

(h) Prof. Prasad Sindekar offers to sell his flat to Prof. S. N. Deshmukh for Rs. 10 lakhs. Prof. S. N. Deshmukh replies, "I accept your proposal and pay you Rs. 4 lakhs by a crossed cheque and the rest of the amount by 3 months' promissory note". Can there be a contract ? Obviously, there cannot be any contract because the acceptance is conditional one.

## 2.4 CONSIDERATION

Consideration is a very essential element for formation of a valid contract. A contract is void without consideration subject to certain exceptions. According to Sir. Pollock, "Consideration is the price for which the promise of the other party is brought".

The definition of the term 'consideration' was given by Lush J. in Currie and Misa case [an English case] which was as follows :

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

Justice Patterson defines consideration as "something which is of some value in the eye of law. It may be some benefit to the plaintiff or some detriment to the defendant".

Section 2 (d) of the Indian Contract Act, 1872 defines the term consideration in the following words :

"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 promise is called a consideration for the promise" and according to section 2 (f) "promises which form the consideration or part of consideration for each other, are called reciprocal promises".

From the definition of consideration, we come to know that consideration is (a) an act of doing something or (b) an abstinence or forbearance from doing something or (c) such act or forbearance may be past, present or future; and (d) there should be a return promise. Thus, consideration implies some benefit to the promisor and some inconvenience or forbearance to the promisee. A few examples of consideration are given below.

- (1) X agrees to sell his factory to Y for Rs. 50,000. Here for X's promise, the consideration is the price of his factory i.e. Rs. 50,000 and for Y's promise, consideration is X's factory.
- (2) X has taken the loan of Rs. 5,000 from Y which he has not repaid within the period specified. If Y promises not to file a suit in the court of law against X provided X repays the loan of Rs. 5,000 within the period of a month. Here the forbearance of Y is the consideration for X's repayment of loan.
- (3) A building contractor engages an engineer to supervise the construction work on the monthly salary of Rs. 5,000. Monthly salary is the consideration for the engineer while from the point of view of the building contractor the consideration is the services of the engineer employed by him.

### 2.4.1 Essential Elements of a Valid or Lawful Consideration

Consideration is nothing but some act or forbearance or promise, suffered or done or made by the promisee for the promise. But every act or forbearance is not a consideration unless it possesses certain essential elements which are noted down below.

- (a) Consideration may be an act to do something or abstinence or forbearance, doing something.
- (b) Consideration may be past, present or future.
- (c) Consideration must be real and not illusory.
- (d) Consideration should move at the desire of the promisor.
- (e) Consideration may move from any person including the promisee.
- (f) For supporting each independent promise, there must be an independent consideration.
- (g) Consideration need not be adequate.
- (h) Consideration must be something which the promisor is not already bound to do.
- (i) Consideration must be valuable in the eyes of law.

Now, let us discuss the above mentioned legal rules as to consideration.

(a) **Consideration may be an act to do something or abstinence or forbearance, doing something :** Consideration does not merely include an act of doing something, but also includes an abstinence or forbearance from doing something. Moreover such act, forbearance can be past, present or future. For example, if X agrees to sell his motor-car Y for Rs. 1 Lakh. Here for X's promise, the consideration is the price of his motor car and for Y's promise, the consideration is X's motor-car. Again, suppose if X has taken the loan of Rs. 1 Lakh from Y to be paid within a period of a month. But X fails to repay the same. Y promises X not to file a suit in the court of law against X, provided X repays the loan within a period of fifteen days and they agree on this point. Here, the forbearance of Y is the consideration for X's repayment of loan. Thus, forbearance to sue is considered as a good consideration. Even composition with creditors, compromise of a disputed claim are also considered good considerations for contracts. Suppose a debtor is not in a position to repay the debt and if his creditor accepts the less amount in full satisfaction of his claim, such compromise is quite legal.

Thus, even the concerned party may not be benefitted and suffer losses, damages, inconveniences, still in the eyes of law, it is regarded as a consideration for the promise.

(b) **Consideration may be past, present or future :** Section 2 (d) of the Indian Contract Act, 1872 says that, "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 or abstinence or promise is called a consideration for the promise".

Thus, the wording of this section 2 clearly indicates that consideration may be past (has done or abstained from doing), Present (does or abstains from doing), or future (promises to do or to abstain from doing).

#### Past Consideration :

When a promisee has done something or has suffered before the date of promise, course, at the desire of the promisor, it is nothing but a past consideration. In other words, where a promisee has already done something or abstained from doing something or given some consideration for the present promise at the request of the promisor, such consideration is called past consideration. Thus, a past consideration is also sufficient to sustain a valid contract.

**Illustrations :**

1. A lawyer started rendering his services to a landlord at the request of the landlord by giving up his legal practice. Later on, the landlord promised the lawyer to pay a certain amount as a pension. In that case, it was held that there was a good past consideration. (Shivsaran Lal Vs. Keshav Prasad case AIR 1917 - Pat 92)
2. Mr. X rendered certain services in the month of August 1999 to Mr. Y. at the request of Mr. Y. After two months, Mr. Y promises to compensate Mr. X by paying Rs. 2,000/- for the services he rendered in the month of August 1999, can it be a good consideration ?

Obviously Yes., Because the services of Mr. X can be considered as a good past consideration for Y's present promise.

3. The son of Mr. N was lost in a fair and Mr. M could find him out. Subsequently Mr. N promised Mr. M to pay Rs. 5,000 for the work he did. The promise given by Mr. N to Mr. M is for past consideration.

**Present Consideration**

Present consideration is also known as executed consideration in which the consideration is given simultaneously with the promise or at the time of making promise. In other words, in present consideration, consideration moves simultaneously with the promise.

**Illustrations :**

1. If X goes to Nirali Prakashan and purchases different books on particular subjects and pays the price of the books on the spot then and there only. Here, the consideration is present or executed. In cash sales, the consideration is always present or executed since a seller does an act of delivering goods on the promise of a buyer to buy the goods.
2. X promises to render certain services to Y on the promise Rs. 1000 in return. Here the amount of Rs. 1000 is the present consideration for the promise of X to render certain services to Y.

**Future Consideration**

Future consideration is also known as executory consideration. In the future consideration, the consideration on both the sides is promised to be given at some future date or after a stipulated period. It consists of exchange of promises and each promise is a consideration for the other. In future consideration the promisee promises to do something or abstains from doing something in future.

**Illustrations :**

1. A promises to deliver certain goods of Rs. 10,000 to B after a month and B promises to pay the price of goods after two months. Here, there is an exchange of promises and each promise is the consideration for the other i.e. the promise of A is supported by B's promise and both the parties have yet to perform their promises. Therefore, the consideration, in this illustration, is future one.
2. X promises to deliver goods to Y on the arrival of train from Delhi and in turn, Y promises to pay the price of goods against the receipt of the goods. This is an example of future consideration where acts of both parties are to be performed on the arrival of the train from Delhi.

(c) **Consideration must be real and not illusory** : This is one of the important conditions of lawful consideration. A merely sham consideration i.e. one which is not of real value but only of apparent value, is not enough. It must be real and possess some value in the eyes of law. In the following cases, it is considered that there is no real consideration.

- (i) **Legal Impossibility** : A promise to do something or abstaining from doing which is not legal, does not amount to good consideration.
- (ii) **Physical Impossibility** : A promise to do something which is not physically possible does not form a valid consideration. If A promises B to make his dead son alive and A should pay Rs. 5 lakhs for that or if A promises to pay to B Rs. 10 lakh for running at a speed of 2000 kilometres per hour, A's promise is physically impossible of performance and therefore, does not amount to a valid consideration.
- (iii) **Uncertain Consideration** : A promise to do something or abstain from doing something which is vague and uncertain is no consideration in the eye of law. If A promises B to pay such salary which shall be "*deemed fit or right or reasonable*" is not a good consideration on a ground of uncertainty. There is no recognised or correct method to ascertain 'fit' or 'right' or 'reasonable' salary.
- (iv) **Illusory Consideration** : A consideration is considered to be illusory if it consists any promise to perform some public duty or to perform some contract already made with the promisor. Illusory consideration can also be called as deceptive consideration and such consideration does not amount to a valid consideration. Following illustration makes this point more clear.

In *Stilk V/s Myrick Case* ( 1809, 2 CAMP. 317), two seamen of a ship deserted the ship half-way while the ship was on a voyage. The captain promised the rest of the crew to pay the wages of the two deserteers to other if the others of the crew would work ship home. The agreement was held to be void for want of a good consideration as it was the contractual duty of the mariners on the ship to exert themselves to bring the ship back home and the mariners on the ship could not recover anything as the consideration was illusory.

(d) **Consideration should move at the desire of the promisor** : The important principle involved in consideration is that an act or forbearance which constitutes consideration must have been done at the desire of the promisor. A voluntary act without the desire of the promisor is not covered by the definition of consideration. Thus, in order to constitute a legal consideration, the act or its forbearance forming the consideration for any promise must be done at the desire of the promisor. Here, it must be remembered that consideration need not confer any benefit on the promisor, but if the act is done at the request or desire of the promisor, it is a good consideration, even the benefit may accrue to the third person.

#### Illustrations :

- (1) X rushes to save Y's building from fire at the request of Y. As X acts at the request of Y, it is a good consideration. But, if X rushes to save Y's building from fire on his own i.e. voluntarily, X cannot demand anything from Y as there is no consideration.

2. In Durga Prasad Vs. Baldeo Case (1880, 3 All. 211), A builder at his own expenses but at the desire of the collector of the district, spent some money on the construction and improvement of the market. In consideration of this, a shopkeeper who was using the market assured to pay certain amount to the builder. It was held in the case that the builder, who was the promisee, constructed the market by spending certain amount at the desire of the collector of the district and not at the desire of the shopkeeper and therefore, the agreement was not valid for the want of a good consideration.

(e) **Consideration may move from any person including the promisee :** Section 2 (d) begins with the wording that, "*When, at the desire of the promisor, the promisee or any other person has done ..*". and it implies that consideration need not move only from the promisor but it can move from the promisee or even from any other person. Thus, even a stranger to the consideration can sue on a contract if he happens to be the party to the contract. There should be consideration for a promise, it is not material who furnishes it.

In Chinayya Vs. Ramayya case (1882, 4 Mad. 137), by a deed of gift, an old lady gifted certain property to her daughter 'R' and directed R that she should pay an annuity to her relative 'C'. Accordingly the agreement was executed in writing. But, later on B refused to fulfill her promise on the ground of lack of sufficient consideration. Madras High Court held that the words 'promisee or any other person' in section 2 (d) show that a stranger to the consideration can maintain the suit.

(f) **For supporting each independent promise, there must be an independent consideration :** If for various promises, there is only one consideration, it becomes impossible to decide the consideration of each of the promises given as all the promises cannot be fulfilled at one and the same time. Therefore, for supporting each independent promise, there must be an independent consideration.

(g) **Consideration need not be adequate :** It is not necessary that the consideration should be adequate. The adequacy of the consideration is for the concerned parties to consider at the time of making the agreement. So long as consideration exists and has some real value and the consent is freely obtained, the courts are not concerned with the adequacy of consideration. Even the minutest real consideration is enough. Suppose X agrees to sell his valuable furniture of Rs. 10,000 for Rs. 500. Of course, A has given free consent to the agreement. The consideration, though not adequate, is valid and agreement is a contract and will not become void on the ground of inadequacy of consideration. But if the consent is not given freely the point adequacy of considerations taken into consideration. For example, Suppose if X agrees to sell his house of Rs. 1,00,000 for Rs. 100 and if he maintains that he has not given the free consent. The court will take into account the fact that inadequacy of consideration in order to decide whether X's consent was obtained freely or not. [Section 25 (Explanation 2)].

(h) **Consideration is something which the promisor is not already bound to do :** A promise to perform some public duty by a public servant is not a good consideration, neither a promise to do something that a person is bound to do under an existing contract or by the operation of law is also not a good consideration. But when someone undertakes to do

something more than he is bound to do under the existing contract, that something more can be a good consideration for the promise given. Suppose Mr. X is asked by Mr. Y to carry goods of Rs. 10,000 from Pune to Mumbai for which Mr. Y promises to pay Mr. X Rs. 1500. There is a good consideration and Mr. X cannot demand anything more for carrying the goods with maximum care as it is the part of his duty under the contract. But if Mr. Y asks him to carry additional goods and to deliver the same to Mr. N who stays in Kalyan, Mr. X can demand something more than Rs. 1500 and that will be a good consideration.

(i) Consideration must be valuable in the eyes of law : This point has already been made clear. It is one of the essentials of a valid consideration that consideration must be something to which the law attaches value though it may be inadequate. But there must be free consent. It leaves people to make their own bargain.

#### 2.4.2 Exceptions to The Rule of 'No Consideration'