

Q.1 Subject to certain exceptions, an agreement without consideration is 'nudum pactum' and is also void. Discuss.

Ans. Section 2(d) of Indian Contract Act, 1872, (hereinafter Act for brevity) provides that when at the desire of the promisor,

- the promisee or any other person
- has done or abstained from doing, does or abstains from doing, promises to do or abstain from doing something
- such act, abstinence or promise

is called the consideration for the promise. It is one of the essential elements of a valid contract. Its requirement is mentioned in Section 10 of the Act. However, the effect of its absence upon a contract has been mentioned in section 25.

The general rule is that an agreement without consideration is void and cannot be enforced. However, section 25 of Indian Contract Act, 1872, provides that there are certain exceptions to this general rule, which are enumerated below:

1. Agreement on account of natural love and affection.
2. Agreement to compensate for past voluntary services.
3. Agreement to pay time barred debt.

Other than these, section 185 of the Act provides that for creation of agency, no consideration is required. Section 122 and section 130 of Transfer of Property Act, 1882 which deals with gift and transfer of actionable claim respectively are also in line with exception to the general rule of requirement of consideration for a valid agreement. Now we will discuss each of them in succeeding paragraphs:

As far as an agreement on account of natural love and affection is concerned, it is appropriate to mention the following conditions for its application:-

- (a) Agreement must be in writing.
- (b) it must be registered.
- (c) it must be on account of natural love and affection
- (d) it must be between the parties who are near relatives to each other.

The Legislature intentionally used the words 'parties standing in real relation to each other,' just to protect the agreements between the parties who are not related to each other by blood but by marriage, adoption or otherwise. Therefore, these words are to be given wider meaning

For application of clause (2) of section 25 i.e. agreement to compensate for past voluntary services, requirements are as follows:

- (a) promise must be to compensate the person who has voluntarily done something for the promisor.
- (b) promise must be to compensate wholly or in part
- (c) act must be done for the promisor or the act must be such, for which promisor was legally compelled to do

Clause (3) of section 25, which exclusively deals with an agreement to pay the time barred debt, is applicable provided following essential conditions are complied with:

- (a) Agreement must be related to the debt which cannot be recovered as law of limitation extinguished the remedy to recover.
- (b) It must be in writing and signed by the debtor or his duly authorized agent.

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