

FREE CONSENT UNDER INDIAN CONTRACT ACT-1872

Dr. Manoj Kumar Sadual

Associate Professor, P.G. Department of Law, Utkal University, Bhubaneswar, Odisha, India

Received: 25 Aug 2021

Accepted: 28 Aug 2021

Published: 31 Aug 2021

ABSTRACT

To be a valid contract, there must be free consent section-10. The Indian contract Act, 1872 static that to enter into a valid contract, there must be free consent of both the parties. In the same way, section 13 of the contract Act, 1872 deals with the real consent. It says that a contract is said to be freely entered into when both the parties agree to the same thing in the same sense. i.e. consensus ad idem. Any agreement in the absence of face consent will be void. Sometimes, these may be circumstances where the either party has not given its consent freely and this may be due to misrepresentation, under influence or mistake of fact. Therefore, any contract entered into coupled with these factors is not a good contract in the eyes of law and such contract will be voidable at the instance of that party whose consent has been taken.

KEYWORDS: *Fraud, Mistake, Consent, Contract, Undue influence, Coercion, Misrepresentation*

INTRODUCTION

It is very seminal that contract is concluded with free consent of the parties. Free consent means when both the parties agree in the same sense upon the same thing. If it is not there, then the contract will be claims that his consent was not freely taken.

Meaning of Consent

When one person shows his willingness to obtain the assent to his offer and the other person accepts his willingness in the same way as has been laid down in the offer. It will be said that he has consented to offer of the proposer. But if such consent has been would made the contract corrupt.

Meaning of Free Consent

For a valid contract, if is essential that the meeting of minds of the parties must be upon the same subjects matter and in the same sense.

Consent must not be obtained by following factors:

Coercion, Undue Influence, Misrepresentation, Fraud, Mistake

Section 15 of contract Act, 1872 defines the coercion as committing or threatening to commit any act forbidden by Indian Penal Code or the unlawful detaining, ore threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Coercion is said to be present in a contract where it has been obtained either by- (a) Doing or threatening of doing any act prohibited by Indian Penal Code, 1860; or (b) Threatening to detain any property to the prejudice of any person,

whatever Do threatening to strike is coercion? On this point, there is a case workman of Appin Tea Estate v. Industrial Tribunal In this case, the workers demanded the bonus from the employers and in consequence of failure to provide the same, they would go on strike, the employers provided the bonus to the workers. He question arose whether the act of giving bonus was in consequence of threat of going on strike and if yes, will it amount to coercion? It was held that it was true that the employers provided the bonus in consequence of the fact of going on strike but it cannot be said that it was coercion within the meaning of section 15 contracts Act, 1872 as it was a again collectively raised by the workers for their rights. Moreover, such strikes are allowed by the Industrial dispute Act. That is why threat to go on strike does not constitute coercion.

Undue Influence

Sometimes, a party may be in a position where it is influenced mentally by the position of other party and in consequence of such influence, it gives the consent to the contract which in reality is not a free consent. Section 16, Contract Act deals with undue influence

- A contract is said to be induced by „undue influence“ where the relation subsisting between the parties are such that one of the parties is in position to determine the will of the other and uses that position to obtain an unfair advantage over the other.
- The following are the situation where a person is deemed to be in position to dominate the will of the other-
 - Where he has a real or apparent authority over the other or where he stands in the fiduciary relation to the other.
 - Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of age, illness or mental or bodily distress.
 - Where a person who is in 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 be upon the person in position to dominate the will of the other.

Contract with Pardanashin lady A pardanashin lady is that lady which remains in parda and generally separated from the society. Separation from the society means, she of Serves parda whenever she goes out of her residence. She opens up herself only in front of her close relation of the family. This tradition of observing parda may be due to the custom of her religion to which she belongs. She generally remains untouched from the affairs of the society. If a contract is made with such lady and afterwards she alleges that she had entered into contract because of the undue influence exerted by the other party. Now the burden of proving that the other party. Now the burden of proving that the other party did not take any advantage of non-awareness of the lady and there was no undue influence at the time when had contracted lies on the other party. This is because, presumption is always raised in favour of the pardanshin lady that she must have been the victim of undue influence presumption is raised in her favour because she is not much aware of the commercial transaction & is more likely to be victim of undue influence.

Fraud

A contract in which there is involvement of fraud, such contract is voidable at the instance of the party whose consent has been so taken. Section 17 of Indian contract Act, 1872 defines the Fraud. "Fraud" means and includes any of the following acts committed by a party to the contract or with his connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract:

- The suggestion, as 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 knowledge or belief of the fact;
- A promise which is made without any intention of performing it
- Any other act of deception

In **Ramchandra Singh v. Savitri**, it was held that fraud is committed where one man causes another to act on a false belief by a representation which he himself does not believe to be true.

Silence as Fraud:- In the explanation to section 17, it is provided that generally, silence does not amount to fraud; however, there are two exceptions to this general rule –

- In case where there is a duty to speak
- In case where the silence is equivalent to speech. However, the above-mentioned exceptions has to be read with Section 19 Contract Act, 1872, according to which even though the silence could be considered to be fraudulent, but if the party whose consent was taken fraudulently had the means of discovering the truth with ordinary diligence, the contract would not be voidable. In certain relationships, it is presumed that there is a duty on the part of one of the parties to speak and tell the truth.

Misrepresentation

Any contract entered into by the parties in which either party makes the contract due to a fact of misrepresentation, and then such contract is voidable at the option of the party whose consent is so obtained. Section 18 of Contract Act, 1872 deals with the misrepresentation-

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;

- Any breach of duty which, without an intent to deceive gains an advantage of 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;
- 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.
- Unwarranted statements: When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true, this is misrepresentation.

Breach of Duty

Any breach of duty which brings an advantage to the person committing it by misleading the other to his prejudice is misrepresentation. This clause intends to meet also those a case in which there is no intention to deceive, but the circumstances are such as to make the party who derives the benefit from the transaction equally answerable in effect as if he had been actuated by motives of fraud or deceived this is called constructive fraud.

Mistake of Facts

Section 20 of the Indian Contract Act, 1872 deals with the mistake of facts. A mistake of fact can be of two types:

- Bilateral mistake: When both the parties are under the mistake of some fact regarding the contract, it would be bilateral mistake. Bilateral mistakes may be classified further as: 1) Mistake regarding the existence of the subject-matter.
- Mistake regarding the quality of subject-matter.
- Mistake regarding the quantity of the subject-matter.
- Mistake regarding the title of the subject matter Unilateral Mistake (Section 21) Section 21 of Contract Act, 1872 provides that a contract cannot be said to be voidable just because one of the parties to the contract was under a mistake as to a matter of fact concerned to the contract. Therefore, a unilateral mistake does not affect the validity of the contract and cannot be a ground for setting aside the contract in the court of law. The validity of a contract is hindered when consent is gained due to a mistake by the parties. A mistake can be of two types, mistake of fact and mistake of law. When the consent to a contract is gained due to a bilateral mistake of fact, the contract is said to be void but when the mistake occurs due to a unilateral mistake of fact, the agreement is valid except in the cases of mistake regarding the nature of the contract or identity of the parties to the contract.

CONCLUSIONS

It can be concluded that to be a valid contract, there should not be any involvement of a fact caused by coercion, fraud, misrepresentation, undue influence. If any of them is present then contract will be voidable. In case of bilateral mistake of fact, the contract will be void and not voidable. It says that a contract is said to be freely entered into when both the parties agree to the same thing in the same sense. i.e. consensus ad idem. Any agreement in the absence of face consent will be void. Sometimes, these may be circumstances where the either party has not given its consent freely and this may be due to misrepresentation, under influence or mistake of fact. Therefore, any contract entered into coupled with these factors is not a good contract in the eyes of law and such contract will be voidable at the instance of that party whose consent has been taken.

REFERENCES

1. Bangia R.K. "Law of Contract" Edition. 2011
2. Ramchandra Singh v. Savitri Devi
3. Indian Contract Act, 1872
4. Workman of Appin Tea Estate v. Industrial Tribunal A.I.R Assam 115

5. *Legal services India.com*
6. *Kempson, E, Whyley, C, Caskey, J. and Collard, S. (2000) In or out? Financial Exclusion: A Literature and Research Review. London: FSA Kempson, E. and Whyley, C. (1999a) Kept out or Opted out? Understanding and Combating Financial Exclusion. Bristol: Policy Press.*
7. *Kempson, E. and Whyley, C. (1999b) 'Understanding and combating financial exclusion, Insurance Trends, Vol. 21, pp. 18–22. McKinsey Report (2010), Global Financial Inclusion. RBI Annual Report (2011)*

