

# **VOID AND VOIDABLE CONTRACT**

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## **CHAPTER 1**

### **INTRODUCTION**

The researcher is provided with the topic “Difference between void and voidable contract”. It will help the researcher to know the factors under which one can differentiate void and voidable contracts.

In this research, the researcher will deal about the definition of contract as well as offer proposal and agreements and what kind of contracts are legal.

#### **1.1.History**

The Indian contract Act was enacted on 25th April, 1872 and came into force from 1st Sept, 1872.

‘Contract’ is derived from a Latin word “contractum” which means to “drawn together” or to bring together” in a common cause or action.<sup>1</sup>

It applies to the code of India except the state of Jammu & Kashmir. The act was passed by British India & based on the principle of English law.

The act is neither retrospective nor exhaustive and deals with the general principles embodying contracts. It applies only to those agreements which are valid & enforceable by law. The act does not cover whole of contract law that why there are various other laws regulating different types of agreements which includes transfer of property which means agreements related to transfer of immovable property and Sale of Goods Act deals with contract of sales of goods and last but not the least that partnership agreements are regulated by Partnership Act etc. Some matters are not covered in any sections of the act then we may follow the principles of English common law.<sup>2</sup>

The act contains 266 sections-

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<sup>1</sup><https://sol.du.ac.in/mod/book/view.php?id=1569&chapterid=1553> on 21/11/2017 at 17:30

<sup>2</sup>[www.businesslawbasics.com/chapter-18-contract-law](http://www.businesslawbasics.com/chapter-18-contract-law) on 21/11/2017 at 17:40

1. Section 76-123 (it deals with the sale of goods which is replaced by Sale of Goods Act, 1930)
2. Section 124-238 (it deals with the specific contract of indemnity and guarantee)
3. Section 124-147 (it deals with the contract of bailment & pledge)
4. Section 182-238 (it deals with contract of agencies)
5. Section 182-238 in section 239-266 is replaced by section 73 & schedule of Indian Partnership Act, 1932.

### **1.2. Definition of contract**

We all know that law related to contract is governed by Indian Contract Act, 1872.

According to section 2(h) of Indian Contract Act, 1872-

“An agreement enforceable by law is a contract”<sup>3</sup>

According to Sir Fedrick Pollock-

“Every promise & promise enforceable by law is a contract.”

According to Salmond-

“An agreement creating & defining obligation between parties”

### **1.3. Formation of contract**

For the formation of contract, there should be an offer as well an acceptance. When a person gives an offer which is accepted by the other person, it results in the formation of agreement. When this agreement becomes enforceable by law, it becomes a contract. It is very important that an agreement should be enforceable by law for the formation of contract.

Agreement = offer + acceptance

Contract = agreement + enforceability

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<sup>3</sup>Pg no. 1 of S.K. Kapoor

### Agreement-

This is defined under section 2(e) as well as section 2(b).

According to section 2(e)

“Every promise or set or promises forming the consideration for each other”

According to section 2(b)

“A proposal when accepted becomes a promise”

According to section 10

“All agreements are contract if they are made by the free consent of parties competent to contract, for a lawful consideration & with a lawful object, & are not hereby expressly declared to be void.”

### Offer-

According to section 2(a) of Indian Contract Act, 1872

“When a 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 to make a proposal.”<sup>4</sup>

### Acceptance-

According to section 2(b) of Indian Contract Act, 1872

“When a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted, when accepted, becomes a promise.”

## **1.4.Essentials of contract**

- (a) Two parties
- (b) Express or Implies
- (c) Create legal obligation
- (d) Communication of offer

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<sup>4</sup>Pg no. 21 of S.K. Kapoor

Formation of contract means presence of two parties i.e. offeror and offeree. The person who makes an offer is called offeror and the person who accepts it is known as offeree or acceptor. There is should be meetings of minds i.e. Consesus-ad-idem.

Offer/acceptance should be expressed or implied as well as the contract should make a legal obligation between the parties. The most importance element of contract is that it should be properly communicated and acceptance should use the mode of communication provided by the offeror.

## CHAPTER 2

### VOID & VOIDABLE CONTRACTS

Under this chapter, the researcher will deal about the meaning of void and voidable contracts.

#### 2.1. Void contracts

A contract that meets any of the following criteria:

- (1) It is illegal from the moment it is made
- (2) It is legal but declared null by the courts because it violates a fundamental principle such as fairness, or is contrary to public policy
- (3) It becomes void due to changes in law or in government policy
- (4) It has been fully performed

A void contract is not a contract and has no effect in a court of law and cannot be enforced in a court of law. Most commonly, a void contract will be missing one or all of the essential elements needed for a valid contract. Neither party needs to take action to terminate it, since it was never a contract to begin with.<sup>5</sup>

In other words, a void contract is a formal agreement that is illegitimate and unenforceable from the moment it is created. There is some overlap in the causes that can make a contract void and the causes that can make it voidable. The fundamental difference between these two types of contracts is a void contract is not legally valid or enforceable at any point in its existence, while voidable contract can be legal and enforceable depending on how the contract defect is handled.<sup>6</sup>

A contract may be deemed void if it is not enforceable as it was originally written. In these instances, void contracts, also referred to as void agreements, involve agreements that are illegal in nature or in violation of fairness or public policy. Void contracts can be agreements made with those not deemed capable of fully comprehending the implications of the agreement, whether permanently, as with a disability, or temporarily, as with those in an

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<sup>5</sup>[www.trainagents.com/.../CourseContent.aspx?ModuleType...CrsPageType...](http://www.trainagents.com/.../CourseContent.aspx?ModuleType...CrsPageType...) On 21/11/2017 at 20:00

<sup>6</sup> ibid

inebriated state. Agreements made with a minor can also be considered void, but agreements involving a minor with the consent of the appropriate parent or guardian may be enforceable.<sup>7</sup>

A contract can also become void if a change in law or regulation, occurring after the agreement was reached but before the contract was fulfilled, leads the activities previously agreed upon to be illegal or considered in violation of fairness.

Once a contract is fulfilled, it can also be considered void. Once complete, there are no longer any actions required based on the terms of the contract. This causes nothing to remain that can be enforced, as all of the terms are considered satisfied.<sup>8</sup>

#### Example-

Any contract agreement created between two parties for illegal actions is considered a void contract. The most common example of a void contract is a contract between an illegal drugs suppliers for a specified supply of drugs provided to an illegal drug dealer. This type of formal agreement is illegitimate since it involves illegal goods and is considered unenforceable from its creation since it does not seek to serve a legal purpose.

## **2.2. Voidable contracts**

A voidable contract is a contract which may appear to be valid and has all of the necessary elements to be enforceable, but has some type of flaw which could cause one or both of the parties to void the contract. The contract is legally binding, but could become void. If there is an injured party involved, the injured party or the defrauded must take action, otherwise the contract is considered valid.<sup>9</sup>

A voidable contract is a formal agreement between two parties that may be rendered unenforceable for a number of legal reasons. Reasons that can make a contract voidable include failure by one or both parties to disclose a material fact; a mistake, misrepresentation or fraud; undue influence or duress; one party's legal incapacity to enter a contract; one or more terms that are unconscionable; or a breach of contract.

A voidable contract is originally considered to be legal and enforceable but can be rejected by one party if the contract is discovered to have defects. If the party with the power to reject the

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<sup>7</sup><https://www.investopedia.com/terms/v/void-contract.asp> on 22/11/2017 at 17:30

<sup>8</sup>Pg no.1 of S.K Kapoor

<sup>9</sup>lomanager.com > Artiles on 18:00

contract chooses not to reject the contract despite the defect, the contract remains valid enforceable. Most often only one of the parties is adversely affected by agreeing to a voidable contract in which the party fails to recognize the misrepresentation or fraud made by the other party.<sup>10</sup>

## **CHAPTER 3**

### **CONDITIONS**

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<sup>10</sup>[docs.manupatra.in/newslines/.../01CAB3F7-FEF2-47EF-8D1B-AE4A3EB4C2D8.pdf](https://docs.manupatra.in/newslines/01CAB3F7-FEF2-47EF-8D1B-AE4A3EB4C2D8.pdf) on 22/11/2017 at 21:00

In this, the researcher will deal how a contract becomes void as well as voidable. There are many circumstances which one person negligent or intentionally negligent which results in the formation of void & voidable contracts.

### **3.1. Conditions for void contract**

According to section 11 of Indian Contract Act, 1872

“Every person is competent to contract who is of the age of majority according to the law to which he is subject & who is of sound mind, & is not disqualified from contracting by any law to which he is subject.”<sup>11</sup>

There are mainly three conditions under which a contract becomes void and deals under section 11 of Indian Contract Act, 1872 i.e.

1. Age (minority)
2. Unsound mind
3. Disqualifies by law

(a) Age (minority)

According to section 3 of Indian Majority Act, 1875

A minor is a person who has not completed the age of majority i.e. 18 years. In England, 21 years is consider as the age of majority and in India it is generally 18 years. If a guardian of a minor is appointed then the age becomes 21. A contract made with minor is consider as void i.e. void ab initio.

#### Void ab initio-

Not legally binding which means a document that is void is useless and worthless as if it does not exist. This means it never had a legal validity from the beginning.

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<sup>11</sup>Pg no. 142 of S.K. Kapoor

The term void ab initio, which means "to be treated as invalid from the outset," it comes from adding the Latin phrase ab initio from the beginning.<sup>12</sup>

For example, in many jurisdictions where a person signs a contract under duress, that contract is treated as being void ab initio.

*Illustration-*

‘A’ entered in a contract with ‘B’, who is a minor for tournament. A made all the arrangements for the same and spent a lot of money. After that ‘B’ repudiated the contract then ‘A’ files a suit for breach of duty. Since the suit was rejected because contract with a minor is void ab initio.

Minor’s contract according to English law

All contract entered by minor are not void as some are consider as voidable and some are absolutely void. Minor’s contract are merely voidable and may be noted as “Where an infant acquires an interest in permanent property to which obligations attach, or involving continuous rights and duties, benefits and liabilities and take some benefits under the contract, he will bound a contract unless h expressly disclaims the contract during infancy or within a reasonable time of attaining his majority.”<sup>13</sup>

In England, there are some contracts which binds minor & remain valid until rescinded by the minor but there are certain contracts which is void.

According to section 1 of Infant Relief Act, 1874

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<sup>12</sup><https://dictionary.lawyerment.com/topic/void/> on 22/11/2017 at 22:00

<sup>13</sup>[docs.manupatra.in/newslines/.../01CAB3F7-FEF2-47EF-8D1B-AE4A3EB4C2D8.pdf](https://docs.manupatra.in/newslines/01CAB3F7-FEF2-47EF-8D1B-AE4A3EB4C2D8.pdf) on 23/11/2017 at 17:30

“All contract whether by speciality or by simple contract henceforth entered by infants for the re-payment of money lent or to be lent, or for goods to be supplied and all accounts settled with infants shall be absolutely void.<sup>14</sup>

### Distinction between English and Indian law

In England some of the minor's contracts are merely voidable whereas others are absolutely void. In India, there was controversy in this connection upto 1903. In that year in *MohriBibee v. DharmadasGhose*, the Privy Council finally ended this controversy by holding that by virtue of sections 10 and 11 of the Indian Contract Act, 1872 that minor's contract are void ab initio.<sup>15</sup>

### Equitable doctrine of restitution

According to this, if a minor obtains some property by fraudulent misrepresenting his age, he can be ordered to restore the property or goods thus obtained.

Under English law, a minor may be compelled to restore the goods or property so long as they are traceable. Money is not traceable so a minor cannot be asked to restore it.

Where a contract of transfer of property is void, and such property can be traced, the property belongs to the promisor and can be followed. There is every equity in his favour for restoring the property to him. But where the property is not traceable and the only way to grant compensation would be by granting a money-decree against the minor, decreeing the claim would almost tantamount to enforcing the minor's pecuniary liability under the contract which is void. The distinction is too obvious to be ignored.<sup>16</sup>

Where the defendant successfully resist any suit on the ground that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872, the court may if the defendant has received any benefit under the agreement from the other party, require him to restore, so as

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<sup>14</sup>[docs.manupatra.in/newslines/.../01CAB3F7-FEF2-47EF-8D1B-AE4A3EB4C2D8.pdf](https://docs.manupatra.in/newslines/01CAB3F7-FEF2-47EF-8D1B-AE4A3EB4C2D8.pdf) on 23/11/2017 at 18:00

<sup>15</sup>Pg no. 144 of S.K. Kapoor

<sup>16</sup>Pg no. 146 of S.K Kapoor

far as may be such benefit of the party, to the extent o which he or his estate was benefited thereby.

This section expands the provision of section 41 of the repealed Act. Apart from compensation the plaintiff may have to restore any benefit received under the instrument, or the defendant may have to do so where he has successfully defended the suit on the ground that the contract was void. This equally applies to a minor.<sup>17</sup>

#### *Illustration-*

X by misrepresenting himself enters into a contract with Y. the contract was related to transfer of money. The plaintiff filed the suit for recovery of his amount but the court held that a contract with a minor is void.

#### Principle of Estoppel

This is enshrined in section 115 of the Indian Evidence Act (1 of 1872) which provides as follows-

“When one person has by his declaration act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representatives shall be allowed in any suit or proceedings between himself and such person or his representative to deny the truth of that thing.”<sup>18</sup>

#### Ractification

We all know that minor’s contract is void andhe cannot validate it by ractification after attaining majority for the obvious reason that ractification relates back to the making of the contract. “As minor’s contract is void and now it follows that there can be no question of ractifying it.”<sup>19</sup>

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<sup>17</sup>[www.encyclopedia.com](http://www.encyclopedia.com) › Social Sciences and the Law › Law › Law on 23/11/2017 at 20:00

<sup>18</sup>Pg no. 149 of S.K Kapoor

<sup>19</sup>Ph no. 151 of S.K. Kapoor

(b) Unsound mind

Another important condition under which a person cannot make a contract with any person. A person who is unsound mind is also incompetent to contract.

According to Section 12 of Indian Contract Act

“A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it he is capable of understanding it & forming a rational judgement as to its effect upon his interest.”<sup>20</sup>

OR,

“A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind.”<sup>21</sup>

OR,

“A person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind.”<sup>22</sup>

Thus when a person is capable to understand the things and forming a judgement of his interests can be consider as sound mind and able to make a contract. An unsound mind person can make a contract with the party when he is of sound mind. When the person is of sound mind but in some conditions becomes of unsound mind becomes incapable to contract with party.<sup>23</sup>

*Illustration-*

‘A’ entered into a contract with a person B, who is not of sound mind. B was unable to perform the contract and the plaintiff filed a suit against him. The suit was not actionable on the account that the person was of unsound mind.

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<sup>20</sup>Pg no 154 of S.K. Kapoor

<sup>21</sup> ibid

<sup>22</sup> ibid

<sup>23</sup>[www.advocatekhaj.com/.../indiancontract/12.php?...Indian%20Contract%20Act...Wh...](http://www.advocatekhaj.com/.../indiancontract/12.php?...Indian%20Contract%20Act...Wh...) On 24/11/2017 at 17:00

(c) Person disqualified by law

Another exemption provided by the law is a person disqualified by law. It means any person whom the law does not allow/disqualifies him from contracting with any person. It may be alien enemy or an insolvent. There are many categories too which are mentioned below-

1. Alien enemies.

An alien (citizen of a foreign country) living in India can enter into contracts with citizens of India during peace time only, and that too subject to any restrictions imposed by the government in that respect. On the declaration of a war between his country and India, he becomes an alien enemy and cannot enter into contracts. "Alien friend can contract but an alien enemy can't contract." Contracts entered into before the declaration of the war stand suspended and cannot be performed during the course of war, of course, they can be revived after the war is over provided they have not already become time-barred.<sup>24</sup>

2. Foreign sovereigns and ambassadors.

One has to be cautious while entering into contracts with foreign sovereigns and ambassadors, because whereas they can sue others to enforce the contracts entered upon with them, they cannot be sued without obtaining the prior sanction of the central Government. Thus they are in a privileged position and are ordinarily considered incompetent to contract.<sup>25</sup>

3. Convict.

A convict is one who is found guilty and is imprisoned. During the period of imprisonment, a convict is incompetent

(a) To enter into contracts, and

(b) To sue on contracts made before conviction.

On the expiry of the sentence, he is at liberty to institute a suit and the law of limitation is held in abeyance during the period of his sentence.<sup>26</sup>

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<sup>24</sup><https://mercantilelaws.blogspot.com> › Capacity on 24/11/2017 at 21:00

<sup>25</sup> ibid

<sup>26</sup> ibid

#### 4. Married women.

Married women are competent to enter into contracts with respect to their separate properties provided they are major and are of sound mind. They cannot enter into contracts with respect to their husband's properties. A married woman can, however, act as an agent of her husband and bind her husband's property for necessities supplied to her, if he fails to provide her with these.<sup>27</sup>

#### 5. Insolvent.

An adjudged insolvent (before an 'order of discharge') is competent to enter into certain types of contracts i.e. he can incur debts, purchase property or be an employee but he cannot sell his property which vests in the official receiver. Before 'discharge' he also suffers from certain disqualifications e.g. can't be a magistrate or a director of company or a member of local body but he has the contractual capacity except with respect to his property. After the order of discharge, he is just like an ordinary citizen.<sup>28</sup>

#### 6. Joint-stock company and corporation incorporated under a special act.

A company/ corporation is an artificial person created by law. It cannot enter into contracts outside the power conferred upon it by its memorandum of association or by the provisions of its special act, as the case may be. Again being an artificial person (and not a natural person) it cannot enter into contracts of a strictly personal nature e.g. marriage.<sup>29</sup>

### **3.2. Conditions for voidable contract**

There are conditions under which contracts can be declared voidable. Conditions are as follows-

- (a) Coercion
- (b) Undue influence
- (c) Fraud
- (d) Misrepresentation

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<sup>27</sup> ibid

<sup>28</sup> ibid

<sup>29</sup> ibid

(e) Mistake

For any contract, consent is necessary and it should be free. When consent is brought by coercion, fraud, undue influence, mistake and misrepresentation, then it results to voidable contract.

According to section 13,

“Two or more person are said to consent when they agree upon the same thing in the same sense.”

(a) Coercion

According to section 15 of Indian Contract Act, 1872

“Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code (Act XLV of 1860) 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.”

In England, the topic of duress at Common Law has been almost rendered obsolete by the general improvement of equitable jurisdiction under the head of undue influence. Detention of property is not consider under duress.<sup>30</sup>

The word ‘Duress’ means violence or threat of violence to person and fear of loss as well as physical harm including imprisonment. Threat to damage of goods does not involve damage of threat.

Essentials of contract are as follows-

- ✓ Committing or threatening to do any act forbidden by the Indian Penal Code.
- ✓ 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 a contract.

(b) Undue influence

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<sup>30</sup><https://www.legalcrystal.com/cases/search/name:coercion-indian-contract-act> on 25\*/11/2017 at 18:00

According to section 16 of Indian Contract Act, 1872

It means any influence that precludes parties from exercising their free consent in entering into an agreement which ultimately makes a contract voidable.

In other words, when a contract is said to be influenced by undue influence when the parties are in a position to dominate the other party as well as to misuse their position to obtain an unfair advantage.

According to English Law, it may arise where the parties stand to one another in such a relation of confidence which puts one of them in a position to exercise over the other an influence which may be perfectly natural & proper in itself but capable of being unfairly used.<sup>31</sup>

Anson-

The term undue influence has sometimes been used by the courts to describe the equitable doctrine but also includes forms of pressure much less direct or substantial.

According to Indian Law, the doctrine of undue influence has been mentioned under section 16 of the Act which states that-

1. A contract is said to be influenced by undue influence where the relation subsisting between the parties are such that one of the parties is in position to dominate the will of the other and uses that position to obtain an unfair advantage of other.
2. In particular and without prejudice relation to the other.
  - (a) Where he holds a real and apparent authority over the other or where he stand in a fiduciary relation to the other.
  - (b) Where he makes a contract with a person whose mental capacity is temporary or permanently affected by reason of age, illness, mental or bodily distress.
3. Where a person who is in a position to dominate the will of another enters into a contract with him & the transaction appears on the fact of it or on the evidence adduced to be unconscionable the burden of proving that such contract was not induced by undue influence shall lie upon the person in position to dominate the will of other.

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<sup>31</sup><https://www.scribd.com/document/347440125/Contract-1> on 25/11/2017 at 19:30

Conditions under which one party can dominate the will of other are as follows-

1. Real or apparent authority. Example- employer over employee and judicial officer against the accused.
2. Federal relationship such as husband & wife, creditor & debtor, landlord & tenant, parents & child, master & servant.
3. Person in mental, illness and bodily distress.

Essentials of sub section (1) of section 16 are as follows-

1. Relationship of parties being such that one of the parties is in a position to dominate the will of other.
2. Used the position to obtain unfair advantage over the other.
3. Unfair advantage is in fact obtained.

Essentials of sub section (2) of section 16 are as follows-

1. Where he holds a real or apparent authority over the other or he stands in a fiduciary relation to the other.
2. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, mental or bodily distress.

Sub section (3) of the section 16 states that where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the fact of it or on the evidence adduced to be unconscionable, the burden of proving that such a contract was not induced by undue influence shall lie upon the person who is in position to dominate the will of other.

The effect of undue influence are as follows-

1. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the other party whose consent was so caused.
2. Any such contract may be aside either absolutely or if the party who was entitled to avoid it has received any benefit thereunder upon such terms and conditions to the court may seem just.

*Illustration-*

X, person who is weakened by a disease or age. He was induced by the undue influence of Y to give an unreasonable amount to Z for his service.

(c) Fraud

According to section 17 of Indian Contract Act, 1872

It means and includes any of the following acts committed by the party to a contract or with the connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract

It means a false statement made knowingly or without belief in its truth or recklessly careless whether it be true or false. Thus fraudulent misrepresentation is a false statement which is made when the representer does not honestly believe it to be true.

In other words, it is a tort when the consent is obtained by fraud, the consent is not free which is essential for a valid contract.<sup>32</sup>

Section 17(1)-False statement

False statement means a statement which is not true in order to constitute fraud. In other words, it means a lie which one uses to mislead the other

According to Indian Law-

1. The suggestions as a fact of that which is not true by one who does not believe it to be true.
2. The active concealment of a fact by one having knowledge or relief of the fact.
3. A promise made without any intention of performing it.

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<sup>32</sup><https://www.insuranceinstituteofindia.com/.../Defining%20fraud%20and%20abuse%2...> On 25/11/2017 at 21:00

4. Any other act fitted to deceive.
5. 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 contract is not fraud, unless the circumstances of the case are such that regard being had to them, it is duty of the person keeping silence to speak, or unless his silence to speak, or unless his silence is, in itself equivalent to speech.

There are condition which constitute fraud i.e. one should speak truth to the other party-

1. Contract of family settlement
2. Contract of marriage
3. Share allotment contract/debenture

Elements of fraud

1. Knowingly
2. Without belief in its truth
3. Recklessly careless whether it be true or false

Intention to deceive or to induce a contract by

1. A suggestion as to a fact with the knowledge that it is not true.
2. The active concealment of a fact by one having knowledge or belief of the factor.
3. A promise made without intention to perform.
4. Any other act fitted to deceive.
5. Any such act or omission as the law specially declares to be fraudulent.

Effects of fraud

When consent of an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party when consent was so caused by fraud.

A party to a contract was caused by fraud or misrepresentation may if he thinks fit insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation had been true.

*Illustration-*

- X, who is deceived by another person B who falsely represents that his factory produces 500 maunds of indigo per year which induces X to buy the factory. The contract is voidable at the option of X.

(d) Misrepresentation

A statement made by one party to the other before or at the time of contracting with regard to some existing facts or to some past events which is one of the causes that induces the contract. It means misstatement in respect of a matter. It may be either innocent or fraudulent.

A misrepresentation is innocent when the representer believes his assertion is to be true whereas it is fraudulent where it is made knowingly or without belief in its truth.<sup>33</sup>

According to section 18 of Indian Contract Act

1. The positive assertion in a matter not warranted by the information of the person making it of that of which is not true though he believes it to be true.
2. Any breach of duty which without an intent to deceive gains an advantage to the person committing it or any one claiming under him by misleading him to another to his prejudice or to the prejudice of anyone claiming under him.
3. 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.

Essentials of misrepresentation

1. Making of unwarranted statement which are not true although the person making it believes it to be true.
2. Any breach of duty giving advantage to the person committing it and thereby misleading another to his prejudice.

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<sup>33</sup><https://www.scribd.com/document/347440125/Contract-1-on-25/11/2017-at-17:30>

3. Causing a party of an agreement to make a mistake as to the substance of the thing which is the subject-matter of the agreement.

Most important, when consent of the party was caused by misrepresentation may if he thinks fit insist that the contract shall be performed and that he shall be put in the position in which he would have been if the misrepresentation had been true.

A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised or o whom such misrepresentation was made does not render a contract voidable.<sup>34</sup>

(e) Mistake

It is one of the important part which results in making contract voidable. Types of mistakes are as follows

1. Common mistake
2. Mutual mistake
3. Unilateral mistake

➤ Common mistake

It means both the parties makes a same mistake and both knows the intention of each other and accepts it but each is mistaken about some underlying and fundamental fact.

➤ Mutual mistake

In this, the parties misunderstand each other and are at cross purpose.

➤ Unilateral mistake

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<sup>34</sup>[https://www.scribd.com/document/347440125/Contract-1 on 25/11/2017 at 21:00](https://www.scribd.com/document/347440125/Contract-1%20on%2025/11/2017%20at%2021:00)

In this, only one of the parties is mistaken. The other knows or must be taken to know of his mistake

According to our Indian Law

Sections 13, 20, 21 and 22 of the Indian Contract Act, 1872 deal with the law relating to mistake.

Classification of mistakes according to Indian Laws are as follows

1. Absence of consent

According to section 13, it may relate to

- (a) As to the identity of the person
- (b) As to the identity of the subject-matter
- (c) As the nature of transaction

As provided under section 13 two or more person are said to consent when they agree upon the same thing in the same sense. That is to say there will be no contract if the parties are not at adidem. If the offeree is mistaken about the identity of the offeror and if he contracts on such mistaken assumption, parties are not said to be ad idem.

Mistake as to the identity of the subject matter means parties though ad idem but contract on the basis of an assumption which subsequently proves to be false.

Mistake as to the nature of transaction means if there is any mistake related to transaction, then the contract is void. If a person sign the deed of gift being under the mistake that he is simply signing a power of attorney, the deed will be invalid on the ground of mistake as to the nature of transaction.<sup>35</sup>

2. Mistake by ignorance or misconception of some matters

- (a) Facts must be essential to the agreement
- (b) Mistake must be of fact not of law
- (c) Both the parties must have been under a mistake

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<sup>35</sup>[kamkus.org/.../Unit%20-%20II%20-%20Law%20of%20Contract-III%20.pdf](http://kamkus.org/.../Unit%20-%20II%20-%20Law%20of%20Contract-III%20.pdf) on 25/11/2017 at 22:00

Facts must be essential to the agreement is covered under section 20 of Indian Contract Act, 1872 which states that

“When both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void”

Explanation to section 20-

“An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to matter of fact”

Mistake must be of fact not of law is covered under section 21 of Indian Contract Act, 1872 which states that

“A contract is not voidable because it was caused by mistake as to any law in force in India, but a mistake as to a law not in force in India has the same effect as a mistake of fact.”

Both the parties must have been under a mistake is covered under section 22 of Indian Contract Act, 1872 which states that

“A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact”

Rectification of mistake means “Where a contract has been reduced to writing, or a deed owing to mutual mistake, fails to express the concurrent intention of the parties at the time of its execution, the court will rectify the written instrument in accordance with their true intent.”

Court will order rectification only in the presence of following conditions-

Firstly, the parties must have been in final and full agreement prior to the execution of the instrument which it is sought to rectify.

Secondly, the party seeking to have the instrument rectified must adduce clear, unambiguous evidence that its terms do not accurately record the true intention of the parties at the time.

Thirdly, the intention of the parties as expressed in the prior agreement must have continued unchanged up to the time of the execution of the written statement, and there must be a literal disparity between the terms of the transactions.

## **CHAPTER 4**

## CASES

### ➤ **On the basis of age**

(a) MohriBibee v. DharmodasGhose

#### Facts-

1. In this case, the defendant lend a minor with a sum of 20,000 at 12% interest & secured the loan by a way of mortgage.
2. The mortgage was void for the lack of capacity stated by the minor's mother.

#### Judgement-

1. It was held tht the contract was void as minor has no capacity to contract.
2. The defendant was unable to refund his money.

### ➤ **On the basis of coercion**

(a) Ranganayakamma v. AlwarSetti

#### Facts-

1. A Madrasi man died leaving a young widow.
2. After that the relatives of the man threatens his wife to adopt a child.
3. They set a condition that if she did not obey the words told by them then she would be not allow to see his husband's cremation.
4. The women adopted a child.
5. Subsequently she applied for cancellation of the adoption.

#### Judgement-

1. The court held that there was coercion.
2. Consent of the lady was brought by coercion which makes the contract voidable.
3. The relatives were held guilty of the act.

(b) Takari Devi v. Rama Dogra

#### Facts-

1. The plaintiff was an illiterate lady.
2. The defendant was an advocate.
3. The plaintiff was the client of the defendant.
4. The defendant told her to execute the land in favour of him.
5. The lady did the work as said by his lawyer.

Judgement-

1. The work was done with the consent of the party. i.e. undue influence
2. The court held that the contract was voidable.

➤ **On the basis of undue influence**

(a) *Merci Celine D Souza v. Renie Fernandez*

Facts-

1. The plaintiff was mentally weak.
2. She was not capable to protect her interest.
3. Dependant on the defendant.
4. The defendant took an unfair advantage.
5. The deed was not attested by two witnesses as per the law.

Judgement-

The court held that the case is of undue influence and because of this the contract is voidable.

➤ **On the basis of fraud**

(a) *State of Andhra Pradesh v. T. Suryachandra Rao*

Facts-

1. Lands was surrendered by the land holder.
2. Lands were accepted by the authorities after enquiry.
3. It was found that the lands was acquired by the State under Land Reform Act which was offered by surrender.

Judgement-

The contract was done by fraud and hence it is voidable.

➤ **On the basis of misrepresentation**

(a) Derry v. Peek

Facts-

1. The defendant company said in prospectus of company that they run tramways with steam power.
2. They stated that they have applied for the permission from the Board of Trade.
3. The Board of Trade refuses to give him the permission.

Judgement-

The court held that there was misrepresentation of data from the defendant's side and the contract is said to be void.

## **CONCLUSION**

There are many contracts which are valid, but sometimes due to certain circumstances, they cease to be enforceable which makes them a void contract because it is impossible that the

contract is to be further executed. Similarly, many people unlawfully induce or persuade the will of another person to enter into a contract, which becomes voidable at the option of the party whose consent was so induced.

There are many conditions on which the contracts are made void as well as voidable which we have studied above. A contract is void when the person who makes is unsound mind such as unconsciousness or having mental illness for a period of time. But the contract is valid it is made with a sound mind person or with a person who attains his majority.

In case of voidable contract, the party is unable to recover his money but in case of voidable contract then he can claim for damages.

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