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Learn in a Minute: Consideration under the Indian Contract Act

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Consideration in contracts is an essential element under the Indian Contract Law. Read more about it in this post!

Introduction

Consideration is one of the essential elements of a valid contract under the Indian Contract Act, 1872. It is the price paid by one party for the promise of another. The doctrine of consideration is based on the "quid pro quo," which means "something in return." Without consideration, a contract is generally not enforceable, except in cases where an exception is provided by law.

Definition of Consideration

Section 2(d) of the Indian Contract Act, 1872, 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 abstain from doing something, such act, abstinence or promise is called a consideration for the promise."

This definition emphasizes that consideration can be past, present, or future and that it must be at the desire of the promisor.

Essential Elements of Consideration

For consideration to be valid under Indian law, it must satisfy the following conditions:

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

The act constituting consideration must be done at the request of the promisor. If an act is done voluntarily or at the instance of a third party, it does not constitute valid consideration.

Example: If A repairs B's house without B's request and later demands payment, B is not obligated to pay since the act was not performed at B's desire.

In **Durga Prasad v. Baldeo**, the plaintiff built shops under the orders of the collector, and the defendant promised to pay a commission from sales. The court held that since the act was not done at the promisor's request, there was no valid consideration.

2. It may move from the promisee or any other person.

Under English law, consideration must move from the promisee, but in India, it may move from the promisee or any other person. This means that even a stranger to the contract can provide consideration and enforce the contract.

In Chinnaya v. Ramayyaa, a woman gifted land to her daughter with the condition that she would pay an annuity to the woman's sister. The daughter later refused. The court held that since consideration had moved from the mother, the contract was enforceable, even though the aunt was a stranger to the contract.

3. It must have some value in the eyes of law.

Consideration must be something of value, though it need not be adequate. Courts do not question the sufficiency of consideration as long as it has some value.

Example: If A agrees to sell his house worth ₹50 lakh to B for ₹10,000, the contract is still valid unless fraud, coercion, or undue influence is proven.

It was held in Thomas v. Thomas that even a small or nominal consideration is valid if it is real and has been agreed upon.

4. It must be real and not illusory.

Consideration must not be physically or legally impossible, uncertain, or illusory.

Example: If A promises B to bring back a deceased person to life in exchange for ₹1,000, this is not valid consideration as it is impossible.

5. It must be lawful.

Consideration should not be illegal, immoral, or against public policy. For example, an agreement to pay money for influencing a public official will be void as the consideration was unlawful.

Types of Consideration

1. Past Consideration

A past act done at the request of the promisor and later ratified by a promise can constitute valid consideration.

Example: A saves B's property from fire. Later, B promises to pay A ₹5,000 as a reward. This promise is enforceable since A acted at B's implied request.

2. Present Consideration

Consideration that is exchanged simultaneously with the promise. This means that both parties fulfill their respective obligations immediately, without any delay. It is also known as executed consideration because the act of performance is completed at the moment the contract is formed.

Example: In a sale transaction, the buyer pays the price at the time of delivery of goods.

3. Future Consideration

Future consideration refers to a scenario where one or both parties make a promise to perform an obligation at a later date. This is known as executory consideration because the performance of the contractual obligations is yet to occur.

Example: A agrees to deliver goods to B next month, and B agrees to pay upon delivery. This is future consideration.

Exception to the Rule of Consideration

The general rule in contract law is that an agreement without consideration is void. However, Section 25 of the Indian Contract Act, 1872, provides certain exceptions where an agreement is valid even without consideration. These exceptions ensure that certain promises, made in good faith or for moral reasons, can still be enforced.

- Agreement made on natural love and affection if expressed in writing and registered.

Example: A father executes a registered gift deed transferring property to his son purely out of love and affection. Since the agreement is in writing and registered, it is enforceable even without consideration.

- A promise made to compensate someone for a past voluntary service is valid even if there was no prior request for the act. However, the voluntary service must have been for the benefit of the promisor.

Example: A finds B's lost wallet and returns it to him. Later, B promises to reward A ₹1,000 for his honesty. Even though there was no contract before A found the wallet, B's promise to compensate is enforceable.

- A promise to pay a debt that is barred by the Limitation Act (i.e., one that cannot be legally recovered due to the passage of time) is valid if the promise is made in writing and is signed by the debtor.

Example: X owes Y ₹50,000, but Y does not file a suit within the limitation period (usually three years for contractual debts). If X later writes and signs a promise to repay Y, this promise is legally binding.

Conclusion

Consideration in contract is a fundamental element under Indian law. It ensures that agreements are supported by an exchange of value, preventing gratuitous promises from being legally binding. The Indian Contract Act recognizes various forms of consideration, including past, present, and future, and allows flexibility in its movement. However, the law also provides exceptions where contracts can be enforceable even without consideration, ensuring fairness and equity in contractual relationships.

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