

to be bound. In every binding contract there must of necessity be a *legal consideration*, and what the law denominated a "sufficient consideration." (Exceptions: Instruments under seal and negotiable paper, which see.)

There are various kinds of *consideration*, and as this is one of the most important features of a contract, several will here be enumerated:

35 Good Consideration is one based upon *natural love and affection*. Example: A father may deed to his child a portion of his land, and it would 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. (See Insolvent Debtors).

36 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.

37 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. (See Section 14).

38 Gratuitous Promises, that is, promises without a consideration, are not binding, because there is no equivalent given. If there is no *consideration* there is no reason for the contract; hence a mere promise to give or do something cannot be enforced.

A promise (unless in writing), to pay another's debt that has already been incurred, is gratuitous and cannot be enforced. (See Statute of Frauds).

Mutual promises, however, if made at the same time, are binding, as the one promise is a "consideration" for the other promise.

39 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.

40 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.

41 Failure of 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 cannot be collected.

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