 6 **Agreements** in restraint of marriage: Under Section 26, every agreement in restraint of the marriage of any person other than a **minor** is void. (**You will study it in detail in Unit 6**).
- 7 Marriage brokerage or brokage contracts. A marriage brokerage contract is one in which, in consideration of marriage, one or the other of the parties to it, or their parents or third parties receive a certain sum of money. Accordingly, dowry is a marriage brokerage and hence unlawful and void.

In the case of *Venkatakrishna v. Venkatachalam*, a sum of **money** was agreed to be paid to the father in **consideration** of his giving his daughter in marriage. Held, such a promise amounted to a marriage brokerage contract and was void.

Similarly, where a purohit was promised a certain sum of money in consideration of procuring a second wife for the defendant, it was held that the promise was opposed to public policy and, thus, void (*Vaithvanathan v. Gangaraju*).

In the above case, if marriage had been performed and the money remains unpaid, it cannot be recovered in a Court of Law. But, if the money had been paid and marriage also performed, the money cannot be got back.

- 8 Agreements in restraint of legal **proceedings**: Section 28 specifies two kinds of agreements as void: (i) an agreement by which a party is restricted absolutely from enforcing his legal rights arising under a contract by the usual legal proceedings in the **ordinary** tribunals, and (ii) an agreement which limits the time within which the contractual rights may be enforced. It is discussed in more detail in Unit 6.
- 9 **Agreements** interfering with course of justice: Any agreement for the purpose **or** to the effect of using improper influence of any kind with judges or officers of justice is void.
- 10 Agreements in restraint of trade: **In** India, agreements in restraint of trade, whether the restraint is total or partial, are declared void under Section 27. These have been discussed in detail in Unit 6.
- 11 Agreements tending to create monopolies: Being opposed to public interest, the contracts tending to create monopolies are void. For example, in *District Board of Jhelum v. Harichand* a local body granted a monopoly to A to sell vegetables in a particular locality. Held, the agreement was void.
- 12 Agreement in restraint of personal liberty: Agreements which unduly restrict the personal freedom of persons are void and illegal being against public policy. For example, X, the debtor, borrowed money from Y, the money lender, on the promise that he would not, without his written consent, leave his job, borrow money, dispose of his property or change his residence. Held, the agreement was void and illegal **as it** restricted the **personal** freedom of X (*Harwood v. Miller's Timber and Trading Co.*)

- 1 A promises to pay his lawyer a fee of Rs. 5,000 if he wins the suit and also promises to transfer to him part of the property in dispute. Can the lawyer recover the promised fee and also claims share in the property?
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- 2 A promises to pay Rs. 1,000 per month to a married woman B, in consideration of B living in adultery with A and acting as his house-keeper. Can B lawfully recover the amount, if A later refuses to pay her?
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5.9 LET US SUM UP

Consideration (the *quid pro quo*), is an essential element to make a contract valid and enforceable. Consideration to be valid must not only be supplied at the desire of the promisor but also should be real and legal. It need not, however, necessarily be supplied by the promisee or be adequate.

Section 25 which declares a contract without consideration as no contract also recognises certain exceptions whereunder in spite of there being no consideration contract shall be valid and enforceable. Section 185 further adds to the list of these exceptions. Thus, the contracts without consideration are valid in the following cases:

- i) agreements which are the result of natural love and affection between parties standing in a near relationship, if the agreement is written and registered,
- ii) a promise to compensate for something voluntarily,
- iii) a promise to pay a time-barred debt
- iv) completed gifts (i.e., gifts offered and accepted) are valid, but a promise to gift cannot be enforced, and
- v) contracts of agency.

The consideration or object of a contract shall be unlawful where: i) it is forbidden by law, ii) if permitted would defeat the provisions of any law, iii) it is fraudulent, iv) it involves or implies injury to the person or property of another, and v) the court regards it as immoral, or opposed to public policy.

What agreements shall be construed against public policy is not defined anywhere in the Act. On analysis of judicial pronouncements, such agreements may be said to include: (1) trading with enemy, (2) agreements for stifling prosecution, (3) champerty and maintenance contracts, (4) agreements for sale of public offices and titles, (5) agreements in restraint of parental rights, (6) marriage brokerage or brocage contracts, (7) agreements interfering with course of justice, (8) agreements to create monopolies, (9) agreement in restraint of trade. (10) agreement in restraint of marriage, (11) agreement in restraint of personal liberty, and (12) agreement in restraint of legal proceedings.

5.10 KEY WORDS

Detriment: It connotes a meaning similar to loss. In particular, it means damage or injury to one's interest.

Maintenance and Champerty: These two expressions are normally used together in law. 'Maintenance' means the promotion of litigation in which a person has no

interest of his own. 'Champerty*', on the other hand, is a bargain whereby one party., is to assist another in recovering property and in turn is to share in the proceeds of the action.

Quid-pro-quo: This **latin** expression means 'something in return'.

Stifling Prosecution : Withholding information **which** may lead to the prosecution of another. The intention is to make a personal **gain**/bargain.

Stranger to Consideration : A person who is a party to the contract but has not supplied the consideration himself. Instead, the consideration is supplied for him by some other person.

Stranger to Contract: A person who is not a party to the **contract**.

5.11 ANSWERS TO CHECK YOUR PROGRESS

- A
- 1 Consideration is the price for which the promise of the other is bought.
 - 2 '**Quid-pro-quo**' is a **latin** expression meaning 'something in return'
 - 3 The promisor
 - 4 Yes
 - 5 Yes
 - 6 i) must, the promisor
ii) adequate, value
iii) void-ab-initio-(nudum pactum)
 - 7 i) **False** ii) False iii) False iv) True v) True vi) False **vii) True**
- B
- 1 i) False ii) False **iii) True iv) True v) False**
 - 2 i) No. Consideration is unlawful (**Sec. 23**)
ii) Consideration is unlawful
 3. No. Section 23, unlawful object. Involves injury to the person or property of another. Similar decision was given in **Gherulal Parekh v. Mahadeo**.
- C
- 1 Lawyer can recover the promised fee but not share in the property. Read the discussion on Champerty and Maintenance.
 - 2 No, the agreement being for an immoral act is against public policy and thus void (Section 23).

5.12 TERMINAL QUESTIONS

- 1 Define 'Consideration'. Discuss various types of considerationis.
- 2 Do you agree with the view 'No Consideration, **No** Contract'?
- 3 In what cases a contract without consideration is not valid.
- 4 Discuss the rule that a stranger to a contract cannot sue on the contract. Are there any exceptions to this rule?
- 5 '**A stranger** to contract cannot sue, but a stranger to consideration can sue'. Do you agree?
- 6 "Insufficiency of consideration is immaterial, but a valid contract must be supported by lawful and real consideration." **Comment.**
- 7 Under what circumstances is the object or consideration of a contract deemed unlawful? Illustrate with examples.

- 8 Discuss the doctrine of public policy. Give examples of agreements that are considered opposed to public policy.

Consideration and Legality
of object.

Note: These questions will help you to understand the unit better. Try to write answers for them. But do not submit your answers to the University. These are for your practice only.