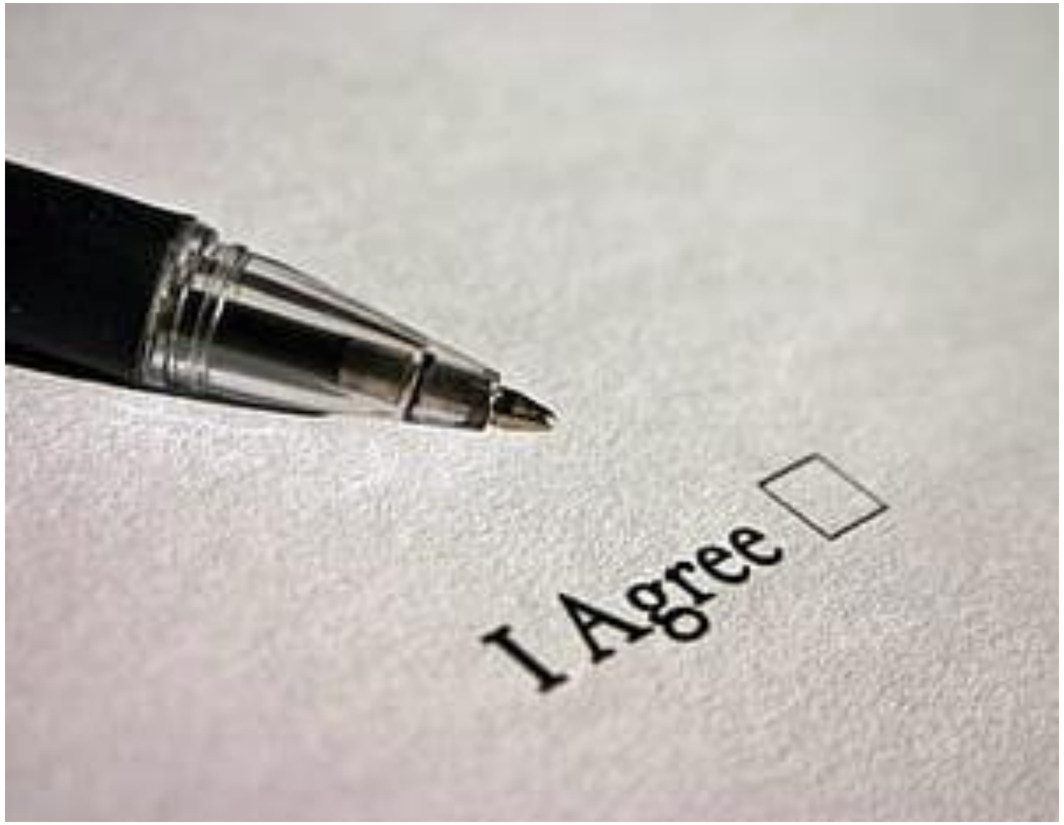
FREE CONSENT FOR CONTRACT



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AGENDA

WHAT IS FREE CONSENT

BARS TO FREE CONSENT

INTRODUCTION

In all the commercial transactions and other non-commercial agreements the parties wish to secure their interests and therefore it is prudent to execute contracts which can be legally enforced in the court of law in case there is any breach by the other party. Therefore a valid and enforceable contract must be executed.

What agreements are contracts—All agreements are contracts if they are made by the **free consent of parties** competent to contract (as defined in Sec 11 & 12), for a lawful consideration (as defined in Sec 25) **and** with a lawful object (as defined in Section 23 & 24), **and** are not hereby expressly declared to be void (as defined in Sections 24 to 30). (**Section 10 of the Indian Contract Act**)

Nothing herein contained shall affect any law in force in India by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents. (Sec 10)

CONSENT

- Two or more persons are said to consent when they agree upon the same thing in the same sense. (**Section 13 of the Indian Contract Act**)
- Concept of *Consensus ad idem*- Meeting of the minds. The parties to contract fully understand the meaning and effect of the contents of the contract. The parties cannot plead ignorance or not understanding the meaning and effect of the contents of the contract after executing the contract.
- The parties giving consent must be competent to execute contract, must mention the consideration and the purpose of the contract should be lawful. The contract should also contain the details required for its performance.
- The important factor is under what circumstances one party has given the consent. Those relevant factors makes a consent a “free consent” or a qualified Consent.

FREE CONSENT Sec-14

- **Free Consent**: 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. (**Section 14 of the Indian Contract Act,1872**).
- Consent can be given for a lot of reasons. However for a consent to be valid consent for the purpose of executing a valid contract, the consent should not be given being influenced by any bar mentioned in Sec-14.

BARS TO FREE CONSENT

Coercion (Sec 15)

Undue Influence (Sec 16)

Fraud (Sec17)

Misrepresentation (Sec 18)

Mistake (Sec 20,21)

COERCION

Sec-15

- “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 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.
- Explanation.—It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed. (Section 15 of the Indian Contract Act).

Important requirements to cause Coercion

- It must be a committed act of coercion where the other party did something to cause you to agree to the terms of the contract.
- It must be a threatened act of coercion, whether physical or psychological, which made you go into the agreement to avoid the threat from becoming a reality.
- It must be the unlawful detainment or threat to take someone's property, such as a car or a home.
- It can be caused by any one person, not necessarily a party of individuals.
- Threat of personal physical harm or suicide by the coercing party may be seen as coercion.

UNDUE INFLUENCE
Sec-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.
- (2) In particular and without prejudice to the generality of the foregoing principle, 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, or where he stands in a fiduciary relation to the other; or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872.
- Sec 111 of Evidence Act deals with Proof of good faith in transactions where one party is in relation of active confidence.

Instances of Undue Influence

- A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.
- A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services, B employees undue influence.
- A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.
- A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence

Power to set aside contract induced by Undue Influence

- When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.
- Section 19A of the Indian Contract Act 1872.
- In easy words where one of the parties to a contract was in position to dominate the decision of the other party, the contract is enforceable only at the option of the other party who was being dominated.
- Case Law: Virendra Singh & Ors. vs Kashiram. AIR 2004 Raj 196, the court set aside the Gift deed given by the Plaintiff, Kashiram (Appellant in the cited Appeal) to Defendant, Virendra (Respondent in the cited Appeal). It was held that the consent was not free and was caused by undue influence and fraud.
- In a recent case law dated 11.11.2019 by Hon’ble Supreme Court in Civil Appeal No. 2896 of 2009 titled Raja Ram vs Jai Prakash Singh & Ors. the Court upheld the decision of High Court whereby the court refused to cancel a Sale Deed due to alleged undue influence. Merely alleging undue influence is not enough and the same has to be proved by cogent evidence.

FRAUD
Sec-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 another party thereto of his agent, or to induce him to enter into the contract:— (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact; (3) a promise made without any intention of performing it; (4) any other act fitted to deceive; (5) any such act or omission as the law specially declares to be fraudulent.
- Explanation.—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.
- Illustrations:
- (a) A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horses unsoundness. This is not fraud in A.
- (b) B is As daughter and has just come of age. Here the relation between the parties would make it As duty to tell B if the horse is unsound.
- (c) B says to A- “If you do not deny it, I shall assume the horse is sound”. A says nothing. Here, As silence is equivalent to speech.
- (d) A & B, being traders, enter upon a contract. A has private information of a change in prices which would affect Bs willingness to proceed with the contract. A is not bound to inform B.

FRAUD
Sec-17

- It is a case of Fraud where a party to a contract knows or believes a fact to be true but conceals it actively from the other party with a view to induce that person to enter into a contract. E.g. While taking a health insurance policy the beneficiary deliberately conceals his active health ailments and therefore constitutes a fraud. Such an insurance contract cannot be enforced as there was no free consent of the insurance company.
- Each case if different and has to be examined on its own merits to hold that whether the consent was free or not.

Misrepresentation
Sec-18

- “Misrepresentation” means and includes— (1) 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; (2) 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; (3) 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.
- Misrepresentation consists of
- (1) **Unwarranted Statements**: Statements which are not warranted or required by the other party. The party providing the same believes it to be true, however the same is not true. The act amounts to misrepresentation
- (2) **Breach of Duty**: Breach occurs when a party does not act in a reasonable manner to prevent loss or prejudice to other party. There can be non disclosure of facts when there is a duty to disclose without intention to deceive.
- 3. **Inducing mistake about Subject matter**: Either party is at mistake of the substance which primarily is the subject matter of contract . This party overlaps with the Mistake of fact.

MISTAKE
Sec 20-22

- Sec-20. Agreement void where both parties are under mistake as to matter of fact.—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. Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.
- Sec-21. Effect of mistakes as to law.—A contract is not voidable because it was caused by a mistake as to any law in force in India; but a mistake as to a law not in force in India has the same effect as a mistake of fact.
- Sec-22. Contract caused by mistake of one party as to matter of fact.—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.

MISTAKE
Sec 20-22

- The Mistake can be Unilateral or Bilateral mistake. Section 20 defines bilateral mistake, where both parties to the contract are under mistake of fact of the requirements of the contract. Both parties have not given their consent in the same sense to the contents of the contract. The mistake should be of certain material fact impacting the contract e.g. volume, quality, price of goods and not merely an inconsequential fact which does not materially affect the performance of contract.
- E.g. The parties contract for import of Mineral Oil to one parties country. However as on date of the contract the import of oil was banned in the country. Both the parties were not aware of this fact, therefore no free consent was provided.
- In Unilateral mistake as defined in Sec 22 when only one party is under a mistake the contract is not void or voidable and the contract remains a valid contract.

Voidability of Agreements without Free Consent
Sec 19

- When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.
- Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.
- Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Voidability of Agreements without Free Consent
Sec 19

- Illustrations (a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A‟s factory, and thereby induces B to buy the factory. The contract is voidable at the option of B. (b) A, by a misrepresentation, leads B erroneously to believe that, five hundred maunds of indigo are made annually at A‟s factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A‟s misrepresentation.
- (c) A fraudulently informs B that A‟s estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.
- (d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A‟s ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.
- (e) A is entitled to succeed to an estate at the death of B, B dies: C, having received intelligence of B‟s death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

CONCLUSION

Without Free consent as defined herein a contract can be considered void or voidable based upon the circumstances in each case. If a contract is void it cannot be enforced by both the parties. In case of voidable contract the contract can be cancelled at the instance of the party whose consent was obtained by either of the bars contained in Section 14. In case that party does not wish to cancel the voidable contract it remains valid and can be performed.

Essentially a void contract cannot be performed and a voidable contract is capable of execution if the relevant party decides not to cancel it.