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CONSIDERATION

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WHAT IS CONSIDERATION?

Consideration means commodity in exchange. It's an essential element naturally needed in a contract. One of the introductory ideas underpinning the present day demand of consideration is that one party to an agreement shouldn't be bound by it if the other party isn't also bound. Generally, if an agreement lacks consideration, neither party can apply it, indeed if it's in jotting. Stating it appreciatively, the conception of consideration requires that both parties to a contract shall have given and have entered commodity as the "price" of their separate pledges. For illustration X pledge to install a home- air exertion unit for Y, and Y pledges to pay XRs. 1,100 for the job. Then the price X has entered (in return for his obligation to install the unit) is the right to a payment of Rs. 1,100 from Y when the job is done; also, the price Y has entered (for her pledge to pay the Rs. 1,100) is her right to have the unit installed. In the notorious English case of Curriev. Misa, consideration was defined by Lush, J. as follows – ‘ a precious consideration in the sense of the law may correspond either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or accepted by the other. ’ The alternate part of this judicial description is the more important bone as it emphasizes that the consideration is reflected not so important in profit for one party but abandonment of some legal right by the other party. It doesn't count whether the party accepting the consideration has any apparent benefit thereby or not; it's enough that he accepts it, and that the party giving it therefore thereby undertakes some burden, or lose commodity which in contemplation of law may be of value. Section 2(d) of the Indian Contract Act defines consideration as ‘ When, at the desire of the pledge, the pledge or any other person has done or abstained, from doing or does or abstains from doing, or pledges to do or to hesitate from doing commodity, similar act or abstinence or pledge is called a consideration for the pledge.’¹

¹ Available at <https://www.toppr.com/guides/business-laws/indian-contract-act-1872-part-i/legal-rules-regarding->

ESSENTIAL ELEMENTS OF CONSIDERATION

The below rudiments of consideration can be developed as follows

1) Consideration must move at the desire of the pledge – An act or abstinence without any request from the pledge is a voluntary act and doesn't come within the description of consideration. also an act or abstinence done at the request of any person other than the pledge doesn't constitute consideration. In other words an act shall not be a good consideration unless it's done at the desire of the pledge. exemplifications A sees B drowning and saves his life. A can not demand payment for his services as it's a voluntary act on his part and B noway asked him to do so. The collector of a quarter asked D to spend some plutocrat on the enhancement of a request and he did so. The shopkeepers of the request promised to pay commission to D on their trade. latterly on they refused to pay the commission. D can not demand payment from the shopkeepers who are using the request for having bettered the request as he'd done so at the desire of the collector and not at the request of shopkeepers – Durgaprasadv. Baldeo(1880) 3 All. 221. Where a depositor drew a cheque upon a bank for an quantum bigger than there was plutocrat to his credit and the bank paid the quantum of the cheque because of their own mistake and not because there was any request from the depositor to recognize his cheque, it was held that there was no consideration involved and hence the depositor was under no legal obligation to reimburse the redundant quantum paid by the bank – AIR 1958 AP 605(607) A person advanced plutocrat to the son on an undertaking given by the father and attained Promissory notes(pronotes) for the quantum advanced. When the father failed to pay the quantum on the pronotes, it was held that these pronoteswere without consideration inasmuch as the advances weren't made at the desire of the son who was the pledge under these pronotes – AIR 1948 PC 150(155)

(2) Consideration may move from the pledge or any other person – It means that so long as there's consideration for pledge, it's immaterial who has furnished it. It may move from the pledge, or from any other person if the pledge has no expostulation. exemplifications In marine insurance, broker's undertaking to pay decoration is consideration though it moves from a third person – AIR 1926 Bom. 82(85) An old lady, by a deed of gift made over certain property to her son D under the direction that she should pay her aunt, P(family of the old lady), a certain sum of plutocrat annually. The same day D entered into an agreement with P to pay her the agreed quantum. latterly, D refused to pay the quantum on the plea that no consideration had

moved from P to D. Held, P was entitled to maintain the suit as consideration had moved from old lady, family of P, to the son D – Chinnayav. Rammaya(1882) 4 frenetic. 137. Note A consideration moving from third party who's a minor is no consideration(AIR 1949 Bom. 215(217)).

3) Consideration is an act, abstinence, forbearance or detriment – At times consideration is taken as misnomer of plutocrat form of exchange. The legal term consideration doesn't mean payment of plutocrat only. The Contract Act says that the consideration can be in the form of an act, abstinence, forbearance or detriment.

a) Consideration as an act – An act done by a person can constitute consideration. Where a person executes an undertaking in favour of a bank on the base of which he receives a substantial benefit of having a current overdraft account with a bank, the installation of overdraft account can not be said to be without consideration – AIR 1953 Tripura 10(10)

b) Consideration as an abstinence – To constitute abstinence as consideration, one must refrain or promise to refrain from doing commodity that he or she's privileged to do. illustration – X promised to pay his whoreson Y, a sum of Rs. 50,000 if he'd refrain from drinking, using tobacco, swearing and playing cards for plutocrat until he becomes 21 times of age. The whoreson abstain from all the specified conditioning as he was requested to do but his uncle failed without making the payment. He claimed the plutocrat out of the uncle's estate as his legal right. Held that, he abandoned his legal right and confined his legal freedom of action upon the faith of his uncle's agreement although it may feel that similar performance actually didn't prove to be a benefit to the pledge. similar detriment still amounted to consideration and he was granted the promised sum of Rs. 50,000.

c) Consideration as forbearance – Forbearance means anteceding one's legal right or claim. Creditor abjuring to apply prosecution and allowing time to pay at the request of the debtor is a good consideration – AIR 1912 Cal. 67(69) exemplifications An agreement to accept a decree and not to appeal against it when parties to it would have appealed is one which is supported by good consideration – AIR 1969 Bom. 221(223, 224) A promises to pay C, his law mate, Rs. 750 if C will give up his part- time job in a cotillion band for the coming nine months. C lives up to the terms of the offer, but A refuses to pay. If C brings suit to recovers. 750, A is liable. Then again we've a unilateral contract, pledge in exchange for a negative act(or a forbearance) – the act of not playing in the band. C's refraining constituted both an acceptance of the offer and a legal detriment to him; therefore we can see that A's pledge was supported by consideration.

d) Consideration as detriment – A detriment suffered by the pledge or any other person,

whether factual or prospective, can constitute a good consideration. The ordinary contract of guarantee is good illustration of detriment form of consideration. In consideration of A's lending BRs. 1000, C promises to repay the loan if B does not. Then C derives no benefit, but A suffers detriment by parting with his plutocrat, and this is enough consideration to support C's pledge handed A lends the plutocrat at C's request. Illustration X, a publisher, promises Y "If you'll advancers. 5,000 to my whoreson for one time, I'll run all your announcements during that time at half the regular rate." Y makes the loan, but X refuses to give advertising space at the reduced rate. However, Y seeks to apply X's pledge – X is liable, If Y sues X to recover damages for breach of contract – that is. Y's act of making the loan to the whoreson constituted not only an acceptance of X's offer but a detriment to Y – the parting with commodity of value where he wasn't else fairly obliged to do so. therefore X's pledge, supported by consideration, is enforceable against him. Note That it isn't necessary for the pledge to admit any benefit as long as the pledge or someone differently suffers a detriment.

4) Consideration can be once, present or unborn a) once consideration – A once consideration consists in an act formerly done by one as consideration for a pledge of the other. therefore when a person promises to compensate another in return for what the ultimate had done for the pledge in the history or before making of the pledge, similar pledge is said to be for once consideration, i.e. consideration which took place in the history. once consideration is as good as present or unborn consideration. For illustration, A does some work for B in the month of April without awaiting any return from B. latterly on, in June, B promises to pay him some plutocrat for the work done in April. This constitutes a valid contract as the work done by A is of the nature of once consideration. illustration – "A" handed redundant services to B(his master), after which B promised him a perk for the same. latterly on B refused to pay the perk. Held that, if the retainers put forth redundant work in consideration whereof a perk is latterly promised to them by the masters, it's in law a pledge for once services which is good under Indian Law – AIR 1925 Mad. 192(194) DB Note Under the English law, once consideration is no consideration. But under the Indian Law past consideration is good consideration because of the use of the words " has done or abstained from doing " in the description of " consideration ".

b) Present(Executed) Consideration – The consideration which moves contemporaneously with the pledge is present consideration. It consists in " doing " or " abstaining from doing commodity ". The stylish illustration of present consideration is cash trade where performance by both the parties(dealer and buyer) is contemporaneous.

Another illustration is a contract of marriage where there's contemporaneous performance by both the parties. The present consideration is also known as executed

consideration because it emphasizes on the prosecution part of performance. A may offer B\$ 10 if B runs from London to Bath. Indeed though B says that he'll accept A's offer, yet until he has run from London to Bath, (i.e. B has performed his part of contract), there's no consideration for A's pledge. B accepts the offer and by running from London to Bath contemporaneously executes the consideration which makes A's pledge a list contract. Note once consideration must be distinguished from the executed consideration. The consideration (running from London to Bath) in the below case is executed after the offer or request and contemporaneously with the acceptance. But, if A promises B\$ 10 in consideration of having run from London to Bath last week, the consideration is once. It's commodity wholly done before the offer or request and before acceptance of the offer.

c) Future (Executory) Consideration – A pledge to do commodity in future is legal consideration. When the consideration from one party to another is to move at some future date, it's called unborn consideration. The consideration for A's pledge to B may be a pledge by B to A. The consideration is also said to be executory. However, the pledge made by each is the consideration for the pledge made by the other, If A pledges to marry B in consideration of B promising to marry A.

exemplifications M and B enter into a contract in April under the terms of which M agrees to make a swimming pool for B in June, B promising to pay Rs. 2,500 in return. M latterly refuses to perform, and B sues him to recover damages for breach of contract. M is liable; that is, his pledge is enforceable. When the pledge was given by one of the mate's for investing certain quantum in the cooperation establishment, it was itself consideration for agreement. also, when similar mate had also accepted liability to bear losses, that was also consideration for other mates on the point of bearing loss and as similar it couldn't be said that the agreement of cooperation was without consideration – 1986 duty LR 787(789,790)(DB)(1986) 157 ITR 537(Guj.).²

Rules regarding consideration

In addition to the rudiments of consideration, the other general rules regarding consideration are as follows

1) Acceptability of consideration – Consideration, means “commodity in return”. This “commodity in return” need not inescapably be equal in value to “commodity given”. The law simply provides that a contract should be supported by consideration. So long as

² Available at <https://www.legalbites.in/consideration/> last seen on 21/4/2024

consideration exists, the Courts aren't concerned as to its acceptability, handed it's of some value. The acceptability of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it's sought to be executed – Bolton v. Madden (1873) L.R. 9 Q.B. 57. Consideration must, still, be commodity to which the law attaches value though it need not be equal in value to the pledge made. The Courts don't live to repair bad bargains. To illustrate, X contracts to vend land in MONTANA to Y for \$ 6,000. Y latterly discovers that the factual value of the land is \$ 3,000. Y is liable on this pledge to pay \$ 6,000, indeed though what he entered was worth much lower. Under the usual test, X incurred a detriment when he promised to convey the land – the rendition of his right to retain the property. The presence of this detriment constituted a consideration sufficient to support Y's pledge to pay; and Y's claim of inadequacy is thus of no applicability. There are exceptions to the rule that the court won't interrogate into the acceptability of the consideration. These apply in some contracts made by minors and generally in the cases where because of a special relationship, one party is suitable to take illegal advantage of another. Though consideration need not be acceptable to the pledge, yet its inadequacy, if veritably great, would raise mistrustfulness in the mind of the judge trying the case, if the other party alleges that his concurrence to the agreement was attained in an unfree manner.

Explanation 2 to section 25 of the Act says that an agreement to which the concurrence of the pledge is freely given isn't void simply because the consideration is shy; but the inadequacy of consideration may be taken into account by the court in determining the question whether the concurrence of the pledge was freely given. illustration – A agrees to vend a house worth Rs. 10,000. A's concurrence to agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration. still, if A says that his concurrence wasn't freely given, the inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's concurrence was freely given.

2) It must have some value in the eyes of law – A precious consideration may correspond either in some right, interest or property accruing to one party or some loss or responsibility suffered or accepted by the other. also, consideration must be certain. A pledge to give a reasonable sum in return for a service can not be executed on the grounds of query. Although the court won't interrogate into the acceptability of the consideration, there are certain acts and pledges which, for reasons of policy, are supposed to be of no value in the eye of law and which are, thus, an inadequate consideration. A pledge to do any act, or forbearance from doing any act, which the pledge might lawfully do, is generally a sufficient consideration; but the law regards some pledges as void and, if a pledge is void, it's a nullity, it isn't a sufficient

consideration for a counter pledge. illustration – In the case of Whitev. Bluett 1853, the pledge by a father to release his son from an outstanding loan, if the ultimate abstain from boring the father with complaints, was refused to be executed, since the essential rudiments of a bargain was lacking. The court observed that,

CONCLUSION

Enforcing any legal contract requires it to have an element of consideration included in it. In simple words, it is nothing but a price that the promise agrees to pay to the promisor. Now, this price can be paid as a benefit to the promisor and/or a loss or detriment to the promise.

Only the promises that are backed by consideration are enforceable because any promise made without any obligation is usually very rash and without any sort of deliberation. The reason for making consideration an essential part of a contract is because it levies a sort of burden on the parties to fulfil the terms of the contract. For Example, if, A promises to give B a car without B doing or abstaining to do anything for it, makes the promise by an unenforceable. This will be a gift and not a contract per se.

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