BLOGS

Free Consent under The Indian Contract Act for SLAT

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Introduction

This article deals with the topic of free consent under Indian Contract Act for SLAT and other law entrance examinations. Section 10 of the Indian Contract 1872 lays down the various essential conditions of a valid contract. For any agreement to become a valid contract it must have the following conditions fulfilled:

1. Lawful Consideration
2. Lawful Object
3. Competent to contract
4. Free Consent
5. Not expressly declared void.

Hence, the aforementioned section makes free consent an essential condition for any contract to be valid and enforceable by law. Section 13 of the Indian Contract Act defines consent and lays down the maxim Consensus ad idem. Consensus ad idem means meeting of minds i.e. agreeing for the same thing in the same sense. For instance, Anita tells Reeta that she will give Reeta the pen on the table after 2 days. But there were two pens on the table: Blue and Red. After 2 days when Anita gives the blue pen to Reeta, she objects and says that she agreed for the red one. In this case, there is no meeting of minds.

Section 14 of the Indian Contract Act gives the negative definition of free consent. All consents are valid except for the consent that has been caused by the five means that are

1. Coercion
2. Undue Influence
3. Fraud
4. Misrepresentation

5. Mistake

Such contracts where consent is caused by any of these five means mentioned above are not valid contracts. Where consent is caused by Coercion, undue influence, fraud or misrepresentation, the contract is voidable but where the consent is caused by mistake, it is either void or not voidable contract.

The void agreement is different from the voidable contract in the sense that in case of the voidable contract, it is up to that party at whose option it is voidable, to either go ahead with the contract or put an end to it.

A general averment that consent was not freely obtained is not enough. It is necessary to prove that consent was caused by any of the five vitiating factors enumerated in section 14 of the Act.

1. Coercion

Section 15 of the Indian Contract Act deals with the coercion. Coercion basically means forcing a person to enter into a contract. As per the provision, Coercion means committing or threatening to commit any act forbidden by the law in IPC or unlawfully detaining or threatening to detain any property to cause any person into a contract.

Illustration: A threatens to kidnap the son of B if B does not give the order for catering to C. Here even if B gives the contract for catering to C, it will not be a valid contract. It will be a valid voidable contract and it will be voidable at the option of B as his consent was not the free consent.

1. Undue influence

Section 16 of the Indian Contract Act deals with the vitiating element of undue influence. When one party to the contract is in a position to dominate the other party and such dominance is used to influence the party to obtain an unfair advantage, it refers to undue influence. Such authority could be a real or apparent or fiduciary relationship between the two parties or where he makes a contract with a person whose mental capacity is temporarily or permanently affected because of age, illness, or mental or bodily distress.

The contract for which contract is caused by the undue influence is voidable at the option of the party whose consent was so obtained. Although in this case, the burden of proof is upon the dominant party to show that there was no presence of influence.

Illustration: A gave his expensive watch to his boss because his boss promised to give him a promotion. Here A's consent was not freely given. Therefore this contract is voidable at the option of A.

1. Fraud

Section 17 of the Indian Contract deals with the consent to a contract caused by Fraud. The other word used for Fraud is Deceit and when one party makes false statements with full knowledge and not recklessly, it amounts to fraud. The fraud is said to be done if:

- A false statement is made and the person making it does not believe it to be true.
- A promise made without any intention of performing it.
- The active concealment of fact
- Any other act fitted to deceive

In the case of fraud, it is important to establish that some loss has been caused due to the fraud committed. There can be no fraud if there is no damage. Also, the statement made as the fraud must be a fact and not an opinion.

Illustration: A sold a puppy to B and told him that the puppy is already vaccinated. The puppy was not vaccinated and therefore this contract is voidable at the option of B.

1. Misrepresentation

Section 18 of the Indian contract Act 1872 deals with the vitiating element of the Misrepresentation. The representation of false and incorrect statement is a misrepresentation. The difference between Fraud and Misrepresentation is the element of intention. Misrepresentation is unintentional and the party making such statement believes it to be true. The contract in which consent has been caused by the misrepresentation is voidable at the option of the person whose consent was so caused.

1. Mistake

A mistake is an incorrect belief but innocent in nature. The mistake could be either be a mistake of law or mistake of fact. The mistake of law is basically ignorance of the law and it is not recognised by the Indian Contract Act. On the other hand, the mistake of fact is an error in understanding or ignorance of fact. But the point worth remembering here is that mistakes are not intentional but innocent. Such a mistake could either be unilateral or bilateral.

Illustration: Amit wanted to enter into a contract with Charu but mistakenly enters into a contract with Charlie believing him to be Charu.