

Business law

Lecture-8

A) Fraud – Section 17

B) Meaning of fraud –

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party or his agent, or to induce him to enter into the contract:

C)

- a) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- a) The active concealment (to hide) of a fact by one having knowledge or belief of the fact;
- b) A promise made without any intention of performing it;
- c) Any other act fitted to deceive;
- d) Any such act which the law specially declares to be fraudulent



Note –

Deceive – intentionally cause (someone) to believe something that is not true

Connivance – willingness for being secretly involved in an immoral or illegal act.

D) Is silence fraud?

- a) Whether silence is fraud or not depends upon various factors.
- b) Normally speaking, silence does not amount to fraud.
- c) However, silence will be considered as fraud in the following situations –
 - When there is a duty to speak
 - Where silence is equivalent to speech.
 - Where there is change in circumstances

E) What will be the effect if the consent is caused by Fraud – 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 aggrieved party decides not to cancel the contract then he may continue the contract and claim damages from the other party.
- d) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person.

Contracts Uberrimae Fidei –

There are contracts in which the law imposes a special duty to act with the utmost good faith i.e., to disclose all material information. Failure to disclose such information will render the contract voidable at the option of the other party

Examples –

- a) Contract of insurance of all kinds
- b) Company prospectus
- c) Contract for the sale of land
- d) Contracts of family arrangements

Misrepresentation – Section 18

A) Meaning –

Business law

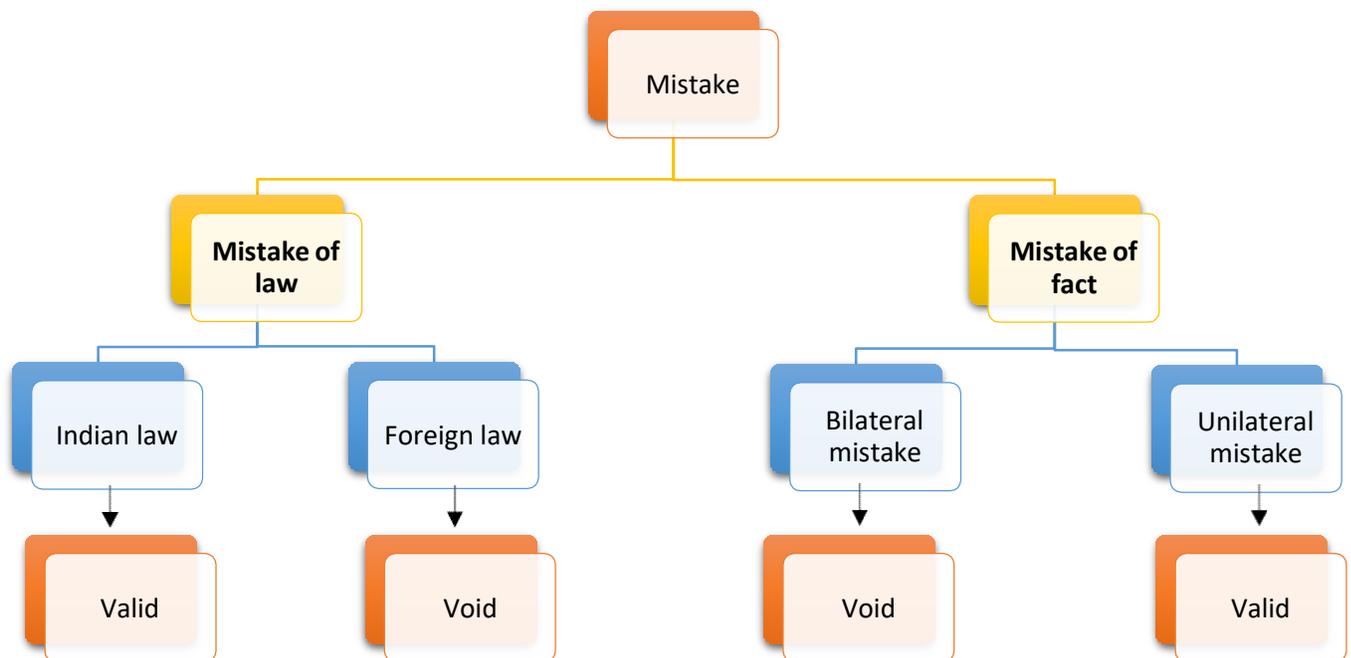
Lecture-8

- a) A representation when wrongly made either innocently or intentionally is a misrepresentation. When it is made innocently or unintentionally it is misrepresentation and when made intentionally or willfully it is fraud.
- b) Misrepresentation means making any statement as true but actually that statement is false.



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

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



Mistake of law – Section 21

Mistake of law of the country –

- 1) When a party enters into a contract, without the knowledge of law in the country, the **contract is valid and not void.**
- 2) A contract is not voidable because it was caused by a mistake as to any law in force in India.
- 3) The reason here is that **Ignorantia juris non excusat (ignorance of law is not an excuse at all).**
- 4) However, if a party is induced (influenced) to enter into a contract by the mistake of law then such a contract may be avoided.

Mistake of law of foreign country –

- 1) Such a mistake is treated as mistake of fact and agreement in such case is void.
- 2) **Ignorance of foreign law may be excused**