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## FREE CONSENT AND CAPACITY TO CONTRACT

~ *Rishikeswarn*

**Abstract :** The Contract Law prescribes basic requisites for a contract to be legally enforceable, including free consent and competency of parties. The contract is void when the consent has not been genuine and obtained by coercion, fraud, misrepresentation, undue influence or mistake. Mistakes may be of facts, or law, affecting the agreements. It further provides that only persons who are not minors, of sound mind and not disqualified by any law will be competent to contract. Contracts with a minor therefore void-ab-initio, and contracts for the benefit of a minor enforceable. Analogous to this, the lunatics can contract only when they are sane. Others like alien enemy, foreign sovereigns, convicts, corporations acting beyond the scope of their power and insolvents are similarly precluded from contracting. Collectively, these provisions work to ensure fairness, protect vulnerable persons and uphold the meaning of certainty in contractual relationships.

**Introduction :** According to the Indian Contract Act 1872 an agreement without free consent is not valid and the agreement in the contract should be entered by a person who has the competency to enter into the contract. An agreement that is entered with a person who is not competent to contract means it is void. The consent should be free from Coercion, Fraud, Misrepresentation, Undue influence and Mistake. Mistakes can be categorised into two types Mistake of law and Mistake of fact. Even if the consent is not free if the party wants to perform the agreement means it's valid. The contract should not be entered with the Minor, A person with an unsound mind and A person disqualified by law. If someone enters an agreement with an incompetent party then the agreement will become void. An agreement entered with the minor is void-ab-Initio (void from the beginning) so the affected party cannot claim remedies but if it is beneficial to minor it is valid. The agreement can be entered with a person who is

occasionally of unsound mind but it should be entered when he/she is of sound mind. Lunatic, Idiot and Drunken and intoxicated person will come under unsound mind.

Alien enemy, Foreign sovereign, Convict, Corporation and company, Insolvent. Let's brief about it.

**Free consent:** Sections 13 - 22 of Indian contract act governs about free consent.

- According to section 13 free consent is defined as two or more persons said to consent when they agree upon the something in same sense.
- in English law it is called as 'consensus-ad-idem' both the parties must have a clear and mutual understanding of the essential terms and subject matter of the agreement.

Illustration: A has 2 cars one Toyota rav4 car and one Tesla Model Y car. B does not know that A has two cars B offers to buy car at ₹50,000. Here there is no understanding of mind in respect of the subject matter.

- Section-14 defines free consent as-consent is said to be free when it is not caused by Coercion(section15),Undueinfluence(section16),Fraud(section17),Misrepresentation(section 18),Mistake(section20, 21, 22)
- Effect of absence of free consent: if the consent is obtained by coercion, undue influence, fraud, misrepresentation are voidable at the option of party whose consent is not free(section 19)

**Coercion [section-15]** - committing or threatening to commit any act forbidden by the Indian penal code or unlawful detaining or threatening to detain any property to prejudice of any person whatever with the intention of causing any person to enter into an agreement.

- The consent should be free and should not be obtained by threatening or committing harm which is forbidden by Indian penal code ( 45 of 1860 )
- Unlawfully detaining or threatening to detain any property

Illustration: A threatens B to sell his car for ₹50,000 which worth is ₹1,00,000 so B accepts to sell the car to A for ₹50,000. Here B consent is not free so B can sue A for obtaining his consent by coercion.

Case law - Chikkam Ammiraju vs Chikkam sesamma, 23, January, 1917

citation: 34IND. CAS.578,(1917)32MLJ494

facts: husband threatens his wife by telling that he will commit suicide to her and his son if they did not allow to execute a release deed in favour of his brother. The wife and son executed the release deed in favour of his brother due to threat.

issue: threat of committing suicide is amounts to coercion or not Judgment: the court held that threat of committing suicide is to coercion under section 15 and court reasoned that threat of committing suicide is forbidden by indian penal code. The release deed by the plaintiff is voidable due to the consent is not free.

**Undue influence [section-16]** - dominating the will of the other persons to obtain an unfair advantage over others

- In particular and without prejudice to the generality of the foregoing principle a person is be in a position to dominate the will of another
- the dominant party will use his position
- obtain an unfair advantage over other

Illustration: A being in debt to the moneylender of his village contracts a fresh loan on terms which appear to be unconscionable. It lies on to prove that the contract was not induced by undue influence.

Case law - Mannu singh vs Umadat pande citation: (1890) ILR 12 ALL 523 facts: the plaintiff Mannu singh was a devotee of the defendant Umadat pande who is a spiritual advisor.

The plaintiff got the guidance and blessing from defendant. The defendant influenced the plaintiff by religious belief and Mannu singh released a gift deed transferring significant amount of his property to Umadat pande this transaction was not made by the plaintiff best interest and consideration.

issue: whether the property obtained by religious influence will be accounted to undue influence.

judgment: The court held that the consent was obtained by undue influence and the contract is invalid finding that the gift deed is not given by the plaintiffs own consent it was given by the religious influence of the defendant.

**Fraud [section-17]** - Any act committed by a party to a contract or with his connivance or by his agent with intent to deceive another party or to induce to enter into contract.

• **Essentials of fraud:**

- it should be committed by the party involved in the contract.
- the active concealment of fact by one party who having knowledge or belief of fact.
- a promise made by one party without an intention to perform that promise.
- the opposite party should actually be deceived.
- the other party should have suffered a loss because of the act done by opposite party.
- the act should be must made willfully.
- the act must be committed before the conclusion of the contract
- any such act or omission which is specifically declared void or fraudulent by law

illustration: A wants to sell his horse to B but the horse is of unsound mind but A knows that is unsound but B did not aware of the unsound mind of the horse but B trust A words and buys the horse but later B comes to know that it is of unsound mind so due to the fraudulent act done by A it deceived B.

- silence amount to fraud:
- when there is a duty to speak
- when silence itself amounts to fraud
- when half truth is spoken

Case law - Derry vs Peek

citation: (1889) LR 14 ac 337 UKHL 1 facts: a company issued a prospects claiming that they have permission to use stream power but they didn't get approval from the government the

investor didn't know the facts about it and they have invested in the shares so they sued the director of the company. issue: fraudulent misstatement and deceit will amount to fraud judgement: the court rejected the claim of shareholder and stated that it was not proven by the shareholders that the director was dishonest so it was done without intention so it will not amount to fraud.

**Misrepresentation [section - 18]** - when party in a contract does something which he believes true but it is not true. It is the false representation made innocently.

Essential elements of misrepresentation:

- the false statement made without the intention to deceive the other party.
- the party should not be aware that it is not true.
- innocently a party making a mistake in an agreement.

**Misrepresentation includes:** Unwarranted statements, breach of duty, inducing mistake about subject matter, suspension of vital facts, representation of state of mind and inducement.

Case law - Esso petroleum ltd co vs Mardon

citation: [1976] EWCA Civ 4 [1976] 2 All ER 5 [1976] QB 801 facts: mardon signed a petrol bunk constructed by esso petroleum they said that they can make an annual turnover of 200,000 gallons the local council made a decision in planning permission they denied direct access to that road so only few customers came so they suffer a loss of income and sued esso petroleum.

issue: whether the esso petroleum is liable for the loss occurred judgement: the court held that the misrepresentation made by esso petroleum is made without an intention to deceive but they should have proper knowledge about it because they are well established petroleum company so they are liable for their negligence.

**Section - 19 - Voidability of agreements without free consent** - When consent to an agreement is caused by coercion, fraud, or misrepresentation the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract whose consent was obtained by fraud or misrepresentation if the party thinks it will be correct they can continue to perform the contract and he would be in the position to decide the terms and conditions.

illustration: A fraudulently informs B that A car is in good condition B buys the car and later came to know about the car's condition so B can sue A or continue to perform the contract.

**Mistake:** Mistake can be classified into two types Mistake of fact and Mistake of law.

- Mistake of fact it can be further classified into two types Unilateral mistake [ section - 22 ] and Bilateral mistake [ section - 20 ].
- Mistake of law [section - 21] also classified into two types Mistake of Indian law and Mistake of Foreign law.

**Bilateral mistake [section 20]** - when the mistake is made by both party involved in the agreement so the contract will become void because both of them has not understood the terms and conditions in the contract. So due the mistake of fact and unaware of the subject matter it will become void.

- the mistake should be done by the parties involved.
- it should be regarding to the subject matter involved in contract.
- the mistake should be essential to the contract.

**Unilateral mistake [section 22]** - when the mistake is committed by single party involved in the agreement so the contract will be not voidable as it was done by single party mistake.

- done by one party involved in the contract.
- because of single person unawareness it won't affect the whole contract.

**Mistake of law [ section - 21 ]** - when the mistake is about the indian law it is not voidable because mistake of india is not excusable so it is not voidable.

- everyone in india should aware of the domestic law which is binding on them.
- mistake of foreign law is void because it is same as bilateral mistake.

- when one person enters into an agreement with foreign citizens which binds foreign law should aware of the law.

**Conclusion :** Finally, even the Contract Law deals with contracts in such a way as to require not only free consent and that the parties are competent for it to be a legal contractual relationship (Contract Act 138). The law does offer protection from coercion, fraud, undue influence, misrepresentation and mistake as results of unfair agreement. It also protects minors, the mentally unsound and persons with legal incapacity from entering contractual obligations that they may not understand or contractually be able to perform. Contracts with an insane or income are usually void ab initio, and in the case of criminals, my role is or may be to take action. Therefore, the two provisions that you can touchstone free consent and competency to contract serve as instruments for effectiveness, equity, justice, and predictability in contractual interactions.

**Capacity to the contract** - it is a legal ability of a person to enter into a contract the person who are in eligible are cannot enter into the contract according to Indian contract act 1872

**Section 11** - person competition to contract - every individual is competent to contract who is of the age of majority according to the indian majority act 1875, person who is of sound mind and a person who is not disqualified by the law which is subject to him.

**person who cannot enter a contract :**

- minor - who is below the age of 18.
- person of unsound mind - Lunatic, Idiot and Drunken and intoxicated.
- person disqualified by law - Alien enemy, Foreign sovereign, Convict, Corporation and company and insolvent.

**Minor:** A person who is below the age of 18

- According to Indian majority act 1875 a person is major when he is of age 18 when he is under his guardian age should be 21 according to Guardian and wards act 1890 • The agreement with the minor is void-ab-initio( void from the beginning ).

Case law - Mohoribibee vs Dharmodas ghosh. citation: [1903] UKPC 12, (1903) LR 30 IA 114 facts: A minor mortgaged his property to a money lender to get some loan of ₹20,000. Money lender know that the person asking loan is minor and gave the loan amount the minor mother came to know about the contract and sue the money lender because he is aware that he is contracting with a minor. issue: whether the money lender is liable for contracting with minor. judgement: the court held that the contract with minor is void-ab-initio and money lender is liable for the contracting with minor because he is fully aware that he is minor and contract with minor is void.

- This rule is because of the minor will not have the state of mind to understand the terms and conditions of the contract so sometimes it may end in loss

#### **Exception:**

- If the contract benefits the minor
- Contract entered by the minors guardian
- For supplying necessary for the minor

**Unsound mind:** a person who can't understand the terms and conditions of the agreement.

- Basically the lunatic, idiot and drunken and intoxicated will be known as unsound mind.

**Lunatic:** A person of unsound mind can enter into a contract when he is of sound mind who goes occasionally of sound mind and a person of sound mind who goes occasionally of unsound mind cannot enter into a contract.

- A person should be of sound mind when he enters into the contract.
- Contracts made in an lucid intervals.

**Idiot:** the person who is of unsound mind from his birth or due do some circumstances.

- cannot understand the the terms and conditions of the contract permanently due to his incapacity.
- contract with idiot is void

**Drunken and intoxicated:** an agreement made with the person when he is drunken and not in the stage to understand the terms and conditions of the contract.

- the agreement should not enter with the drunken person until he is of in the state to understand the terms and conditions of the contract.
- the contract entered with the intoxicated person is void.

Illustration: A enters into a contract to sell his car to B when he has mental illness. When the performance of a contract A cannot understand the terms due to his mental illness so the contract becomes void.

Case law - Inder singh vs parmashwardhari singh

citation: AIR1957PAT491,1957(5)BLJ238,AIR 1957 PATNA 491 facts: the contract was to sell the property.the seller of the property was of unsound mind when they entered into the contract.

issue: whether the contract is valid or void because of the seller's mental illness during the formation of the contract.

judgement: the court held that the contract entered by the person of unsound mind is void as it is proven that the seller was incapable to understand the terms and conditions of the contract so it is void.

**Section - 12** - Purpose of being sound mind when entering into the the contract.

- should be of sound mind when enters into the contract and making the terms and conditions of thecontract.
- should be capable to understand and preform the contract.
- should have a good interest over the contract.

unsound mind can make contact when he is of sound mind and sound mind cannot enter the contract when he is of unsound.

- should be of soundness
- temporarily unsoundness can enter during soundness

**Person disqualified by law:** who do have the capacity to enter into a contract due to the disqualification of law.

- Alien enemies, Foreign sovereign, convicts, corporation and company and insolvent are the not eligible to enter into the contract due to the disqualification.

**Alien enemies:** a person of country with whom india is with war are not entitled to enter into a contract unless specifically government give permission to enter.

**Foreign sovereign:** the ambassador of the country enters into a contract with Indian citizens but they cannot sue them because they are of foreign origin because it won't bind the local law.

**Convicts:** is not capable to enter a contract while he undergoes imprisonment they are disqualified from entering into the contract. They can enter into a contract after the time period of imprisonment gets over.

**Corporation and company:** a company can enter into a contract only within the scope of its memorandum of association. The contract made outside the its scope will become void.

**Insolvent:** a person declared insolvent by the court cannot enter into a contract relating to their disposition of the property and they will become capable when they declare capable by the court.

**Conclusion:** As per the Indian contract act 1872 the essential should must be fulfilled to form a valid contract so the two main essential which is discussed above are the very important to fulfill the both free consent and capacity to contract because a person should have both the capacity and consent to form a contract if the both do not fullfill the contract will be declared void according to the law. So the contract which satisfies the both will not have any problem. Even if one thing is fulfilled and another thing isn't fulfilled then it will become void so as per section 11 the capacity should be fulfilled and section 13 the consent should be give and it should be free.

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