

Free Consent

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In the Indian Contract Act, the definition of Consent is given in Section 13, which states that “it is when two or more persons agree upon the same thing and in the same sense”. So the two people must agree to something in the same sense as well. Let’s say for example A agrees to sell his car to B. A owns three cars and wants to sell the Maruti. B thinks he is buying his Honda. Here A and B have not agreed upon the same thing in the same sense. Hence there is no consent and subsequently no contract.

Now Free Consent has been defined in Section 14 of the Act. The section says that consent is considered free consent when it is not caused or affected by the following,

1. Coercion
2. Undue Influence
3. Fraud
4. Misrepresentation
5. Mistake

Elements Vitiating Free Consent

Let us take a look at these elements individually that impair the free consent of either party.

1] Coercion (Section 15)

Coercion means using force to compel a person to enter into a contract. So force or threats are used to obtain the consent of the party under coercion, i.e it is not free consent. Section 15 of the Act describes coercion as

- committing or threatening to commit any act forbidden by the law in the IPC
- unlawfully detaining or threatening to detain any property with the intention of causing any person to enter into a contract

For example, A threatens to hurt B if he does not sell his house to A for 5 lakh rupees. Here even if B sells the house to A, it will not be a valid contract since B's consent was obtained by coercion.

Now the effect of coercion is that it makes the contract voidable. This means the contract is voidable at the option of the party whose consent was not free. So the aggravated party will decide whether to perform the contract or to void the contract. So in the above example, if B still wishes, the contract can go ahead.

Also, if any monies have been paid or goods delivered under coercion must be repaid or returned once the contract is void. And the burden of proof proving coercion will be on the party who wants to avoid the contract. So the aggravated party will have to prove the coercion, i.e. prove that his consent was not freely given.

2] Undue Influence (Section 16)

Section 16 of the Act contains the definition of undue influence. It states that when the relations between the two parties are such that one party is in a position to dominate the other party, and uses such influence to obtain an unfair advantage of the other party it will be undue influence.

The section also further describes how the person can abuse his authority in the following two ways,

- When a person holds real or even apparent authority over the other person. Or if he is in a fiduciary relationship with the other person

- He makes a contract with a person whose mental capacity is affected by age, illness or distress. The unsoundness of mind can be temporary or permanent

Say for example A sold his gold watch for only Rs 500/- to his teacher B after his teacher promised him good grades. Here the consent of A (adult) is not freely given, he was under the influence of his teacher.

Now undue influence to be evident the dominant party must have the objective to take advantage of the other party. If influence is wielded to benefit the other party it will not be undue influence. But if consent is not free due to undue influence, the contract becomes voidable at the option of the aggravated party. And the burden of proof will be on the dominant party to prove the absence of influence.

3] Fraud (Section 17)

Fraud means deceit by one of the parties, i.e. when one of the parties deliberately makes false statements. So the misrepresentation is done with full knowledge that it is not true, or recklessly without checking for the trueness, this is said to be fraudulent. It absolutely impairs free consent.

So according to Section 17, a fraud is when a party convinces another to enter into an agreement by making statements that are

- suggesting a fact that is not true, and he does not believe it to be true
- the active concealment of facts
- a promise made without any intention of performing it
- any other such act fitted to deceive

Let us take a look at an example. A bought a horse from B. B claims the horse can be used on the farm. Turns out the horse is lame and A

cannot use him on his farm. Here B knowingly deceived A and this will amount to fraud.

One factor to consider is that the aggravated party should suffer from some actual loss due to the fraud. There is no fraud without damages. Also, the false statement must be a fact, not an opinion. In the above example if B had said his horse is better than C's this would be an opinion, not a fact. And it would not amount to fraud.

4] Misrepresentation (Section 18)

Misrepresentation is also when a party makes a representation that is false, inaccurate, incorrect, etc. The difference here is the misrepresentation is innocent, i.e. not intentional. The party making the statement believes it to be true. Misrepresentation can be of three types

- A person makes a positive assertion believing it to be true
- Any breach of duty gives the person committing it an advantage by misleading another. But the breach of duty is without any intent to deceive
- when one party causes the other party to make a mistake as to the subject matter of the contract. But this is done innocently and not intentionally.

5] Mistake

A mistake is an erroneous belief that is innocent in nature. It leads to a misunderstanding between the two parties. Now when talking about a mistake, the law identifies two types of mistakes, namely

1. A Mistake of Law
2. A Mistake of Fact

Mistake of Law

This mistake may relate to the mistake of the Indian laws, or it can be a mistake of foreign laws. If the mistake is regarding Indian laws, the rule is that the ignorance of the law is not a good enough excuse. This means either party cannot simply claim it was unaware of the law.

The Contract Act says that no party shall be allowed to claim any relief on the grounds of ignorance of Indian law. This will also include a wrong interpretation of any legal provisions.

However, ignorance of a foreign law is not given a similar treatment. Ignorance of the foreign law is given some leeway, the parties are not expected to know foreign legal provisions and their meaning. So a mistake of foreign law is in fact treated as a mistake of fact under the Indian Contract Act.

Mistake of Fact

Then there is the other type of mistake, a mistake of fact. This is when both the parties misunderstand each other leaving them at a crossroads. Such a mistake can be because of an error in understanding, or ignorance or omission etc. But a mistake is never intentional, it is an innocent overlooking. These mistakes can either be unilateral or bilateral.

Bilateral Mistake

When both parties of a contract are under a mistake of fact essential to the agreement, such a mistake is what we call a bilateral mistake. Here

both the parties have not consented to the same thing in the same sense, which is the definition of consent. Since there is an absence of consent altogether the agreement is void.

However, to render an agreement void the mistake of fact should be about some essential fact that is of importance in a contract. So if the mistake is about the existence of the subject matter or its title, quality, quantity price etc then it would be a void contract. But if the mistake is of something inconsequential, then the agreement is not void and the contract will remain in place.

For example, A agrees to sell to B his buffalo. But at the time of the agreement, the buffalo had already died. Neither A nor B was aware of this. And so there is no contract at all, i.e. the contract is void due to a mistake of fact.

Unilateral Mistake

A unilateral mistake is when only one party to the contract is under a mistake. In such a case the contract will not be void. So the Section 22 of the Act states that just because one party was under a mistake of fact the contract will not be void or voidable. So if only one party has made a mistake of fact the contract remains a valid contract.

However, there are some exceptions to this. In certain conditions, even a unilateral mistake of fact can lead to a void or voidable agreement. Let's see a few of these exceptions via some examples and case studies.

When Unilateral Mistake is as to the Nature of the Contract: In such a case the contract can be held as void. Let us see the example of Dularia

Devi v. Janardan Singh. Here an illiterate woman put her thumb impression on two documents thinking they were the same. She thought the document was to gift some property to her daughters. But the other document was a Sale deed to defraud the women out of more of her property. This contract was held void by the courts

When the Mistake is regarding the Quality of the Promise: There was an auction being held by A to sell hemp and tow. B thinking the auction was only for hemp, mistakenly bid for a tow. The amount bid was on par for hemp but very high for a tow. Hence the contract was held as voidable.

Mistake of the Identity of the Person contracted with: For example, when A wants to enter into a contract with B but mistakenly enters into a contract with C believing him to be B.