

be valid. He could not recover it afterwards even if he desired to do so. A mere *promise*, however, to give a deed some time in the future would not be binding.

(b) *Valuable consideration* is usually, but need not necessarily be, a monetary consideration. It may be something given or done, or something promised to be given or done by or for the person making the promise. Any of these would constitute a "sufficient consideration."

A promise to marry is held a valuable consideration.

(c) *Illegal consideration* is where the act to be performed is wholly or in part immoral or contrary to public policy, or forbidden by Statute; as smuggling goods into the country, selling lottery tickets, publishing or selling immoral literature. Notes given in satisfaction of a wager on an election or a horse race, or in settlement of a "bucket shop" transaction, or to a hotel-keeper in payment for liquor, or a note towards election expenses are void.

A note given for a gambling debt has been declared null and void even in the hands of an innocent endorsee for value before maturity. *Birolean v. Derorun*, 7 L. C. J., 128 (1863).

(d) *Consideration in contracts under seal*.—Contracts under seal are valid without a consideration. The placing of a seal on a contract makes it final. The seal itself is said to impute a consideration.

(e) *Consideration in regard to negotiable paper is presumed*. Promissory notes, acceptances and cheques in the hands of an innocent holder for value are valid, even if they were issued without a consideration. With such paper consideration is *presumed*, and an innocent third party buying them before maturity may collect them. The party to whom they were given without value could not enforce payment; neither could third parties if they purchased them after maturity. Accommodation notes and acceptances are common examples of this kind.

Anson's four general rules as to consideration are as follows:

1. It is necessary to the validity of every promise not under seal.
2. It need not be adequate to the promise, but must be of some value in the eye of the law.
3. It must be legal.
4. It must either be present or future; it must not be past.

But there are important exceptions to the 4th rule, as for instance:

A debt barred by the Statute of Limitations is *consideration* for a subsequent written promise to pay it. There are other exceptions that could be given, but, as a rule, it is correct to say that the consideration must not be past.

#### 48 Failure of Consideration.

A failure of the consideration voids the contract. Example: A person agrees to give \$500 for a certain interest in a patent to manufacture gas, and afterwards the patent is found to be void. The contract cannot be enforced, and if a note were given it could not be collected except in the hands of "an innocent holder for value."

(a) *Partial failure* of consideration does not void the contract, and the other party may obtain damages for the part that failed.