

VOID & VOIDABLE AGREEMENTS CONCERNING FREE CONSENT SECTIONS 19 and 20 of ICA, 1872

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INTRODUCTION

For an agreement to be a valid contract, it should meet the essentials mentioned in Section 10 of the Indian Contracts Act, 1872 and consent is one of the essentials. According to the section, “All agreements are contracts if they are made by free consent”^[1].

Thus, if an agreement is made without a free consent, it cannot be a valid contract, and it would be voidable or void.

In this paper, we are going to discuss such situations when an agreement becomes void and voidable without free consent.

I. Void and Voidable agreements

First, let us know the meaning of void and voidable agreements before going into situations where it becomes void and voidable.

“A contract which ceases to be enforceable by law is a void contract.”^[2]

“An agreement which is enforceable by law at the option of one or more parties thereto, but not at the other or others, is a voidable contract.”^[3]

So, we can say that a void contract is void from the beginning and not enforceable by law. But in voidable contracts, it remains valid until it has been declared void and the option to declare it void or not depends upon the innocent party of the contract.

II. Free consent

What is consent, when does one say the consent given is free.

‘When two or more persons agree upon something in the same sense they are said to have given consent’.^[4] According to Section 14 of ICA, a consent is said to be a free one, if it is not caused by-

- Coercion
- Undue influence
- Fraud
- Misrepresentation

- **Mistake**

According to Section 10 of the Indian Contracts Act, which talks about essentials of a valid contract the consent given by the parties to the contract must be a free one and not caused by any of those conditions mentioned in Section 14 of ICA.

- **Coercion**

Coercion is “the committing, or threatening to commit, any act is forbidden by the Indian Penal Code (45 of 1860) or the unlawful 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.”^[5]

It is not necessary that the place where consent was taken by coercion IPC is applicable and that only the party to the contract causes the coercion. Even a third party to the contract can cause coercion to obtain the consent.^[6]

- **Undue influence**

“When the relationship subsisting between the parties are such that one party is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other then such a contract is said to be formed under undue influence.”^[7]

- **Fraud**

Fraud includes “any of the following acts committed by a party to a contract, or with his/her convenience, or by his/her agent, with intent to deceive the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

- i. the active concealment of a fact by one having knowledge or belief of the fact;
- ii. a promise made without any intention of performing it;
- iii. any other act fitted to deceive;
- iv. any such act or omission as the law specially declares to be fraudulent.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his/her silence is, in itself, equivalent to speech.”^[8]

- **Misrepresentation**

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 to be true;
- ii. any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him/her; by misleading another to his/her prejudice, or the prejudice of any one claiming under him/her;
- iii. causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement^[9].

WHEN IT IS VOID & VOIDABLE

According to Section 20 of ICA, 1872 when both the parties of the agreement are at under the mistake of a matter of fact, which is essential for an agreement and if there is a mistake as to a law, not in force in India, then it becomes void.^[10] Which means such contracts are not enforceable from the beginning and there is no option for the parties to decide on voidability of contract.

According to Section 19 of ICA, 1872, when consent to an agreement is caused by coercion, fraud, or misrepresentation as mentioned above, it becomes voidable which means that party whose consent is obtained by coercion, fraud or misrepresentation has the option to choose whether the contract is void or not. And if a party whose consent was obtained by fraud or misrepresentation decides to perform the contract then such agreement should be put in a position as if the representations made are true. And, if a party whose consent is obtained by misrepresentation or by silence fraudulent has means to discover the truth or if the fraud or misrepresentation did not cause the person to give consent the contract doesn't become voidable. And, if they consent to an agreement is by the undue influence it is at the option of the party whose consent was so caused to decide about the validity of the contract.^[11]

If a party who has the option, decides to void the contract, he has to restore the benefit if received any in such a contract.^[12]

CONCLUSION

We can conclude by saying that consent is one of the essentials for a valid contract and it should be a free one. Therefore, if there is no free consent, there is no point of the contract being valid.

Section 19 & 20 of Contract Act, where it is interpreted to us how important a free consent is to a valid contract and without which the contracts can be void or voidable.

Hence, I think the clauses that if one had means to discover the truth and the clause to restore the benefit, if decided to void the contract states the fact that law does not allow a party to make a contract to take advantage and later say that there was coercion fraud misrepresentation or undue influence.

