

Chapter 3

Lawful consideration and objects, and capacity of parties

CONSIDERATION

- Definition and essential elements of consideration
- Agreements without consideration
- Privity of contract

LAWFUL UNLAWFUL OBJECT / CONSIDERATION

- Circumstances where object or consideration is unlawful
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- Agreements opposed to public policy

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- Who are competent to contract?
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Lawful consideration and objects, and capacity of parties

1 CONSIDERATION

1.1 Definition and essential elements of consideration

Definition: Consideration [Section 2(d)]

When at the desire of the promisor, the promisee or any other person who 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.

When a party to an agreement promises to do something, he must get something in return. This something in return is consideration. The analysis of the above definition reveals that a consideration may be the value by which promise is bought. Consideration may be following:

An act i.e. doing something

An abstinence or forbearance i.e. abstaining or refraining from doing something.

A promise in return (of another promise)

Please See The Example 01: Consideration

Desire of the promisor

An act or abstinence of promise constituting consideration must have been done or made at the desire or request of the promisor. Thus, an act done at the desire of a third party or without the desire of the promisor cannot constitute a valid consideration.

Please See The Example 02: Desire of the promiser

Move / from promisee or any other person

In return consideration may be from the promisee himself or by any other person even by stranger.

Please See The Example 03: Move / from promisee or any other person

Consideration may be past, present or future

The consideration may be past (done or abstained from doing), present (does or abstains from doing) or future (promises to do or to abstain from doing). The consideration which has moved before the formation of agreement is said to be past consideration. The consideration which moves simultaneously with the promise is called present consideration. The consideration which moves after the formation of agreement is called future consideration.

Please See The Example 04: Consideration may be past, present or future

Consideration to have some value

There is no requirement for the adequacy of consideration but it should have some value. There should be something in return and this something in return need not necessarily be equal in value to something given.

Please See The Example 05: Consideration to have some value

Something which the promisor is not already bound to do

The consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.

Please See The Example 06: Something which the promisor is not already bound to do

Consideration must be real

The consideration must be real and not illusory.

Please See The Example 07: Consideration must be real

Lawful

The consideration must neither be unlawful nor opposed to public policy.

Please See The Example 08: Lawful

1.2 Agreements without consideration

An agreement without consideration is void except under the following cases:

Natural love and affection [Section 25(1)]

Agreements made on account of natural love and affection without consideration will be valid if:

- expressed in writing,
- registered under the law,
- made on account of natural love and affection, and
- between parties standing in a near relation to each other.

Please See The Example 09: Natural love and affection

Promise to compensate past voluntary services [Section 25(2)]

Such promise made without consideration is valid if:

- it is a promise to compensate and
- the person who is to be compensated has already done something voluntarily or has done something which the promisor was legally bound to do.

Please See The Example 10: Promise to compensate

Time barred debt [Section 25(3)]

A promise to pay time barred debt is enforceable if:

- it is made in writing,
- it is signed by the debtor or his agent, and
- it relates to a debt which could not be enforced by a creditor because of law of limitation.

Please See The Example 11: Time barred debt

Gifts

The gifts which are accepted by the donee are called completed gifts and are valid.

Please See The Example 12: Gift

Contract of agency [Section 185]

A consideration is not necessary for a contract of agency.

Please See The Example 13: Contract of agency

Contract of bailment

A consideration is not necessary for a contract of bailment i.e. gratuitous contract of bailment.

Please See The Example 14: Gratuitous bailment

Charitable subscription

Where the promisee on the strength of the promise makes commitments i.e. changes his position to the detriment.

Please See The Example 15: Charitable subscription

Contract of guarantee [Section 127]

Consideration received by the principal debtor is sufficient for the surety and it is not necessary to result in some benefit to the surety himself.

Please See The Example 16: Contract of guarantee

1.3 Privity of contract

Privity of contract means the relationship subsisting between the parties who have entered into contractual obligations.

Therefore, **only parties to the contract** may sue or may be sued under the contract.

The doctrine of **privity** of contract is a law principle which provides that a contract cannot grant rights or impose obligations upon any person who is not a party to the contract. [Wikipedia](#)

However, there are few exceptions (not examinable) to this rule, when a contract (non-party to the contract) may sue for enforcement of legal rights or obligations arising stranger to under the contract.

Please See The Example 17: Agreement without consideration

Please See The Example 18: Validity of an agreement made without consideration

Please See The Example 19: Agreement without consideration

Please See The Example 20: Agreement without consideration

2 LAWFUL / UNLAWFUL OBJECT AND CONSIDERATION

2.1 Circumstances where object or consideration is unlawful

Definition: Legality of object and consideration [Section 23]

The consideration or object of an agreement is lawful unless:

- It is forbidden by law
- It is of such a nature that if permitted would defeat the provisions of any law
- It is fraudulent
- It involves an injury to the person or property of another
- The court regards it as immoral, or opposed to public policy

The analysis of above definition is given below:

Forbidden by law

If the law of the state prohibits an object or the consideration of an agreement then such agreements are void. An act is forbidden by law when it is punishable by the law of the country.

The effects of such agreements are following:

- The collateral transactions to such an agreement also become tainted (polluted) and hence cannot be enforced.
- No action can be taken for the recovery of money paid or property transferred under such an agreement and for the breach of any such agreement.

Please See The Example 21: Forbidden by law

Defeats the provisions of any law

If the object or the consideration of an agreement is of such nature that, if permitted, it would defeat the provisions of any law, the agreement is void.

Please See The Example 22: Defeats the provisions of any law

Fraudulent

Where the object of an agreement is fraudulent the agreement is void.

Please See The Example 23: Fraudulent

Involves or implies injury

The object of an agreement will be unlawful if it tends to injure a person or the property of another. Property can either be movable or immovable.

Please See The Example 24: Involves or implies injury

Court regards it as immoral or opposed to public policy

Where the object or consideration of an agreement is such that the court regards it as immoral or opposed to the public policy then the agreement is void.

Please See The Example 25: Court regards it as immoral or opposed to public policy

2.2 Where object or consideration is partly unlawful [Section 24, 57 and 58]

Non–separable promises

When an agreement contains things to do legal as well as illegal and the legal part **cannot** be separated from illegal part, the whole agreement is illegal and void.

Please See The Example 26: Non-separable promises

Separable promises

When an agreement contains things to do legal as well as illegal and the legal part **can** be separated from illegal part, the legal part is a contract and the illegal part is a void agreement.

Please See The Example 27: Separable promises

Alternative promise being illegal

In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Please See The Example 28: Alternative promise being illegal

2.3 Agreements opposed to public policy

An agreement is said to be unlawful if the court regards it as opposed to public policy. Following are the agreements which are held to be opposed to public policy:

Trading with enemy

A person cannot enter into an agreement with an alien enemy during the period of war on the ground of public policy.

This is because the further performance of the agreement involves commercial interaction with the enemy and the continued existence of agreement would confer upon the enemy an immediate or future benefit.

Contracts entered before the declaration of war are either suspended or terminated during the period of war.

Please See The Example 29: Trading with enemy

Stifling prosecution

Criminals should be prosecuted and punished; hence an agreement for stifling prosecution is illegal.

An **agreement** in which one party agrees to drop criminal proceedings pending in a court in consideration of some amount of money, is unlawful. **Internet**

It is in public interest that if a person has committed crime he must be prosecuted and punished.

Please See The Example 30: Stifling prosecution

Sale of public offices

The agreements of sale of public offices are illegal as such agreements, if enforced, would led to inefficiency and corruption on public life. Similarly, an agreement to pay money to a public servant to induce him to act corruptly or to retire and thus make way for the appointment of promisor are void on the ground of public policy.

Please See The Example 31: Sale of public offices

Restraint of parental rights

An agreement which prevents a parent to exercise his right of guardianship is void. A father is entitled by law to the custody of his child. He cannot enter into an agreement which is inconsistent with his duties arising out of such custody.

Please See The Example 32: Restraint of parental rights

Restraint of personal liberty

An agreement which unduly restricts the personal liberty of a person is void as law generally allows all persons with a freedom to enter into any contract they please.

Please See The Example 33: Restraint of personal liberty

Agreement to create monopoly

An agreement to create monopoly is void as this will impair consumer sovereignty and result in high prices for low quality of goods and services.

Please See The Example 34: Agreement to create monopoly

Marriage brokerage agreement

An agreement in which a person promises for reward to procure marriage for another is void being opposed to public policy.

Please See The Example 35: Marriage brokerage agreement

Please See The Example 36: Legality of object

Please See The Example 37: Legality of consideration

Please See The Example 38: Withdrawal of legal proceedings

3 COMPETENT TO CONTRACT

3.1 Who are competent to contract? [Section 11]

Every person is competent to contract:

- who is of the age of majority according to the law to which he is subject, and
- who is of sound mind, and
- who is not disqualified from contracting by any law to which he is subject.

3.2 Agreements with a minor

In Pakistan a minor is a person who has not attained majority which is:

- 21 years where a guardian of a minor's person or property is appointed by the court of law under the Guardians and Wards Act, 1890; or

- 18 years in other cases.

The law pertaining to agreements with a minor is given below:

Void agreement

An agreement with a minor is void ab initio.

Please See The Example 39: Void agreement

Rule of estoppel does not apply

Where an infant / minor represents fraudulently or otherwise that he is of the age of majority and induces another to enter into a contract with him, even then, he will not be liable.

Please See The Example 40: Rule of estoppel does not apply

Ratification not allowed

Ratification is approving or accepting something which has happened already. It is necessary that the minor must be competent to contract at the time of entering in the contract. Therefore, an agreement with a minor cannot be ratified subsequently after he attains majority.

Please See The Example 41: Ratification not allowed

Contract by minor and adult jointly

If a minor enters into an agreement jointly with a major person then such agreement can be enforced against the major person who has jointly promised to perform.

Please See The Example 42: Contract by minor and adult jointly

Minor may be admitted to benefits of partnership [Section 30 – Partnership Act]

A minor can be admitted for the benefits of partnership with the consent of all the partners. He cannot be a partner until he attains majority.

Please See The Example 43: Minor may be admitted to benefits of partnership

Minor as an agent [Section 184]

A minor can be agent but cannot be a principal. However, if anyone acts on behalf of minor principal, he will be personally liable.

Please See The Example 44: Minor as an agent

Minor and insolvency

A minor cannot be declared insolvent because he is incompetent to contract.

Please See The Example 45: Minor and insolvency

Minor can be beneficiary

A minor can file a suit but cannot be sued.

Please See The Example 46: Minor can be beneficiary

Agreements on behalf of minor by parents or guardian

If the parent of a minor entered into an agreement on behalf of a minor being within the scope of the authority and for the benefit of the minor then such agreements can be enforced by or against the minor.

Please See The Example 47: Agreements on behalf of minor by parents or guardian

Minor and necessaries [Section 68]

A person who supplied necessaries to a minor is entitled to be reimbursed from the property of such minor. Such claim is against the property of the minor and not against the minor personally.

Please See The Example 48: Minor and necessaries

3.3 Agreements by persons of unsound mind [Section 12]

A person is said to be of sound mind for the purpose of making a contract:

- if at the time when he makes it,
- he is capable to understand the terms of the contract,
- to form a rational judgment as to its effect upon his interests.

Thus, if a person is not capable of both, he is said to have suffered from unsoundness of mind.

Please See The Example 49: Unsound mind

Position of agreements with a person of unsound mind

The positions of such agreements are given below:

- An agreement with a specific person/idiot is void.
- If a lunatic enters into a contract while he is of unsound mind, an agreement during this period is void.
- If a lunatic enters into a contract while he is of sound mind, an agreement during this period is valid.
- A person delirious from fever or drunken person cannot enter into a contract while such delirium or drunkenness lasts and he is not able to understand the terms of the contract or form a rational judgment.
- A person of unsound mind can enforce a contract for his benefits.

- A person, who supplied necessaries to a person of unsound mind or his dependant, is entitled to be reimbursed from the property of such person of unsound mind. Such claim is against the property of the person of unsound mind and not against the person personally.

- A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind.

- A person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind.

Please See The Example 50: Position of agreements with a person of unsound mind

Burden of proof

The rules regarding the burden of proof are following:

If a person is usually of sound mind then burden of proof, that he was of unsound mind at the time of making contract, lies on the person who questions the validity of contract.

If a person is usually of unsound mind then burden of proof that he was of sound mind at the time of making the contract lies on the person who wants to enforce the contract.

Please See The Example 51: Burden of proof (occasionally of unsound mind)

Please See The Example 52: Burden of proof (occasionally of sound mind)

3.4 Agreements with persons disqualified by law

There are some disqualifications imposed on certain persons in respect of their capacity to contract

which are discussed below:

Alien enemies

An alien is a person who is the citizen of a foreign country. He can enter into a contract and be sued during peace time but if a war is declared then an alien enemy can neither enter into a contract nor be sued during the period of war. Contracts entered before the declaration of war are either suspended or terminated during the period of war.

Please See The Example 53: Alien enemies

Foreign sovereigns and ambassadors

Such persons have immunity unless they choose to submit themselves to the jurisdictions of our courts. They have a right to enter into a contract but can claim the privilege of not being sued.

Please See The Example 54: Foreign sovereigns and ambassadors

Convicts

A convict while under imprisonment is incapable of contracting but this disability comes to an end after the expiry of the sentence or when he is on parole.

Please See The Example 55: Convicts

Insolvent

A person declared as insolvent cannot enter into a contract as his property is dealt with by official assignee or official receiver.

Please See The Example 56: Insolvent

Companies

A company is an artificial person and a contract entered into by a company will be valid only if it is within the powers granted to it by the Memorandum of Association.

Please See The Example 57: Companies

Please See The Example 58: Agreement with a minor

Please See The Example 59: Agreements with disqualified persons

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