

B.Com Hons. (Part 2 Paper-4)  
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Topic:--Consent

# CONSENT

- According to Section 13 two or more persons are said to consent when they agree upon the same thing in the same sense.
- This means that there should be perfect identity of mind (*consensus ad idem*) regarding the subject matter of the contract.

# FREE CONSENT

- To make a contract valid not only consent is necessary but the consent should also be free. [?] Section 13 says the consent is said to be free when it is not caused by any of the following :
  - (a) Coercion - sec 15
  - (b) Undue influence - sec 16
  - (c) Fraud
  - (d) Misrepresentation - sec 17,18
  - (e) Mistake –sec 20,21

## COERCION – SEC 15

- Coercion is committing or threatening to commit any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain any property to the prejudice of any person, whatsoever with the intention of causing any person to enter into an agreement .

## UNDUE INFLUENCE – SEC 16

- Undue influence is the improper use of any power possessed over the mind of the contracting party. According to section 16 a contract is said to be affected by undue influence when:
- The relations subsisting between the parties are such that one of the parties is in a position to dominate the will of other.
- Uses that position to obtain an unfair advantage over the other.

Following are the parties that can be affected by undue influence

- Doctor and patient
- Lawyer and client
- Guardian and ward
- Trustee and beneficiary
- Teacher and student

# DIFFERENCE BETWEEN COERCION & UNDUE INFLUENCE

Coercion	Undue Influence
The consent of the party is taken by committing an act forbidden by Indian penal code.	The consent of the party is obtained by dominating the party by taking unfair advantage.
Physical force is exercised.	Moral force is used.
Relationship between the promisor & the promisee is not necessary.	Some sort of relationship must exist between two parties to the contract.

## FRAUD – SEC 17

- Misrepresentation of facts may be intentional or innocent. Intentional misrepresentation has been termed as Fraud and innocent misrepresentation has been termed simply as ‘misrepresentation’ in the contract act.



## MISREPRESENTATION – SEC 17-18

- Misrepresentation is a false representation made innocently without any intention of deceiving the other party .It may include two things:
  - (a) wrong statement of a material fact not known to be false
  - (b) Non-disclosure of facts where there is a legal duty to disclose without intention to deceive

# Difference between Fraud and Misrepresentation

<b>Misrepresentation</b>	<b>Fraud</b>
There is no intention to deceive or to gain any undue influence.	False statement is made deliberately with a clear intention of deceiving the other party.
It makes other contract only voidable at the option of the party whose consent been so caused.	The injured party besides avoiding the contract may also claim the damages.

# MISTAKE – SEC 20,21

Mistake are of two type :-

- Mistake of law
- Mistake of fact

Mistake of law is further divided into three categories:-

- (a) mistake of Indian law
- (b) mistake of foreign law
- (c) mistake as to private rights of the parties – treated as mistake of fact .

Mistake of fact is divided into categories:-

- Bilateral mistake
- Unilateral mistake

Thank  
you!