

*(This assignment is a partial fulfilment of the requirement of the Contract Law course.)*



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| <b>Title of Assignment:</b>    | <b>Class Assignment# 02</b>  |
| <b>Title of Course:</b>        | <b>Law of Contract I</b>     |
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| <b>Submission Date:</b>        | <b>December 12, 2020.</b>    |

## **Meaning of consent**

The term Consent means "agreed to "or giving acceptance. The parties to the Contract must freely and mutually agree upon the terms of the contract in the same sense and at the same time. There cannot be any agreement unless both the parties it to agree to it. If there is no Consent, Agreement will be *void*.

Consent exist when one person voluntarily acknowledge to the proposal or desire of another person. Consent is employed in several field like law, medicine, research and relationship. Free consent means a consent giving to an individual for the performance of an act on his own will. Here we see the consent and free consent under Law of Contract Act 1872 which is a law following in India and Pakistan from British rule.

## **Definition Under Contract Act 1872**

Free Consent is an essential element for formation of a contract . According to Section 10 of the Indian Contract Act, 1872, All agreements are contracts, if they are made by the free consent. Section 13 and Section 14 of the Indian Contract Act, 1872 defines 'Consent' and 'Free Consent' respectively.

According to Section 13 of the Indian Contract Act, 1872 consent means when both parties agree to a thing in the same sense of mind or unison of mind and it defines Consent as " Two or more person are said to consent when they agree upon the same thing in the same sense."

Consent is considered to be free consent under section 14 of Contract Act 1872 when the following factors are satisfied:

- It should be free from coercion. As defined in ( Section 15)
- The contract should not be done under the pressure of undue influence.( Section 16)
- The contract should be done without fraud. (Section 17)
- The contract should not be made through misrepresentation. (Section 18)
- The contract should not be made by mistake. (Section 20,21,22)

## Elements of free consent

The factors constituting the free consent jotted above are the essential elements of free consent without which the consent would not be considered free and hence not lead to a valid contract.

Hence, the main elements of free consent are five which are discussed in detail below in terms that when they occur in a contract makes it void. :

### 1. Coercion

When a person commits or threatens to commit an act which is forbidden under the Pakistan Penal Code, or detains an object unlawfully or threatens to do so with the intention to force a person to enter into a contract, then it is said to be coercion.

**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.

### 2. Undue influence

When a contract is made between two parties and one of them is in the position to dominate the will of the other party and takes unfair advantage of the position, then the contract is said to be made out of undue influence. The principle of undue influence is based on the doctrine of equity.

#### Salient features

- Either of the parties should be in a state to dominate over other
- The party who dominates should have taken undue advantage of his position

**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.

### 3. Fraud

Fraud means an action that includes the false assertion of facts, concealment of facts and any promise with the intention to deceive a person. According to Section 17 of the Indian Contract Act, 1872 when a party contracts with the other party with the intention to deceive amounts to fraud. The party may directly make the contract with the other party or it can be done with the help of an agent even.

**For example**, A agrees to sell his horse to B. A had the knowledge that the horse is of unsound mind and did not inform it to B. B, asked A if he does not deny the fact then

B would consider the horse to be sound and A kept silence to it. In this case, mere silence amounts to the agreement, thus A performed a fraudulent act.

#### 4. **Misrepresentation**

Misrepresentation means a false representation of the fact. According to Section 18 of the Indian Contract Act, Misrepresentation is the stating of deceiving information which results in the assertion of the other party into entering into a contract and subsequently undergoing loss. The information, however, presented by the guilty party is a result of genuine belief about the matter. Misrepresentation is said to be committed Firstly when the person deceiving positively asserts not warranted information to another misleading them somehow. Secondly, there is a breach of duty which has caused the prejudice of one or another to be at stake. Lastly, a mistake has been committed by another because of the act or information of the one misrepresenting them.

#### 5. **Mistake**

According to Section 20 of the Indian Contract Act, a contract is declared void when a mistake is caused by both the parties that bilateral mistake, which violates the essentials to an agreement. Hence, there are a number of types of mistakes, which occur in a contract .

- **Unilateral Mistake:** A mistake is said to be unilateral when one party is mistaken in the agreement.
- **Bilateral Mistake:** A mistake is said to be mutual when both parties misunderstood each other. Thus it shows that there is a breach in the principle of consensus-ad-idem in the contracts and the contract is to be considered as void.

**For example,** In the case of *Solle v Butcher*, it was seen that both the parties entered into the contract of lease of Flat. Both the parties believed that the identity of the flat has changed thus the maximum rent which was GBP 140 per annum has also changed. But later the court held that there was no change of identity thus, it was held that there was a mutual mistake of fact and thus the contract was declared to be void.

- **Mistake of law:** People should have minimum knowledge about the law, they should be aware of the fact that which act they should restrain from doing and which they are ought to do. And there would be no remedy provided or excused under the fact of mistake of law in these circumstances.

- **Mistake of fact:** When there is a bilateral mistake causing a contract void, it is subjected to a mistake of fact and not to mistake of law. When there is a misunderstanding between the parties or omission of facts which leads to the mistake, is said to be a mistake of fact.

## **Conclusion**

CONSENT IMPLICIT A MEETING OF MIND. IF THERE IS NO CONSENT AND THERE IS NO MEETING OF MIND. IF CONSENT OBTAINED WITHOUT FREE OF MIND HERE THE CONSENT UNDER SOME INFLUENCE SO FREE CONSENT IS ESSENTIAL INGREDIENTS IN CONTRACT.