**Chapter-6**

**Consideration**

**Definition:** In the word of Justice Lush “a valuable consideration is in the sense of the law, may consist either in right interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given ,suffered or undertaken by the other.”

**Section 2 (d) of the Contract act, 1872** defines consideration which is as follows:

“when at the desire of the promisor, the promise 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.”

**Ingredients of a valid consideration**

The ingredients of a valid consideration are-

i. It has to be given at the desire of the promisor

ii. It has given by the promisee or any other person

iii. A consideration may be past, present or future

iv. It must be something to which the law attaches a value.

**Classification of consideration**

**Section 2 (d) of Contract Act 1872** provides three kinds of consideration. Such as-

i. Past Consideration;

ii. Executed Consideration or Present Consideration

iii. Executory Consideration or Future Consideration

**1. Past Consideration**: If the service is rendered in the past at the request or desire of the promisor the subsequent promise is regarded as an admission that the past consideration was not gratuitous and which is evidence of the amount of the reasonable remuneration of the faith of which the services were rendered **[Re Casey’s Patents (1892) 1 ch.104, 115, per Bowen, L.J].**

A past consideration should be distinguished from an executed consideration. An executed consideration is done in response to a positive promise, whereas the case of past consideration is not so.

**2. Executory Consideration:** Consideration is called “executory” where there is an exchange of promises to perform actsin the future, eg a bilateral contract for the supply of goods whereby **A** promisesto deliver goods to B at a future date and **B** promises to pay on delivery. If **A** does not deliver them, this is a breach of contract and **B** can sue. If **A** delivers the goods his consideration then become executed.

**3. Executed Consideration:** If one party makes a promise in exchange for an act by the other party, when that act is completed, it is executed consideration.

**Example:** In a unilateral contract where **A** offers Tk.500 reward for the return of her lost handbag, if **B** finds the bag and returns it, **B**’s consideration is executed.

**Legal Rules Regarding A Valid Consideration**

**1. It must move at the desire of the promisor:** An act constituting consideration must have been done at the desire or request of the promisor, if it is done at the desire of the third party or without the desire of the promisor it will not be a good consideration.

**Example: A** saves **B** goods from fire without being asked to do so. **A** can not demand consideration for his services **[Durga Prasad Vs. Baldeo (1880)]**

**Abdul Aziz Vs. Masum Ali, 1914 case.** The secretary of a Mosque Committee filed a suit to enforce a promise which the promisor had made to subscribe Rs.500 to the re-building of a mosque.

**Held:** “ the promise was not enforceable because there was no consideration in the sence of benefit” ,as “ the person who made the promise gained nothing in return for the promise made” , and the secretary of the Committee to whom the promise was made, suffered no detriment as nothing had been done to carry out the repairs. Hence, the suit was dismissed.

**2. It may move from the Promisee or any other person:** Consideration may move from the promise or any other person, i.e, even an stranger. This means that as long as there is a consideration for a promise it is immaterial who has furnished it .But a stranger to the consideration will be able to sue if he is a pay to the contract.

**Case Law:** an old lady, by a deed of gift, made over certain property to her daughter D, Under the direction that she should pay her aunt, S (sister of old lady), a certain some of money annually. The same day D entered into an agreement with her aunt S to pay her agreed amount. Later, D refused to pay the amount on the plea that no consideration has moved from S to D.

Held: S was entitled tomaintain suit as consideration had moved from the old lady, sister of S, to the daughter, D **[Chinnaya vs.Ramayya(1881), 4 Mad.137]**

**3. It may be Past, Present or Future:** The word used in Section 2(d) are”…has done or abstain from doing (past), or does or abstains from doing (present), or promises to do or to abstain from doing (future), something,”

**Past consideration:** When the consideration by the party for the present promise was given in the past,

i.e. ,before the date of promise, it is said to be past consideration.

**Present consideration:** When consideration is given simultaneously with promise,

i.e. , at the time of the promise, it is said to be present consideration .E.g. , cash sale.

**Future consideration:** when consideration for one party to the other is to pass subsequently to the making of the contract, it is future consideration.

**4. It need not be adequate:** Consideration as said “some thing in return” and something this something in return need not be equal in value to “something given”. The law requires that the contract must be supported by consideration and not the adequate consideration. The adequacy of the consideration is to be determined by the parties to the contract at the time of entering into it, but the court has no right to determine the adequacy of the consideration.

**5. It must be real:** Although consideration need not be adequate, it must be real and of some value in the eye of law**.**

**Example:** A contracts withB that A will construct a house for B by a day and B will pay to A Tk.10 lakhs. This is not a valid contract because the consideration is not real.

**6. It must be lawful:** The consideration given for an agreement must not be unlawful. A consideration to the contract must not be against public policy, Immoral and illegal and it is not forbidden by law **(section 23 of the Contract Act, 1872).**It must be something which the promisor is not already bound to do: a promise to do what one is already bound to do, either by general law or under an existing contract, is not a good consideration for the new promise, since it adds nothing to the pre-existing legal or contractual obligation.

The leading case is that **Ramchandra Chintaman vs.Kalu Raju (1877),** there was a promise to pay to the Vakil an additional sum if the suit was successful.

**Held:** The promise was void for want of consideration. The Vakil was under a pre-existing contractual obligation to render the best of his services under the originalcontract.

**Privity of contract or stranger to contract**

Privity contract means the relationship subsisting between the parties to a contract. It means that no one but the parties to a contract can be bound by it or be entitled under it. Only parties to a contract can sue each other orbe sued upon.

A stranger to a contract cannot sue both under the English and Bangladesh law for want of privityof contract.

**“No Consider No Contract” Explain With Exception**

Consider is the foundation of every contract. In the absence of consideration a promise or undertaking is purely gratuitous- creates no legal binding**.**

According to **Salman and Winfield (Law of Contract, salmond and Winfield)-**

 **“A promise without consideration is a gift; one made for a consideration is a bargain.”** So it can be said that where there is no consideration there is no contract.

The general rule is that an agreement made without consideration is void **(section 25).** In every valid contract consideration is very important. A contract may only be enforceable when an adequate consideration is there.However the Contract Act, 1872 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).**

A hindu husband, after referring to quarrels and disagreement between him and his wife executed a registered document in favour of his wife agreeing to pay her maintenanc**e.** But no consideration moved from the wife**.**

**Held:** The agreement was void for want of consideration **[Rajlukhee Devee vs. Bhoothnath (1900), 4, cal. W.n.488].**

**2. Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has alreadyvoluntarily done something forthepromisor, is enforceable under **section 25(2) of the Contract Act.** In order that apromise to pay for the past voluntarily 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 to the promisee.

**3. Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration**[Section 25(3)]**

The debt must be such which the creditor might have enforced in law for recovery of the payment. A person under no obligation cannot, therefore, promise to pay. An insolvent finally discharged is under no obligation to pay any debt. So any promise to pay by him is not a debt as there is no consideration for such a promise.

In **Daulat Ltd. Vs.Pubali Bank (DLR 39.243)** case, it was held that, an unconditional promise to pay a time-barred debt in writing duly signed does not come under section 19 of Limitation Act, it being not made before the expiration of the period of limitation. It directly comes under **section 25(3) of the Contract Act.**

**4. Agency:** According to section 185 of the Contract Act,1872 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 of the Act states “nothing in this section shall affect the validity as between the donor and done, of any gift actually made”. Thus, gifts do not require any consideration.

From the above it can be said that consideration is the basis of every contract. Section 25 of Contract Act provides an agreement made without consideration is void. But there are a few exceptions to the rule, where an agreement without consideration will be valid and enforceable.

**What consideration and objects are unlawful**

The objects and consideration of an agreement must be lawful. If the objects and consideration of an agreement are not lawful then the contract will not be a valid contract. Thus when one hires a house for use a gambling house, the objects of the contract is to run a house. Section23 of the Contract Act, 1872 provideswhich considerations and objects are unlawful. The object is said to be unlawful if-

i. It is forbidden by law;

ii. It is of such nature that if permitted it would defeat the provisions of any law;

iii. It is fraudulent

iv. It involves an injury to person or property of any other;

v. The court regards it is immoral or opposed to public policy.