

Business law

Lecture-6

➤ NO CONSIDERATION – NO CONTRACT- Section 25

A) Meaning –

The general rule is ex-nudopacto non oritur actio i.e. an agreement made without consideration is void.

Example –

If Salman promises to pay Aishwarya ` 1000 without any obligation from Aishwarya then it will be void contract as there is no consideration from Aishwarya towards Salman.



B) Exceptions –

Exceptions -

Under following cases, a contract will be valid even without consideration

- 1) Promise made on account of natural love and affection
- 2) Promise to compensate for voluntary services
- 3) Promise made to pay a time barred debt
- 4) Completed Gifts
- 5) Creation of agency
- 6) Contract of Guarantee
- 7) Remission

1) Promise made on account of natural love and affection –

An agreement made without consideration is valid –

- a) It is expressed in **writing**.
- b) It is **registered** under the law.
- c) It is made on account of **natural love and affection**.
- d) It is between parties standing in **near relation** to each other.

2) Promise to compensate for voluntary services –

Voluntary service means service done without any request. It will be valid if the following conditions are satisfied –

- a) The service should have been done voluntarily.
- b) The service should have been done for the promisor.
- c) The promisor must have been in existence at the time when the service was done.
- d) The intention of promisor must have been to compensate the promisee.

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e) The service rendered must also be legal.

Example: Jethalal finds Babita's purse and gives it to her. Babita promises to give Jethalal 50 rupees. This is a valid contract.

3) Promise to pay time-barred debt –

- a) A promise by a debtor to pay a time-barred debt is also a valid contract.
- b) But the promise must be in writing.
- c) It must be signed by the promisor or his authorised agent.
- d) The promise may be to pay the whole or part of the debt.

Example: Ram owes Laxman 1,000 rupees but the debt is barred by the Limitation Act. Ram signs a written promise to pay 500 rupees on account of the debt. The promise will be valid and binding without any fresh consideration.

4) Creation of Agency –

- a) No consideration is necessary to create an agency.
- b) Thus, when a person is appointed as an agent, his appointment is valid even if there is no consideration.

5) Completed Gifts –

- a) Gifts once made cannot be recovered on the ground of absence of consideration.
- b) Absence of consideration will not affect the validity of any gift already made.

Example: Virat gave a watch as a gift to Anushka on his birthday. Later on Virat cannot demand the watch back on the ground that there was no consideration.

6) Contract of guarantee –

Contract of guarantee needs no consideration.

7) Remission –

Remission means lesser performance of the contract than what is actually to be performed.

➤ DOCTRINE OF PRIVACY OF CONTRACT / STRANGER TO CONTRACT –

Doctrine of privacy of contract means stranger to contract cannot sue

Dunlop Pneumatic Tyre Co. v. Selfridge Ltd –

D supplied tyres to a wholesaler X, on condition that any retailer to whom X re-supplied the tyres should promise X, not to sell them to the public below Ds list price. X supplied tyres to S upon this condition, but nevertheless S sold the tyres below the list price. Held: There was a contract between D and X and a contract between X and S. Therefore, D could not obtain damages from S, as D had not given any consideration for Ss promise to X nor was he party to the contract between D and X.

Exceptions –

In the following cases, stranger to a contract can also sue

1. Beneficiary of a trust –

A trust is created for the benefit of a beneficiary. Hence, the beneficiary can enforce the provisions of the trust even though he is a stranger to the contract.

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Example –

In a contract between Munnabhai and Circuit, beneficial right in respect of some property may be created in favor of Chinki and in that case, Chinki can enforce his claim on the basis of this right.

2. Provision in marriage settlement –

A stranger to the contract can sue on the contract where a provision is made for him in marriage settlement.

3. Provision for maintenance or marriage expenses of female members under a family arrangement –

In case a provision is made for the marriage or maintenance of a female member of the family on the partition of a Hindu undivided family, the female member can enforce the promise though she may be a stranger to a contract.

Example –

If Nikhil gives his Property in equal portions to his 3 sons with a condition that after his death all 3 of them will give Rs 10,000 each to Neha, the daughter of Nikhil. Now Neha can prosecute if any one of them fails to obey this.

4. Assignee of a contract –

- a) The benefits of a contract may be assigned.
- b) The assignee of a contract can enforce the benefits of a contract though he is not a party to it.

Example: Rahul assigns his insurance policy in favour of his wife. The wife can enforce it although she is not a party to it.

5. Acknowledgement of liability –

Where the promisor either by his conduct or acknowledgement or by part payment or by estoppel creates privity of contract between himself and the stranger, the stranger can sue.

Example: Raju pays Shyam 500 rupees to be given to Baburao, Shyam acknowledges to Baburao that he holds that amount for him. Baburao can recover the amount from Shyam.

6. Agency contract –

Contracts which are entered into by the agent on behalf of the principal can be enforced by the principal even though he is not a party to the contract.

