

Business Law (Topic Name : Free Consent)

1. Free Consent: Meaning

As discussed earlier, free consent is an essential requirement of a valid contract under section 10 of the Act. According to section 13 of the Indian Contract Act, two or more persons are said to consent when they agree upon the same thing in the same sense. It is essential to the creation of a contract that both parties should agree to the same thing in the same sense. It is not only the 'consent' but 'free consent' which is necessary for a valid contract.

The term 'free consent' has been defined in section 14 of the Act.

According to this provision, consent is said to be free when it is not caused by-

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of section 20, 21 and 22.

When the consent is obtained by coercion, undue influence, fraud or misrepresentation, the contract is voidable at the option of the party whose consent was so obtained.

How ever, when the consent is caused by mistake, the agreement is void.

COERCION [section 15] :

"Coercion" is the committing or threatening to commit any act, forbidden by the Indian Penal Code 1860 or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Illustrations. (1) Leading case: Ranganayakamma Vs Alwar Setti (1889) , 13 Mad. 214.

A Madrasi gentle man died leaving a young widow. The relatives of the deceased threatened the widow to adopt a boy other wise they would not allow her to remove the dead body of her husband for cremation. The widow adopted the boy and subsequently applied for cancellation of the adoption. It was held that the adoption was not binding on her as her consent was obtained under coercion within the meaning of sec 15 since any person who obstructed a dead body from being removed for cremation, would be guilty of an offence under sec 297 of the IPC. The adoption was set aside.

(2) L threatens to shoot M, if he doesn't let out his house to him. M agrees to let out his house to L. The consent of M has been induced by coercion.

An agreement induced by coercion is voidable and not void.

That means it can be enforced by the party coerced, but not by the party using coercion.

UNDUE INFLUENCE [section 16] :- "A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other." A person is deemed to be in a position to dominate the will of the other, when he holds authority real or apparent over the other, or when he stands in a fiduciary relation to the other.

Examples: i) A father, by reason of his authority over the son can dominate the will of the son. For the same reason the husband can dominate the will of the wife.

ii) A person, by reason of fiduciary relationship, a solicitor can dominate the will of his client and

iii) A trustee can dominate the will of the beneficiary.

iv) Similarly a person whose mental capacity is affected by age, illness or distress may be a prey to undue influence. For instance, a doctor is deemed to be in a position to dominate the will of his patient enfeebled by protracted illness.

FRAUD [section 17] :

The term 'fraud' includes all acts committed by a person with an intention to deceive another person.

As per the Act, "fraud means and includes any one of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive or to induce another party thereto or his agent, to enter into the contract.

1. The suggestion, as to a fact of that which is not true by one who does not believe it to be true;
2. The active concealment of a fact by a person who has knowledge or belief of the act;
3. A promise made without any intention of performing it;
4. Any other act fitted to deceive;
5. Any such act or omission as the specially declares to be fraudulent.

Examples: (1) A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud by A.

(2) B is A's daughter and has just come to age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

Section 17 reveals that fraud is an untrue statement which is deliberately made without believing in its truth. But if a person makes a false statement in good and with utmost honesty, he cannot be held guilty of fraud.

In spite of the object of the person making fraud being good, it deserves to be called a fraud. All unfair acts, committed to deceive the other party come under the category of fraud.

MISREPRESENTATION [section 18] :

The term 'Misrepresentation' means a false representation of fact made innocently or nondisclosure of a material fact without any intention to deceive the other party. Section 18 defines the term 'misrepresentation' as follows:

i) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

ii). Any breach of duty which, without an intent to receive gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him,;

iii). Causing however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

MISTAKE [section 20] :

According to Section 20 of the Indian Contract Act, "When both the parties to an agreement are under a mistake as to a matter of fact, essential to the agreement, the agreement is void.

Following three conditions must be fulfilled for the agreement to become void:-

1. Both the parties being under mistake,

2. Mistake of fact,

3. That fact being essential for the agreement

Mistake may be defined as an erroneous belief concerning something. It may be of two kinds "mistake of law" and "mistake of fact". Mistake of law means everyone is deemed to be conversant with the law of his country, and hence the maxim "ignorance of law is no excuse."

Mistake of law, therefore, is no excuse and it doesn't give right to the parties to avoid the contract.

Mistake of fact may be of two types..i) Bilateral mistake- Where the parties to an agreement

misunderstood each other and are at cross purposes,there is a bilateral mistake

Unilateral mistake :

Where only one of the contracting parties is mistaken as to a matter of fact,the mistake is a unilateral mistake.

Stating the effect of mistake as to law,Sec21

declares that"a contract is not voidable because it was caused by a mistake as to any law inforce in India.

References :

1. Indian Contract Act by Dr Avtar Singh.
2. Indian Contract Act by R.K.Bangia., Allahabad Law Agency, Faridabad Haryana
- 3.Business law by MCKuchhal &Vivek Kuchhal.
- 4.Business law by N.D.Kapoor.