

COVERAGE

1. Meaning of Free Consent
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MEANING OF FREE CONSENT

Consent means an act of assenting (i.e. giving approval) to an offer. Two or more persons are said to consent when they agree upon the same thing in the same sense. In English law, this is called “consensus ad idem”.

Consent is said to be free when it is not caused by a. Coercion or b. Undue Influence or c. Fraud or d. Misrepresentation or e. mistake.

COERCION (518 (2) (a))

COERCION	
Meaning	<p>As per Section 518 (2) (a) of MCCA, a person shall be deemed to have indulged in coercion if he/she, with the objective of compelling any person, to accept any contract against his/her will,</p> <ul style="list-style-type: none"> • withholds or threatens to withhold property belonging to him/her, or • threatens to defame him/her or • threatens to harm his/her life or body, or • commits or threatens to commit any other action in contravention of prevailing law. <p>The English law uses the term duress for coercion.</p>
Example	<ol style="list-style-type: none"> 1. A is in possession of B's laptop. A withholds the laptop and says, —Sell me the laptop for Rs. 10,000 or else, you will not get the laptop. Here, A has coerced B by threatening to withhold his property. 2. X beats Y and compels him to sell his car for Rs 50,000. Here's Y's Consent has been obtained by coercion.
Who / To whom coercion may be exercised ?	Coercion may proceed from any person (whether a party to contract or stranger) and may be directed against any person (whether a party to contract or stranger)
Effect of Coercion	<ol style="list-style-type: none"> 1. When consent to an agreement is obtained by coercion, the contract is voidable at the option of the party whose consent was obtained by coercion. (i.e aggrieved party) 2. The party rescinding a voidable contract shall restore the benefit received by him under the contract to the person from whom the benefit was received. 3. A person to whom money has been paid or anything delivered under coercion, must repay or return it. <p>Example: X threaten to kill Y if he does not sell his house for Rs 100000 to X. Y sells his house to X and receive the payment. Here, Y's consent has been obtained by coercion. Hence this contract is voidable at the option of Y. If y decides to</p>

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FREE CONSENT

	Avoid the contract, he will have to return Rs 100000 which he had received from X.
Threat to file a suit	A threat to file a suit (whether civil or criminal) does not amount to coercion unless the suit is on false charge. Threat to file a suit on false charge will thus amount to an act of coercion.
Threat to Commit Suicide	Committing a suicide is forbidden by law. Hence a threat to commit suicide amounts to coercion.
High Price/ High Interest	<p>If anyone sells the goods on high price on account of necessity wouldn't amount to coercion unless the other person is forced to purchase at such high price from the vendor only.</p> <p>Similarly, if any money is obtained on a very high interest rate on account of necessity it would not amount to coercion unless the person lending money insist the borrower to borrow the money from him only.</p>

UNDUE INFLUENCE (518 (2) (b))

UNDUE INFLUENCE	
Meaning	<p>The term Undue Influence means dominating the will of the other person to obtain an unfair advantage over the other.</p> <p>A contract is said to be induced by undue influence</p> <ol style="list-style-type: none"> Where the relations subsisting between the parties are such that one of them is in a position to dominate the will of the other and The dominant party uses that position to obtain an unfair advantage over the other.
Example	<ol style="list-style-type: none"> A, a man suffering from disease is induced to B's influence over him as his medical attendant to agree to pay B an unreasonable sum for his professional service. B employs undue influence. X advanced Rs 10000 to his son Y during his minority and obtained upon Y's coming of majority age, a bond from Y for Rs 100000. Here, there is a misuse of parental influence.
Effect of Undue Influence	<ol style="list-style-type: none"> When consent to an agreement is obtained by undue influence, the contract is voidable at the option of the party whose consent was obtained by undue influence. (i.e aggrieved party) The party rescinding a voidable contract shall restore the benefit received by him under the contract to the person from whom the benefit was received.
Undue influence when presumed	<p>Undue influence may be presumed to exist in the following cases where a person is in a position to dominate the will of the other.</p> <ol style="list-style-type: none"> Where a party holds a real or apparent authority over the other: Where the parties hold relationship where a party can influence the will of other like - master and servant, convict and police, parent and child, etc. Where a party stands in a fiduciary relationship to the other: Fiduciary relationship means the relationship means the relationship of mutual trust and confidence.

	<p>Such a relationship is supposed to exist between doctor and patient, lawyer and client, trustee and beneficiary, etc. However, there is no presumption of undue influence between husband and wife, principle and agent, landlord and tenant, debtor and creditor, etc.</p> <p>iii) Where a party playing a role of guardian or protector: When a party makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of old age, illness or mental or bodily distress, it is often subject to influence of others and the law provides protections to such a distressed person.</p>
Presumption of undue influence to be rebutted ?	<p>The presumption of undue influence can be rebutted by showing</p> <ol style="list-style-type: none"> That the dominant party has made a full disclosure of all the facts to the weaker party before making the contract That the price was adequate and That the weaker party was in receipt of competent independent advice before entering into the contract.
Pardanashin Woman	A woman who observes complete seclusion (i.e. who does not come in contract with people other than her family members) is called pardanashin woman.

COERCION vs UNDUE INFLUENCE

COERCION vs UNDUE INFLUENCE

BASIS OF DIFFERENCE	COERCION	UNDUE INFLUENCE
NATURE OF ACTION	It involves physical force or threat.	It involves moral or mental pressure.
RELATIONSHIP	Partied to contract may or may not be related to each other.	Parties to contract are related to each other under some sort of relationship.
WHO CAN EXERCISE	It can be exercised even by a stranger to the contract	It can be exercised only by a party to a contract and not by a stranger.
PRESUMPTION	Coercion has to be proved by the aggrieved party. It is not presumed by law.	It may be presumed by the law under certain circumstances.
Nature of liability	The party committing the crime may be punishable under criminal liability.	It doesn't involve any criminal liability.
PLACE	May be within or outside the country	Within the country only.

FRAUD (518 (2) (d))

FRAUD

Meaning	<p>As per Section 518 (2) (c), a party to the contract or his/her agent shall be deemed to have committed fraud if he/she,</p> <ul style="list-style-type: none"> • leads the other party or his/her agent to believe or takes any action to believe the particular matter is true although he/she knows that it is false, or • suppresses any information in his/her possession, or • indulges in any other fraudulent act punishable under prevailing law, • such action is done with the intention of deceiving the opposite party or his/her agent. <p>Derived from French term “fraude” which means a “criminal deception intended to gain money or personal advantage”.</p>
Example	<ol style="list-style-type: none"> 1. A sells a fake diamond ring to B for Rs 20,000 knowing that B is willing to pay Rs 20,000 believing it to be a pure diamond ring. But A is aware that it is actually made of fake diamond. Here, A has committed fraud 2. A sells, by auction, to B, a horse which A knows to be unsound. A says to B that the horse is absolutely sound. Later, B comes to know that the horse was unsound. A has committed fraud.
As per Indian Contract Act 1872	<p>Fraud includes:</p> <ul style="list-style-type: none"> • The suggestion ,as to a fact, of that which is not true, by one who does not believe it to be true. • The active concealment of a fact by one having the knowledge or belief of fact. • A promise made without any intention of performing it. • Any such act or omission as the law specially declares to be fraudulent. • Any other act fitted to deceive
Essential elements of Fraud	<ul style="list-style-type: none"> • By a party to contract or by anyone with his connivance (i.e. support) or by his agent. • False representation with the knowledge of falsehood. • The representation must be related to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to fraud. • Actually deceived • Suffered losses
Effect of Fraud	<ol style="list-style-type: none"> 1. Right to Rescind the Contract within reasonable time 2. Right to insist upon performance 3. Right to claim damage. <p>In any of the following cases a contract induced by fraud is not voidable</p> <ol style="list-style-type: none"> a. The aggrieved party had the means of discovering the truth with ordinary diligence. b. Where the party after becoming aware of fraud takes a benefit under the contract

	<p>c. Where an innocent third party before the contract is rescinded acquires for consideration some interest in the property passing under the contract.</p> <p>d. Where the parties can't be restored to their original position.</p> <p>e. If such party does not go to court within one year.</p>
Silence as Fraud	Generally, mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. This rule is based on principle of Caveat Emptor which means let the buyer beware.
Exception to the General Rule "Silence does not amount to Fraud"	<p>In the following cases silence amounts to fraud</p> <p>1. Statutory Obligation to disclose Where it is the duty of a person to disclose all the relevant facts but such person does not disclose it, it amounts to fraud.</p> <p>2. Where party stand in Fiduciary relationship In case of contract of utmost confidence, it the duty of party to speak and if any party breaches such trust it amount to fraud. These are also known as uberrimae fidei contract.</p> <p>3. Changes in Circumstances If any changes are made about the fact or subject matter of the contract, its holder has to communicate the changes to other party. If he remains silent, it amounts to fraud.</p> <p>4. Half Truth Where one party discloses only certain facts to induce another party to enter into contract as a result of which the other party has to suffer loss amounts to fraud.</p> <p>5. Silence equivalent to speech Where silence is itself equivalent to speech such silence amounts to fraud who has suffered losses due to the silence of other party.</p>

IMPORTANT NOTES

MISREPRESENTATION (518 (2) (c))

MISREPRESENTATION

Meaning	<p>Misrepresentation means a false representation of fact made innocently or non disclosure of a material fact without any intention to deceive the other party. Misrepresentation can be called innocent representation' or non fraudulent misrepresentation or misconception.</p> <p>As per Section 518 (2) (d) of MCCA, following contracts are said to be done under misrepresentation:</p> <ul style="list-style-type: none"> • Submission of false particulars on any matter without reasonable basis for doing so; • Misleading any party so as to aggrieve him/her; • Causing a mistake as to any matter of the contract; • Contract is made for the matter other than what it was believed to be made
As Per Indian Contract Act 1872	<p>Misrepresentation means and includes:</p> <ol style="list-style-type: none"> 1. When a person positively states that a fact is true when his information does not warrant it to be so. <p>Example:</p> <ul style="list-style-type: none"> • X says to Y who intends to purchase his land, "My land produces 2 tons of rice per acre." X believes the statement to be true although he has no sufficient ground for the belief. Y purchases x's land believing X's Statement. Later on, Y finds that the land produces only 1.5 tons of rice per acre. Here x's representation is misrepresentation. <ol style="list-style-type: none"> 2. When there is a breach of duty by a person without intention to deceive which brings an advantage to him, and loss to the other. <p>Example:</p> <ul style="list-style-type: none"> • A, having no time to read the contents of a deed, signed it as he was given the impression by B that it contained nothing but formal matters already settled between them. The deed, however contained a release in favour of B. In this case, A was allowed to set aside the deed. Here, although B was under no obligation, legally or morally, to communicate the contents of the deed to A. But as A placed confidence in B, it became the duty of B to state all the contents of the document. <ol style="list-style-type: none"> 3. When a party causes the other party to the agreement to make a mistake as to the subject matter. <p>Example:</p> <ul style="list-style-type: none"> • A, a seller in a contract of sales of 10 bales of paddy farming makes representation that no sulphur has been used in cultivation of the paddy. However, 2 out of 6 acres of land, sulphur had been used B, the buyer wouldn't have purchased the paddy but for the representation. A is guilty of misrepresentation.

Essential Element of Misrepresentation	<ol style="list-style-type: none"> 1. The misrepresentation must be of Material Facts. The false statement must be of material facts. A mere expression of one's opinion is not a statement of facts. Example: There is a lot of difference when the seller states that his property is worth one lakh of rupees, and when he states that he paid one lakh of rupees for the property. The first is the opinion which the buyer may adopt if he so wishes. And the second is a statement of fact which, if false, makes the contract voidable. 2. The misrepresentation must be false, but the person making it honestly believes it to be true. 3. The misrepresentation must induce the other party to enter into contract. 4. The misrepresentation must have been addressed by one party to the party misled.
Consequences	<p>Misrepresentation makes the contract voidable at the option of the party whose consent was obtained by misrepresentation. However the contract remains valid unless and until it is set aside.</p> <p>However, in the following two circumstances, the contract is not voidable on account of misrepresentation:</p> <ol style="list-style-type: none"> 1. Where the other party had the means of discovering truth with ordinary diligence. 2. Where the misrepresentation does not induces the other party to enter into contract.

FRAUD vs MISREPRESENTATION

FRAUD vs MISREPRESENTATION		
BASIS OF DIFFERENCE	FRAUD	MISREPRESENTATION
INTENTION	A wrong representation is made wilfully with the intention to deceive the other party.	A wrong representation is made innocently. i.e without any intention to deceive other party.
KNOWLEDGE OF FALSEHOOD	The person making the wrong statement does not believe it to be true.	The person making the wrong statement believes it to be true.
RIGHT TO CLAIM DAMAGES	The aggrieved party can claim damages.	The aggrieved party can not claim damages.

MISTAKE (SEC 517 (g) & (i))

MISTAKE

Meaning	<p>A mistake is said to have occurred where the parties intending to do one thing by error do something else.</p> <p>As per Section 517 (2) (g) & (i) of MCCA, following contracts are said to be done under mistake:</p> <ol style="list-style-type: none"> 1. A contract which cannot be performed because the parties thereto do not exactly know about the matter in relation to which it has been concluded is void. [Section 517 (g)] 2. A contract which is vague as it does not provide reasonable meaning thereof is void. [Section 517 (i)] <p>Example:</p> <ul style="list-style-type: none"> • A agrees to sell painting to B. But at the time of agreement, heavy rainfall had destroyed the painting. Neither A or B were aware of this. There is no contract due to mistake of fact.
Type of Mistake	<ol style="list-style-type: none"> 1. Mistake of Law 2. Mistake of Fact
Mistake of Law	<p>As per the Latin maxim ignorantia juris non excusat, 'ignorance of law is no excuse'. No one can ignore the law.</p> <p>Mistake of law makes a contract void. Mistake of law can be of two types:</p> <p>a. Mistake of law of same country</p> <p>Everyone must know law of the country. All the citizens are presumed to know the law. Therefore, a contract in which there is mistake of law of the same country is void.</p> <p>It means that the liability under the contract can not be avoided merely by telling that the person did not know the laws at the time of entering into contract.</p> <p>b. Mistake of Foreign Law</p> <p>Mistake of a law of foreign country is regarded equivalent to the mistake of fact and sometimes it is excusable because one cannot be expected to know law of other country.</p>
Mistake of Fact	<p>Mistake of fact is related to the subject matter of the contract. It is also a sufficient cause to turn the contract to void. But it depends on the volume and nature of the factual mistake. If factual mistake is of serious nature or relates to essential matters of fact of the contract such mistake makes the contract void, otherwise it is excusable.</p> <p>Mistake of fact can be of two types:</p> <p>a. Unilateral Mistake</p> <p>The term unilateral mistake means where only one party to the agreement is under a mistake. It does not make the contract void. However, mistake as to identity of the person contracted with or the nature of the contract makes the contract void.</p>

Example:

1. X sold Oats to Y by sample and Y thinking that they were old oats, purchased them. In fact, the oats were new. It was held that Y was bound by the contract.
2. S Knew that on account of his criticism of the plays in the past, he would not be allowed entry to the performance of a play at the theatre. The managing director of the theatre gave instructions that ticket should not be sold to S. S, however, obtained a ticket through one of his friends. On being refused admission to the theatre, he sued for damages for breach of contract. It was held that there was no contract between the theatre company and S as the theatre company never intended to contract with S.

b. Bilateral Mistake

Where both the parties to agreement are under a mistake, it is termed as Bilateral Mistake. Bilateral mistake makes the agreement void. Thus the agreement is void if :

- i. Both the parties are under a mistake
- ii. Mistake relates to essential fact

Example:

1. A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Kathmandu. It turns out that, before the date of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither the party was aware of the facts. The agreement is void.
2. A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

Bilateral Mistake as to Subject Matter

An agreement is void where there is a bilateral mistake as to the subject matter. A bilateral mistake as to the subject matter includes the following:

1. Mistake as to the existence of Subject Matter

2. Mistake as to the quantity of subject matter

Example:

- There was a contract for sale of 30,000 pieces of Argentine hare skins. Negotiation as to price were on 'per piece' basis and that was in accordance with the usual trading practice. The seller by mistake in the offer stipulated to supply at a certain rate 'per pound' instead of 'per piece'. A pound on an average contained three pieces of such skins. The buyer sued the seller for non delivery of goods. It was held that there had arisen no contract in this case, because the seller's intention was not properly reflected in the offer.

3. Mistake as to the quality of subject matter

Example:

- A agrees to buy a particular horse from B. Both believed it to be a race horse but it turns out to be a cart horse. The agreement is void because there is bilateral mistake as to the quality of subject matter.

	<p>4. Mistake as to the price of subject matter If there is genuine mistake as to the price of the subject matter, the contract is void.</p> <p>5. Mistake as to the identity of subject matter Example:</p> <ul style="list-style-type: none">• A agrees to buy from B a certain horse. B has one race horse and one cart horse. A thinks that he is buying race horse but B thinks that he is selling cart horse. The agreement is void because there is bilateral mistake as to the identity of subject matter. <p>6. Mistake as to the title of subject matter Example:</p> <ul style="list-style-type: none">• A agrees to buy a particular horse from B. That horse is already owned by A. The agreement is void because there is bilateral mistake as to the title of the subject matter.
Bilateral Mistake as to the possibility of performance	The agreement is void where there is a bilateral mistake as to the possibility of performance. The impossibility may either be physical or legal.

IMPORTANT NOTES