

Business law

Lecture-7

➤ Free consent

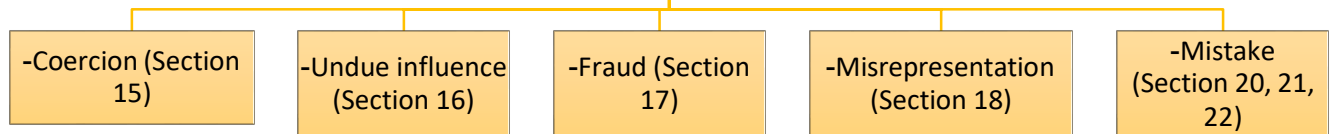
A) Meaning – Section 13

‘Two or more persons are said to consent when they agree upon the same thing in the same sense.’



B) When consent is said to be free?

As per section 14 of the Contract act consent is said to be free when **following are absent –**



📌 Coercion – Section 15

A) Meaning of coercion –

Coercion means –

- committing or threatening to commit any act forbidden (prohibited) by Indian Penal Code against another person; or
- unlawful detaining or threatening to detain the property of another person
- with a view to obtain consent of another person



B) Who can exercise coercion –

Coercion may come from a person party to the contract or even third person not connected with the contract directly.

C) Important points –

- Prosecution** – A mere (only) threat to prosecute a man or file suit against him does not constitute a coercion.
- High prices and high interest Rates** – Charging high interest rate, high price etc. is not a coercion as the same is not prohibited under the Indian Penal code.
- A threat to commit suicide** – Consent to an agreement may at times be obtained by threatening to commit suicide. Threat to commit suicide also amounts to coercion.

D) What will be the effect if the consent is caused by coercion – Section 19

- Agreement is voidable at the **option of aggrieved party**.
- Aggrieved party has the option to cancel (rescind) the contract.
- If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person.

📌 Undue Influence – Section 16

A) Meaning of undue influence –

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A contract is said to be induced (caused) by “undue influence” where the relations subsisting (existing) 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.



B) When a person is deemed to be in a dominating position?

- a) Where he holds a real or apparent authority over the other (e.g. master and servant)
- b) where he stands in a fiduciary (trust) relation to the other (e.g. Doctor and patient)
- c) 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 (pain)

Note –

The burden of proving that the contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other

C) There is presumption of undue influence in the following relationships –

- a) Parent and child
- b) Guardian and ward
- c) Doctor and patient
- d) Solicitor and client
- e) Trustee and beneficiary
- f) Religious advisor and disciple
- g) Fiancé and fiancée

D) However, there is no presumption of undue influence in case of relationship of —

- a) landlord and tenant
- b) debtor and creditor
- c) husband and wife.

E) What will be the effect if the consent is caused by Undue influence – Section 19

- a) Agreement is voidable at the option of aggrieved party.
- b) Aggrieved party has the option to cancel (rescind) the contract.
- c) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person

