BLOGS

Notes on Contract Law: Consideration under Indian Contract Act

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Introduction

A contract cannot be enforced in a court of law if it lacks consideration. Consideration in layman's terms can mean 'something in exchange. Without consideration, one party to an agreement would not be bound by it if the other party is not bound. A party to a contract should have given and received something in exchange for their respective promises.

Illustration of Consideration

In the contract for the sale of a car, A receives the payment of 10,00,000 for his promise to sell his car, while B receives the car for her promise to pay Rs 10,000. In this contract, the car and Rs 10,000 are respective considerations for the promises made by both parties.

Provision of Consideration under Indian Contract Act

Consideration under Indian Contract is defined in **Section 2(d)** of the Indian Contract Act as follows:-

'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.'

Essential Elements of Consideration

1. Consideration is at the desire of the promisor – Consideration is valid only if it is done at the desire of the promisor. An act without the request of the promisor is a voluntary act while an act at the request of a third party is not valid consideration.

2. Consideration can be done by any person- As long as the consideration is at the desire of the promisor, it does not matter who carries it out. In ***Chinanaya v Rammaya*** A made a gift to her daughter B on the condition that B shall pay an annual sum to C.

B entered into an agreement with C to pay her the amount, however, she later refused to pay. She argued that no consideration moved from C to A. However, the Court held that B has to pay C as the consideration had moved from A, the mother to B, the daughter, for paying the money to C.

3. Consideration can be an act or abstinence- Consideration is not only limited to money or goods, but can also include an act or restraining from doing an act. If B promises to refrain from buying a property in exchange of a certain sum, the consideration in this case is not an act, but an abstinence.

4. Consideration can be in the present, past or future- Consideration can be an act already done by a person, or it can be simultaneous or it can be a promise to do an act in the future.

If A promises to compensate B for an act done by A in the past, without any expectation of reward, the act by A will be past consideration. Past consideration is done even before the offer is made. However, it is important to note that **past consideration is not valid under English law but is valid in India.**

A common example of present consideration is any contract of sale of good where the good and money is exchanged simultaneously. Future consideration is a promise to do something in the future. An example for future consideration is contracts to build a house, where one party pays some amount to the builder, in exchange of promise to build a house for them.

Now that we have dealt with the essential elements of consideration under Indian Contract Act, let us look at the general rules to keep in mind while dealing with questions related to consideration.

A consideration is an essential element for a contract to be legally enforceable. And the consideration must be certain and it must have some value in the eyes of law. The Courts are not

concerned with the adequacy of the consideration.

For example, in ***White v Bluett*** the Court refused to enforce a contract between a father who promised to write off his son's loan if he refrained from boring his father with complaints, as the consideration had no eyes in the eyes of law. However, a contract to sell a Ferrari for Rs 1000 will be enforceable if it satisfies all other elements of a valid contract. However, the inadequacy of consideration will raise a doubt in court, if the other party alleges vitiated consent, coercion or any other objection.

Further, the consideration for a contract **should be real and not impossible or illusory.** For example, a contract to bring a dinosaur to Earth or write off a debt by a person who is not the lender is impossible.

Illusory consideration is consideration is not actually there, but gives an impression of being there. In Stilk v. Myrick, the captain of a ship promised to divide the wages of two seamen who deserted the ship, to the rest of the crew if they promised to help him in taking the ship back. However, the crew was duty bound to do the same already, therefore, the promise was not enforceable.

If one of the parties is already under an obligation to do something, such act cannot form valid consideration. This duty can be imposed by law, for e.g. a public servant carrying out there responsibility, or it can arise out of an existing contract, for e.g. paying a professional extra for doing something that they are already contracted to do.

Lawful and Unlawful Consideration

Section 10 of the Act states that "All agreements are contracts if they are made for a lawful consideration".

Section 23 details what consists of unlawful consideration, namely:

(a) it is forbidden by law;
(b) or, is of such a nature that if allowed it would defeat some law of the country;
(c) it is fraudulent;
(d) it involves injury to the property or person of the other;
(e) court regards it as immoral or opposed to the public policy.

Any contracts with such consideration which is a crime or fraud or immoral shall be unenforceable.

Exceptions to Rule on Consideration under Indian Contract Act

Section 23(5) of the act deals with exceptions to the rule on consideration. It contains agreements that are enforceable even if there is no consideration. These agreements are:

- Made on account of love and affection
- Compensation for past voluntary services
- Promise to pay a time barred debt- A debt that cannot be recovered after a certain time lapse.
- Completed Gift- A gift made to another person under the Transfer to Property Act
- Contract of Agency- Such contracts give authority to one person to act as an agent of another.

With this article we have revised in detail Consideration under Indian Contract Act. You can find the last two parts of our notes here and here.