***Question # 5***

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**CONSIDERATION & OBJECT (Hand out)**

**Preamble:**

Consideration is one of the essentials of a valid contract. An agreement without consideration is void. An agreement is enforceable only when both the parties get something and give something. The something given or obtained is called consideration.

**Relevant Law/ Provision**: Section: 2d (Consideration) **&** Section: 25 (Exceptions)

**According to Contract Act 1872:**

“ 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.”

**(Section: 2d)**

**Pollack Comments:** “The consideration is the price for which for which the promise of the otheris bought and the promise thus given for value is enforceable”.

**Example:** A agrees to sell his house for Rs 10 Lac to B. Now for A the consideration is Rs 10Lac and for B consideration is the house of A.

**ESSENTIALS/RULES OF A VALID CONSIDERATION**

|  |  |  |
| --- | --- | --- |
| **1.** | It shall move at the desire of the Promisor | (Durga Prasad Vs Baldeo) |
| **2.** | It may move from the Promisee or any other Person | (Chinnaya Vs Ramayya) |
| **3.** | It may be an Act, Abstinence or Promise |  |
| **4.** | It may be Past, Present or Future | (Shiva Saran Vs Kesho Prasad) |

* 1. It need not be Adequate
  2. It must be real

1. **It shall move at the desire of the Promisor** (Promisor = A person who makes a promise)

For a valid consideration, the act of doing or abstaining which forms the consideration must be done at the desire of the promisor. Similarly acts done voluntarily

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|  | do not constitute considerations. | | | |  |
|  | **Example:** | A promises to repair B’s Car and B promises to him 15,000 Rupees. The | | | |
|  | promise of one party is the consideration for the other party. | | | |  |
|  | **Case Law Reference:** | | (Durga Prasad Vs Baldeo) | |  |
| **2. It may move from the Promisee or any other Person** | | | | | (Promisee = A person to |
|  |  |  |  |  |  |

whom the promise is made)

A consideration may move from the promisee or any other person. It means a person can sue (filing a case in the court) even if the promise moved from a third party.

**Case Law Reference/Example**: A gifted a property to her Daughter R with a conditionthat shall pay certain amount to A’s brother C annually. R promised but later on refused to pay C, her uncle. It was held that C could recover the amount through court.

**(Chinnaya Vs Ramayya)**

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1. **It may be an Act, Abstinence or Promise**
   1. **When it is an Act:** P agrees to construct A’s house for Rs 12 Lac. A’s promise topay Rs 12 Lac is the consideration for P’s promise for construction of a house.
   2. **When it is an Abstinence**: (Abstinence = not to do an act) A promises not tosue B if B pays him additional Rs 5,000. The abstinence of A is the consideration for B’s payment.
   3. **It may be a Promise:** For a valid consideration, there must be a promise fromboth sides.
2. **It may be Past, Present or Future**

When Consideration to be given after rendering services, it is for past services, when Consideration paid for current services is called Present Consideration and when consideration to be paid on some future date is known as Future Consideration.

1. **When it is Past**:A teaches B in the month of January and get his services paidin the month of February is a past Consideration.
2. **When it is Present**: When we purchase something from a shop and pay theamount immediately is known as present Consideration.
3. **When it is Future**:X promises to deliver a car to Y after a week and Y promisesto pay the price after a week is an example of Future consideration.

**5.** **Consideration need not be Adequate:** (Adequate = reasonable)

It is not necessary that consideration should be equal to the promise made. Law only insists the on the presence of consideration and not on its adequacy.

**Example:** Ahmad agrees to sell his house of worth 15 Lac Rupees for 12 LacRupees and his consent is free, the contract is valid.

**6.** **Consideration must be Real**

It is necessary that consideration must be real and competent where it is not possible to perform; it is not a valid consideration.

**Example 1**: A promises to put life in B’s dead brother and Bpromises to give him oneLac Rupees. It is not a valid contract.

**Example 2:** A promises to beat K for 10,000 rupees, since it’s illegal to beat any one,therefore not a valid contract.

**EXCEPTIONS TO CONSIDERATION**

(Exception = an act which doesn’t follow the Rule)

Though law recognizes contracts with considerations but there are certain examples where the absence of consideration yet recognizes the contract as a valid one. Following are certain conditions which are known as exception to general rule.

1. Natural Love and Affection
2. Voluntary Compensation
3. Time Barred Debt
4. Contract of Agency
5. Remission by Promisee

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**(a) Natural Love and Affection**

Natural love and affection means when parties have very close relations with each other. Such contracts are valid in the following conditions.

1. The contract is in writing
2. Registered contract
3. Contract made on account of natural love and affection
4. Parties must have near relation with each other

**Example:** When the father of B promised to pay him Rs 3 Lac for the purchase of anew car, in this agreement absence of consideration doesn’t make it a void agreement because natural love and affection from a father for his son is there.

**(b) Voluntary Compensation**

If a promise is made to compensate wholly (completely) or partly for voluntary services is enforceable even though without consideration.

**Example1:** A finds B’s purse and returns him and B promises to pay him Rs 500. It’s avalid contract.

**Example2:** If X saved the son of Y from drowning and Y promised to pay him 5000Rupees forms a valid contract.

**(c) Time Barred Debt** (Time Barr Debt = A debt which has not been claimed within time)A time barred debt if promised to be paid under an agreement without any consideration is lawful and is considered valid in the eye of law. Statutory period to claim

time barred debt is 3 years.

**Example:** A took 2 Lac rupees from B as a loan and gave B a cheque of sameamount as a guarantee. B didn’t claim that debt for a period of 3 years, though his right of demanding loan is lost but if A even though promises to pay 2 Lac Rupees, is a valid agreement.

**(d) Contract of Agency**

Generally Agents get commission for their services but when the same agent promises his Principle not to charge anything makes a valid agreement.

**Example**:X an agent promises to sell of Y’s house without taking any commission isa valid contract.

**(e) Remission By the Promisee** (Promisee = A person to whom the promise is made)When a person agrees to receive less than what is due, the term remission is used.

Such agreements are valid in the eye of law.

**Example:** X owes Y 12,000 Rupees. On X’s demand Y returns 8,000 Rupees and Xaccepts it in full satisfaction of the whole debt. It’s a valid contract.

**Featured Extra Outlooks**

**Doctrine of Privity of Contracts: (Doctrine = Principle), (Privity = A relation between the parties)**

Privity of Contracts means relationship existing between the parties who have entered into agreement and rest of the world has no concern with them unless otherwise contrary to law. There are two consequences of Doctrine of Privity of Contract.

**Rule 1.**

A person who is not a party to Contract cannot Sue (Even parties’ benefit is there)

**Rule 2.**

A Contract cannot confer rights or impose obligations (Strangers to Contract cannot be

sued) (Dunlop Tires Vs. Selfridges Ltd)

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**Conclusion:**

Consideration is one of the essentials of a valid contract. An agreement without consideration is void (illegal). A consideration is what a promisor demands for his promise. In other words something given or obtained in contracts is called Consideration and without its presence contracts are not generally recognized but with subject to certain exceptions.

**Expected University Questions:**

**1.** Define Consideration. What are the various rules regarding a valid Consideration.

**(OR)**

**2.** Explain the term Consideration and state the exceptions to the General Rule.

**(OR)**

**3.** What are the situations when in which a contract is valid even without Consideration?”

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