

FREE CONSENT

• Consent [Sec 13]

Two or more persons are said to consent when they agree upon the same thing in the same sense.

• Consent = ^{इच्छा की एकता होना}
Union of wills
and

Accord in the mind of the parties.
^{दोनों की इच्छाओं की समूह}

• Latin word of consent = Consensus ad idem

• If there is no consent then it is said to be
'error in consensus'

• Sec-14 ⇒ Consent is not free, if it is caused by

→ Coercion (धमकी)

→ Undue Influence (मानसिक दबाव)

→ Fraud (धोखा)

→ Misrepresentation (असत्यता से manipulate)

→ Mistake (गलती)

⇒ Coercion :- As per Section 15, coercion is the

- committing or threatening to commit - forbidden by Indian Penal Code
करना (धमकी) / धमकी (धमकी)
- unlawful detaining or threatening to detain - property
धरना देना
- to the prejudice to any person / property.
हानि (नुकसान)
- the object of coercion is to make an agreement.
(धमकी से agreement करना)

⇒ Consequences of coercion :- As per Section 19, it is voidable contract.

⇒ Threat to commit suicide - whether is it coercion?

- Suicide though forbidden by IPC is not punishable, as a dead man cannot be punished.
- Sec 15 says that committing or threatening to commit any act forbidden by IPC is coercion.

⇒ Coer Undue Influence :- dominate the will
[Sec 16] +
unfair Advantage over the other

Section- 16(2) provides essential ingredients under this provision :-

(i) Relation b/w the parties
 When there is near relation b/w the parties, a party can be influenced by other.

(ii) Position to dominate the will

Real or Apparent authority

Holds real authority (i.e. money) like doctor & patient; master & servant; etc.

Fiduciary relationship

Holds trust and faith relationship b/w the parties like father & son; husband & wife; etc

Mental distress

Mental capacity is temporarily or permanently affected by the reason of mental or bodily distress

Unconscionable

Bargains

Position to dominate the will of other and the contract is apparently unconscionable
 i.e. case of face से वता - वता रत ५ १३ ५६ ०१०३ ५१

(iii) The object must to take ^{undue} ~~unfair~~ advantage where the person is in position to influence the will of other in getting consent, must have the object to take advantage of other.

(iv) Burden of proof [Section 16(3)]

To avoid the contract on the ground of undue influence, he has to prove that —

- other party is in position to dominate his will
- other party actually used his position to
- obtain his consent.
- Transaction is unfair or unconscionable.

⇒ Effects of Undue Influence [Section 19A]

- If consent caused by undue influence, it is voidable contract at the option of the party whose consent was so caused.
- Such contract may set aside by court and if any benefit received, it may be set aside upon such terms & conditions as are just in the eyes of law.

⇒ Fraud [Section 17]

Fraud is a false statement or willful concealment of a material fact with an intention to deceive another party.

Sec 17 of the Act states that fraud means & includes any of the following acts :-

fraud may include any of these

false statement
गलत बात बोलना

Active Concealment
जरूरी बात को छुपाना

Deception
किसी काम को धोखा देने के लिए करना

Intentional non-performance
जानकार काम पूरा न करना

fraudulent act or omission
law में ही fraud defined करा हुआ है

Note :- A deceit which doesn't deceive is no fraud.
(i.e. धोखा दिया जिससे धोखा न हुआ)

fraud must have made with an intention to deceive and must actually deceive in other party.

⇒ Consequences of Fraud

Valid

Void

Can sue for damages

⇒ Exception :- Contract is not voidable :-

- If the fraud, had the means of discovering the truth with ordinary diligence (धोखा मत mind लगाकर पता लगाया जा सकता था कि fraud ही रहा है।)
- A fraud which didn't cause the consent of the party to agreement.

⇒ Can silence be fraudulent?

Yes, silence can be fraudulent in case of

when it is the duty of the party to speak

when there is fiduciary relation b/w the parties.

⇒ Constructive fraud
Misrepresentation [Section 18]

Acc. to sec 18, there is misrepresentation

Unwarranted Assertion	Breach of duty	Innocent Mistake
फालतु की बातें बोलना - ज्यादा बोल दिया/सुद कोसी (↓ नहीं पता था कि झूठ है)	जो बताना चाहिए था जो नहीं बताया ↓ When there is a breach of duty by a person without any intention to deceive which brings an advantage to him	गलती से ↓ If one party causes the other, innocently to make a mistake as to nature of the agreement is said to be misrepresentation
When a person makes positive statement honestly believing it to be true though it is false, said to be misrepresentation		

Consequences of Misrepresentation :-

⇒ Mistake :- It is an erroneous belief concerning something. It may of two kinds

Mistake of Law
⇓

Mistake of fact
⇓

Latin word:- Ignorantia Juris
Non Excusat

Latin word:- Ignorantia facti
Excusat

★ Mistake of Law :-

It is of two types

(a) Mistake of General law of Country

Everyone is deemed to be conversant with the law of his country & hence ignorance of law is no excuse.

Section 21 enacts that a contract is not voidable because it was caused by a mistake as to any law in force in India.

No excuse → not allowed in 'Mistake of Law'

→ If the party has received benefit through contract of law of mistake → It is to be given back.

→ These contracts are generally void and the party breaking the law has to pay the fine accordingly.

(b) Mistake of foreign law :- (Void contract)

Mistake of foreign law is treated as 'mistake of fact'. Here the law relating to factual mistakes will apply.

* Mistake of Fact :- It is of two types :-

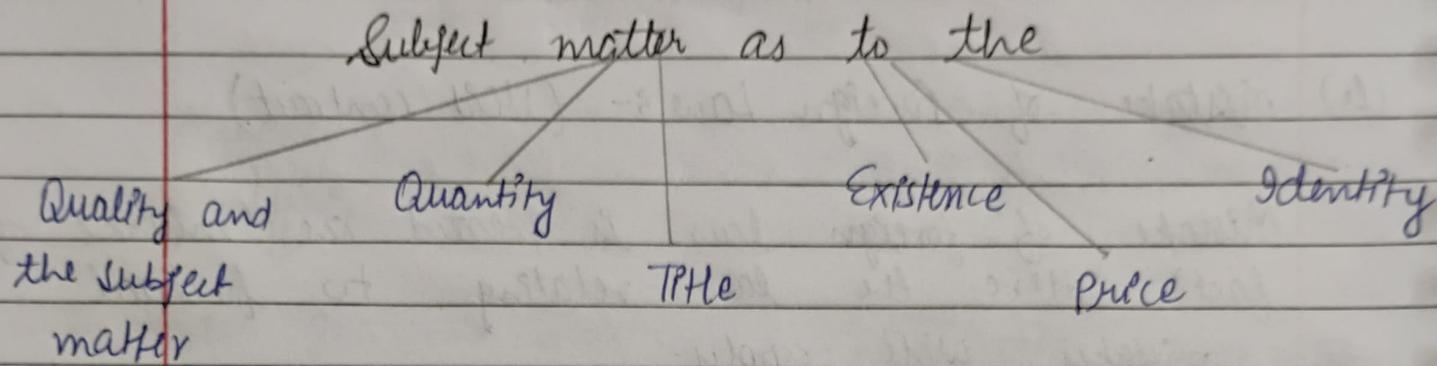
(i) Bilateral Mistake :- It is void-ab-initio.

Section 20 provides that, where both the parties to an agreement are under a mistake as to a subject matter of fact essential to the agreement is void.

Agreement to become void-ab-initio following 3 condition must be fulfilled.

- Both parties must make mistake.
- Mistake relates to some fact not to judgement or opinion
- The fact must be essential to the agreement (related to main part)

⇒ Cases of Bilateral Mistake



(ii) Bilateral Mistake :-

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

Section 22 provides that, 'A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.'

Law regarding Unilateral Mistake

Contract valid

Contract void

Agreement void-ab-initio