BLOGS

Adequacy of Consideration under Indian Contract Act: Present and Past Consideration

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Introduction

Under the provisions of ***Section 2(h) of the Indian Contract Act 1872***, a contract that is capable of being enforced by law is considered valid. Moreover, all contracts are subject to certain prerequisites that must be fulfilled, as stipulated in ***Section 10 of the Act***.

These prerequisites include consideration, free consent, a contract object that is lawful, and the involvement of competent parties. Consequently, consideration under Indian Contract Act emerges as a pivotal requirement for the validity of a contract, particularly in light of the fact that a contract lacking valid consideration is rendered void, as delineated in ***Section 25 of the Act***.

Essential Elements of Consideration

The concept of consideration under Indian Contract Act has been delineated under ***Section 2(d)***, which emphasizes the significance of a mutual comprehension or agreement in a contractual context. It stipulates that the promisor must have offered a commitment to perform an action or refrain from doing so, as discussed and agreed upon by the involved parties.

In the legal precedent of ***Currie v. Misa*** case, consideration is defined as "An advantageous consideration, in the legal sense, can be constituted by a variety of factors such as rights, interests, refraining, detriments, losses, or responsibilities bestowed, endured, or assumed by the counterparty."

Past and Present Consideration under Indian Contract Act

The nature of consideration encompasses three distinct categories: past, present, and future consideration.

Past consideration refers to instances where consideration has been exchanged between parties prior to the creation of a formal written agreement. It is important to note that while past consideration is acknowledged within Indian law, it is not recognized as a valid form of consideration under English law.

On the other hand, **present consideration** occurs when both parties provide consideration simultaneously or when there is a concurrent movement of consideration between them. English law does not permit the inclusion of past considerations. However, even within English law, there have been exceptions to the rule regarding past consideration in certain cases.

These cases involve situations where the repayment of a promise or debt is prevented by the law of limitation, where a promise or debt involves a voidable obligation (such as when a minor requests past consideration after reaching the age of majority), and where a promise or debt has been discharged or cannot be enforced due to bankruptcy.

On the other hand, India universally accepts past consideration, as long as the parties have mutually agreed for such consideration to remain valid.

Adequate Consideration under Indian Contract Act

While it is anticipated that the valuation of consideration must be duly assessed to be equivalent to the value presented by the promisor, it is not necessarily required to be adequate; nevertheless, it would still be considered valid.

Suppose A promises to sell his car to B for Rs. 1. While this may seem like an inadequate consideration, it's still sufficient because it's something of value being exchanged.

There exist various principles that are applicable to the sufficiency of consideration in the realm of contract law. These principles include:

1. If an individual was already obligated to perform the specific task in question prior to the formation of the contract, the consideration is deemed inadequate and invalid.

2. Once the parties have mutually agreed upon a consideration, it is binding upon them regardless of its adequacy.

3. Consideration is considered inadequate if it is without value or if it is deceptive.

4. The value of consideration must be discernible and ascertainable in the eyes of the court of law.

5. Consideration is deemed inadequate if it contravenes public policy.

These principles also delineate the distinction between sufficient consideration and adequate consideration. While adequate consideration takes into consideration the worth of the consideration, regardless of its fairness.

Conversely, sufficient consideration is examined within the framework of equitable value. In the instance of ***Thomas v. Thomas***, even a yearly consideration of £1 was permitted, taking into account that the consideration did possess some economic value. It could be contended that the consideration was neither sufficient nor adequate, yet it holds legal validity.

Furthermore, in the case of ***White v. Bluett***, a commitment made by a son to not bore his father was not considered to be a valid consideration due to the absence of an economic nature to the consideration.

Conclusion

Consideration under Indian Contract Act is a crucial element in forming a valid contracts. It represents the price or value exchanged between parties, and for a contract to be enforceable, there must be lawful, two-sided, and sufficient consideration.

In cases when the court decides that the consideration is not adequate then the contract does not become void but rather becomes unenforceable and raises questions on the bargaining power of the parties. This means that the promise made by the promisor in exchange for the act is what is held against the promisor.

Even though the Indian Contract Act does not mention the difference between nominal consideration and inadequate consideration, the Courts through various cases have made sure that the difference stands strong; one such case is that of ***Midland Bank trust vs Green***. The laws related to these are very specific and do not hold the chance of loopholes but establishing the inadequacy of consideration can be a complex task for the court.

For more notes on Indian Contract Act, click here!