

BUSINESS LAW

UNIT 1: The Indian Contract Act, 1872

TOPIC- FREE CONSENT

FREE CONSENT

Free consent is another essential element for a valid contract. Section 13 defines **consent** and Section 14 defines when is consent **free**. As per sec.13 ,**two or more persons are said to consent when they agree on the same thing in the same sense i.e. consensus ad -idem**. As per sec.14 ,**consent is said to be free when it is not caused by coercion\undue influence\fraud \misrepresentation\mistake**.

In order to prove that consent is not free, the complainant must prove that if he had not been forced to agree or if he had known the truth, he would not have entered into the contract. When the essential element of free consent is absent, the contract is not valid but whether it would be void or voidable would depend on the nature of flaw in consent. **When consent is caused by coercion, undue influence, fraud or misrepresentation, then consent is not free and contract is voidable at the option of aggrieved party but when consent is caused by bilateral mistake, there is no consent at all and hence the agreement is void.**

COERCION(SEC.15)

COERCION implies forcing a person to enter into an agreement by

- ✓ committing an act forbidden by IPC or
- ✓ threatening to commit an act forbidden by IPC or
- ✓ unlawful detaining the property of other or
- ✓ threatening to detain the property of other

Ranganayakamma vs Alwar Setty- A widow was forced to adopt a boy by her relatives who refused to remove her deceased husbands' body until she consented to adoption. Held, the consent was obtained by coercion and adoption could not be enforced. Obstructing a dead body from being removed for cremation is an offence under IPC

Muthia vs Karuppan-An agent refused to handover the books of accounts to the new agent unless the principal released him from all the liabilities. The principal had to give a release deed under the threat. Held , the release deed was voidable at the option of the principal as he was coerced for the release deed.

- Coercion may be **directed at a party to an agreement or a stranger to contract** . Similarly it may **proceed from a party to an agreement or from a stranger to contract**.
- **Threat to file suit on false charges amounts to coercion**. But threat to file suit on genuine grounds is not coercion.
- **Threat to commit suicide amounts to coercion**. **Chikkam Ammiraju vs Chikkam Seshamma** -A person , by a threat to commit suicide , forced his wife and son to execute a release deed in favour of his brother in respect of certain properties. Held, the release deed was issued under coercion and so could be set aside.
- **Coercion is wider than duress**. Duress does not include threat or act with regard to goods or property of another. Duress includes only actual or threatened violence over persons and not their property
- A contract caused by coercion is **voidable at the option of the aggrieved party (Sec.19)**. He may either exercise the option to **affirm** the transaction and hold the other party bound by it or may **repudiate** the transaction by exercising a right of rescission. In case the party opts to rescind a voidable contract, then he must restore back any benefit received by him from the other party as per **Sec.64**.
- The burden of proof that coercion was used lies on the party that wants to set aside the contract on the plea of coercion.

UNDUE INFLUENCE (Sec.16)

A consent is said to be caused by undue influence where

- ✓ the relations between the parties are such that one of them is in a position to dominate the will of another and
- ✓ the dominant party uses his position to obtain an unfair advantage over the other
- A person is **deemed to be in a position to dominate the will of another (i.e. there is presumption of undue influence and there is no need of proving undue influence by aggrieved party)**, where
 - he has apparent\ real authority over another e.g. master and servant, police officer and accused
 - he stands in fiduciary relation to the other e.g. doctor and patient, father and son, guru and disciple
 - he makes contract with mentally distressed person e.g. old illiterate persons
 - he makes contract with pardanashin women e.g. women living in seclusion
- Wherever there is presumption of undue influence, the **burden of rebutting the presumption lies on guilty party**. He has to prove that price was adequate, there was full disclosure of facts to other party and that other party's consent was free.
- There is **no presumption of undue influence** in cases of husband and wife/mother and daughter/grandson and grandfather/landlord and tenant/creditor and debtor etc. and undue influence has to be proved by aggrieved party.
- A contract caused by undue influence is **voidable at the option of the aggrieved party**. Such party has the right to **affirm** the contract or **repudiate** the contract. In case the party decides to rescind the contract, it may have to restore back benefits received from other party wholly or partly **as per the directions of court (19A)**.
- **Difference between coercion and undue influence – very important**

FRAUD (Sec.17)

Fraud means inducing another person enter into contract by deliberately misrepresenting the facts. As per section 17, it includes

- ✓ Making false statement intentionally
- ✓ Active concealment of fact
- ✓ Making a false promise
- ✓ Any other act fitted to deceive \cheat\dupe
- ✓ Any act \ omission specifically declared fraudulent under any law

• **A deceit which does not deceive gives no ground for action.** This implies that the fraudulent statement must have been instrumental in inducing the other party to enter into contract. If the fraudulent statement is ignored by other person and he enters into contract because of other factor, then he cannot accuse other party of fraud.

• **SILENCE AND FRAUD or FRAUDULENT SILENCE**

- As a rule Mere silence as to facts is not fraud. There is no duty on one party to make disclosure of all known material facts to the other party. It is also the duty of other party to enquire.
- However ,there are certain situations, where it the duty of the party to speak and disclose the facts to the other party. Here, if the party remains silent, it will constitute fraud. These situations are
 - Where parties stand in fiduciary relation to each other.
 - Contracts of insurance
 - Contract of marriage engagement
 - Share allotment contract
- Silence is also fraudulent where circumstances are such that " silence is in itself equivalent to speech.

• A contract caused by fraud is **voidable at the option of aggrieved party.** So he can **rescind the contract** or can **insist that the contract shall be performed** but he be put in position in which he would have been had the representation been true. **Further, the aggrieved party can also sue for damages and claim compensation for loss suffered as a result of fraud.**

• In case of fraud, the **contract is voidable even though the aggrieved party had the means to discover the truth** by ordinary diligence. But in cases of fraudulent silence, the contract is not voidable, if the aggrieved party had the means to discover truth with ordinary diligence.

MISREPRESENTATION (Sec.18)

Misrepresentation means making a wrong representation innocently\ unintentionally. As per Sec.18, it includes

- ✓ assertion of unwarranted statements of material facts believing them to be true
- ✓ breach of duty without an intention to deceive Case- With vs O' Flanagan
- ✓ causing mistake about subject matter innocently

- Misrepresentation must be of facts. A mere expression of opinion or commendation or a general remark does not constitute misrepresentation.
- A contract caused by misrepresentation is **voidable** at the option of the aggrieved party. He can **rescind** the contract or he may **affirm** the contract and insist that he be put in the position he would have been had the representation been true. *Misrepresentation does not entitle the aggrieved party to claim damages.*
- In case of misrepresentation, the **contract is not voidable if the aggrieved party had the means of discovering the truth** with ordinary diligence.
- Difference in fraud and misrepresentation – is important.
- **LOSS OF RIGHT OF RESCISSION**
 - ✓ Affirmation-by express words or conduct eg. An misled investor accepts dividend on shares allotted to him by a company issuing a misleading prospectus.
 - ✓ Restitution not possible eg. Where the subject matter of the contract has been consumed / destroyed.
 - ✓ Lapse of time eg. party wanting to rescind the contract on charges of fraud takes too long a time in taking action
 - ✓ Rights of third parties are created. eg. Where a cheat obtains goods by fraud and before the aggrieved seller rescinds the contract, the cheat sells it off to a bonafide party for value, then the seller cannot rescind.

MISTAKE- Erroneous Belief of Something (Sec.20,21 and 22)

• Mistake of law

- ✓ Mistake of law of country - Ignorance of law is no excuse. So if there is mistake of law of the country, the contract is binding.(Sec21)
- ✓ Mistake of law of foreign country- Treated as mistake of fact

• Mistake of fact

- ✓ **Bilateral mistake(Sec.20) -both parties are mistaken about some essential fact pertaining to the contract-** here the **agreement is void abinitio** as there is no consent at all
 - Mistake as to existence of subject matter of agreement
 - Mistake as to identity of subject matter of agreement .CASE- Reffles vs Wichelaus
 - Mistake as to quantity of subject matter of agreement.CASE- Henkel vs Pope
 - Mistake as to quality of subject matter of agreement
- ✓ **Unilateral Mistake i.e. only one party under mistake as to fact**
 - As per Sec.22 , **A contract remains valid if caused by unilateral mistake** on part of one of the parties.
 - However , **contract is voidable if mistake is because of fraud\ misrepresentation** by the other party.
 - But as per judicial interpretations , **the agreement is void abinitio in two cases** below
 - Mistake as to identity of person contracted with.CASE - **Said vs Butt ; Boulton vs Jones; Cunday vs Lindsay**
 - Mistake as to nature and character of document.CASE- **Bala Devi vs Santi Mazumdar**

COERCION vs UNDUE INFLUENCE

Coercion (Section 15)	Undue influence (Section 16)
<ul style="list-style-type: none">Here consent is obtained by committing / threatening to commit an act forbidden by IPC or detaining/threatening to detain some property unlawfully	<ul style="list-style-type: none">Here consent is obtained by dominating the will of the other person
<ul style="list-style-type: none">It is mainly physical in character i.e. involving use of physical or violent force	<ul style="list-style-type: none">It is mainly moral in character i.e. involving use of moral or mental pressure
<ul style="list-style-type: none">There is no presumption of coercion by law	<ul style="list-style-type: none">There is presumption of undue influence in many cases eg. where there is real authority or fiduciary relationship etc.
<ul style="list-style-type: none">Burden of proof is on the aggrieved party and it has to prove that coercion was used to obtain his consent.	<ul style="list-style-type: none">Burden of proof is on guilty party as it has to rebut the presumption of undue influence by law and prove that no undue influence was exercised.
<ul style="list-style-type: none">The person exercising coercion may have to face criminal liability	<ul style="list-style-type: none">The person exercising undue influence does not face any criminal liability
<ul style="list-style-type: none">As per sec.19 of Indian Contract Act, 1872, if a contract caused by coercion ,is rescinded, any benefit received by the aggrieved has to be restored u/s 64.	<ul style="list-style-type: none">As per sec.19 of Indian Contract Act, if a contract caused by undue influence is rescinded, the Court has discretion to direct what the aggrieved party will restore back .

FRAUD vs MISREPRESENTATION

Fraud	Misrepresentation
<ul style="list-style-type: none">• Covered under Section 17	<ul style="list-style-type: none">• Covered under Section 18
<ul style="list-style-type: none">• It means deliberate misstatement or active concealment or fake promise or any other act fitted to deceive	<ul style="list-style-type: none">• It means assertion of an unwarranted statement or breach of duty or causing mistake about subject matter innocently
<ul style="list-style-type: none">• Fraud is wilful, and deliberate and intentional	<ul style="list-style-type: none">• Misrepresentation is innocent and unintentional
<ul style="list-style-type: none">• Person making the statement does not have any belief in statement made by him.	<ul style="list-style-type: none">• Person making the statement has belief in the statement made by him.
<ul style="list-style-type: none">• Here the aggrieved party can also claim damages for loss suffered in addition to the right of rescinding the contract.	<ul style="list-style-type: none">• Here the aggrieved party cannot claim damages. It only has a right to rescind the contract.
<ul style="list-style-type: none">• Incase of fraud, the contract is voidable even though the party defrauded had the means to discover the truth with ordinary diligence.	<ul style="list-style-type: none">• Incase of misrepresentation, the contract is not voidable if the party defrauded had the means to discover the truth with ordinary diligence.