

Free Consent

Module II



FREE CONSENT

To make a contract valid, not only consent is necessary, even it should also be free. In law of contract consent is said to be free if it is not caused by any of the following: -

1. **Coercion**
2. **Undue influence**
3. **Fraud**
4. **Misrepresentation**
5. **Mistake**

There is a distinction in between consent and free consent. If consent is affect or taken by one of the above express elements than it will be not deemed as free consent.

COERCION TO COMMIT A CRIME



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Coercion

1. **Coercion is the committing or threatening to commit any act which is Unlawful or Threatening to detain any property, of any person, with the Intention of causing any person to enter into an agreement.**
2. **Examples: - After giving a good beating to A, B makes him to agree to sign a promissory note for Rs 1000.**



Types of Coercion

- **Threat to commit Suicide:-**



An attempt to commit suicide is an offence and it is also type of coercion.

- **Threat to file a suit.**
- **Threat to act some unlawful acts.**
- **Threat to detain property of any person.**

COERCION



- The term 'Coercion' or 'Duress' means putting a person under fear.
- Here the consent is obtained by threatening or pressurizing.

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.



- ***“Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, 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.”***
- *An agreement induced by coercion is voidable and not void. That means it can be enforced by the party coerced, but not by the party using coercion.*

Examples of Coercion

- John at the gunpoint orders Steve to make a promissory note in his favour, in order to save his life and consequently, Steve signs the note.
- Harish compels Shalini to sign a deed threatening her to harm Laxmi(Shalini's mother) if Shalini does not agree to sign the deed and due to threat, she signs it.
- James threatens Robert, that he will kill his son, if he does not agree to sell his bungalow to James, for 50 lakhs, whose market price is 5 crores. Further, due to threat Robert signs the deal and sells his house.
- Amit threatens Simran to commit suicide if she refuses to marry him. Simran accepted the offer because of the threat which amounts to coercion.

Essentials of Coercion



Committing or threatening to commit any act

The act is forbidden by Indian Penal Code (IPC)

Coercion may be exercised over person or property

Can be exercised by contracting party or by third party.

Intention of causing the other party to enter into a contract

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
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- 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.

Relationships Prone to Undue Influence

- Undue influence typically occurs when parties relate in a certain way such as in the special relationships between the following set of people:
 - A husband and wife.
 - A parent and child.
 - A fiancé and fiancée.
 - A guardian and ward.
 - A doctor and patient.
 - A lawyer and client.
 - A pastor and parishioner.



Difference between coercion and undue influence




Coercion	Undue Influence
The consent of the aggrieved party is taken by committing or threatening to commit an act forbidden by Indian penal code.	The consent of the aggrieved party is obtained by dominating the party by taking an unfair advantage of his position.
Physical force is exercised	Moral force is used in undue influence
Relationship between the promisor and the promisee is not necessary	Some sort of relationship must exist between the two parties to the contract

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

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- 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.

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.

S.N.	Basis	Fraud	Misrepresentation
1.	Meaning	A fraud is an intentional misrepresentation or concealment of fact with an aim to deceive the other party.	Misrepresentation is an innocent misstatement made without any intention to deceive the other party.
2.	Section	Fraud is defined under section 17 of Indian Contract Act, 1872.	Misrepresentation is defined under section 18 of Indian Contract Act, 1872.
3.	Intention to deceive	There is intention to deceive the other party.	There is no intention to deceive the other party.
4.	Belief of the fact	The party making fraudulent statement believes that the fact is not true.	The party making the misrepresentation believes that the fact is true.
4.	Suit for damages	The aggrieved party has the right to sue the party for damages.	The aggrieved party cannot sue the party for damages.
5.	Defense in the court	The party who made fraudulent statement cannot set up a defense that the aggrieved party had sufficient mean to discover the truth.	In case of misrepresentation the party who made representation can set up a defense that the aggrieved party had sufficient mean to discover the truth.