

FREE CONSENT

According to section 13. Two persons are said to have consented when they agree upon same thing in the same sense.

In English law, this is called 'consensus – ad – idem'

Effect of absence of consent:

⇒ When there is no consent at all, the agreement is void – ab – initio'. It is not enforceable at the option of either party.

Example 1:- X have two car one Maruti car and one Honda city car. Y does not know that X has two cars Y offers to buy car at Rs.50,000. Here, there is no identity of mind in respect of the subject matter. Hence there is no consent at all and the agreement is void – ab – inito.

Example 2:- An Illiterate woman signed a gift deed thinking that it was a power of attorney – no consent at all and the agreement was void – ab – inito [Bala Devi V S. Manumdats]

Free consent ⇒ Consent is said to be free when it is not caused by [Section 14]

- (a) coercion [Section 15]
- (b) Undue influence [Section 16]
- (c) Fraud [Section 17]
- (d) Misrepresentation [Section 18]
- (e) Mistake [Section 20, 21,22]

Coercion (Sec 15)

- (a) Committing any act which is forbidden by the IPC
- (b) Threatening to commit any act which is forbidden by the IPC.
- (c) Unlawful detaining of any property or
- (d) Threatening to detain any property.

Undue Influence (Sec 16)

Meaning of undue influence :- dominating the will of the other person to obtain an unfair advantages over the others.

- (a) where the relation subsisting between the parties must be such that one party is in position to dominate the will of the other.
- (b) The dominant party use his position.
- (c) Obtain an unfair advantage over the other.

Fraud (17)

⇒ The term fraud means a take representation of facts made willfully with a view to deceive the other party.

⇒ Sec.17- fraud means any act committed by a party to a contract or with his connivance or by his agent with intent to deceive another party there to or his agent or to induce to enter into contract.

Essentials of fraud :-

- (a) By a party to the contract
- (b) There must be representation – [an opinion a statement of expression – does not fraud].
- (c) The representation must be false.

- (d) Before conclusion of contract.
- (e) The misrepresentation must be made willfully.
- (f) The misrepresentation must be made with a view to deceive the other party.
- (g) The other party must have actually been deceived.
- (h) The other party have suffered a loss.

Misrepresentation (section 18)

Misrepresentation is when a party (person) asserts something which is not true though he believes is to be true.

In other words misrepresentation is a false representation made innocently. An agreement is said to be influenced by misrepresentation if all the following conditions are satisfied.

- (a) The party makes a representation of a fact [The representation by a stranger (By anyone with his connivance or by agent) to the contract does not affect the validity of the contract.
- (b) The misrepresentation was made innocently i.e. if was not made with a view to deceive the other party.
- (c) The other party has actually acted believing the misrepresent to be true.

Misrepresentation include:-

- Unjustified statement of facts – positive assertion – Believe true really not true no basis misrepresentation
- Breach of duty.
- Inducing other to make mistake as to quality or nature of subject matter.

Mistake:

Mistake means innocent or erroneous belief which leads the party to misunderstand the others.

Mistake may be either Bilateral or Unilateral.

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- Bilateral mistake is when both the parties to a contract are under a mistake.
- Unilateral mistake is when only one party to the contract is under a mistake.

Effect of mistake on validity of a contract: Mistake is some unintentional act, omission or error, arising from unconsciousness, ignorance or forgetfulness, imposition or misplaced confidence.

It may be of two kinds-

- (i) Mistake of Law: A mistake of law does not render a contract void as one cannot take excuse of ignorance of the law of his own country. But if the mistake of law is caused through the inducement of another, the contract may be avoided. Mistake of foreign law is excusable and is treated like a mistake of fact. Contract may be avoided on such mistake.
- (ii) Mistake of fact: Where the contracting parties misunderstood each other and are at cross purposes, there is a bilateral or mutual 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 void.