

Consideration

LEARNING OBJECTIVES: To learn the importance of consideration To find the definition and essential elements of consideration To learn the concept of Privity of Contract and Privity of Consideration To understand about Promissory Estoppel To find the rule in 'Pinnel's case' and exceptions to it To learn about exceptions to consideration

An act, forbearance, or promise by one party to a contract that constitutes the price for which he buys the promise of the other.

INTRODUCTION

Another essential ingredient for the formation of a contract is consideration. Consideration is what a promisor demands as the price for his promise. This may be used in the sense of quid pro quo i.e. something in return.

Even if the promisor intends to bind himself to the promise, but his promise is not supported by consideration, it can't bind parties legally.

DEFINITION

Consideration is the price for which promise of the other is bought and the promise, thus, given for value is enforceable. The Webster's Third New International dictionary (Unabridged) defines consideration as:

Something that is legally regarded as the equivalent or return given or suffered by one for the act or promise of another.

In other words:

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

the other. In *ChidambaraIyer v. P. S. RengaIyer*," the Supreme Court compared the classic definition of "valuable consideration" as given in *Currie v. Misa** with that of Section 2(d) of the Contract Act and held:

...So far as is relevant to the present enquiry, the content of the two definitions as practically the same, though the expression "valuable" is implied under Section 2(d) of the Contract Act, for consideration shall be "something which not only parties regard but the law can regard as having some value. From the definitions it is apparent that consideration may be

negative or positive. The importance of consideration as an essential ingredient to any contract has been provided under Section 25 of the Act. It states:

An agreement made without consideration is void ... Thus, as per Section 25, any agreement without consideration is not a valid contract. In a case, a lease agreement was executed upon condition that in case of failure to deposit instalments by K, within prescribed time-limit, the agreement would become void and that the Local Development Authority shall be free to sell the plot to any third party. Before execution of the said agreement, only 25% of the original bid amount was paid by K. Moreover, the said instalments were not paid within the prescribed time limit. It was held by the Supreme Court that the said lease agreement automatically rendered void because of non-payment of consideration.' Section 2(d) of the Act defines 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 abstinence or promise is a

called a consideration for the promise. Thus, the definition makes it aptly clear that consideration for a contract need not always necessarily flow from the parties to the contract and any other can furnish the same. This definition contains the following ingredients:

- (1) At the desire of the promisor
- (2) The promisee or any other personal
- (3) Has done or abstained from doing something
- (4) Such act, abstinence or promise is called consideration Example:

Soumya agrees to sell her car to Saloni for Rupees 2,50,000/-. For Soumya's promise, the consideration is the said amount and for Saloni, the consideration is Soumya's car. In R.P.F. Commissioner v. Shiv Kumar Joshi," it was held that:

... It may accordingly be laid down as a general rule, that there is a sufficient consideration for a promise if there is any benefit to the promisor or any loss or detriment to the promise. The gist of the term "consideration" and its legal significance have been clearly summed up in Section 2 (d) of the Contract

Act. (Para 10) Further, in CCE v. Fiat India (P) Ltd, also, the meaning of the expression "sole consideration" was explained by the Supreme Court in the following words:

... "Consideration" means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. Similarly, when the word "consideration" is qualified by the word "sole", it makes consideration stronger so as to make it sufficient and valuable having regard to the facts, circumstances and necessities of the case.

Mere willingness to utilize the monies for the purpose of the trust cannot be regarded as consideration, for consideration to support an agreement must be valuable and non-gratuitous.

Also, the 'good consideration should be differentiated from 'valuable consideration', since the former is founded on natural duty and affection," and "good" has been clarified there to be generally used "in antithesis to valuable consideration."¹¹

When a contract consists of a number of terms and conditions, each condition does not form a separate contract, but is an item in the one contract of which it is a part. The consideration for each condition in a case like this is the consideration for the contract taken as a whole. It is not split up into several considerations apportioned between each term separately."

ESSENTIAL ELEMENTS The following are the essential ingredients of the consideration:

(1) At the Desire of the Promisor (Promissory Estoppel) The act or abstinence must be done at the desire of the promisor. In other words, the act shall not be a good consideration if:

(a) Unless it is done at the desire of the promisor (b) Or done at the desire of any third person

Thus, acts or services rendered voluntarily, or at the desire of any third party, will not amount to valid consideration. Example: Mr. L owns a fire extinguishing company. He sees Mr. Q's house on fire and helps in extinguishing the said fire. Mr. L cannot demand

payment for his services as Mr. Q never asked for his help. In the case of Durga

Prasad v. Baldeo,¹³ the plaintiff built a market at the order of the collector of the district with his own expenses. The defendant subsequently occupied one of the shops in the market and promised to pay a part of the price (as commission) on all the goods sold by him. Later on he did not fulfill his promise and the plaintiff sued him for recovery of money.

Oldfield J. rejected the action to recover the commission since the plaintiff never constructed the market 'at the desire' of the promisor i.e. the defendant. Hence, the promise was without consideration and could not be enforced.

In Kedar Nath v. Gorie Mohamed,¹⁴ it was decided to build a Town Hall at Howrah provided, of course, sufficient subscriptions for the same were collected. The plaintiff was a Municipal Commissioner and one of the trustees of the Howrah town hall fund. When the subscriptions list reached a certain point, the Commissioners including the plaintiff entered into a contract for the purpose of

building the Town Hall. The defendant, on being applied to, had subscribed his name in the book for Rupees 100.

The question to be decided was whether the plaintiff, as one of the person, who made himself liable on the faith of the promised subscriptions, could sue on behalf of himself and all those in the same interest with him to recover the amount of the subscription from the defendant.

The Court held the defendant to be liable to pay Rupees 100, which was the subscription promised by him. In the words of Ontegram CJ:

It is clear that there are a great many subscriptions that cannot be recovered. A man for some reason or other puts his name down for a subscription to some charitable object, for instance, but the amount of his subscription cannot be recovered for him because there is no consideration. But in this particular case, the persons were asked to subscribe knowing the purpose to which the money was to be applied, and they knew on the faith of their subscription an obligation was to be incurred to pay the contractor for the work. Under these circumstances, this kind of conduct arises That is a perfectly valid contract and for good consideration: it contains all the essential elements of a contract which can be enforced in law by the persons

to whom the liability is incurred. This is also known as 'promissory estoppel.

(2) Promisee or any other Person The 'act can be done by the promisee or any other person.' It means a person can sue on contract, even if the consideration for the promise is moved by any third party.

This principle has been adopted from an old English case *Dutton v. Poole*.¹⁶ In this case, the plaintiff's father decided to cut the family tree for the marriage of his daughter, the plaintiff. His son (the defendant) promised to pay £1,000 for plaintiff's marriage and asked his father not to cut the family tree. The plaintiff's father did accordingly. Subsequently, the father, the plaintiff, therefore, sued the defendant to recover the money. It was held that although the plaintiff was not a party to the contract between the father and the son, yet she was entitled to recover the promised sum from the defendant.

This rule was not followed for nearly two centuries.

Later in *Tweddle v. Atkinson*, wherein in consideration of the intended marriage between the plaintiff and the daughter of the defendant, plaintiff's father and the defendant agreed in writing to pay a certain sum of money to the plaintiff. It was also agreed that the plaintiff will have "full power to sue the said parties in any court of law or equity for the aforesaid sums hereby promised and specified." The defendant having failed to pay the sums promised, the plaintiff sued him to recover

the money. The plaintiff relied on the decision in *Dutton v. Poole*. But the Court refused to follow this decision and dismissed the action. Wightman J. observed:

It is now well established that no stranger to the consideration can take advantage of a contract although made for his benefit. Crompton J. also emphatically remarked:

It would be a monstrous proposition to say that a person was a party to the contract for the purpose of suing upon it for his own advantage, and not a party to it for the purpose of being sued.

The "Doctrine of Privity" can be worded so as to mean that a contract cannot confer rights or impose those obligations arising under it, on any person except the parties to it. There has been a great divergence of opinion in the courts in India on this issue. Though the contract Act has no provision either for, or against the rule, the English decision in *Tweddle v. Atkinson*, is equally applicable in India, which states that a contract cannot be enforced by a person who is not a party to it.

In *Jamna Das v. Ram Avtar*, a purchaser of property contracted with the seller to pay off the mortgage debt. In an action brought by the mortgagee against the purchaser to recover the mortgage debt, it was held by the Privy Council that he was not entitled to force the contract so as to compel the purchaser to pay off the debt because he was not a party to the contract. Rankin J. in *Krishan Lal v. Promila Bala*, observed:

Clause (d), section 2, Contract Act, widens the definition of 'consideration' so as to enable a party to a contract to enforce the same in India in certain cases in which the English Law would regard that party as the recipient of a purely voluntary promise and would refuse to him a right of action on the ground of *nudum pactum*. Not only, however, is there nothing in Section 2 to encourage the idea that contracts can be enforced by a person who is not a party to the contract, but this notion is rightly excluded by the definition of 'Promisor' and 'Promisee'. It is erroneous to suppose that in India persons

who are not parties to a contract can be permitted to sue thereupon. The SC has upheld Privity in *M.C. Chako v. State Bank of Travancore*, where Shah J. endorsed the observations of Rankin J. in the case of *Krishna Lal Sahu v. Promila Bala*. The facts of this case are that the Highland Bank was indebted to the State Bank of Travancore under an overdraft. One M was the manager of the Highland Bank and his father K had guaranteed the repayment of the overdraft. K gifted his properties to the members of his family. The gift deed provided that the liability, if any, under the guarantee should be met by M either from the bank or from the share of property gifted to him. The State Bank attempted to hold M liable under this provision of the deed. But he was held not liable. It was observed:

The State Bank not being a party to the deed was not bound by the covenants in the deed, nor could it enforce the covenants. It is settled law that a person not a party to a contract cannot enforce the terms of the contract.

The representatives who held the properties of K would have been liable to pay out of the property if the action against them had not been time barred.

In another case, the appellants who were the manufactures of motor tyres, covers and tubes, under an agreement sold some tyres to M/s. Dew and Co. The agreement provided that M/s. Dew and Co. would not sell or offer any Dunlop motor tyres, covers, tube, etc. below the appellant's list nor give to any customer any cash or other discounts or advantage reducing the same and in case of the breach of the conditions of the contract, to pay the sum of £5 for each tyre, cover or tube sold or offered. M/s. Dew and Co. in its turn sold certain motor tyres to the respondents (i.e., Selfridge and Co. Ltd.) and obtained a similar contract regarding the maintenance of price list and promises to pay the sum of £5 for each tyre sold or offered below the list price. The respondents having sold tyres below the list price were sued by the appellants for the breach of contract.

The Court held that, the respondents were not liable because no consideration moved from the appellants to the respondents.

Viscount Haldane L.C. affirmed the principle that 'consideration must move from the promise'. However, under the Indian law, this is not necessary. Section 2(d) of the Contract Act clearly provides that consideration may move from the “promise or any other person.”

In another case, Venkata Chinnaya Rau Garu v. Venkataramaya Garu, the defendant's mother gave her daughter her share in the Zamindari by a registered gift. Paragraph 12 of the deed provided:

I have been till now giving annually Rupees 653 to my brothers as I pleased. You should, therefore, until you give them a village which can yield the said

income exclusive of peshkash by paying them and their descendants. In consideration of the share in Zamindari received in pursuance of the above provision of the deed, the defendant on the same date executed an agreement in favour of the donor's brother promising to fulfil the terms of para 12 of the deed. But she failed to fulfil the said promise. A suit was, therefore, brought to recover the amount due with interest by the donor's brother. The defendant (appellant in this appeal) resisted the suit on the ground that no consideration moved from the side of the donor's brothers and hence, the promise could not be enforced.

Privity of Contract and Consideration

Position in English law (1) Consideration must move from the promisee only. If any other person furnishes the same, the promisee cannot enforce the promise since he becomes alien to the consideration

(2) Even beneficiary to the contract cannot claim any right under it being a stranger to the contract.

Exceptions to the Privity Rule Over a period of time, a number of exceptions have been devised by courts so that the person for whose benefit the contract is made, but he is not a party to the contract, can sue.

Few of the most often recognized exceptions are as follows:

(i) Beneficiary under a Trust/Charge/any other Arrangement If a charge or any interest has been created in some specific property in favour of a person who is not a party to the contract, the beneficiary may enforce it. The Privy Council recognized this equitable exception in the leading case of Nawab Khwaja Muhammad Khan v. Nawab Husaini Begam. Co

In this case, the suit was brought by a Mohammedan lady against her father-in-law to recover arrears of certain allowance called Kharcha-i-pandan (betel-leaf expenditure), under the terms of an agreement executed by the father-in-law in consideration of her marriage with his son at the time when she and her husband were minors. The amount was to be paid out of the rent of his specific property. The defendant (appellant in this appeal) disclaimed liability on the following two grounds: (1) that the plaintiff (respondent in this appeal) was not a party to the agreement in question, and hence, was not entitled to enforce it; (2) that she had forfeited her right to the allowance by her misconduct and refusal to live with her husband. The Subordinate Judge dismissed the suite on the second ground.

The High Court reversed the order. The defendant appealed to the Privy Council which dismissed the appeal. It was contended on behalf of the defendant that *Tweddle v. Atkinson*,¹ is the authority for the rule that only a party to a contract can sue it and enforce it. In this connection, the Privy Council observed:

.....that in India and among communities circumstanced as the Mohammedans, among whom marriages are contracted for minors by parents and guardians, it might occasion serious injustice if the common law doctrine was applied to agreements or arrangements entered into in connection with such contracts.

(ii) Partition/Marriage Settlement/Family Arrangements Where an agreement is made in relation to marriage, partition or any other family arrangement and a provision is made for the benefit of a person, the beneficiary may take advantage of that agreement though he or she was never a party to the contract.

Section 15(c) of the Specific Relief Act, 1963 enables specific performance of a contract being a settlement on marriage and family arrangements, at a suit of any person beneficially entitled there under, and creates an exception to the rule that a party to the contract cannot sue.

In *Daropti v. Jaspat Rai*, the defendant's wife left him because of his cruelty. He then executed an agreement with her father, promising to treat her properly, and if he failed to do so, to pay her monthly maintenance and to provide her with a dwelling. Subsequently she was again ill-treated by the defendant and also driven out. She was held entitled to enforce the promise made by the defendant, to her father.

(iii) Acknowledgement of liability Where under a contract a party undertakes an obligation to make a payment to a third party and he acknowledge it to the said third party, the third party, though not a party to the contract can enforce the contract. This is due to the application of the principle of estoppel. (iv) Covenants Running with the Land The law relating to transfer of immovable property can be applicable in certain situations and the rule of privity stands modified there." In the case of *Tulk v. Moxhay*, it was held that a person who purchases a land with notice that the owner of the land is bound by the duties that arise out of an agreement or covenant affecting the land, shall be bound by them though he had never been a party to the agreement.

In *Steel Authority of India v. State of M.P.*, a piece of land was assigned by the Central Government to its own corporate undertaking with all the rights. It was held by the SC that the right to exemption from land revenue would be available to the undertaking in the similar manner as that of Central Government.

(v) Law relating to Negotiable Instruments The rule of privity of contract does not apply in case of promissory note and bill of exchange also.

Has done or Abstained from doing something or does or Abstains from doing or Promises to do or Abstain from doing

Consideration is an act or abstinence that has already been done or is going on or is promised to be done in future. Abstinence on the part of the promisor to do something can undoubtedly be consideration for a contract."

Thus, in view of the definition under Section, 2(d), the consideration may be of the following three types: Past, Present and Prospective consideration. The words “has done or abstained from doing” refer to something already done. This is known as past consideration. The word “does or abstains from doing” refer to something done or omitted in praesenti. This is known as present consideration.

The words “promises to do or abstain from doing” refer to something done in future i.e. in futuro. This is known as prospective consideration."

These may also be categorized as executory and executed considerations, which are being detailed as hereunder:

Executory Consideration So far, as the consideration consists in promise in future, it is said to be executory consideration. In fact, it may be understood as a promise for a promise. The liability is outstanding on both sides.

Executed Considerations *A Consideration which consists in performance, past or present is called 'executed consideration'. It may comprise of an act or actual forbearance against a promise. The liability is outstanding on one side only as the one party has already performed its part.*

The SC carried out the distinction between executed and executor consideration in the following words:

An executed consideration consists of an act for a promise. It is the act which forms the consideration.... No contract is formed unless and until the act is performed e.g. the payment for a railway ticket, but the act stipulated for exhausts the consideration, so that any subsequent promise, without further consideration, is merely a nudum pactum....In an executed consideration the liability is outstanding on one side only; it is a present as opposed to a future consideration. In an executory consideration, the liability is outstanding on both sides. It is in fact a promise for a promise; one promise is bought by the other.... The contract is concluded as soon as the promises are exchanged. In mercantile contracts this is by far the most common variety. In other words, a contract becomes binding on the exchange of valid promises, one being the consideration for the other. It is clear, therefore, that there is nothing to prevent one of the parties from carrying out his promise at once i.e. performing his part of the contract; whereas the other party who provides the consideration for the actor detriment to the first may not carry out his part of the bargain simultaneously with the first party. If the contract has been fully and completely performed on both sides, no question of any further rights and liabilities under the contract is likely to arise. If, however, the contract

is one in which the consideration is executed on one side, there will be a right on one side and an outstanding liability on the other. If the consideration is executory on both the sides, there will be outstanding rights and liabilities on both sides." Both, the promises and the act, which constitutes the consideration, are integral and correlated parts of the same transaction in case of executed consideration. In past consideration, the promise is subsequent to the act and independent of it. Example: a reward for finding a lost good.

Under the Indian Law, a past consideration is a good consideration. However, in a case where services were given in exchange of a promise under which she obtained similar services, it was held that consideration for earlier promise would not be operative for subsequent promise. Having once operated as the consideration for his earlier promise, her past services could not be treated under Section 2(d) of the Act as a subsisting consideration for his subsequent promise to transfer the properties to her."

Under the English Law, a past consideration is no consideration since it arises out of a promise, "subsequent to and independent of the transaction." Such act, Abstinence or Promise is called a Consideration for the Promise Following points may be considered here:

> Consideration should be of some value Consideration should be 'something which not only the parties regard but the law can also regard as having some value.'" Though the act is done at the desire of the promisor, if it is insignificant or does not have any value in the eyes of law, it cannot be termed as a consideration.

Example: I shall give you my new car if you get my shirt dry-cleaned.

In the above example, since the work done is worthless, it does not constitute a valid consideration since it is not the words but the spirit of the provision that matters. If the payment made is resolved to be donated, its acceptance would make it a gift and did not give rise to a contract.'

> Adequacy of the Consideration In the ordinary course, the courts will not enquire into the adequacy of the consideration because it is something between the parties.

Explanation 2 to Section 25 says:

An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the

question whether the consent of the promisor was freely given. Illustration (f) to Section 25:

A agrees to sell a horse worth Rupees 1,000 for Rupees 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the

inadequacy of the consideration. However, as per the Explanation 2 to Section 25, an agreement to which the consent of the promisor is freely given is not void, merely because the consideration is inadequate; but, the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given. In view of the long lapse of time and appreciation of the value of the properties, with the consent of the parties, the consideration for agreement of sale of certain properties was enhanced. Thus, adequacy of consideration could be considered by court while determining their willingness to perform the contract.⁴ Illustration (g) explains it further:

A agrees to sell a horse worth Rupees 1,000 for Rupees 10. A denies that his

consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given. Thus, if there is some other vitiating element, example, found, is involved in the agreement, then the Courts can look into inadequacy of consideration as an evidence to find unconscionable bargains.

> Forbearance to Sue As per the definition in Section 2(d) of the Act, forbearance to sue will constitute a good or valuable consideration. Forbearance to sue means that one party has a certain right of action against the second party or any other person. On the request of the second party, he refrains from bringing the action. In true sense, this is a kind of abstinence that is recognized as good consideration.

► Performance of Existing Duties If by law or under another contract, a person is already bound to do something, that act shall not constitute a valid consideration. Example:

(i) A Traffic Police constable on duty in an area cannot charge from the commuters for smooth functioning of the traffic. (ii) The client promised to pay a reward to his lawyer in case he argues well in the Court. The lawyer argued well and won the case. But the client refused to pay the reward in addition to the fee. The lawyer sued the client. It was held that the promise for the reward by the client was without any consideration since the lawyer was already under a duty to do his best to win the case. The said agreement was void since no fresh consideration was provided ever.

Rule in Pinnel's Case under English Law It has been held in England in the well-known Pinnel's case, 43 that, if a debtor pays a smaller sum in satisfaction of a larger sum, it will not be regarded a good discharge of the debt because of the obvious reason that the debtor was already bound to pay the whole amount. But if

the debtor gives a gift of a horse, hawk, or robe, etc., it will be regarded as a good discharge, because in the words of the court:

For it shall be intended that a horse, hawk, or robe, etc. might be more beneficial to the plaintiff than the money in respect of some circumstances: or otherwise, the plaintiff would not have accepted it in satisfaction.

However, the rule in Pinnel's case i.e., the payment of a lesser debt for a larger sum is not a good discharge of the debt as it is against commercial convenience.

Exceptions to the Rule in Pinnel's case The courts, over a period of time, have admitted few exceptions to the said rule:

(i) Part – Payment by Third Party The first exception recognized to the rule in Pinnel's case, is that if the part payment by a third party is accepted, it will amount to a good discharge of the debt. Example, in Hirachand Punamchand v. Temple, 44 the Court held, that:

If a creditor accepts part payment by a third party in satisfaction of money due to him by a debtor, he cannot afterwards sue the debtor for the balance

of the debt. In this case the father of a debtor offered amount less than the debt in full settlement of the debt and enclosed a draft. The creditor encashed the draft and filed the suit to recover the balance. Dismissing the suit the Court observed that:

.....after acceptance by the creditor of a sum offered by a third party in settlement of the claim against the debtor, the creditor cannot maintain an action for the balance.

(ii) Compromise A second exception to rule in Pinnel's case is where a compromise agreement is entered into between the debtor and the creditors providing for the lesser amount in settlement of a larger amount of debt.

(iii) Payment before – time Sometimes, the rigors of the rule are mitigated by importing the doctrine of estoppel. A promise intended to be binding, intended to be acted on and in fact acted on, is binding so far as its terms properly apply. *

Position under Indian Law The courts in India are not confronted with the situations as mentioned above since the Doctrine of Consideration here is not extended to the discharge of contracts. Section 63 clearly provides:

*Promisee may dispense with or remit performance of promise Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, * or may accept instead of it any satisfaction which he thinks fit.*

Illustrations (b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of

*the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged. (c) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim. *"* (d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A' without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount. (e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a [compositions of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand. The words of this section imply that a promise can discharge the promisor not only without consideration but without a new agreement.

Exceptions to Consideration Section 25 of the Act lays down a few exceptions to the consideration:

Section 25: Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made. Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely

given. Thus, an agreement made without consideration is void, unless

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do ; or unless (3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced

payment but for the law for the limitation of suits. In any of these cases, such an agreement is a valid contract even without consideration. These exceptions are detailed hereunder:

(a) Natural Love and Affection Following are the essentials needed to invoke this exception:

(i) The agreement must be in writing (ii) It must be registered under the law for the time being in force (iii) It must be out of natural love and affection

(iv) The parties must be standing in a near relation to each other The exception shall not be invoked if parties are in a near relation to each other but there is no love and affection between them.

In the case of *Rajlukhy Debee v. Bhootnath Mookerjee*, 49 the suit was filed by the wife against her husband to recover the arrears of the allowance which her husband agreed to pay under the registered agreement. The courts could not find any trace of love and affection between the parties. It was held that since there was no consideration for this agreement from the wife's side, the suit was not maintainable under the exception (1) to Section 25.

However, in yet another case, the sister executed a power of attorney relinquishing her right to share in joint family properties in favour of her brother on receipt of Rupee 1 out of love and affection for the brother. She authorized her brother to enter into partition on her behalf. The said documents were in writing of attorney and the deed of partition cannot be said to be without consideration. Thus, the said power of attorney and the partition deed were held not void in view of the exceptions thereto provided under Section 25."

In the case of *Smt. Manali Singhal v. Ravi Singhal*," there was settlement between husband and wife for payment of maintenance to wife. The husband pleaded that the settlement was arrived at under coercion and under influence by wife. But there was no proof that when the settlement was arrived at, the persons on husband's side were physically and economically weak. In fact, there were equal number of persons present from both sides and the impugned settlement had signature of all persons from husband's side. The amount of maintenance was written in words, figures in hands of husband. The Delhi High Court held that in view of the aforementioned facts, it can be safely inferred there from, prima facie that the impugned settlement was entered into by the defendants out of their own free will and without any pressure, coercion or duress in order to help the plaintiffs to pass on their lives comfortably in the absence of the earner of their bread i.e., defendant No.1.52

(b) Past Voluntary Service The essential elements to invoke this exception are as follows:

(i) The act must have already been done. (ii) It must have been done voluntarily. (iii) It must be done for the promisor or something which the promisor was

legally bound to do. (iv) The promisor must be in existence at the time when the act is done. (v) The promisor must promise to compensate for the act already done.

(c) Promise to Pay a Time-Barred Debt The following essentials are required for this exception to be applicable:

(i) The promise to pay must be in writing and signed by the person

concerned or his agent generally or specially authorized in that behalf. (ii) The promise may be either for the whole of the debt or a part thereof. (iii) The promise to pay must be in respect of the debt which the creditor

might have enforced payment but the law for the limitation of suits. In *Khadi Gram Udyog Trust v. Shri Ram Chandraji Virajman Mandir*, 53 it was held that the creditor's right to release the debt is barred by limitation, the debt survives.

This logic gains support from the fact a time-barred 'debt would constitute a valid consideration for a new contract.'⁴

(d) Creation of an Agency Under Section 185, there is another exception to consideration along with the above mentioned exceptions. Section 185 of the Act says:

No consideration is necessary to create an agency. Hence, for creating contract of agency, no consideration is required.

(e) Presumptions under Section 118 of the Negotiable Instruments Act, 1882 In a suit to enforce a simple contract, the plaintiff has to aver in his pleadings that it was made for good consideration and must substantiate it by evidence. But to this rule, the negotiable instruments are an exception. In a significant departure from the general rule applicable to contracts, Section 118 of the Negotiable Instruments Act, 1882 provides certain presumptions to be raised. This section also lays down some special rules of evidence relating to presumptions. The reason for these presumptions is that, a negotiable instrument passes from hand to hand on endorsement and it would make trading very difficult and negotiability of the instrument impossible, unless certain presumptions are made. The presumptions, therefore, is a matter of principle to facilitate negotiability as well as trade. 55

POINTS TO REMEMBER

> An agreement without consideration is void. > An act or abstinence done by the promisee or any other person, at the desire of the promisor, to do or to abstain from doing something is termed as a consideration for the promise. If a promise is made by one party and another party relying upon that assurance alters his/her position to his/her detriment; the promisor later is stopped from denying what was represented by him earlier. This is rule of estoppels. Consideration can be executed (past or present) and executor (future). Adequacy of consideration is not essential to hold

any contract valid. There are few exceptions to this requirement of consideration viz. natural love and affection, compensation for past voluntary services and promise to pay a' time-barred debt.