

# Legal rules as to consideration:

[Law](#), [Common Law](#)



Legal rules as to consideration: 1) Consideration must move at the desire of the promisor: the act done or loss suffered by the promisee must have been done or suffered at the desire or request of the promisor. The act done at the desire of a third party or without the desire of the promisor cannot be a good consideration. It is not necessary that the promisor himself should be benefited by the acts of the promisee. The benefit may be intended for a third party. But the desire or request of the promisor is essential. Example: A sees B's house on fire and helps in extinguishing it. B did not ask for A's help. A cannot demand payment for his service. 2) Consideration may move from the promisee or any other person: consideration can be given or supplied by the promisee or any other person who is not a party to the contract. As long as there is a consideration it is not important who has given it. Therefore, a stranger to consideration can sue on a contract provided he is not a stranger to contract. This is known as the "doctrine of constructive consideration". 3) Consideration may be past, present or future: consideration may be past, present or future. But according to English law, consideration may be present or future but never past. 4) Consideration need not be adequate: consideration need not be adequate to the promise, but it must be of some value in the eye of law. 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 of the parties to consider at the time of making the agreement. However, 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. This is because inadequacy may suggest fraud, mistake or coercion etc. Example: Ali agrees to sell a car worth \$2,000 for

\$200. Ali's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of consideration. 5) Consideration must be real and not illusory: Although consideration need not be adequate, it must be real, competent and of some value in the eyes of the law. Real consideration is one which is not physically or legally impossible. If the consideration is physically impossible, vague or legally impossible, the contract cannot be enforced. 6) Consideration must be lawful. The consideration for an agreement must be lawful. An agreement is valid if it is based on lawful consideration. Consideration is unlawful: a) if it is forbidden by law or b) if of such a nature that if permitted it would defeat the provisions of any law, or c) is fraudulent, or d) involves injury to the person or property of another, e) court regards it as immoral or opposed to public policy Example: I ) A promises to maintain B's child and B promises to A \$ 2000 yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. These are lawful considerations. II ) A promises to obtain for B, an employment in the public services, and B promises to pay \$ 800 to A. the agreement is void as the consideration for it is unlawful. 7) Consideration may be an act or abstinence or promise: Consideration may be a promise to do something or not to do something. So it may be either positive or negative. Consideration need not always be doing some act. It can be not doing an act also. 8) Consideration 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 a new promise. There will be no detriment to the promisee or benefit to the promisor over and above their existing rights or obligations. Similarly, a promise to perform a public duty by a public servant is not a good consideration. Example: A promises to pay \$ 200 to police officer for investigation into a crime. This promise is without consideration because the police officer is already bound to do so by law. Exceptions: There are, however, certain exceptions to the rule that past consideration is no consideration. Under the exceptions, past consideration is as good as present or future consideration. The exceptions are as follows: 1) Services rendered at the request of the promisor. When the consideration consists of services rendered at the request of the promisor, it is a good consideration. The request may be either express or implied. 2) Promise to pay a time-barred debt: where a debt is bound by limitation, the debtor can waive the benefit of that plea and promise to discharge the debt. Such a promise is enforceable. A time-barred debt can be taken as valid consideration for a subsequent promise. 3) Negotiable instrument: where a negotiable instrument is given in consideration of some past act, that past act will form as a good consideration for the issue of the negotiable instrument and the party who gets the instrument can validly enforce it. Unreal Considerations: in the following cases, the consideration is not legal because of physical or legal impossibility or uncertainty. The following are not real considerations. 1) Physical impossibility: if a person agrees to perform an impossible act for a consideration, the promise is not enforceable. The promise is unreal. Discovering treasure by magic or making two parallel straight lines meet or putting life back into a dead body cannot be enforced as promises because

of impossibility. 2) Legal impossibility: whenever the performance of a promise is legally impossible, consideration is not real. 3) Uncertain consideration: consideration is not real and is not enforceable if it is uncertain or ambiguous. Examples: A engages B for doing a certain work and promises to pay a “reasonable sum”. There is no recognized method of ascertaining the “reasonable” remuneration. The promise is not enforceable as it is uncertain. 4) Illusory consideration: an illusory consideration is not real and is unenforceable. Example: A promises to give B one ton of gold brought from the sun. the consideration is sham and illusory. 5) Pre-existing legal obligations: 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 a new promise. Similarly, a promise to perform a public duty by a public servant is not a consideration. Real or Good Consideration: The following are good real or considerations: 1) Forbearance to sue: forbearance to sue is a kind of abstinence. It means a person who has a right of action against another person refrains from bringing the action. Forbearance to sue may be forever or for a short or limited time. Forbearance to sue at the desire of the debtor is a good consideration. Example: A has a right to sue his debtor B for \$5000. But he postpones suing as B agreed to pay \$ 2000 more. Such forbearance is a valuable consideration for the promise of B. 2) Compromise of a disputed claim: Compromise is a kind of forbearance. The compromise of a disputed claim is a good consideration for the fresh agreement of compromise. Example: A sues to recover a debt of \$2000 from B. B denies the whole debt and promises to pay \$500 to A as a sort of compromise. This compromise of B is supported by consideration and is valid. 3) Composition

with Creditors: A person who is not in a position to pay his debts fully may call a meeting of his creditors and request them to accept a lesser amount. If the creditors agree to it, the agreement is binding upon the debtor and creditors.