

Introduction

In a world where corporations are on the rise, one cannot ignore the concept of contracts and the essence of their role in the corporate sector. What is a contract, you ask? Well, defined in its simplest terms, a contract is a promise that can be enforced by the law. It is a proposal that, when accepted, becomes a promise. The person who makes the proposal is called the promisor, and the one who accepts it is referred to as the promisee. Delving deeper into its meaning, the law of contracts in India is governed by the [Indian Contract Act, 1872. Section 2\(h\)](#) of this very Act defines a contract as an *“agreement enforceable by law”*. A contract can also be called a *“promise with a consideration”*. Section 2 of the Indian Contract Act is the interpretation clause of the Indian Contract Act and lists out the essentials of a contract and defines it exhaustively and substantively. One such essential of a contract is ‘consideration’. This term has been defined under Section 2(d) as willingness or abstinence of the promisee to do something or making a promise to do so, at the instance of the promisor. Keep reading to know more about this concept!

Consideration

Section 2(d) of the Indian Contract Act defines the term consideration as follows-

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

- Has done, or abstained from doing something;

Or

- Does or abstains from doing something;

Or

- Promises to do, or to abstain from doing something;

Then such act, abstinence or promise is called a consideration for the promise.

In short, the term consideration means ‘something in return’ i.e. ‘QUID PRO QUO’.

Pollock- “the price for which the promise of the other is bought, and the promise thus given for value is enforceable”.

Blackstone- “the recompense given by the party contracting to the other”

In *Currie v. Misa*, Lush J. define the term consideration as follows-

“A valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by other”.

Illustration- A agrees to sell his car to B for Rs. 50,000. Here, B’s promise to pay the sum of Rs. 50,000 is the consideration for A’s promise to sell the car, and A’s promise to sell the car is the consideration for B’s promise to pay the Rs. 50,000.

Essential elements of consideration

In order to be considered a valid consideration in the eyes of the law, it is important that a consideration meet certain essential elements. These essential elements have been explained below.

Consideration must proceed at the instance of the promisor

Any act or abstinence from an act should be done only if the promisor desires the same. If the act is done voluntarily without the request or desire of the promisor, or if it is done at the instance of any third party, the consideration will not be valid.

Let's consider a simple example- if you help your friend with his homework without him asking, and then later you ask him to pay you a certain amount for the same, it will not be a valid consideration since you voluntarily decided to help him out with his homework.

In the case of [Durga Prasad v. Baldeo](#) (1879), Durga Prasad decided to build a few shops at his own expense after the order of the collector. The people who then took occupation of these shops promised to pay commission from their sales to Durga Prasad but did not perform on the promise. Durga Prasad sued the shopkeepers. The Allahabad High Court held the consideration to be invalid since he had built the shops on the order of the collector and not at the instance of the shopkeepers. The Court further stated that (paste content from already published article)

It is important to note, however, that it is not mandatory that the promisor has to benefit from the act or abstinence; it is only necessary that it be done at his desire. This was held in the case of [Kedarnath Bhattacharji v. Gorie Mahomed](#) (1886)

Consideration may proceed from the promisee or any other person

Another essential element is that the act or abstinence from an act which will constitute consideration for a contract may be done by the promisee or any other person. It simply implies that, as long as a promise carries a consideration, it is immaterial as to who has furnished that consideration. If the promisor does not object to it, the consideration can move to a person other than the promisee as well.

This principle was held in the case of *Chinnaya v. Ramayya*, ILR (1876-82) 4 Mad 137, in which A transferred some property to her daughter through a gift deed with the instruction that the daughter will give her brother an annuity. The daughter agreed to pay the annuity and signed a written agreement in the brother's favour on the same day. After that, the daughter chose not to keep her word, and the brother filed a lawsuit to get his money back. The defendant (sister) argued that because there was no consideration from the brother's side and because he was not a party to the consideration, he lacked standing to file a lawsuit. It was ruled that consideration need not be moved from the promisee personally. The brother was therefore allowed to continue the lawsuit.

However, under English law, this principle does not stand.

Consideration may be past, present, or future

The consideration of a contract may be an act or abstinence that has already been done at the desire of the promisor, is in progress or is promised to be done in the future. On this basis, consideration can be categorised as past, present, or future.

Past consideration

A promise for a voluntary action performed in the past that will enable the party making the promise to pay or to do something later is referred to as a 'past consideration.' It indicates that future payment is promised in exchange for an act performed without any promises from the other party. When a promise is made because of a benefit the promisor got in the past that gave rise to a need to make restitution, the promise is said to have been made for the past consideration. Prior to today, there had been no consideration; nevertheless, there is now a good and valid consideration.

For example, you help your neighbour paint their balcony without any expectation of anything in return. But that neighbour pays you Rs. 1000 for the act you have done. Their motivation to compensate you comes from the help you provided in the past. This is known as past consideration.

Past voluntary service

This concept has been covered under [Section 25\(2\)](#), which provides that a promise to wholly or partly compensate someone who has already done something for the promisor voluntarily is a valid and enforceable consideration. A voluntary service is a service or act that was done without any request or promise, but later a promise to pay for that act was subsequently made.

For example- someone saves a man from drowning, and later the man decides to reward the person who saved him.

Past service at request

This concept has not been adequately covered by the Act. This is due to the fact that when a request is made, it presupposes the promise of payment for the act. It cannot apply to an act done at request but without any promise to pay. But this concept can include an act which has been done at request, and the promise to pay is made subsequently. The Bombay High Court upheld this principle in the case of *Sindha Shri Ganpati Singhji v. Abraham* ILR (1896) 20 Bom 755 as it laid down that services rendered to a minor at his request and which were continued after the age of majority at the same request, were good consideration for his promise to pay.

Present or executed consideration

This type of consideration moves simultaneously with the consideration. An act which has already been done in response to the promise is called 'executed consideration.' People often tend to confuse past consideration with executed consideration. But they are, in fact, very distinct. Past consideration always consists of an act done without any promise. But executed consideration means an act which has been done in response to a positive promise.

For example, offers of rewards for finding lost items can only be accepted by finding and producing the item to the owner, and this is also a consideration for a promise.

Future or executory consideration

Executory consideration, also known as future consideration, refers to a promise that will be carried out at a later time. This is future consideration since the promisor is making an offer for a later date, and the promisee is promising to accept and execute the contract after that date. Each promise, in this particular case, is a consideration for the other. In this instance, both parties postpone the payment of the consideration. At a later date, both parties are liable for the obligation.

For example, X promises to sell certain goods to Y for a certain price. In return, Y promises to make payment to X for the goods. This is an example of a future consideration.

Consideration must be of some value

Let's suppose you promise your friend that you will give him your brand new airpods if he goes and fetches them from your bag, which is kept in a classroom two floors up. But this act would not, under any circumstance, qualify as a legitimate consideration for the promise. Such an act no doubt satisfies the words of the definition, but it does not catch its spirit. This is why it is insisted that the consideration must have some value in the eyes of the law. It has been stated by the Supreme Court

in the case of [Chidamabara Iyer v. P.S. Renga Iyer \(1966\)](#) that consideration “shall be ‘something’ which not only the parties regard but the law can also regard as having some value.”

Adequacy of the value of consideration

We have established that consideration must be of some value. However, it is important to note that it is not, however, necessary that the consideration should be adequate to the promise. The courts cannot assume the duty to determine what would be an appropriate consideration for the parties, the parties have to decide that between themselves. If a party gets what he has contracted for, no matter how great or small a value, the courts will not enquire into its adequacy. The adequacy of consideration is something which is for the parties to decide when entering into a contract, not for the court when it is sought to be enforced.

Inadequacy as evidence of imposition

Even though the adequacy of consideration cannot be questioned, the inadequacy of consideration may be considered by the court in order to determine whether there was free consent given by the promisor according to Explanation 2 of Section 25. Once the court is satisfied that consent was freely given, the agreement will be valid notwithstanding the inadequacy of the consideration.

Forbearance to sue

If a person agrees not to sue the defendant when he has a right of action against the defendant, based on a promise by the defendant, as part of the consideration for a contract, it will always be considered valuable consideration. It is a kind of abstinence that is so clearly recognised as good consideration in the definition itself. In the case of [Debi Radha Rani v. Ram Dass \(1941\)](#), the Patna High Court held that in a case where a wife has a right to sue her husband for maintenance but she forebears to sue him on the promise by the husband that he will pay her monthly allowance, the consideration is a valid one in the eyes of the law. However, it is important to remember that there can be no real forbearance unless the claim is immediately due.

Consideration must be real

The consideration must be real, as in, it should not be physically or legally impossible in nature. The consideration will also not be considered real if it comes with a level of uncertainty, because if consideration is not certain, it becomes impossible to carry it out. Given under are the instances when consideration will become unreal and hence void in the eyes of the law.

Physical impossibility

Consideration cannot be something that is physically impossible to be carried out. For example, you promise to do 300 pushups in 3 minutes if your friend agrees to pay you Rs. 10 lakh for it. This is impossible to accomplish physically. Hence, such consideration is physically impossible and will not be held valid in the eyes of the law.

Legal impossibility

A promise to do an act that is prohibited by law will be a consideration that is legally impossible. For example, if you promise to pay Rs. 10 lakhs to your friend for murdering your enemy, the consideration will not be valid.

Uncertain consideration

Consideration must be clearly stated and certain in nature. Otherwise, there arises ambiguity and the consideration will be held not valid as it becomes difficult to ascertain what exactly the consideration is. For example, if you go to the cobbler and ask him to replace the soles of your shoes, and he says he might charge you Rs. 100 or Rs. 150, this will become an uncertain consideration because you don't know which amount you have to pay in exchange for him changing the soles of your shoes.

Illusionary consideration

We often hear movie dialogues in which the hero promises to bring the moon and stars to his girlfriend. This is a classic example of an illusionary consideration. Illusionary consideration cannot stand in the court of law because it is a promise to give something which is not real.

Consideration involving pre-existing duty

A new obligation should be fulfilled as part of the consideration. According to the law, fulfilling an existing legal obligation is irrelevant. It ought to be something that goes above and beyond what is already expected of a person. Furthermore, promising to pay a government employee for doing a public duty is not an acceptable kind of consideration.

Consideration must be lawful

The consideration must be legitimate in order for the agreement to stand. The following circumstances are prohibited by Section 23 of the Indian Contract Act from allowing consideration:

- When it involves a legally prohibited act, or
- When it harms another individual's person or their property, or
- When the act is perceived to be immoral or against public policy.

Except in situations when the illegal part of the agreement can be separated from the legal part, the entire agreement will be void if any part of it is illegal.

Exceptions to Consideration

Section 25 of the Contract Act lays down a few exceptions when an agreement made without consideration is not void.

Exception 1- Natural Love and Affection

A written and registered agreement based on natural love and affection between near relatives is enforceable without consideration. The expression 'near relative' will include parties related by blood or marriage.

Exception 2- Past Voluntary Service

A promise to compensate a person, who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, is enforceable. However, such service should have been rendered voluntarily and without promisor's knowledge, and for the promisor only.

For example, a promise made after attaining the age of majority to pay for goods supplied to the promisor during minority was held to be within the exception.

Illustration:- A finds B's mobile phone and gives it to him. B promises to give Rs. 100. This is a contract.

Exception 3- Time-barred Debt

A promise to pay a time-barred debt is enforceable.

Illustration:- X owes Y, Rs. 1,000, but the debt is barred by the Limitation Act. X signs a written promise to pay Y, Rs. 500 on account of the debt. This is a contract.