

INDIAN CONTRACT ACT ,1872

Indian Contract Act 1872 is the main source of law regulating contracts in India. It was enacted on 25 April, 1872 by Imperial legislative council . It extends to (the whole of India) (except the state of Jammu and Kashmir); and it shall come into force on the first day of September, 1872.

FREE CONSENT

CONSENT AND FREE CONSENT

Consent means when it is received from somebody must be free from compulsion or pressure. It is not enough for valid contract .

According to **Indian Contract Act , 1872, Sec.13** defines consent as : ‘Two or more persons are said to consent when they agree upon the same thing in the same sense ‘ i.e. *consensus ad idem* .

Free consent means parties to contract may agree upon the same thing in the same sense and along with the same. .It is one of the essential elements of valid contract.

According to **Indian Contract Act, 1872, Sec. 14** defines consent is said to be free when it is not caused by:

1. Coercion, as defined in Sec. 15
2. Undue influence, as defined in Sec. 16
3. Fraud, as defined in Sec. 17
4. Misrepresentation , as defined in Sec. 18
5. Mistake, subject to the provisions of sections 20,21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

COERCION

Coercion means use of physical pressure like threats , assaults , kidnappings etc.

According to **Indian Contract Act , 1872, Sec.15** defines coercion as : Coercion is the committing , or threatening to commit ,any act forbidden by the Indian Penal Code (45 of 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.

Essentials :

1. Act forbidden by the Indian Penal Code

It is clear above that if a person commits or threatens to commit any act forbidden by the Indian Penal Code for obtaining the consent of the other person on an agreement, in this case consent is deemed to have been obtained by coercion.

Case law:

- **Ranganayakamma v. AlwarSetti (1889)**
- **ChikkanAmmiraju v. ChikkamSeshama (1918)**

2. Unlawful detaining of any property

- To the prejudice of any person
- Threat to strike is no coercion
- Statutory compulsion is no coercion

Duress under English Law

Under English law 'Duress and Menace'. Duress consists in actual or threatened violence or imprisonment of the parties which had made contract or his wife, parent or child, by the other party or by anyone acting with his knowledge and for his advantage.

UNDUE INFLUENCE

Undue influence means pressure and misuse of power for unfair advantage.

According to **Indian Contract Act, 1872, Sec. 16** defines undue influence as:

- (1) 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.
- (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-
 - (a) Where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
 - (b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on evidence adduced, to be unconscionable, the burden of proving that such

contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Essentials:

1. The relations subsisting between the parties are that one must dominate the will of the other
2. A person uses his dominant position to obtain an unfair advantage over the other.

Relations which involve domination

When can it be said that one party is able to dominate the will of the other?

The answer is, that in all cases where there is trust and active confidence between the contracting parties or the parties are not on equal footing.

Relations are:

- Real and apparent authority
If person has an authority over the party, it is possible that he would not take undue advantage like abusing them. **E.g.** A police officer over the accused, an employer over the employee.
- Fiduciary relation
Fiduciary relation means a relation of trust and confidence. **e.g.** Solicitor and client, doctor and patient, and creditor and debtor.
- Mental distress
In this where person makes a contract with person whose mental capacity is temporarily or permanently affected by reason of age, mental and bodily stress. **e.g.** A, a man suffered by disease, is induced B's influence over him as medical attendant, to agree B to pay unreasonable sum to A for services. B employs undue influence.

PRESUMPTION OF UNDUE INFLUENCE

- Unconscionable bargains
Is one no man in his senses, not under a delusion, would make on the one hand and which is not fair or reasonable man would accept on the other.
Case law: **Wajid Khan v. Raja Ewaz Ali Khan (1890)**
- Inequality of bargaining power
Under which parties to a contract may be equal in power to dictate terms and conditions.
Case law: **Lloyds v. Bundy (1975)**
- Parda-nishin women
A lady living in seclusion i.e. it had no communication with male strangers except from behind a screen.
Case law: **Ismail Musajee v. Hafiz Boo (1906)**

Effect of undue influence –

According to **Indian Contract Act ,1872,Sec 19-A** defines as:

When consent to an agreement is caused by undue influence , the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such caused may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.

FRAUD

Fraud means purposefully deceiving people with the intention of getting them enter into contract.

According to **Indian Contract Act, 1872, Sec. 17** defines fraud as: Fraud means and includes any of the following act committed by a party to a contract ,or with his connivance ,or by his agent, with intent to deceive another party thereto or his agent ,or to induce him to enter into contract –

- (1) the suggestion ,as 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 one having knowledge or belief of fact ;
- (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 law specially declares to be fraudulent.

- ❖ Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud , unless the circumstances of the case are such that ,regard being had to them , it is the duty of the person keeping silence is , in itself , equivalent to speech.

Essentials:

1. False statement of fact

In occurring a fraud, it is necessary that there should be a statement of fact which is not true. Mere expression is not enough to constitute a fraud.

Case law: **Edington v. Fitzmaurice (1885)**

2. Wrongful intention

In occurring a fraud , it is necessary that person should intentionally make wrong statement with an intent to deceive other party thereto induce him to enter into the contract . if there is no intention to deceive another party, there is no fraud.

Case law: **Derry v. Peek (1889)**

Exceptions:

- When there is duty to speak , keeping silence is fraud

Case law: **V. Srinivasa Pillai v. L.I.C. of India (1977)**

- When silent is equivalent to speech
Case law: **Shri Krishan v. Kurukshetra University (1976)**

MISREPRESENTATION

Misrepresentation means giving false information without any intention to deceive.

According to **Indian contract Act, 1872, Sec. 18** defines misrepresentation as:

Misrepresentation means and includes –

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though the believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or the prejudice of any one claiming under him;
- (3) 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.

Types of misrepresentation:

1. Unwarranted statements

When a person, asserts that fact must be true when his information does not warrant it to be so, if he believes it to be true, then this is misrepresentation.

Case law: **Oceanic Navigation Co. v. Soonderdas Dharamsey (1890)**

2. Breach of duty

Any breach of duty which has an advantage of a person who is committing it by misleading the other to his prejudice is a misrepresentation.

Case law: **Oriental Bank Corporation V. John Fleming (1879)**

3. Inducing mistake about subject- matter

A party to an agreement for making a mistake there should be substance of the thing which is the subject of the agreement is also misrepresentation.

Case law: **Nurse Spg & Wvg Co ltd, Re (1880)**

Effect of flaw in consent :

- Right of rescission of the contract
Rescission of contract is the common remedy which is available in all cases like coercion, misrepresentation, fraud or undue influence.

LIMITATIONS :-

- When the contract is affirmed
 - Lapse of time
 - Acquisition of a right by a third party
 - Inability to restore the goods
 - Damage in lieu of rescission of contract
- Right to claim compensation
- The remedy of damages or compensation may also sometimes be available to the contracting parties, in all cases coercion, undue influence, fraud. And misrepresentation.
- Damages in case of fraud
 - Damages in case of non- fraudulent misrepresentation
 - Duty of party rescinding the contract to pay compensation

MISTAKE

Mistake means when either one or both parties are under mistake as to fact of the contract

According to **Indian Contract Act, 1872, Sec. 20** defines mistake as: Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

TYPES OF MISTAKE :

1. Unilateral Mistake:- A mistake would be unilateral where one party is mistaken. According to **Indian Contract act, 1872, Sec.22** defines as – a contract is not voidable merely because it caused by one of the parties to it being under a mistake as to a matter of fact.
2. Bilateral Mistake: - A mistake would be bilateral where both party is mistaken. According to **Indian Contract Act, 1872, Sec. 20** defines as - Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

According to **Indian Contract Act, 1872, Sec. 21** defines as – A contract is not voidable because it was caused by a mistake to any law in force in India; but a mistake as to a law not in force in India has the same effect as a mistake of fact.

Essentials:

1. Mistake as to subject matter – If there is mistake of both parties to the agreement regarding its existence, identity, price, quality, quantity then agreement is void.

Case law:

- **Smith v. Hughes (1871)**
 - **Gustavus Courtier v. Robert Hastie (1856)**
2. Mistake as to possibility of the performance of the contract – If both the parties believe that a contract is capable of performance but due to impossibility it cannot be performed, agreement is void.
 3. Mistake as to title – Buyer is the owner of what the seller purposes to sell. There is nothing seller has to transfer. The transfer of ownership is intended but it is impossible agreement is void.
 4. Mistake as to promise – A contract is to void if a party to a contract, without any fault of his own, makes a mistake, about the character and nature of the document.
 5. Mistake as to identity of the parties – where one of the parties represents himself to be some person, which actually he is not it is called ‘Mistake of identity’ and agreement is void.

Case law:

- **Boulton v. Jones (1886)**
- **Philips v. Brooks Ltd. (1919)**

MISTAKE OF LAW – ‘law’ means the general law of the land, foreign law and private rights of the parties as a mistake of law.

1. Mistake of general law of the country – It means erroneous belief with regard the provisions and application of law. Mistake of law is not excusable as every citizen is expected to know the law of the country.
2. Mistake of foreign law - Ignorance of foreign law is excusable. the contract will be void and mistake is made with regard to foreign.
3. Mistake of private rights of the parties – mistake as to pre-existing private right cannot be regarded as a mere mistake of law .it is excusable.

your intellectual friend...

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