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Academic Scripts

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## **Introduction**

The Law of Contract constitutes the most important branch of mercantile or commercial law. It affects everybody, more so, trade, commerce and industry. It may be said that the contract is the basis of the cultured world. This Act came into force from the 1<sup>st</sup> day of September, 1872. It extends to the whole of India except to the State of Jammu and Kashmir. The Act was passed by British India and is based on the principles of English Common Law. This Act's part II describes and discussing on free consents, mode of discharge of contract etc. Breach of contract and remedies for the breach of contract.

## **Genuine and Free Consent**

Meaning of consent: According to section 13 two or more persons are said to consent when they agree upon the same thing in the same sense.

Meaning and Importance of Free Consent: People who enter into contract must give their free consent. It is the most important and essential element of valid contract. In the absence of free consent or without the free consent valid contract is completely impossible. It is essential to create a valid contract that the parties have consensus or meeting of the mind. They must agree up on something in the same sense at the same time. It gives continuous power till the entire performance of the contract. Mutual understanding between the parties results agreement on the same thing in the same sense. Such agreements represent the real consent from the inner part of the parties which gives positive impression to performance of the liabilities created from the contract.

## **Section 14 in The Indian Contract Act, 1872**

'Free consent' defined.—Consent is said to be free when it is not caused by— —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 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.

Free Consent, an essential element of a valid contract, is said to be free when it is not caused by any of the following:

a) Coercion (Section 15): Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property with the intention of causing any person to enter into an agreement. What the Indian law calls Coercion is called in English law duress or menace. Duress is said to consist in actual or threatened violence or imprisonment of the contracting party or his wife, parent or child, inflicted or threatened by the other party or by one acting on his knowledge and for his advantage.

Threatening at Gun- Point, threatening to commit suicide and refusing to hand over the account books of a business are some of the instances which amount to coercion.

b) 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.

The following relationships may raise the assumption of undue influence:

~ Parent and child

~ Guardian and ward

~ Religious advisers and disciple

~ Doctor and patient

~ Solicitor and client

~ Fiancé and fiancée

The main difference between coercion and undue influence is that if a consent is given under the threat of an offence it is coercion and if a consent is given under the domination of a person who has the ability to influence the decision it is undue influence.

c) Misrepresentation (Section 18): Misrepresentation is the innocent or unconscious presentation of wrong facts by one party, which are taken into account by the other party before entering into a contract. The person making such a misrepresentation honestly believes that such statement is true. Misrepresentation results not only from mis-statement of facts but also from suppression of material facts without any intent to deceive the other party. In case of wilful suppression of material facts, it amounts to Fraud as defined under Section 17.

Consequences of misrepresentation: The aggrieved party, in case of misrepresentation by other party, may avoid or rescind the contract or accept the contract while insisting that he shall be placed in the position in which he would have been if the representation made had been true.

d) Fraud (Section 17): Fraud means and includes any of the following acts committed by a party to a contract, or with his conspiracy (intentional active or passive) or by his agent with intention to deceive or to induce a person to enter into a contract. It is important to understand that in case of fraud, there is an intention to deceive the other party by asserting a false statement. It is equally important that the other party relied on such statement before entering into the contract. as a result of which the said party suffers losses.

Uberrimae Fidel: These are the contracts on which the law imposes a special duty to act with the utmost good faith to disclose all material information. Examples: Contract of Insurance, Company prospectus inviting public to subscribe for its shares.

Consequences of Fraud: A contract induced by fraud is voidable at the option of the party defrauded. The defrauded party may nullify the contract within a reasonable time or may insist on the performance of the contract on conditions that he shall be put in the position in which he would have been if the representation made had been true or may sue for damages.

e) Mistakes (Section 20 & 21): Mistakes can be (1) of Law or (2) of facts. Ignorance of Law is no excuse and contracts entered by mistake of Law are binding. Mistakes of foreign Laws and private rights are treated as mistakes of facts and may be declared as void. Mistakes can be Unilateral or Bilateral. In the first case it is a one-sided mistake and the contract is held valid. In the second case both the parties commit mistakes and the contract is declared as VOID.

1. Consent [section 13] – Agreed upon same thing in the same sense – consensus ad-idem – meeting/identity of mind.

2. Free Consent [Section 14] – A consent is said to be free if it is not caused by

(a) Coercion or

(b) Undue influence or

(c) Fraud or

(d) Misrepresentation or

(e) Mistake.

3. Coercion [sec 15] – Coercion is committing or threatening to commit an act forbidden by IPC or the unlawful detaining or threatening to detain any property to the prejudice of any person, whatever with intention of causing him to enter into an agreement.

☐ A threat to commit suicide amounts to coercion.

☐ A person to whom money has been paid or anything delivered must repay or return it.

4. Undue influence [sec 16] – A contract is said to be induced by undue influence where the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of another and uses that position of obtain an unfair advantage over the other.

☐ A person is in a position to dominate the will of another where he holds real or apparent authority over the other or stands in fiduciary relation to the other.

## 5. Fraud [sec 17] (Intention to Deceive)

- (a) The suggestion as a fact which is not true by one who does not believe it to be true.
- (b) Active concealment of fact by one having knowledge or belief of the fact.
- (c) A promise made without any intention of performing it.
- (d) Any other act fitted to deceive.
- (e) Any such act or omission as to law specially declared to be fraudulent.

MERE SILENCE IS NOT A FRAUD.

Exception:

- ☐ Where is the duty of person to speak.
- ☐ Where silence is equivalent to speech.

6. Misrepresentation – Where a person asserts something which is not true though he believes it to be true.

\* A contract induced by Coercion, undue influence, fraud or misrepresentation is voidable

Fraud Misrepresentation

1. It includes the intention to deceive the other party or it is willful action. It does not include the intention to deceive the other party or it is not willful action.
2. The party, who makes false statement, knows the truth very well.
3. Under this, the aggrieved party can claim the damage because there was intention to deceive to him.

## Mistake

Meaning and definition of Mistake:

Mistake is 'misconception'. The party of a contract intending to do anything but do something else is a mistake. Mistake is another factor, which hampers free consent. In order to make a valid contract the parties to contract must agree upon the same thing in the same sense where the contract is entered into consent cannot be said to be free. Mistake is an erroneous belief relating to the subject matter of the contract.

According to Black's Law Dictionary, Mistake means an error, misconceptions or misunderstanding and erroneous belief.

Section 20 of Indian Contract Act, 1872 clearly defines that where both the parties to an agreement are under mistake as to the matter of fact essential to the agreement, the agreement is void. In this regard, Nepal Contract Act, 1956 Section 13 has prescribed as a matter under the void contract. It states in the section 13(g) that a contract cannot be performed because the subject matter of the contract is not clearly known to the contracting parties. Mistake may be defined as an erroneous belief about something.

## Types of mistake:

(a) Mistake of law: 'Ignorance of Law is no Excuse'. It is well set rule. No one can ignore the law. Everyone must know the law of the country. All the citizens are presumed to be known the prevailing laws. A party cannot be

allowed to get any relief on the ground that it had done a particular act in ignorance of law. A mistake of law does not give the right to the parties to avoid the contract.

(b) Mistake of fact: Mistake of fact is related to the subject matter of the contract. It is also a cause to turn the contract void. If factual mistake is of serious nature like formation or essential factor that is responsible to void the contract. Negligible mistake occurs that is excusable. Fundamental error is relating to the subject matter and it is taken as serious mistake.

-Bilateral mistake: Where both the parties to an agreement are under a mistake as to a matter of fact, essential to the agreement, the agreement is a void.

-Unilateral mistake: If mistake is committed by one of the parties of the contract is called the unilateral mistake. Generally, a contract by unilateral mistake is not void. A unilateral mistake does not affect the validity of the contract. If the unilateral mistake caused by fraud or misrepresentation there is possibility of avoidance of the contract.

### **Mode of Discharge of Contract**

#### **◆ Discharge of Contract**

A contract is said to be discharged when the rights and liabilities created by such contract, come to an end. Contracts may be

Discharged or terminated by the following:

- ~ Performance of the Contract, or
- ~ Mutual Consent, or
- ~ Lapse of time, or
- ~ Operation of Law, or
- ~ Impossibility of Performance, or
- ~ Breach of contract.

When an agreement, which was binding on the parties to it, ceases to bind them, the contract is said to be discharged. A contract may be discharged in the following ways:

- By Performance of the contract ;
- By breach of the contract ;
- By impossibility of performance ;
- By Agreement

### **Discharge by Agreement**

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need to be performed by section 62, of the Indian Contract Act. Thus the parties to contract are free to substitute the entire contract or to rescind it entirely or to modify, alter, or rescind some of its terms.

## **Breach of Contract**

It is the easiest way of discharging the contract. When either of the parties does not fulfil the duties and liabilities prescribed by the contract, the contract is said to be breached. It can be of two types:

1. **Actual Breach of Contract:** Actual Breach of contract is done at the specific time and place where the contract is supposed to be performed. If neither of the specifications is mentioned in the contract, any breach during the performance of the contract is considered as Actual breach of contract.
2. **Anticipatory Breach of Contract:** It is stated to have occurred if breach has been committed before the time for performance. When a party explicitly denies or abstains from performing the contract or does some definite act, which makes the performance rather impossible, then such a breach is an anticipatory breach of contract.

Under sec 73 “when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely or result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Damages may be classified into four categories.

1. Ordinary or general damages.
2. Special damages.
3. Exemplary or vindictive damages.
4. Nominal damages.

Under sec 74, when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, or as the case may be, the penalty stipulated for.

## **Remedies for Breach of Contract**

- ☐ Right to rescind the contract
- ☐ Right to claim damages
- ☐ Right to continue the contract
- ☐ Suit upon Quantum Meruit (as much as is earned or according to the quality of work done)
- ☐ Suit for specific performance
- ☐ Suit for injunction
- ☐ Injunction order is issued by the court when a party does what he promised not to do.

## **Summary**

In today's session we started with an introductory knowledge on Indian Contract Act. We started with the essential of contracts on the basis of free consent, modes of discharge of a contract and remedies for breach of contract. Further we also learnt about various elements of free consent". Lastly we ended our session by identifying contractual capacity.