

## Free Consent

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There have to be two parties to a contract, who willingly and knowingly enter into an agreement. But how does the law determine if the parties are both these things? This is where the concept of free consent comes in. Let us learn more about free consent and the elements vitiating free consent.

## Free Consent

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**

In contracts, a mistake may operate in two ways. Firstly, it may defeat the consent of the parties' altogether and secondly, it may mislead the parties about the purpose of the contract. The cases in which consent of the parties is defeated are covered under **section 13 of the Indian Contract Act.**

**Section 13 of the Act** defines consent as, *"Two or more persons are said to consent when they agree upon the same thing in the same sense."* basically, for consent, there should be consensus ad idem. A mistake can be of fact as well of law.

If a **mistake of law** is of Indian law then parties cannot avoid the contract and same is the case with the mistake of fact where the mistake is unilateral. But if the mistake is of foreign law and there is a bilateral mistake of fact by the parties then the agreement is void. A void agreement is defined under [section 2\(g\)](#) of the Indian Contract Act. It reads as, *"An agreement not enforceable by law is void agreement."*

Provisions related to mistake are dealt in three sections of the Indian Contract Act ([section 21, 22 and 23](#)). When the mistake of the parties does not defeat the consent but only mislead the parties section 20 of the Indian Contract Act shall apply. It reads as, *"Where both the parties to an agreement are under a mistake of fact essential to the agreement, the agreement is void."*

**For example**, if A agrees to buy from B a certain cow but it turns out that at the time of the bargain, the cow was dead and none of the parties to contract was aware of it. Hence, in such a situation the agreement is rendered void. Section 20 will operate only when both the parties of an agreement are under a mistake and the fact about which they were under a mistake is essential to the agreement.

**Section 21** of the Act emphasises upon the effect of mistake of law. It reads as “*A contract is not voidable merely of the fact that it was caused by the mistake of law in India, but a mistake of law as to not in force in India has the same effect as a mistake of fact.*”

For example, A and B make a contract on the belief that a particular deal is barred by Indian law of limitation, the contract cannot be held voidable or void.

**Section 22** of the **Indian Contract Act** deals with the provision where the mistake is of one of the parties to contract. It provides that, “*A contract is not voidable merely because of the fact that it was caused by the mistake of the fact of one of the parties.*”