

Ques. Define consent. How is consent said to be free?

Ans.

There have to be two parties a contract, who willingly and knowingly enter into an agreement. But how does the law determine if the parties are both these things? This is where the consent comes in. Let us learn more about free consent and the elements vitiating free consent.

Sec 10 of contract act states "All agreements are contracts, if they are made by the free consent of parties." In order to make a valid contract it is necessary that there should be (a) consent and (b) free consent. For the formation of a contract the parties should either have assented, or be deemed to have assented, to the same thing in the same sense. It is called consensus ad idem. Free consent is one of the essentials of valid contract you can read other essentials of contract here.

In other words, "Consent means" to agree or to be willing to do something."

Black's Law - "Consent is" a concurrence (cooperation, union in action, agreement in opinion) of wills. It is (voluntary yielding (to give up) the will to the proposition of another."

Free consent

In the Indian contract act, the definition of consent is given in section 13, which states that "it is when two or more persons agree upon the same thing and in the same sense." So the two people must agree to something in the same sense as well. Let's say for example A agrees to sell his car to B. A owns three cars and wants to sell the maruti. B thinks he is buying his Honda.

(p.T.O.)

Now, free consent has been defined in section 14 of the Act. The section says that consent is considered free consent when it is not caused or affected by the following.

~~It is free~~

(i) Coercion: — It is Restraint, Compulsion or act of compelling by physical or mental force or arms to repress. In widest sense it implies that fear is the motive which coerces the will. Every transaction in this sense is regarded as voidable. In this sense coercion would cover every case where a party to an agreement is deprived of the freedom of his will. It is defined in sec 15 of Contract Act.

(ii) Under influence: — Under influence is a mental or moral threat. There is undue influence when the influence exerted overpowers the will without convincing the judgment. It is a grip on another's mind. It may be defined as "the unconscious use by one person of power possessed by him over another in order to induce the other to enter into a contract."

(iii) Fraud: — Fraud so clouds the reason that the person defrauded cannot form a rational judgment of the effect of the transaction upon his interest.

Consent cannot be said to be free when it has been obtained by fraud.

(iv) Misrepresentation: — It means misstatement of a fact material to a contract. A mere expression of opinion cannot be called misrepresentation. If misrepresentation is made wrongly and intentionally, it is said to be fraud.

(v) Mistake → Parties of the contract should agree the same thing in the same sense. If parties give their consent under any error, there is no agreement. In other words where the parties have different things in mind or understand the same thing in different ways is not free consent.

(vi) Final Analysis - Free consent is the consent which is obtained by the free will of the parties. Free consent is the historical essentials of a valid contract. A contract is voidable if there is no free will. Not only consent but free consent is necessary to complete the validity of contract.