

*Biyani's Think Tank*

**Concept based notes**

# **Legal Aspects of Indian Business**

**(Business a regulatory Frame Work)**

*(BBA Part-I)*

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## CHAPTER-1

### Some Important Short Questions

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**Q.1 Define Contract.**

**Ans.:** "An agreement enforceable by Law is a Contract." (Section 2(h))

**Q.2 What is implied contract?**

**Ans.:** An agreement which is not made by written or spoken words of parties but it is evidenced from the acts or conduct of the parties or according to prevailing conditions.

**Q.3 What is quasi contract?**

**Ans.:** The contract which is not created by proposal and acceptance but imposed by law based on the principle of equity.

**Q.4 Distinguish between void and voidable contract.**

**Ans.:** A void contract is ab-initio void hence, cannot be enforced by law on the other hand enforceability of a voidable contract, depends upon the will of the aggrieved party.

**Q.5 What is the difference between void Agreement and Void contract?**

**Ans.:** Void agreement is void from beginning (ab-initio) whereas void contract becomes void when aggrieved party chooses to rescind it.

**Q.6 What is general and standing offer?**

**Ans.:** The offer made to the public in general and any one can receive, it is general offer, whereas standing offer is an offer made as tender to supply goods as and when required amounts to a standing offer.

**Q.7 What is cross offer and counter offer?**

**Ans.:** When two parties exchange identical offers in ignorance at the time of each other's offer, it is called cross offer, on the other hand when offeree offers variations in the original offer, it is called as counter offer.

**Q.8 What is executed and executory contract?**

**Ans.:** A contract in which all the parties to the contract have performed their respective obligation is known as executed contract, whereas Executory contracts is one in which all or something still remain to be fulfilled or performed by the parties.

**Q.9 What is Bilateral and Unilateral contract?**

**Ans.:** Bilateral contract is one in which both the parties exchange a promise to each other, which is to be performed in future, but still outstanding hence, it is called bilateral contract and similar to executory contract on the other hand, Unilateral contract is one in it a promisor promises to do something. In such a contract, promisor binds himself to perform his promise but the offerer does not do so. Therefore, it is called Unilateral Contract.

**Q.10 Explain capacity to contract.**

**Ans.:** The term capacity to contract means competence to legally enter into a contract that is legally binding to the parties.

**Q.11 Who is a Minor?**

**Ans.:** A minor is a person who has not completed eighteen years of age. Who has not completed the age of 21 years in case the court has appointed guardian or superintendence of court of wards of minor's property.

**Q.12 What is Consent?**

**Ans.:** According to Section 13 "Two or more persons are said to consent when they agree upon the same thing in the same sense." It is Unison or meeting of mind or consensus ad idem.

**Q.13 What is Coercion?**

**Ans.:** According to Section 15 of Indian Contract Act, 1872, "Committing any act forbidden by Indian Penal Code or detaining or threatening to detain property of another for getting consent is coercion."

**Q.14 Explain undue influence.**

**Ans.:** When a dominating party misuses his influence to dominate the will of the weaker party to get undue or unfair advantage in a contract, then it is called undue influence (Section 16).

**Q.15 What do you mean by fraud?**

**Ans.:** According to Section 17, "The term fraud is the intentional misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement"

**Q.16 What do you mean by misrepresentation?**

**Ans.:** It is defined under section 18. It means any innocent or without intentional false statement or positive assertion of fact made by one party to the other during the course of negotiation of a contract is known as misrepresentation.

**Q.17 What is mistake?**

**Ans.:** It is defined under Section 20 to 22, "It is an erroneous belief about something. When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake. It is mistake of law and mistake of fact. The mistake of Indian Law is enforceable not void but mistake of foreign law is void. When mistake made by a person it unilateral mistake and mistake is made by both the parties. It is bilateral mistake.

**Q.18 What is consideration.**

**Ans.:** It is quid-pro-quo means something in return. Hence, consideration is the price paid by promisee for the obligation of the promise.

**Q.19 What is doctrine of privity of contract?**

**Ans.:** A person who is not a party to the contract cannot sue upon it. Only the party to the contract can enforce the same.

**Q.20 What is Ex-Nudo-Pacto Nor-Oritur actio mean?**

**Ans.:** It means from bare promise, no right of action can arise.

**Q.21 What is maintenance?**

**Ans.:** It is simply meaning the promotion of litigation in which one had no interest.

**Q.22 What is Champerty?**

**Ans.:** It is a bargain where by one party agrees to assist the other in recovering property.

**Q.23 What is wagering Agreement?**

**Ans.:** It is an agreement involving payment of a sum of money upon the determination of an uncertain event.

**Q.24 What do you mean by Agreement against public policy?**

**Ans.:** It simply mean whenever an agreement is harmful or injurious to public interest and welfare it is said to be against public policy. It is harmful to the social, political, economic and other interest and welfare of the public is called agreement opposed to public policy.

**Q.25 What is Contingent contract?**

**Ans.:** It is a contract in which the promisor undertakes to perform the contract upon the happening or non happening of a specified future uncertain event, which is collateral to the contract (Section 32).

**Q.26 What is Appropriation of payments?**

**Ans.:** In case of a debtor owes several distinct debts to the same creditor, he makes payment which is insufficient to satisfy all the debts. In such a situation a question arises as to which particular debt the payment is to be appropriated.

**Q.27 What is Novation?**

**Ans.:** Novation means substitution of a new contract in place of an existing one with the consent of all the parties to the contract.

**Q.28 What is Rescission?**

**Ans.:** It is cancellation of a contract by the consent of all the parties to it or by the aggrieved party to it.

**Q.29 Explain Remission.**

**Ans.:** According to Section 63, "Remission meant acceptance of a lesser performance in discharge of a whole obligation under a contract.

**Q.30 What is Waiver?**

**Ans.:** When a party entitled to claim performance releases the other party from his obligation it is known as waiver.

**Q.31 What is supervening impossibility?**

**Ans.:** If after making agreement it becomes impossible to fulfill the promise under contract, it is supervening impossibility. The contract becomes void.

**Q.32 What is liquidated damages?**

**Ans.:** When the sum payable in the event of breach is decided by parties in advance, it is called liquidated damages.

**Q.33 What are exemplary damages? When they are awarded?**

**Ans.:** The damages which are awarded with a view to punish the defendant. These are awards in two cases i) On breach of contract of marriage and 2) wrongful dishonour of customer's cheque by the bank.

**Q.34 What is the contract of Indemnity?**

**Ans.:** A contract of indemnity means a contract by which one person promises to save the other from the loss caused to him by conduct or incident.

**Q.35 What is contract of guarantee?**

**Ans.:** According to Section 126 of contract Act "A contract of guarantee as a contract to perform the promisor discharge the liability of a third person in case of his default.

**Q.36 What is bailment?**

**Ans.:** According to section 148 "bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

**Q.37 What is Lien? What are its types?**

**Ans.:** Lien is a right to retain that which is in possession of a person and belongs to another until his demands are satisfied. There are two types of lien 1) The general lien which means to retain any property belonging to the other for any



lawful payment and 2) It is relating to retain those goods, which are the subject matter of contract of particular lien.

**Q.38 What is agency?**

**Ans.:** The relationship between agent and principal created by an agreement whereby agent is authorized by his principal to represent him and establish contractual relations with third party.

**Q.39 What is Agency by estoppel?**

**Ans.:** If a person either by his conduct or words leads to another person to believe that a certain person is his agent, is called agency by estoppel.

**Q.40 What is agency by ratification?**

**Ans.:** If the principal ratifies the act of a person done without authority, it is known as 'agency by ratification'.

**Q.41 What is sub-agent and substituted Agent?**

**Ans.:** A sub agent is a person employed by and acting under the control of the original agent in the business of the agency (Section 191) on the other hand, a substituted agent is named by agent but appointed by the principal. He is liable to principal.

**Q.42 What is contract of Sale. How it is different from Agreement to sell?**

**Ans.:** A contract where seller transfers or agrees to transfer property, in goods to the buyer for a price on the other hand, a contract where seller agrees to transfer property in goods in future on fulfillment of certain conditions is called as agreement to sell.

**Q.43 How sale is different from Bailment?**

**Ans.:** The intention of parties in case of sale is to transfer property in goods immediately, but in case of bailment, the property in goods is not transferred.

**Q.44 What is goods under sale of goods Act, 1930 and its types?**

**Ans.:** According to Section 2(7) "Goods means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

According to Section 6 (1 and 2) of the act there are three types of goods as :

- (1) Existing goods viz – Specific, ascertained or unascertained goods
- (2) Future goods and
- (3) Contingent goods

**Q.45 What is condition and warranty?**

**Ans.:** According to Section 12(2), a condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated, whereas warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives right to claim for damages but not to a right to reject the goods and treat the contract as repudiated (Section 12(3)].

**Q.46 What is doctrine of Caveat Emptor?**

**Ans.:** The buyer must take care when buying goods; it is not seller's duty to point out the defects in goods.

**Q.47 What is the meaning of Res Prit Domine?**

**Ans.:** It simply means risks follows ownership. It is general rule that risk prima facie passes with ownership.

**Q.48 What is the meaning of Nemo dot quod non habit.?**

**Ans.:** It means nobody can give what he himself has not or no seller can transfer a better title than he himself has.

**Q.49 What is unpaid seller?**

**Ans.:** According to Section 45 (1) the seller of goods deemed to be unpaid seller when whole price has not been paid or negotiable instrument received as payment dishonoured.

**Q.50 What are the rights of unpaid seller?**

**Ans.:** He has two rights :

- (1) Right against the goods i.e. right of lien, right of stoppage of goods in transit and right of resale.
- (2) Rights against buyer personally i.e. a) suit for price, b) damages for non acceptance, repudiation of the contract before the due date and suit for interest.

**Q.51 What is retracting the bid?**

**Ans.:** The term retracting means withdraw or revoke. A bidder may retract his bid at any time before the compilation of sale. Any condition in an auction sale which forbids the bidder to retract his bid is void.

**Q.52 What is damping?**

**Ans.:** Damping is an overt act of dissuade the prospective buyer from raising the price by pointing out defects in the goods, creating confusion in the mind of intending bidder and taking away him from the place of auction.

**Q.53 When knock out agreement becomes illegal?**

**Ans.:** In the intention of the partner to knock out is to defraud a third party; such agreement is illegal.

**Q.54 Define Company under Company Law.**

**Ans.:** In terms of Section 3(2)(i) of the Companies Act, 1956, a company means "A company formed and registered under company Act 1956 or an existing company. An existing company means a company formed and registered under any of the former companies Act."

**Q.55 What is Body Corporate?**

**Ans.:** According to Section 2(7), Body Corporate or Corporation includes a company incorporated outside of India but does not include as follows :

- (i) A corporate sole.
- (ii) A cooperative society registered under any law relating to co-operative societies.
- (iii) Any other body corporate declared by Central Govt. in its gazette.

**Q.56 What do you mean by holding company?**

**Ans.:** According to section 4(4) a company shall be deemed to be holding company of another if but only if that other is its subsidiary. Hence, a company has control over another company, the controlling company is known as holding company and the company is known as holding company and the other company is known subsidiary company.

**Q.57 What is a Government Company?**

**Ans.:** According to Section 617 "a Govt. company means any company in which not less than 51% of the paid up share capital is held by the following :

- (i) By the Central Govt;
- (ii) By any State Govt. or Governments; or
- (iii) Partly by Central Govt. And partly by one or more State Governments.

A subsidiary of a Government Company is an also Government Company.

**Q.58 Foreign companies?**

**Ans.:** According to Section 591(1) "A foreign company is the company which is or has been incorporated outside India but establish or has established a place of business within India."

**Q.59 What is one man company?**

**Ans.:** It is also known as family company. The one man holds entire share capital of the company. Other person holds only the minimum or negligible number of shares in the company.

**Q.60 Who is a promoter?**

**Ans.:** A promoter is a person or group of persons who conceives an idea regarding the formation of a company for the first time. He also takes necessary steps for formation of a company and takes other essential steps for its incorporation, raising of capital and making it a going concern.

**Q.61 What is commencement of business certificate?**

**Ans.:** A public company cannot start business without it. Hence, a public company before start of business must get a certificate that is called Commencement of

Business Certificate. At the same time a public as well as private company must also commence its business within one year of its incorporation.

**Q.62 What is Ultra Vires?**

**Ans.:** It is composed of two Latin words i.e. Ultra and Vires. Ultra means beyond and vires means power. Hence ultra vires means beyond one's power. In the context of company law, ultra vires means the acts beyond the legal powers or objects of the company. If a company acts/contracts beyond the memorandum either expressly or impliedly, it is null and void.

**Q.63 How doctrine of Constructive notice is opposed to the doctrine of indoor management?**

**Ans.:** This is against the principle of constructive notice which protects the company against outsiders for notice given to all due to public documents on the other hand doctrine of indoor management believes that internal management of the company and rules are according to memorandum and Articles. In case of irregularity and mismanagement, then the company will be held liable.

**Q.64 What is abridged prospectus?**

**Ans.:** Abridged means which is in brief and it is a memorandum containing such salient features of a prospectus prescribed.

**Q.65 What is Statement in lieu of prospectus? Explain the varying conditions of issue of it.**

**Ans.:** If a company requires to get shares or debentures amount from the public. The private company is restricted but the public company is required to issue prospectus. But some time the company privately managed the funds in such a case statement in lieu of prospectus ;must be filed at least three days before the allotment of shares or debentures; so it is substitute to prospectus.

**Q.66 Define a Director?**

**Ans.:** The Supreme Court of India defines "A person who guides policy and superintends the working of a company, is a director". The name by which he is called is immaterial. The term includes a Managing Director

**Q.67 How many directorships can be held by an individual?**

**Ans.:** No person shall hold office at the same time as director in more than fifteen companies. If he does work more than this limit, he has to resign more than fifteen companies.

**Q.68 Define Company Secretary?**

**Ans.:** According to Section 2(45) of the Company Secretaries Act 1980 includes any individual possessing the prescribed qualifications and appointed to perform the duties which may be performed as Secretary under the act and any other ministerial or administrative duties.

According to Section 2(1)(C) of the Company Secretaries Act "Company Secretary means a person who is a member of the Institute of Company Secretaries of India."

**Q.69 What is holder in Due Course?**

**Ans.:** According to Section 9 of the act, a holder in due course means i) who is to be the holder of N.I. ii) who possessed for consideration iii) he got it before the date of maturity, iv) he must have obtained the instrument in good faith and v) it is complete in all respects.

**Q.70 What is acceptor for honour?**

**Ans.:** According to Section 108 of the act, "A person desiring to accept for honour must by writing on the bill under his hand, declares that he accepts ;under protest the protested bill for the honour of the drawer or of a particular endorser whom he names or generally for honour.

**Q.71 What is obliterating a Crossing?**

**Ans.:** According to Section 89 provides protection to a collecting banker of a cheque whose crossing is obliterated or erased by a dishonest person under the following condition of such cheque the paying bank shall be discharged from its liability if

A) The cheque is not crossed or obliteration of crossing is not apparent at the time of presentation for payment, and

B) The payment has been made in due course as required under section 10.

**Q.72 What is noting and protesting?**

**Ans.:** According to Section99, "Noting consists of recording and authenticating the fact and reasons of dishonour of a N.I. by the notary public at the request of the holder upon the same instrument or upon a paper attached thereto or party upon each. It contains date of dishonour, reasons for the dishonour, fees of Notary Public, his signature and reference to the notary public."

Protesting : According to Section100 "Protest is a formal certificate of dishonour issued by the notary public to the holder of a bill or note on his demand. It contains signature of Notary Public, about the fact time and place of the dishonour. The name of person for and against whom the instrument is protested."



## Meaning and Essentials of Contract

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**Q.1. "An agreement enforceable by law is a contract" Comment and explain the essentials of a valid contract in brief.**

**Ans.:** Generally contract means a promise or agreement made by two or more persons enforceable by law. According to Indian Contract Act 1872 Section 2(h) defined.

"An agreement enforceable by law is a contract." Hence, agreement and legal enforceability creates an agreement as contract. Section 10 defines "All Agreements are contracts if they are made by the free consent of parties, competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared void. The contract to be made in writing by law of land or in the presence of witnesses or be registered, if required"

On the basis of the above definitions and judgment given by judges, help us to mention the following essentials of a valid contract :

- (1) Atleast two parties are required to enter into a contract that is promisor and promisee.
- (2) **Agreement** : Proposal and acceptance must be absolute and unconditional. The two identical Cross-offers and successive counter offer are only offer and not agreement.
- (3) The intention should be to create legal relations not the social, domestic, political relations.
- (4) Contractual capacity among persons who is not minor, insane and disqualified by law of the land.
- (5) Consent or Consensus ad idem. The parties are said to consent when they agree upon the same thing in the same sense. (Section13).
- (6) **Free Consent** : According to Section14, the consent is said to be free when it is not caused by i) coercion, or ii) undue influence, or iii) fraud, or iv) misrepresentation or v) mistake.
- (7) **Consideration** : Except some exceptions, an agreement without consideration is void. It means quid pro-quo. It must be lawful and real and not illusory.
- (8) The lawful object and its consideration must be legal.
- (9) The agreement must have certain meaning.
- (10) An agreement to be valid must be possible to be performed.
- (11) The agreements must not be declared void by the law of the land.
- (12) Compliance of legal formalities is required.

Hence, every agreement to be enforceable by law must possess all these essential elements for a contract. If any of the element is missing in an agreement, such agreement is not enforceable by law.

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## Proposal and Acceptance

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**Q.1. Define offer and acceptance. Explain rules regarding valid acceptance.**

**Ans.:** The term offer is also called proposal. It is defined under Indian Contract Act, 1872 Section 2(a), "when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

Acceptance is defined under section 2(b) of Contract Act, 1872 i.e. when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

**Rules regarding Valid Acceptance :** A few important rules of acceptance are as follows in brief :

- (1) Acceptance must be absolute and unqualified {Section 7(1)}.
- (2) It must be in prescribed manner/reasonable manner {Section 7(2)}.
- (3) Acceptance may be given by performance of condition or act required by an offeror {(Section8)}.
- (4) It may be given by acceptance of consideration (Section 8).
- (5) Acceptance may be express or implied.
- (6) It must be given within specified or reasonable period of time.
- (7) Acceptance must be given while the offer is in force.
- (8) It must be given only after the communication of offer is complete.
- (9) Acceptance must be given by the person to whom offer is made.
- (10) Acceptance must be communicated, only mental determination or intention to give acceptance is not sufficient.

- (11) It must be from competent person/authorized person otherwise it will not be binding. **Powell V. Lee (1908)**
- (12) It should be communicated to the offeror himself, other than him will not create legal obligation.
- (13) Acceptance subject to contract is no acceptance. It will not create legal binding.

**Note :**

- (i) A rejected offer cannot be accepted.
- (ii) Counter offer does not constitute acceptance.
- (iii) Cross offer cannot be assumed as acceptance.
- (iv) Silence does not generally amount to acceptance.
- (v) Acceptance to offer means acceptance of all terms of offer.
- (vi) Sometimes grumbling acceptance is a valid acceptance.
- (vii) Enquiring/seeking clarification of offer is not to be assumed as acceptance.
- (viii) Circumstances of the acceptance must show the ability and willingness to fulfill the terms of offer.

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## **Capacity to Contract**

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**Q.1. Who can make a valid contract? Discuss the validity of agreements made by a minor.**

**Ans.:** According to Section 11, "Every person is competent to contract who is of the age of majority according to law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject. Hence, the following persons can make valid contract :

- (i) Who is major
- (ii) Who is of sound mind or sane
- (iii) Who is not disqualified from contracting by any to which he is subject

### **Validity of Agreement made by a Minor :**

- (i) Agreements with or by a minor is absolutely void. Ruling was given in Mohri Bibee vs. Dharmodas Ghose.
- (ii) No ratification of minor's contract.
- (iii) A minor can be a promisee or beneficiary.
- (iv) Restitution/compensation is possible in case of minor under (section 33, specific Relief Act, 1963).
- (v) The rule of estoppel does not apply for minor, he can plead his minority.
- (vi) No specific performance is possible in case of minor because contract made by him is void {(Mirsarawarjan vs. Fakhruddin 1912) 3 Col. 232)}
- (vii) Contract by parents/guardian/manager may be made on behalf of the minor, provided they had authority and benefit to minor
- (viii) Minor may be given share in existing partnership business by the consensus of the partners.
- (ix) Minor may be appointed as Agent but principal will be personally liable for his acts.

- (x) Acts done by minor parents will not be liable.
- (xi) Guarantee for and by the minor is valid.
- (xii) Insolvency Act does not apply on minor; hence, minor cannot be adjudicated insolvent.
- (xiii) Minor may be joint promisor under Law of contract.
- (xiv) Minor cannot apply for allotment of shares in company, but he can apply for fully paid up share on behalf of his guardian.
- (xv) Minor is allowed to make, draw and endorse negotiable instrument but he is not liable for dishonour.
- (xvi) Minor cannot enter into service agreement but he can be beneficiary if he has performed his promise.
- (xvii) Minor can enter into the contract of Apprenticeship at the age of 14 years if he is physically fit.
- (xviii) Minor can become trade union member if he has attained the age of 15 years.
- (xix) Marriage contract of minor on behalf of parents is allowed on the ground of the customs of the community.
- (xx) Minor is held responsible for torts or civil wrong committed by him
- (xxi) Liability of necessities of life supplied to him or his legal dependents. His property is liable; he is personally not liable.

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## Free Consant

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**Q.1. Define Free consent? When does consent become free? Explain rules regarding free consent.**

**Ans.:** According to section 10 of the Indian Contract Act, 1872, "All agreements are contract if they are made by the free consent of the parties competent to contract for a lawful consideration and lawful object and are not hereby expressly declared to be void". Therefore, free consent is the one of the essentials of valid contract. But free consent is composed of two words free + consent. The term free meant without any pressure. Consent means defined under Section 13. "Two or more persons are said to consent when they agree upon the same thing in the same sense."

Free consent is defined under section 14 i.e. consent is said to be free when issues not caused by :

- (1) Coercion, as defined in section 15, or
- (2) Undue influence, as defined in section 16, or
- (3) Fraud, as defined in section 17, or
- (4) Misrepresentation, as defined in section 18, or
- (5) Mistake subject to the provision of section 20, 21 and 22.

Therefore, consent is not free when it has been caused by coercion or undue influence or fraud or misrepresentation and mistake. But if the consent is caused by any one of the first four factors such as coercion, undue influence, fraud and misrepresentation. The agreement is a voidable at the option of the party whose consent was so caused. (Section 19 and 19A). Under such position, the aggrieved party has option to assume the agreement either valid or void. If the contract is caused by mistake of foreign law, the agreement is void under section 20 and 21. Hence, there are two situations i.e. no free consent that is earlier and no consent is as error in consensus.

The rules regarding free consent are as follows one by one.

**Coercion :** Coercion means and includes the use or threatening to use the physical force against a person or property to compel him to enter him into a contract. According to section 15 of the Indian contract Act, 1872.

“Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code or the lawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. “It is immaterial whether IPC is or not enforced in the place where the coercion is employed (Section 15).

**Legal Rules relating to Coercion :**

- (1) Committing any act forbidden by the IPC i.e. killing or beating another person and interfering in the personal freedom of another person etc.
- (2) Threatening to commit any act forbidden by the IPC.
- (3) Threats to suicide amounts to coercion.
- (4) Unlawful detaining of any property.
- (5) Unlawful threatening to detain any property
- (6) The act of coercion must have been performed with the intention of causing any person to enter into an agreement.
- (7) Coercion may proceed either from the party or from a stranger.
- (8) Coercion may be directed against the party or any person.
- (9) It is not necessary that IPC should be in force at the place where the coercion is applied.

The effect of coercion is voidable at the desire of the aggrieved party.

**Undue Influence :** Instead of physical force ;when mental force is used for getting the consent of the another party, when a dominant party misuses his influence to dominate the will of the weaker party, to get unfair advantage, in a contract is said to be influenced by undue influence.

It is defined under Section 16.

The legal rules relating to undue influence :

- (1) The relations subsisting between the parties to a contract are such that one of them is in a position to dominate the will of the other due to
  - (i) Real or apparent authority.
  - (ii) In case of fiduciary relation.
  - (iii) In case of persons under mental or bodily stress.
- (2) The dominating party uses his position to obtain an unfair or undue advantage over the other party.

**Legal effect :** Due to undue influence, the agreement becomes voidable at the option of the party whose consent was so caused. The court may set aside any

such act under undue influence. A pardanashin woman is also given protection from undue influence.

**Fraud :** Fraud is intentional misrepresentation or concealment of material facts of an agreement by any party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

According to Section 17, "fraud means and includes any of the following acts committed to a contract or with his connivance, or by his agent, with an intention to deceive another party thereto or his agent, or to induce him to enter into contract."

- (i) The suggestion as a fact of that which is not true by one who does not believe it to be true.
- (ii) The active concealment of a fact by one having knowledge or belief of the fact.
- (iii) A promise made without any intention of performing it,
- (iv) Any other act fitted to deceive, and
- (v) Any such act or omission as the law specially declares to be fraudulent.

**Essential Elements of Fraud :**

- (1) There must be a false representation either by words or by spoken words, induce the other party to enter into contract by active concealment of material fact.
- (2) It must be done by the party or his agent.
- (3) The representation must relate to a fact, the other party has been attracted to act upon the representation leading to fraud.
- (4) The representation intentionally done to commit a fraud must have been done before the conclusion of the contract.
- (5) The other party must have been deceived by fraud.

**Legal Effects :**

- (1) Contract becomes voidable at the option of the party defrauded,
- (2) The defrauded party can sue for damages suffered or ask for restitution, and
- (3) The party can insist for the performance of the contract.

**Misrepresentation :** It is innocent and unintentional false statement of fact told by one party to the other during the course of negotiation is called misrepresentation. According to section 18 misrepresentation means and includes :

- (i) 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 is not true.
- (ii) Any breach of duty which, without an intention to deceive, gains an advantage to the person committing it or any one claiming under him, by misleading another to his prejudice or to the prejudice any one claiming under him.
- (iii) Causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is subject of the agreement.

**Essential Elements of Misrepresentation :**

- (i) It must be a misrepresentation of some material fact;
- (ii) It must be made before the concerned party enters into a contract.
- (iii) It must be innocent or unintentional statement.
- (iv) Misrepresentation may be committed by any of the following ways :
  - (a) By positive statement.
  - (b) By breach of duty.
  - (c) By causing a mistake by innocent misrepresentation.

**Legal Effect of Misrepresentation :** An aggrieved party suffering any loss as a result of misrepresentation can either rescind or avoid the contract altogether or can accept the contract but insist that he will be placed in such position in which he should have been, if the misrepresentation made had been true (section 19).

**Mistake :** Mistake is one of the causes because of which the consent is said not to be free. It is a misconception or misimpression or misunderstanding or erroneous belief about something. According to Section 20, "Where both the parties to an agreement are under a mistake as to a matter of fact essential to an agreement, the agreement is void."

Mistake may be of two types viz –

- (i) Mistake of Law, and
- (ii) Mistake of Fact

Mistake of law may be two types :

- (i) Mistake of law of the land will be enforceable but mistake of foreign law is void.
- (ii) Mistake of fact: is as to material fact of the contract.

Mistake of fact may be of two types :

- (1) Bilateral Mistake, and



- (2) Unilateral Mistake
- (1) **Bilateral Mistake** : Bilateral mistake is mutual mistake by both the parties to agreement and relating to
- (i) Mistake as to subject matter, and
  - (ii) Mistake as to possibility of performance of the contract.
- (i) Mistake as the subject matter may be as to identity of subject matter, as to existence of subject matter, quality of the subject matter, quantity of product, as to price, mistake as to title, mistake as to existence of State of affairs and (ii) mistake is to possibility of performance. It may be of two types viz Physical and Legal impossibility.
- (2) **Unilateral Mistake** : The unilateral mistake means where one of the parties to a contract is under a mistake. As to the matter of fact, it is unilateral mistake. Such contract is not voidable. But under such following conditions, contract of unilateral mistake also becomes void :
- (i) Mistake as to the identity of the party contracted with,
  - (ii) Mistake as to identity of attributes of contracting party, and
  - (iii) Mistake as to the nature of the contract.

□ □ □

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