

Business law

Lecture-9

Mistake of fact – Section 20

A) Bilateral mistake -

- 1) Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.
- 2) Mistake must be mutual i.e. both the parties should misunderstand each other

Types of mistakes falling under bilateral mistake are as follows –

- (a) **Mistake as to existence of subject matter:** If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.
- (b) **Mistake as to identity of subject matter:** It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identify of subject matter.
- (c) **Mistake as to the quality of the subject matter:** If the subject matter is something essentially different from what the parties thought to be, the agreement is void.
- (d) **Mistake as to quantity of subject matter:** Bilateral mistake as to quantity of subject matter would render the contract void.
- (e) **Mistake as to title of subject matter:** The agreement is void due to bilateral mistake as to title of the subject matter.
- (f) **Mistake as to price of the subject matter:** Mutual mistake as to price of the subject matter would render the agreement void.
- (g) **Mistake as to possibility of performance of Contract** - Impossibility may be:
 - Physical impossibility:** A contract is void if it is identified to be non-feasible (not possible) due to physical factors, like time, distance, height, etc.
 - Legal impossibility:** A contract is void if it provides that something shall be done which as a matter of law cannot be done.

B) Unilateral Mistake as to fact – Section 22

- 1) A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.
- 2) A unilateral mistake is not allowed as a defense in avoiding a contract unless the mistakes brought about by another party's fraud or misrepresentation.

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Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is unlawful if it is –

- **forbidden by law**; or
- it is of such nature that **if permitted it would defeat the provisions of law**; or
- is **fraudulent**; or
- involves or implies **injury to the person or property** of another; or
- the Court regards it as **immoral or opposed to public policy**.

In each of these cases the consideration or object of an agreement is said to be unlawful.

Every agreement of which the object or consideration is unlawful is void.

➤ Void and Illegal Contracts –

Consequence of Illegal Agreements

- an illegal agreement **is entirely void**;
- **no action can be brought** by a party to the contract to an illegal agreement. The maxim is “**Ex turpi cause non-oritur action**” - **from an evil cause, no action arises**;
- money paid or property transferred under an illegal agreement cannot be recovered. The maxim is **in parti delicto potierest condition defendetis- In cases of equal guilt, more powerful is the condition of the defendant**;
- where an agreement consist of two parts, one part legal and other illegal, and the legal parts is separable from the illegal one, then the Court will enforce the legal one. If the legal and the illegal parts cannot be separated the whole agreement is illegal; and
- any agreement which is collateral (connected) to an illegal agreement is also tainted with illegality and is treated as being illegal, even though it would have been lawful by itself



➤ Agreements Void as being opposed to Public Policy –

The following agreements are void as being against public policy but they are not illegal –

- a) **Agreement in restrain (restrict) of parental rights** : An agreement by which a party deprives himself of the custody of his child is void.
- b) **Agreement in restraint of marriage** : An agreement not to marry at all or not to marry any particular person or class of persons is void as it is in restraint of marriage.
- c) **Marriage brokerage or brokerage Agreements** : An agreement to procure marriage for reward is void. Where a purohit (priest) was promised Rs.200 in consideration of procuring a wife for the defendant, the promise was held void as opposed to public policy, and the purohit could not recover the promised sum.
- d) **Agreements in restraint of personal freedom are void** : Where a man agreed with his money lender not to change his residence, or his employment or to part with any of his property or to incur any obligation on credit without the consent of the money lender, it was held that the agreement was void.
- e) **Agreement in restraint of trade** : An agreement in restraint of trade is one which seeks to restrict a person from freely exercising his trade or profession.