

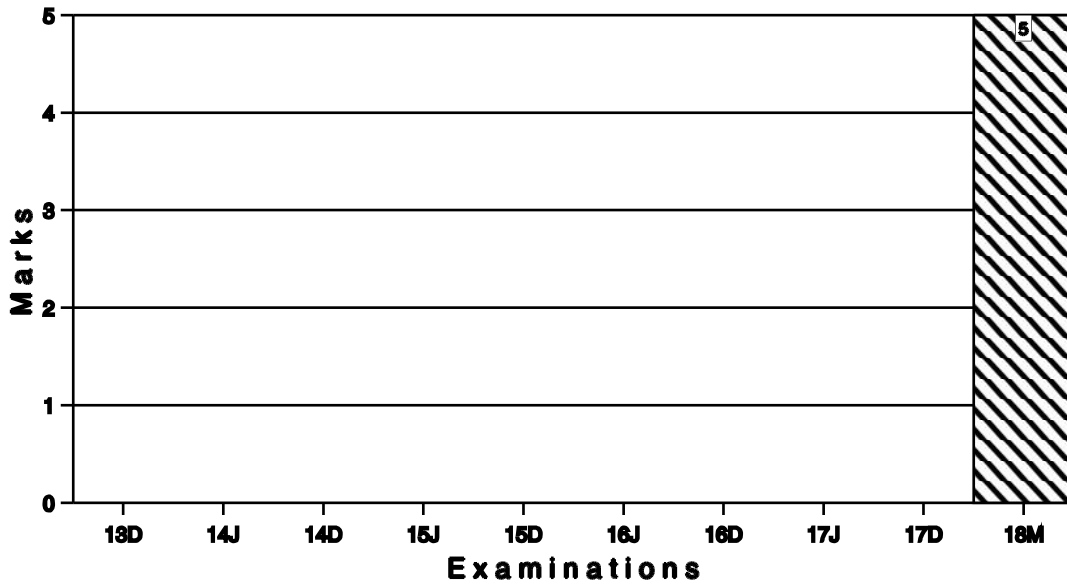


CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<h1>1</h1>	
Unit: 2	Consideration

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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SELF STUDY QUESTIONS**Q.1: What is consideration?****Answer:**

- Consideration should be something that is lawful
- A mere promise is not enforceable at law
- It means “Quid Pro Quo” i.e. “something in return”
- As per Section 2 (d), “when at the desire of the promisor, the promisee or any other person”
 - has done or abstain from doing, or
 - does or abstains from doing, or
 - promises to do or abstains from doing, such actor abstinence or promise is called as consideration of promise.”
- As per Section 2 (e) “Every promise and every set of promises, forming the consideration for each other, is an agreement”
 - General Rule is - “NO CONSIDERATION, NO CONTRACT”
 - Consideration may move at the desire of the promisor and not at the desire of the third party.
 - There may be stranger to consideration but not stranger to a contract.
 - Under English Law, it must move from the promisee or any other person. Thus, stranger cannot sue on the contract.
 - Under Indian Law, however a stranger to consideration can file a suit.

Q.2: Describe the Legal Rules Regarding Consideration?**Answer:**

- it must move at the desire of the promisor [Case law : Durga Prasad V/s Baldeo]
- it may be done by promisee himself or by any other person.

Relevant Case Law :

Chinnayya V/s Ramayya.

Facts -

- (i) A by a gift deed transferred certain property to her daughter, given her the direction to pay annuity to A's brother.
- (ii) On the same day, daughter executed a writing in favour of A's brother, agreeing to pay annuity.
- (iii) She declined afterwards stating that no consideration had moved from her uncle Decision - Court held that consideration may move from any person. Thus, A's brother was entitled to file a suit.
 - It may be past, present or future.
 - It must be real and not vague.
 - It must be legal.
 - It need not be adequate (But if not adequate then consent must be free)
 - It must be something more than the promisee is already bound to do for the promisor.
 - It may not be illusory.

Q.3: What do you understand Suit by a third party to a contract?

Answer:

- **Doctrine of Privity of Contract :**
 - It means that only those persons who are the parties to a contract, can sue and be sued upon the contract.
 - It is different from stranger to consideration.
 - It refers to the relationship between parties who have entered into the contracts.
 - The third party cannot sue upon it, even though, the contract may be for his benefits.
 - Thus, 'a stranger to the contract' cannot bring a valid suit under the contract'

Relevant Case Law -

- Dunlop Pevmatic Tyre Co. V/s Selfridge Ltd.
- Tweddle V/s Atkinson

- **Stranger to contract how right to sue in the following cases :**
 - (a) Beneficiary of Trust or charge, can enforce it even if he is not a party in trust deed.
 - (b) Marriage settlement, partition and other family arrangements and other such agreements which are reduced to writing.
 - (c) Acknowledgment of liability or by past performance thereof.
 - (d) Assignment of contract, however, it must be noted nominee is not an assignee.
 - (e) Contracts entered through an agent.
 - (f) Covenant running with the land. The purchaser of immovable property is bound by several conditions created by an agreement affecting the land, even though he is not a party to the original agreement.
 - (g) Where the promisor by his own conduct is estoppel from denying his liability to perform the promise, the person who is not a party to the contract can sue upon to make the promisor liable.

Q.4: Describe the Validity of an agreement without consideration?

Answer:

- An agreement made if valid if -
 - expressed in writing and registered under law.
 - made an account of natural love and affection.
 - between parties standing in near relation to each other.
- A promise is valid if -
 - it is a promise to compensate a person wholly or in part, a person who has already done something voluntarily for the promisor.
 - Something which the promisor was legally compellable to do.
- A promise to pay, wholly or in part, a debt, which is barred by law of limitation can be enforced if -
 - it is in writing.
 - it is signed by the debtor or his authorised agent.

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Note - A debt barred by limitation cannot be recovered, a promise to pay such debt is without any consideration.

- It does not apply to completed gifts i.e. gift given and accepted.
- Consideration is not required to effect a valid bailment of goods i.e. gratuitous bailment.
- Not required to create an agency.
- If a person promised to contribute any thing to a charity and on his faith, the promisee undertakes a liability to that extent, the contract shall be valid. [Relevant case law : Kedarnath V/s Gorie Mohammed].

SHORT PRACTICE QUESTIONS

1. What do you mean by consideration ?
2. Write down legal rules regarding consideration.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1995 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) A stranger to the consideration can enforce the contract. (2 marks)

Answer:

Correct: Under the Indian Law, consideration may move from the promisee or any other person, i.e. even a stranger. This rule applies in the cases of marriage settlement, partition or other family arrangements, trust, agency, assignment, etc.

1996 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) Inadequacy of the consideration cannot be taken into account by the court in determining whether the consent was given freely.

(2 marks)

Answer:

Incorrect : According to explanation 2 of section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because of the consideration being inadequate. But the court may take into account the inadequacy of the consideration in knowing the reality whether the consent of the promisor was given freely or not.

1997 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (vii) Consideration in a contract of sale of goods can also be paid partly in money and partly in goods.

(2 marks)

Answer:

Correct: Consideration paid partly in money and partly in goods will be taken as a valid sales because price is there. It is so because price is considered must for sale.

1998 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) Consideration may move even from a person who is not a party to the contract.

(2 marks)

Answer:

Correct: According to Section 2(d) of the Indian Contract Act, 1872 consideration may move from the promisee or any other person who may not a party to the contract. In other words, there can be a stranger to the consideration.

1999 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (iii) A promise to take either rice or smuggled opium for a consideration of

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₹ 1,000 is wholly void.

(2 marks)

Answer:

Incorrect: As per Section 58 of the Indian contract. Act, 1872, that in the case of an alternative promise, one branch of which is legal and the another branch is illegal; the branch with legal promise can only be enforced. Therefore, to take the rice is a legal promise hence it is enforceable, whereas to take smuggled opium is illegal and is enforceable by law.

2000 - May [1] State with reason whether the following statement is Correct or Incorrect.

(ii) Consideration may be present or future but not past. (2 marks)

Answer:

Incorrect : Section 2(d) of the Act states that the consideration may be past, present or future,

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

(vii) Consideration for sale of goods must be in terms of Money. (2 marks)

Answer:

Correct : It is one of the most important feature of the contract of sale that the price should be paid in term of money.

2002 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

(ii) Consideration may be present or future, but not past. (2 marks)

Answer:

Incorrect: As per the definition of consideration contained in, Section 2(d) of Indian Contract Act, 1872 consideration may be present, past and future.

DESCRIPTIVE QUESTIONS

1996 - May [2] Comment on the following:

(a) An agreement without consideration is void.

(5 marks)

Answer:

A contract without consideration is valid under the following cases :

For an agreement to be enforceable at law must be supported by a valid consideration. An agreement without consideration is void and enforceable (General Rule). But Section 25. Specifies the cases where an agreement made without consideration is valid. The exceptional cases are as follows:

1. **Natural Love and Affection [Section 25(1)]:** An agreement made without consideration will be valid, if it is in writing and registered and is made on account of natural love and affection between the parties standing in near relation to each other. (with reference to Rajlukhee Devee Vs. Bhootnath).
2. **Compensation for services rendered [Section 25 (2)]:** An agreement will be valid without consideration if 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 for, that a promise to make payment for the past voluntary services is binding, there should be following factors:
 - (i) the services should have been rendered voluntarily.
 - (ii) These should have been rendered for the promisor.
 - (iii) the promisor must exist at the time of rendering services.
 - (iv) the promisor must have intended to compensate to the promisee.
3. **Time-barred debt [Sec. 25 (3)]:** A promise to pay a time-barred debt is also enforceable, if it is in writing and signed by the promisor. The promise must be to pay whole or part-time debt.
4. **Completed gift:** An agreement in respect of a gift that has been made and accepted.
5. **Agency:** An agreement containing agency may be without consideration.

1998 - May [2] Comment on the following (Give brief answers):

- (a) "For every valid agreement there should be the consideration".

(5 marks)

Answer:

Please refer 1996 - May [2] (a) on page no. 48

1999 - May [2] Comment on the following (Give brief answers):

- (a) To form a valid contract consideration must be adequate. (5 marks)

Answer:

The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned as to its adequacy, provided it is of some value. 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. (*Bolton v. Modden*). Consideration must however, be something to which the law attaches value though it need not be a equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act 1872, 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.

2002 - May [2] Briefly the following:

(b) "No consideration, no contract".

(5 marks)

Answer:**No consideration, no contract:**

All contract, contain two parts: (i) the promise, and (2) the consideration for such promise. A promise without consideration is purely gratuitous. Such promise can not create a legal obligation, no matter that it is highly sacred and morally binding (*Abdul Aziz v. Mazum Ali -AIR 1914, 36 All 268*). Thus, the rule of law is that no consideration, no contract. Section 25 of the Indian Contract Act, 1872 embodies the rule that an agreement without consideration is void. However, there are certain exceptions to the general rule:

- (1) If an agreement is expressed in writing and registered and is made on account of natural love and affection, it is a valid contract without consideration.
- (2) A promise to compensate a person for something which has already been done voluntarily for the promisor, is valid without consideration, and creates a contract.
- (3) A promise by a debtor to pay a time-barred debt is valid provided that it is made in writing and is signed by the debtor or by his authorised agent in this behalf.

- (4) The rule 'no consideration, no contract' does not apply in case of a completed gift.
- (5) No consideration is necessary to create an agency.

1994 - Nov [5] Answer the following:

- (a) When is a contract valid even without consideration? (5 marks)

Answer:

The general rule is that an agreement made without consideration is void (Sec. 25). In every valid contract consideration is very important. A contract may only be enforceable when there is adequate consideration is there. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. **Natural Love and Affection:** A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. A contract in writing, registered on account of natural love and affection between parties standing near relation to each other are the essential requirements for valid contract though it is without consideration. (Rajlukhee Devee vs. Bhootnath).
2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under (Sec. 25(2)). In order that a promise to pay for the past voluntary services is binding, the following essential factors must exist:
 - (i) The services should have been rendered voluntarily.
 - (ii) The services must have been rendered for the promisor.
 - (iii) The promisor must be in existence at the time when services were rendered.
 - (iv) The promisor must have intended to compensate the promisee.
3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt

barred by limitation it is valid without consideration (Sec. 25(3)).

4. **Agency:** According to section 185 of the Indian Contract Act, no consideration is necessary to create an agency.
5. **Completed gift:** In case of completed gifts, the rule no consideration, no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.

1995 - Nov [6] (a) What is Consideration? Discuss briefly the legal requirements of valid consideration. (10 marks)

Answer:

Meaning of Consideration:

Consideration is an essential element of a valid contract. It is a technical word meaning thereby *quid pro quo* i.e. something in return. 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. Thus, consideration must result in a benefit to one party and a detriment or loss to the other party or a detriment to both.

Thus, if A agrees to sell his books to B for ₹ 100, B's promise to pay ₹ 100 is the consideration for A's promise to sell his books and A's promise to sell the books is the consideration for B's promise to pay ₹ 100.

Section 2(d) of the Indian Contract Act defines consideration as under:

"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."

For every valid contract consideration is very essential. But there are certain exceptions to this rule which have been incorporated under Section 25 of the Indian Contract Act.

Legal requirements of valid consideration may be enumerated as under:

- (i) Section 2(d) of the Indian Contract Act emphasises that consideration must move at the desire of the promisor. Any act done at the desire or request of the third party or voluntary acts would not constitute a valid

consideration.

- (ii) Consideration must be lawful and should not be forbidden by law.
- (iii) Consideration must be real and not illusory. If it is physically impossible, vague or legally impossible, the contract cannot be enforced.
- (iv) Consideration must be of some value in the eyes of law. The Supreme Court has laid down consideration shall be something which not only the parties regard but the law can also regard as having some value.
- (v) The consideration must not be the performance of existing duties e.g. (i) legal obligations or (ii) contractual obligations.
- (vi) The consideration need not be adequate. In other words, an inadequate consideration does not render a contract void.
- (vii) The consideration may be furnished by the promisee or any other person. So long as there is consideration for a promise, it is immaterial who has furnished it.
- (viii) The consideration must be either positive or negative (See definition).
- (ix) Consideration may be forbearance to use.
- (x) The consideration may be past, present or future.

1996 - Nov [5] Answer the following:

- (a) When consideration is deemed to be unlawful? (5 marks)

Answer:

Unlawful Consideration: The legality of consideration and object thereto is provided under Section 10 of the Indian Contract Act, 1872 As per Section 23, an agreement of which the object or consideration is unlawful is void. Following are the cases in which the consideration and object of an agreement is said to be unlawful:

1. If it is forbidden by law.
2. If it is of such nature that if permitted it will defect the provision of any law.
3. If it implies or involves injury to the person or property of another.
4. If it is fraudulent.
5. If the court regard it as immoral
6. If it is opposed to public policy.

According to Section 24, where consideration and object of an

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agreement is unlawful in part the whole agreement is void.

2000 - May [7] Write short notes on the following:

- (ii) Under what circumstances a contract without consideration is valid. (5 marks)

Answer:

Please refer 1996 - May [2] (a) on page no. 48

2002 - May [7] Explain the following (Give brief answers):

- (a) Unlawful consideration (5 marks)

Answer:

Unlawful Consideration: One of the essential element of consideration is that it must be lawful. An agreement becomes void, if it is based on unlawful consideration. The consideration of an agreement becomes unlawful when:–

1. It is forbidden by law or
2. If it is fraudulent or
3. If it defeats the provision of any law or
4. If it involves or implies injury to the person or property of another or
5. The court regards it as immoral or opposed to public policy.

2002 - Nov [5] Briefly the following:

- (b) What is Consideration? Give its characteristics. (5 marks)

Answer:

Consideration:

It is the price of the promise i.e. something in return Section 2(d) of the Indian Contract Act, 1872 defines it as when the desire of the promisor, the promises or any other person abstained has done or from doing, or does or abstains for doing, or promises to do or abstain from doing something such an act or abstinence or promise is called consideration for the promise”.

Characteristics

1. Consideration is the doing or not doing of something which the promisor

desires to be done or not done.

2. Consideration must be at the desire of the promisor.
3. Consideration may move from one person to any other person.
4. Consideration may be past, present or future.
5. Consideration need not be adequate but should be real.

2018 - May [2] (a) State the exceptions to the rule “An agreement without consideration is void”. (5 marks)

Answer:

The general rule is that an agreement without consideration is void. However, there are certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. Natural love and affection:

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g. husband and wife) to each other is enforceable without consideration.

- 2. Compensation for past voluntary services:** A promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, although it is without any consideration today.

3. Promise to pay time barred debt:

Where a promise in writing signed by the person making it or by his authorised agent is made to pay a debt barred by limitation it is valid and binding even though without consideration.

4. Agency:

No consideration is necessary to create an agency.

5. Completed Gift:

In case of gifts the rule no consideration, no contract is not applicable.

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6. Bailment:

No consideration required for this.

7. Charity:

If one promises to undertake liability to contribute to charity, the contract shall be valid even though without consideration.