

Corporate Laws

BBA(FIA)

Lecture 7

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What is a Consent



- It means acquiescence or act of assenting to an offer.
- Sec 13 “Two or more persons are said to consent when they agree upon the same thing in the same sense” (*ad idem*)

When Consent is said to be missing:

1. Offer and acceptance do not coincide
 2. Mistake as to the identity of the person contracted with
- Raffles vs. Wichlehouse

Case Discussion



Case: Raffles v. Wichelhouse

Facts of the Case:

Two parties entered into an agreement for sale of cargo of cotton to arrive “ex-Peerless from Bombay”. There were two ships of that name and both sailed from Bombay but one left in October and the other in December. Both the parties misled by similarity of name, had a different ship in mind. It was held that the agreement was void for lack of consensus ad idem.

Case Discussion



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Decision:

The court considered the matter objectively but was unable to determine which ship was the contracted ship.

What Is Free Consent



Sec 14:

Consent is said to be free when it is **not** caused by:

- Coercion (Sec.15) or
- Undue influence (Sec.16) or
- Fraud (Sec.17) or
- Misrepresentation (Sec.18) or
- Mistake (Sec. 20, 21 and 22)

What Happens when there is No Consent



When there is NO CONSENT, there is NO CONTRACT.

Salmond describes “no consent” as “**Error in Consensus**”.

And “no free consent” as “**Error in Causa**”

If there is “no consensus ad idem”, there is “no contract”.

Case Discussion



Case: Bala Debi vs. S. Majumdar

Facts of the Case:

An illiterate woman executed a deed of gift in favor of her nephew under the impression that she was executing a deed authorizing her nephew to manage her lands. The evidence showed that the woman never intended to execute such a deed of gift, nor was the deed ever read or explained to her.

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Decision:

Held, the deed was void and inoperative.

Coercion



Sec 15:

“Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code 1860 or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.”

When a person is compelled to enter into a contract by the use of force by the other party or under a threat, “coercion” is said to be employed.

Coercion Includes

- Fear
- Physical Compulsion
- Menace to goods
- Physical harm or loss



Threat To Commit Suicide



Does It Amount To Coercion?

Threat To Commit Suicide



Does It Amount To Coercion?

A threat to commit suicide amounts to coercion if close relationship existed between persons.

Case Discussion



Case: Chikham Ammiraju vs. Chikham Seshamma

Facts of the Case:

A person held out a threat of committing suicide to his wife and son if they did not execute a release deed in favor of his brother in respect of certain properties. The wife and son executed the release deed under the threat.

Case Discussion



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Decision:

Held, “the threat of suicide amounted to coercion within sec.15 and the release deed was, therefore voidable”.

Threat To File a False Charge



Does It Amount To Coercion?

Threat To File a False Charge



Does It Amount To Coercion?

- Threat to file a charge or threaten criminal prosecution is not coercion.
- Threat to file a false charge or threaten **false** criminal prosecution amounts to coercion.

Effect of Coercion



- **Voidable contract:** The contract is voidable at the option of the party whose consent was so caused (Sec.19)
- **Restitution in all cases:** Restore the benefits received, if any, to the person from whom it was received if the aggrieved party opts to rescind the voidable contract. (Sec 64)
- **Punishment:** guilty party may be liable for criminal action.
- **Burden of Proof:** Party who wants to avoid contract / person alleges coercion to set aside the contract.

Undue Influence Sec 16(1)



A person is deemed to be in a position to dominate the will of another:

- A. Where he holds a real or apparent authority over the other.
 - E.g.: Relationship between master and servant, tax officer-assessee, police-accused
- B. Where he stands in a fiduciary relation to the other.
 - E.g.: Solicitor and client, promoter and company, trustee-beneficiary, doctor-patient, guardian-ward
- C. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason or age, illness or mental or bodily distress.

Case Discussion



Case: Mannu Singh vs. Umadat Pandey

Facts of the Case:

A spiritual guru induced his devotee to gift to him the whole of his property in return of a promise of salvation of the devotee.



Case Discussion



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Decision:

Held, the consent of the devotee was given under undue influence.



What Is Misrepresentation



- If a misrepresentation is made honestly believing it to be true or without knowing that it is false, it is known as innocent misrepresentation.
- In law
 - innocent misrepresentation is called **misrepresentation** and
 - intentional misrepresentation is called **fraud**.

Example:

A while selling his refrigerator to B, tells him that the refrigerator is in good condition. A genuinely believes the refrigerator is in good condition, but has no sufficient ground for the belief. Later, B finds the refrigerator is not in good condition. The representation made by A is misrepresentation.

Misrepresentation Section 18



Misrepresentation means and includes the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; or any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him; or causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Consequences of Misrepresentation



The aggrieved party, in case of misrepresentation by the other party, can:

- **Voidable Contract:** Avoid or rescind the contract, or
- **Demand for Performance and Restitution:** Accept the contract but insist that he shall be placed in the position in which he would have been if the representation made had been true.
- **Not entitle to claim damages:** interest or expenses incurred

Exception:

- If the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence, contract is not voidable.

Fraud Section 17



Fraud means and includes any of the following acts committed by a party to a contract or with his connivance, or by his agent, with intent to deceive or to induce another party thereto or his agent, to enter into the contract.



Is silence Fraud?

Is silence Fraud?



Section 17

“Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.”

Points to remember:

1. Duty of the person to speak, or
2. Silence is equivalent to speech

When Silence is Not Fraud



- Silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Case Discussion



Case: Shri Krishan vs. Kurukshetra University

Facts of the Case:

In this case a student didn't mention in the examination form that he was short of attendance, a fact which he knew and gave the examination. Later on when the university got to know about it, it decided to cancel his examination. Student filed a suit against it.

Decision:

It was held that it was not fraud as university should have its own verification system.



When Silence is Fraud



1. It is the duty of the person keeping silence to speak
 - Contracts of utmost good faith
 - Fiduciary relationship exists: Trustee and beneficiary, guardian and ward, agent and principal, solicitor and client
 - Insurance
 - Shares in co.
 - Family arrangements
 - Sale of land
 - Contracts to marry
 - Partnership
2. Silence in itself is equivalent to speech
3. Half truths
4. Change of circumstances

Consequences of Fraud



1. **Voidable Contract:** Avoid or rescind the contract, or
2. **Demand for Performance and Restitution:** Accept the contract but insist that he shall be placed in the position in which he would have been if the representation made had been true.
3. **Damages:** Can sue for damages if suffers loss.

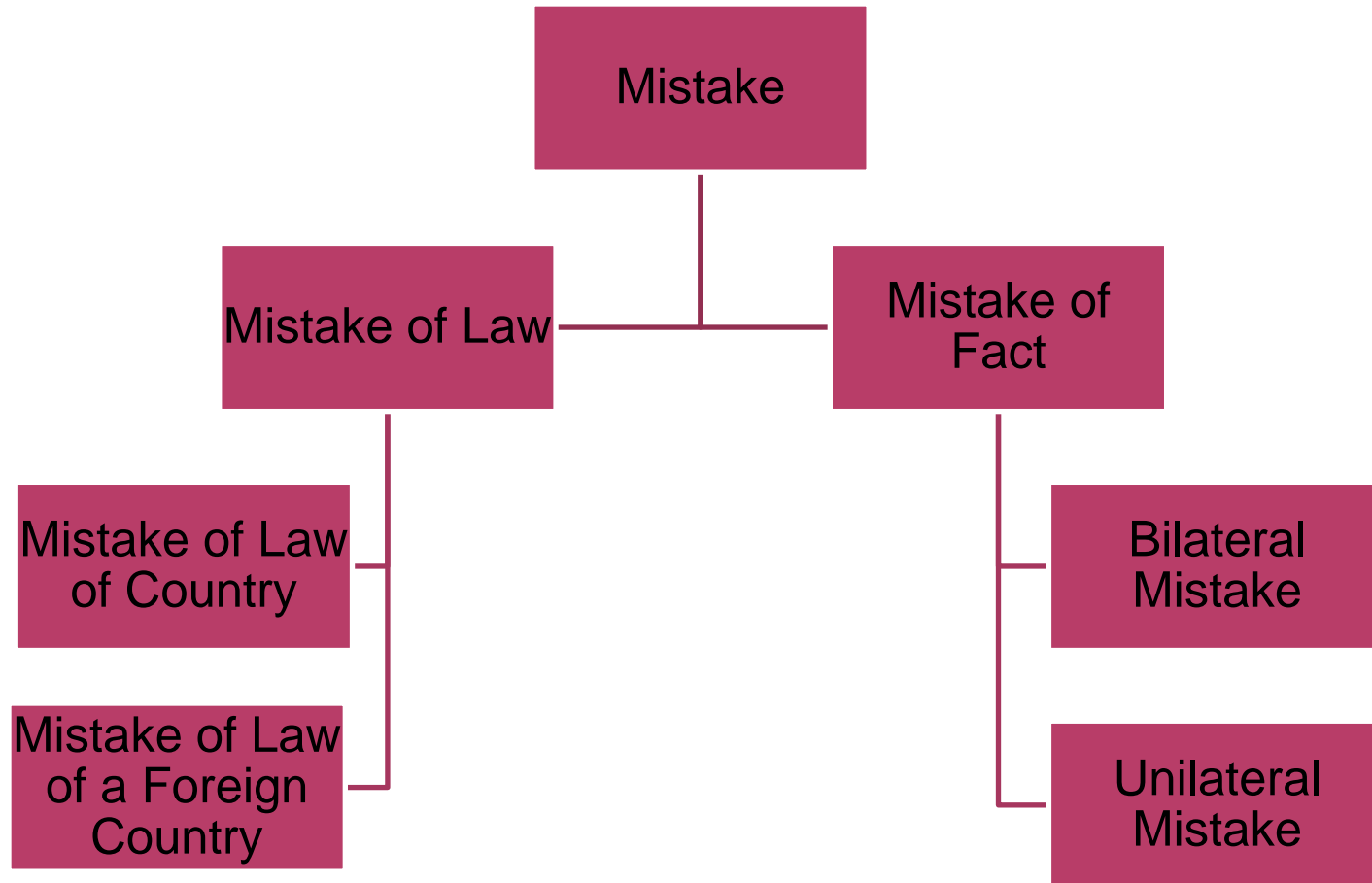
Exception:

- Fraud which did not cause the consent to a contract of the party on whom such fraud was practiced does not render a voidable contract.
- In case of fraudulent silence, if the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence, contract is not voidable.

Mistake



- It may be defined as an erroneous belief concerning something.



Mistake of law of the County



1. Contract Valid

- Ignorance of law is no excuse (Ignorantia Juris Non Excusat): 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 is no excuse and the contract cannot be avoided.

Mistake of Law of a Foreign Country



1. Such a mistake is treated as mistake of fact.
2. The agreement in such a case is void if there is a bilateral mistake and valid if there is a unilateral mistake.

Mistake of Fact: Bilateral Mistake



Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement.

- **Effect:** the agreement is void.

Mistake of Fact: Unilateral Mistake



- When in a contract only one of the parties is mistaken regarding the subject-matter or in expressing or understanding the terms or the legal effect of the agreement, the mistake is a unilateral mistake.
- **Valid Contract:** own negligence, lack of reasonable care
- According to Sec.22: A Contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.



THANK YOU