

Lawful Consideration and Object

The fourth essential element of a valid contract is that the contract must be for a lawful consideration and with a lawful object. There are always two parties in a contract and they make reciprocal promises to each other. As such the thing which is consideration for one party, the same thing is the object for the other party, and the thing which is the object for one party is the consideration for the other party.

Illustration : A contracts with B to sell his horse for Rs 1000. In this case, the sale of horse is the object of contract for A and it is consideration of the contract for B, while the payment of Rs 1000 is consideration for A and it is the object of the contract for B.

The term 'object' means the motive, purpose, or design for which it is entered into. The consideration for a contract may be lawful while its object at the same time may be unlawful. But in either case, whether the consideration is unlawful or the object is unlawful, the agreement is void.

Definition of Consideration :- The existence of consideration is important for a valid contract. Contracts result only when one promise is made in exchange for something in return. The something in return is what we mean by consideration.

Section 2(d) :- When, at the desire of the promisor, the promisee or any other person :

- (1) has done or abstained from doing something, or
- (2) does or abstains from doing something, or
- (3) promises to do or to abstain from doing something.

Such act or abstinence or promise is called a consideration to the promise.

When consideration or object is unlawful (Section 23) :

The seven circumstances which would make consideration as well as an object unlawful are discussed below :

(1) **Forbidden by law** : If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act is forbidden by law when it is punishable by the criminal law of the country or when it is prohibited by special legislation or regulations made by a competent authority under powers derived from the legislature.

(2) **Defeat of the provision of law** : If the object or the consideration of an agreement is such that, though not directly forbidden by law, it would defeat the provisions of any law, the agreement is void.

(3) **Defeat of any rule for the time being in force in India** : It is well established rule of law that the unless the will is proved in some form, no grant of probate can be made merely on the consent of the parties. Hence an agreement or compromise as regards genuine and due execution of a will, to its effect is to exclude evidence in proof of the will, is not lawful so as to be enforceable under the provisions of the Civil Procedure Code.

(4) **Fraudulent** : An agreement, which is made for a fraudulent purpose is void. Thus an agreement in fraud of creditors with a view to defeating their rights is void.

(5) **Injury to the person or property of another** : If the object or consideration of an agreement is injury to the person or property of another, it is void, being an unlawful agreement.

(6) **Immoral** : An agreement whose object or consideration is immoral, is illegal and therefore void.

(7) **Agreement opposed to public policy** : It is not easy to define the term ' Public Policy' with any degree of precision because ' public policy' by its very nature, is highly uncertain and keeps on fluctuating with the passage of time. An agreement, which conflicts with morals of the time and contravenes any established interest of society may be said to be opposed to public policy. In India, it has been left to the court to hold any contract as unlawful on the ground of being opposed to public policy.

What Considerations and Objects are Unlawful ? :

According to Section 23, every agreement of which the object or consideration is unlawful is void, and the consideration or the object of an agreement is unlawful in the following cases :

(1) **If it is forbidden by law** : This clause refers to agreements which are declared illegal by law. If the consideration or object for a promise is such as is forbidden by law, the agreement is void. An act or an undertaking is forbidden by law :

(a) when it is punishable by the criminal law of the country, or

(b) when it is prohibited by special legislation or regulations made by a competent authority under powers derived from the legislature.

Illustrations : (a) Agreements for sale or purchase above the standard price fixed by the relevant law (e.g., Essential Commodities Act, 1955) with regard to a controlled articles are illegal and hence void (Sita Ram vs Kunj Lal case).

(b) An agreement to pay consideration to a tenant to induce him to vacate premises governed by the Rent Restriction Act is illegal and cannot be enforced because such an act is forbidden by the said Act (Mohanchana Vs Mahindra case).

(2) **If it is of such a nature that, if permitted, it would defeat the provisions of any law :**

This clause refers to cases where the object or consideration of an agreement is of such a nature that, though not directly forbidden by law, it would indirectly lead to a violation of law, whether enacted or otherwise (e.g., Hindu and Mohammedan Laws). Such an agreement is also void.

Illustrations : (a) An agreement by the debtor not to rise the plea of limitation, should a suit have to be filed, is void as tending to limit the provisions of the Limitation Act (Rama Murthy vs Gapayya case).

(b) An agreement between husband and wife to live separately is invalid as being opposed to Hindu Law (A.E. Thimmal Naidu vs Rajammal case).

(3) **If it is fraudulent** : An agreement whose object or consideration is to defraud others, is unlawful and hence void.

Illustrations : (a) A, promises to pay Rs 200 to B, if B would commit fraud on C. B agrees. B's agreeing to defraud is unlawful consideration for A's promise to pay. Hence the agreement is illegal and void.

(b) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful. [Illustration (e) to Section 23].

(4) **If it involves or implies injury to the person or property of another** : If the object or consideration of an agreement is injury to the person or property of another, it is void, being an unlawful agreement.

Illustrations : (a) An agreement to commit an assault or to beat a man has been held unlawful and void (Allen vs Rescous case).

(b) An agreement to put certain property to fire is unlawful and void under this clause.

(5) **If the court regards it as immoral** : An agreement whose object or consideration is immoral, is illegal and therefore void. The scope of the word 'immoral' here extends to the following :

(i) Sexual immorality e.g., illicit cohabitation or concubinage or prostitution.

Illustrations : (a) A, agrees to let her daughter to hire B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code. [Illustration (k) to Section 23].

(b) A gift deed executed in consideration of illicit intercourse has been held void as its object was immoral (Ghumma vs Ram Chandra case).

It may be noted that an agreement to pay for 'past' or 'future' illicit cohabitation is also void, as

being immoral. Consideration which is immoral at the time when it passes cannot become innocent by passage of time and therefore the consideration for past cohabitation is unlawful as being immoral (Hussenali vs Dinbai case). Similarly, a promise to pay for the purpose of future cohabitation, which comprised the consideration, was held illegal and void (Lakshminarayana vs Subhadri).

(ii) Furtherance of sexual immorality

Illustrations : (a) A prostitute was sued for the hire money of a carriage in which she used to go every evening in order to make a display of her beauty and thus to attract the customers. The suit was dismissed on the ground that the plaintiff contributed towards the performance of an immoral and illegal act and hence he was liable to suffer (Pearce vs Brooks case).

(b) A man who knowingly lets out his house for prostitution cannot recover the rent, it being an act for furtherance of sexual immorality (Choga Lal vs Piyasi case). The landlord may, however, recover if he did not know the purpose.

(iii) Interference with marital relations

Illustrations : (a) Money advanced to a married woman to enable her to procure a divorce and to marry the plaintiff could not be recovered back as the object of the agreement was held immoral (Bai Vijli vs Nansa Nagar case).

(b) An agreement for future separation between a husband and wife is void ab initio it being immoral in the eye of law.

(iv) Such acts which are against good public morals.

Illustrations : An agreement for future marriage, after the death of first wife is against good morals and hence would be void (Wilson vs Carnley case).

(6) If the court regards it as 'opposed to public policy' : An agreement is unlawful if the court regards it as 'opposed to public policy'. It is not possible to give a precise or exact definition of the term 'public policy'. On the basis of decided cases on the subject the following agreements have been held to be against public policy :

(i) Trading with an alien enemy

(ii) Agreements interfering with the course of justice

(iii) Agreements for stifling criminal prosecution

(iv) Maintenance and champerty

(v) Traffic in public offices

(vi) Agreements creating an interest opposed to duty

(vii) Agreements unduly restraining personal liberty

(viii) Agreements interfering with parental duties

(ix) Marriage brokerage agreements

(x) Miscellaneous cases

References :

1) Business Law (6th edition) : MC Kuchhal and Vivek Kuchhal (Vikas Publishing House, Noida)

2) Indian Contract Act (12th edition) : RK Bangia (Allahabad Law Agency, Faridabad)

3) Indian Contract Act (12th edition) : Avtar Singh (Eastern Law Agency, Noida)