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Legal Reasoning: Understanding Free Consent for CLAT 2022

Aditya Anand · 26 Aug 2021

Legal Reasoning for CLAT 2022 Free Consent

Introduction: Free Consent for CLAT 2022

Consent is understood by different individuals in many different ways. However, in Contract law, there is a specific definition. Any agreement between two or more parties that is enforceable by law is a contract. In India, contracts are governed by the Indian Contract Act, 1872 (**ICA**) which is a statute containing detailed provisions on various aspects of contracts including execution and enforcement. The various provisions contained in the Act are referred to as "Sections".

For a detailed study of the basics of contracts, click here

Section 10 of the ICA states that *"All agreements are contracts if they are made by the free consent of parties...."*. This means that ***free consent is a key component*** *of a valid contract* and an agreement shall not constitute a valid contract if the consent of any party to the contract had not been freely given.

Free Consent for CLAT 2022 under the Indian Contract Act

Section 14 of the ICA defines the term "free consent" and states that any consent which has been given by a party pursuant to coercion, undue influence, fraud, misrepresentation or mistake shall not be treated as free consent.

These elements whose existence makes a consent to be treated as not 'free' can be understood as follows:

- Coercion – In simple words, coercion means compelling a person to do something by using force or giving threats. Section 15 of ICA states that coercion means: 1. committing or threatening to commit any act forbidden by the Indian Penal Code or 2. illegally detaining or threatening to detain any property to the prejudice of any person with the intention of causing

him/her to enter into an agreement. The Indian Penal Code defines offences punishable in India so if any person obtains the consent of a party to an agreement by doing/threatening to do commit any offence punishable under the Indian Penal Code, the consent shall be said to have been obtained by coercion.For example, A threatens to kill B if B does not sell his house to A for Rs. 10,000 and B agrees to do so in order to save his life. In such a case, B's consent has been obtained by coercion.

- Undue influence – Section 16 of the ICA states that a contract is said to have been induced by undue influence when 1. the relationship between the parties to such contract is such that either party is in a position to dominate the will of the other and 2. such party actually used that position to obtain an unfair advantage over the other. For instance – A, a man weakened by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. In this case, B has employed undue influence over A since B has abused his position as A's medical attendant.
- Fraud – In layman's language, fraud means wrongfully deceiving a person into doing or not doing something with the intent of obtaining some personal or financial gain.Section 17 of ICA states that fraud means the commission of any of the following acts by a party to the contract or by his/her agent to deceive another party or his/her agent or to induce him/her to enter into a contract: 1. suggesting a false fact while knowing it to be false, 2. actively concealing a fact while knowing or believing the same, 3. making a promise without the intention of performing it, 4. doing any other act fitted to deceive and 5. doing any act or omission which has specifically been declared by law to be fraudulent.For instance – A sells a box of rotten apples to B for Rs. 100 while knowingly making a false statement to B that the apples are absolutely fit for human consumption. Since A has made a false statement to B about the quality of the apples in order to convince B to enter into a contract for purchasing them from A, B has committed fraud in terms of section 17 of the ICA.
- Misrepresentation – Misrepresentation simply means giving a false or misleading account about something. Section 18 of ICA states that is misrepresentation includes any of the following acts: 1. the positive assertion of any fact which is not true though the person making the assertion believes it to be true, 2. any breach of duty which secures some advantage to the person committing it and is not coupled with an intent to deceive and 3. innocently causing a party to make a mistake regarding the substance of the thing forming the subject matter of an agreement. Thus, misrepresentation is similar to fraud since both fraud and misrepresentation

involve making false statements but they differ in respect of intention.In the case of fraud, a party makes false statements knowing that they are false and also bears an intention to deceive the other party while in case of misrepresentation, there is no such intention and any false statements which are made are made while believing them to be true. If in the above example, A had not known that the apples which he was selling are rotten and had genuinely believed them to be fit for human consumption while stating this fact to B, it would be a case of misrepresentation and not a fraud.

- Mistake – In the context of contracts, a mistake means some misunderstanding or misapprehension of a fact relating to an agreement which caused either party to the agreement to give his/her consent to the agreement.This implies that such a party would not have given their consent to the agreement had such misunderstanding or misapprehension not occurred at all. Section 13 of ICA which defines consent states that “two or more persons are said to consent when they agree upon the same thing in the same sense“.Thus, if parties to a contract do not agree upon the same thing or do not agree upon a particular thing in the same sense, it is a case of mistake and it cannot be said that consent has been given by both parties because there is no “meeting of their minds”.In such case, the parties may mistakenly believe that they have agreed to the same thing but it is not so in reality which therefore vitiates the consent given by the party who has mistakenly given consent. For example, A agrees to buy a particular horse from B which was already dead at the time when this agreement was reached but neither party knew about it. This is a case where both A and B have given their consent under a mistake of fact which relates to the horse being living or dead.

Implications under Indian Contract Act when Consent is not Free

From the above discussion, it is clear that consent of a party to a contract gets vitiated when such consent was the result of coercion, undue influence, fraud, misrepresentation or mistake.

The question now arises as to what will be the consequences when the consent is not free, or in other words, whether the agreement in question can still be enforced under the law.

The answer lies in sections 19 and 19A of the ICA. Section 19 of the ICA states that when the consent of a party to an agreement has been obtained by coercion, fraud or misrepresentation, the agreement would constitute a contract “voidable” at the option of such party.

Voidable means that the party whose consent was not free may either choose to enforce the contract as it is or may rescind the contract i.e. avoid the contract completely in case of which

such contract will not bind either party and the resulting situation would be as if no contract had been entered at all.

Similarly, section 19A of ICA makes a contract voidable when consent has been obtained by exercising undue influence. In case of consent given by mistake, section 20 of ICA treats the contract to be void when both parties were under a mistake of fact.

Further, a contract involving a mistake of law is valid as per section 21 of ICA. Section 22 of ICA states that a contract cannot be treated as voidable merely because either party was under a mistake of fact.

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All content written above is only meant to be read and understood for conceptual clarity and not memorized. The various sections of ICA referred above are only for reference and also need not be memorized.

Revised and updated on August 26, 2021.