

MERCANTILE LAWS

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CA

CPT

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2.) FREE CONSENT (Section 14)

A consent is said to be free when it is not caused by

- ✚ coercion,
- ✚ undue influence,
- ✚ fraud,
- ✚ misrepresentation or
- ✚ mistake.

3.) ELEMENTS VITIATING FREE CONSENT

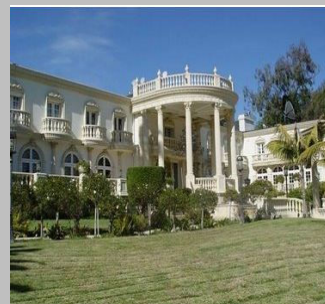
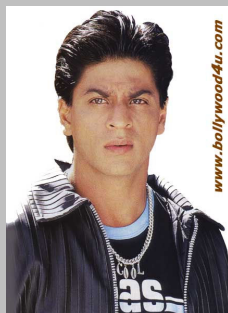
(a) Coercion
(Section 15)

Meaning

- ✚ Actually committing an offence forbidden by IPC; or
- ✚ Threatening to commit an offence forbidden by IPC
- ✚ Actually detaining the property; or
- ✚ Threatening to detain the property

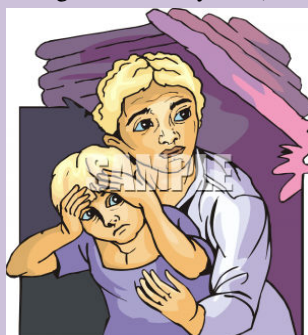
Intention

- ✚ Causing any person to enter into an agreement.



Note

- ✚ Threat to commit suicide amounts to coercion.
(Where a Husband obtained a release deed from his wife & son under a threat of committing suicide, the transaction was set aside on the ground of coercion, suicide being forbidden by IPC)



(Sign My Release Deed)

- ✚ The agreement induced by coercion is voidable.
- ✚ A person to whom money has been paid or anything delivered under coercion, must



	repay or return it.
	<u>Other Points:-</u> - It is irrelevant as to whether or not IPC is in force – - At the time when coercion is employed; or - At the place where coercion is employed. - Coercion may proceed from – - A party to the contract; or - Stranger to contract.
(b) Undue Influence (Section 16):	<u>Conditions:-</u> - One party is in a position to dominate the will of the other. - The dominant party uses his dominant position. - The dominant party obtains an unfair advantage by way of entering into a contract. 
	✚ A person is deemed to be in a position to dominate the will of the other, when he holds authority real or apparent over the other, or ✚ When he stands in a fiduciary relation to the other. Example: - (a) Father and son (b) Solicitor and Client (c) Trustee and Beneficiary (d) Doctor and Patient, etc. ➤ A contract which is induced by undue influence is voidable.
(c) Fraud (Section 17)	➤ Fraud means and includes any of the following acts committed by a party to a contract OR with his connivance OR by his agent with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: ✚ representation of a fact knowing that such fact is not true. ✚ the active concealment of a fact by one having knowledge or belief of the fact. ✚ a promise made without any intention of performing it. ✚ any other act fitted to deceive. ✚ any such act or omission as to law specially declared to be fraudulent. ✚ A contract induced by fraud is voidable.
	<u>Note:-</u> - The party has made a representation of a fact. - An opinion, a statement of expression, or a statement of intention does not constitute a fraud.



Q- Is mere silence amounts to fraud ?

Ans: - No, Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Exceptions:-1.) Where it is duty of the person to speak.

2.) Where silence itself equivalent to speech.

(d) Misrepresentation

Where a person asserts something which is not true though he believes it to be true, his assertion amounts to misrepresentation.

(e)

MISTAKE		SEC. 20 & 22.
Mistake of Indian law	The contract is not voidable	
Bilateral mistake	➤ The agreement is void if- a) The mistake relates to a fact; b) Such fact is material to the agreement; and c) Both the parties are at mistake. ➤ Bilateral mistake may be a) Mistake as to the subject matter. b) (b) Mistake as to the possibility of performance.	
Unilateral Mistake	➤ The contract is neither void nor voidable.	