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## CONSIDERATION

**2(d): Consideration** - “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 an act or abstinence or promise is called consideration for the promise”.

**Currie v Misa (1875) LR 10 Ex 153** - A valuable consideration, in the sense of the law, may consist in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.

**Durga Prasad v Baldeo (1881) ILR 3 All 221** – An act done at the desire of a third party is not consideration.

**Chinnaya v. Ramayya (1882) ILR 4 Mad 137** - Consideration may proceed from a third person; therefore, absence of privity of consideration does not invalidate a contract.

**23: What considerations and objects are lawful, and what not** – The consideration or object of an agreement is lawful, unless— it is forbidden by law; or is of such a nature that if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

### Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here B’s promise to pay the sum of 10,000 rupees is the consideration for A’s promise to sell the house, and A’s promise to sell the house is the consideration for B’s promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A’s promise is the consideration for B’s payment and B’s payment is the consideration for A’s promise and these are lawful considerations.

(d) A promises to maintain B’s child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A’s estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

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<p>(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.</p> <p>(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code (45 of 1860).</p>
<p>Srinivas v. Raja Ram Mohan, (1951) 2 MLJ 264 – A loan advanced to a guardian for celebrating the marriage of a minor in violation of the Child Marriage Restraint Act 1929 was illegal, and therefore the lender could not recover the money. [Forbidden by law]</p>
<p>Ram Saroop v. Bansi Mandar, (1915) 42 Cal 742 – An agreement compelling a debtor to work without pay for a creditor, coupled with harsh penal consequences on default, is void because it involves injury to the person and is opposed to public policy. [Injury to person or property]</p>
<p>Pearce v. Brooks, (1866) LR 1 Ex 213 – Where a person knowingly lets out a carriage to a prostitute for use in attracting customers and carrying on prostitution, the agreement is void because it is connected with an immoral purpose, and therefore the owner cannot recover the hire charges. [Immoral purpose]</p>
<p>Esposito v. Bowden (1857) 7 E & B 763 – The outbreak of war renders contracts involving trading or intercourse with an enemy illegal and void, since a declaration of war operates as a prohibition on commercial dealings with the enemy. [Trading with enemy]</p>
<p>Sudhindra Kumar Rai Chaudhuri v. Ganesh Chandra Ganguli, AIR 1938 Cal 841 - No Court of law can countenance or give effect to an agreement which attempts to take the administration of law out of the hands of the Judges and put it in the hands of private individuals. [Stifling prosecution]</p>
<p>Raja Venkata Subhadrayamma Garu v. Sree Pusapathi Venkatapati Raju, AIR 1924 PC 162 – Agreements of champerty and maintenance are not inherently void in India, but courts will refuse to enforce them if they are extortionate, unconscionable, or opposed to public policy. [Champerty and maintenance]</p>
<p>Saminatha v. Muthusami, (1894) ILR 17 Mad 23 - An agreement to pay money to induce a person holding a public office to resign in favour of another person is void as being opposed to public policy, because public offices cannot be made the subject of private bargaining. [Trafficking in public offices]</p>
<p>Giddu Narayanish v. Mrs. Annie Besant, (1915) ILR 38 Mad 807 – A father cannot irrevocably transfer or barter away his right of guardianship over his minor children by contract, and therefore such an agreement is void as opposed to public policy. The father was entitled to revoke the arrangement and reclaim custody of the children. [Parental rights]</p>
<p>Vaithyanathan v. Gangaraju, (1884) ILR 8 Mad 149 – Where a purohit was promised money for procuring a second wife for the defendant, the agreement was opposed to public policy and therefore void. [Brokering marriage]</p>
<p>Venkatakrishna v. Venkatachalam, (1905) ILR 28 Mad 185 – Where money was promised to the father in consideration of giving his daughter in marriage, the agreement amounted to a marriage brokerage contract and was therefore void as opposed to public policy. [Brokering marriage]</p>
<p>District Board of Jhelum v. Harichand, AIR 1934 Lah 474 – An agreement by which a local authority granted an exclusive monopoly to sell vegetables in a particular locality was void as being opposed to public policy and public interest. [Creating monopoly]</p>
<p>Harwood v. Miller's Timber & Trading Co. Ltd., [1917] 1 KB 305 – A loan agreement imposing unreasonable restrictions on the borrower's personal liberty — such as restrictions on changing employment, residence, borrowing money, or dealing with property without the lender's consent — was void as being contrary to public policy and personal freedom. [Creating servitude]</p>

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**24: Agreements void, if considerations and objects unlawful in part** – If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

**Pickering v. Iffracombe Railway Co. (1868) LR 3 CP 235** – The general rule is that, where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good.

**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** - 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 contract.

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.

Illustrations

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 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.

**Kedarnath Bhattacharji v. Gorie Mahomed, (1887) ILR 14 Cal 64 (Cal)** - A mere promise to donate is ordinarily not enforceable; however, if the promisee acts upon the

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promise and incurs liability in reliance on it, valid consideration arises and the promisor becomes bound.

Bolton v. Madden (1873) LR 9 QB 55 - The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced.

EXERCISES

1. Define 'Consideration'. Discuss various types of considerations.
2. Do you agree with the view 'No Consideration, No Contract'?
3. In what cases a contract without consideration is not valid.
4. 'A stranger to contract cannot sue, but a stranger to consideration can sue'. Do you agree?
5. "Insufficiency of consideration is immaterial, but a valid contract must be supported by lawful and real consideration." Comment.
6. Under what circumstances is the object or consideration of a contract deemed unlawful? Illustrate with examples.
7. Discuss the doctrine of public policy. Give examples of agreements that are considered opposed to public policy.

