
UNIT 4 FREE CONSENT

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4.0 OBJECTIVES

After studying this unit you should be able to:

- explain the meaning of consent
- describe the circumstances when consent is not free
- explain the meaning of coercion and undue influence, and their effect on the validity of a contract
- distinguish between 'coercion and undue influence'
- explain the meaning of misrepresentation and fraud, and describe their effect on the validity of a contract
- distinguish between misrepresentation and fraud
- describe various types of mistakes and their effect on the validity of a contract.

4.1 INTRODUCTION

You have learnt that there are some essentials of a valid contract and one of **them** is that the consent of the contracting parties must be free. If the consent is not free, the contract shall be treated as void or voidable depending upon the factor which affected the consent. In **this** unit you will learn about the meaning of consent and the various factors that affect the consent **viz.**, coercion, undue influence, fraud, misrepresentation, and mistake. You will also learn how far the validity of an agreement is affected by each of these factors.

4.2 MEANING OF CONSENT

You have learnt that when two parties enter into a contract they should give their consent. The consent of the parties means that they understand the same thing in the same sense. There must be no misunderstanding between the parties about the subject matter of the contract. Section 13 of the Indian Contract Act defines the term 'Consent' as *Two or more persons are said to consent when they agree upon the same thing in the same sense.*

Thus, consent involves identity of minds in respect of the subject matter of the contract. In English Law, this is called 'consensus-ad-idem'. If the parties are not ad-idem on the subject matter of the contract, then there is no real agreement between them. When two persons enter into a contract concerning a particular person or a **thing** and it turns out that each of them had a different person or thing in mind, no contract would exist between them. For example, A has two Maruti cars, one is blue and the other red. He wants to sell his red Maruti car. B who knows of only A's blue car, offers to buy A's car for Rs. 60,000. B accepts the offer thinking it to be an offer for his red Maruti car. Here the two parties are not thinking in terms of the same subject matter. Hence, there is no consent and the contract will not be valid. In *Foster v. Mackinnon*, the defendant has purported to endorse a bill of exchange which he was told was a guarantee. The court held that he was not liable as his mind did not go with that writing and he never intended to sign a bill of exchange. There was no consent and consequently no agreement arose.

4.3 CONCEPT OF FREE CONSENT

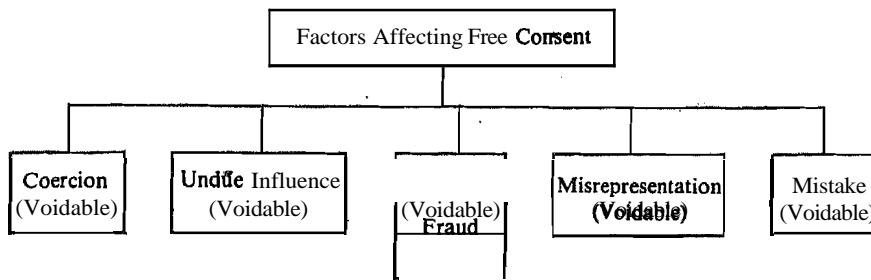
For a contract to be valid it is not enough that the parties have given their consent. The consent should also be free **i.e.**, it has been given by the free will of the parties involving no pressure or use of force. Section 10 of the Contract Act specifically provides that *All agreements are contracts if they are made by the free consent of the parties Now let us understand when the consent is said to be free.*

Section 14 of the Act states that *Consent is said to be free when it is not caused by (i) coercion, or (ii) undue influence, or (iii) fraud, or (iv) misrepresentation, or (v) mistake.* Thus, the consent of the parties to a contract is regarded as free if it has not been induced by any of the five factors stated under Section 14. In other words, the consent is not free if it can be proved that it has been caused by coercion, undue influence, fraud, misrepresentation, or mistake. For example, **X**, at a gun point, makes Y agree to sell his house to X for Rs. 50,000. Here, **Y's** consent has been obtained by coercion and therefore, it shall not be regarded as free.

When the consent of any party is not free, the contract is usually treated as voidable at the option of the party whose consent was not free. If, however, the consent has been caused by mistake on the part of both the **parties**, the contract is considered void. Look at Figure 4.1. It depicts the factors affecting free consent

and their effect on the validity of the contract.

Figure 4.1.



You should note that there is a difference between, the two situations viz., (i) when there is no free consent, and (ii) when there is no consent at all. In case the consent is **not** free the contract is voidable, at the option of the party **whose** consent was not free. But, in case there is complete absence of consent, the agreement is void ab-initio i.e., it is not enforceable at the option of the party whose consent was not free. But in case there is complete absence of consent, the agreement is void ab-initio i.e., it is not enforceable at the option of either party. Let us now discuss each of these five factors of free consent in detail.

4.4 COERCION

4.4.1 What is Coercion?

Coercion means forcibly compelling a person to enter into a contract i.e., the consent of the party is obtained by use of force or under a threat. Section 15 of the Contract Act defines 'coercion' as *Coercion is (i) the committing or threatening to commit, any act forbidden by the Indian Penal Code; or (ii) 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.* In other words, the consent is said to be caused by coercion when it is obtained by exercising some pressure by either committing or threatening to commit any act forbidden by the Indian Penal Code or unlawfully detaining or threatening to detain any property. Coercion, thus, implies committing or **threatening** to commit some act which is contrary to law. Let us now analyse the implications of this definition.

- 1) **Committing any act forbidden by the Indian Penal Code** : When the consent of a person is obtained by committing any act which is forbidden by the Indian Penal Code, the consent is said to be obtained by coercion. Committing a murder, kidnapping, causing hurt, rape, defamation, theft etc. are some of the examples of the acts forbidden by the Indian Penal Code. For example, A beats B and compels him to sell his scooter for Rs. 2,000. In this case the consent of B is induced by coercion.

In the case of **Ranganayakamma v. Alwar Setti**, A Hindu Widow of 13, was forced to adopt a boy under threat that her husband's **dead** body would not be allowed to be removed unless she adopts the **boy**. The widow adopted the boy and subsequently applied for cancellation of the adoption. It was held that the adoption was voidable at her option as her consent was obtained by coercion because preventing the dead body from being removed for cremation is an offence under Section 297 of the Indian Penal Code.

- 2) **Threatening to commit any act forbidden by the Indian Penal Code** : From the definition you will observe that not only the committing of an act forbidden by the Indian Penal Code amounts to coercion but **even a threat to commit such act amounts to coercion**. Thus, a threat to shoot, to murder, to kidnap or to cause bodily injury will amount to coercion. For example, A threatens to shoot B, if he does not sell his ship to A for Rs. **1,00,000**. B agrees to sell his ship to A. Here **the** consent of **B** has been obtained by coercion.

- As per the explanation of Section 15, it does not matter whether the Indian Penal Code is or is not in force in place where the coercion is employed. If the suit is filed in India, this provision will apply. For example, A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code. A, afterwards sues B for breach of contract at Calcutta. A has employed coercion, although his act is not an offence by the law of England and although Section 506 of the Indian Penal Code was not in force at the time when, or the place where, the act was committed.
- 3) **Unlawful detaining of any property** : If a person unlawfully detains the property of another person and compels him to enter into a contract with him, the consent is said to be induced by coercion. For example, an agent refused to hand over the account books of the principal to the new agent appointed in his place unless the principal released him from all liabilities. The principal had to give a release deed as demanded. It was held that the release was not binding because the consent of the principal was obtained by exercising coercion (**Muthia v. Karuppan**).
 - 4) **Threatening to detain any property unlawfully** : If a threat is held out to detain any property of another person, this also amounts to coercion. In **Bansraj v. The secretary of State, the Government** gave a threat of attachment against the property of A for the recovery of a fine due from B, the son of A. A paid the fine. It was held that the consent of A was induced by coercion and he could recover the amount paid under coercion.
 - 5) **Intention of causing any person to enter into an agreement** : The act of coercion must have been done with the object of inducing or compelling any person to enter into a contract.

From the above discussion it becomes clear that the definition does not say anywhere as to by whom or against whom coercion can be exercised. Hence, **whether the act of coercion is directed against the promisor or any other person in whose welfare the promisor is interested, the consent will not be free.** For example, A threatens to kill B's son C if B refuses to sell his car to him. Here, the threat is directed against C (B's son). So, the consent is treated as induced by coercion. Similarly, it is not necessary that the threat should come from a party to the contract, it may come from a stranger. For example, A threatens to kill B if he does not sell his house to D. B agrees to sell his house to D. Though A is a stranger to the contract the consent is caused by coercion. What is important, therefore, is that a forbidden act was involved to obtain the consent of the other party. Whether it moves from the party or a stranger to the contract, is immaterial.

Threat to File a Suit

Sometimes a doubt may arise whether a threat to file a suit amounts to coercion or not. You should know that a threat to file a civil or criminal suit does not amount to coercion because it is not forbidden by the Indian Penal Code. However, a threat to file a suit on false charge amounts to coercion since such an act is forbidden by the Indian Penal Code.

Threat to Commit Suicide

Under the Indian Penal Code a suicide and a 'threat to commit suicide' are not punishable. But, an attempt to commit suicide is punishable. Now, the question arises whether a 'threat to commit suicide' shall amount to coercion or not. This point was considered by Madras High Court in the case of **Ammiraju v. Seshamma**. In this case a person, by a threat to commit suicide, induced his wife and son to execute a release deed in favour of his brother in respect of certain property. The transaction was set aside on the ground of coercion. The court held that though a threat to commit suicide is not punishable under the Indian Penal Code, it is deemed to be forbidden by that code.

4.4.2 Effect of Coercion

The effect of coercion is explained in Sections 19 and 72 of the Act. Section 19

provides that when the consent of a party to an agreement is obtained by coercion, the control is voidable at the option of the party whose consent was not free (also called aggrieved party). In other words, it is **upto** the aggrieved party to decide whether to set aside the contract or perform it. If, however, the aggrieved party decides to avoid the contract, he cannot be compelled to perform his promise. But in that case, he has to restore any benefit received by him under the contract, **to** the other party from whom it had been received. For example, A threatens to kill B if he refuses to sell his scooter for Rs. 1,000 to A. B sells his scooter to A and receives the payments. Here B's consent was 'not free and if B decides to avoid the contract then he will have to return Rs. 1,000 which he had received from A.

Section 72 clearly provides *a person to whom money has been paid anything delivered under coercion, must repay or return it*. For example, a railway company refused to deliver certain goods to the consignee, except upon the payment of some illegal charges for carriage. The consignee paid the illegal charges in order to obtain the goods. Here he is entitled to recover so much amount of the charges as were illegal and excessive.

4.4.3 Burden of Proof

The burden of proving that consent was induced by coercion **lies** on the party who wants to avoid the contract. In other words, it is for the aggrieved party to prove that his consent was not free. This could be done by proving that he would not have entered into this contract had coercion not been employed.

4.5 UNDUE INFLUENCE

4.5.1 What is Undue Influence?

The second factor which affects consent and makes it unfree, is undue influence. The term 'undue influence' means the improper or unfair use of one's superior power in order to obtain the consent of a person who is in a weaker position. Section 16 (i) of the Contract Act defines undue influence as *'A contract is said to be induced by undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.*

If we analyse this definition, two essentials of undue influence become clear :

- i) the relations subsisting between the parties should be **such** that one of them is in a position to dominate the will of the other, and
- ii) the dominant party should have used that position to obtain an unfair advantage over the other.

Both the characteristics must be present simultaneously. The presence of one without the other will not invalidate the contract on the ground of undue influence,

Examples

- a) A, a lady gifted all her property to B, her spiritual guru so that she may secure benefits to her **soul** in next world. Later on, she disputed the validity of the gift deed. Here, the spiritual guru was in a position to dominate the will of his disciple A and by using his strong position obtained an unfair advantage. Hence, it was held that the consent of A was obtained by undue influence.
- b) A was suffering from a number of ailments and B was treating him. B by exercising his influence over A as his medical attendant, induced A to agree to pay B an unreasonable sum for his professional services. In **this** case B has used his superior position to obtain an unfair advantage over A. Thus, you observe that undue influence compels a person in a weaker position to do something which he otherwise would not have done had he been left free to

do the things. Undue influence destroys the free mind of a person and compels him to do something which is against his will. Thus, undue influence is a kind of mental pressure and not a physical coercion.

4.5.2 Presumption of Domination of Will

You have learnt that undue influence is involved only when one party is in a position to dominate the will of the other. Now the question arises as to when can a person be said to be in a position to dominate the will of the other. Answer to this question is provided by Section 16 (2) of the Act. It states that a person is deemed to be in a position to dominate the will of another where :

- i) **He holds a real or apparent authority over the other** : Examples of such cases are relations between master and the servant, parent and child, income tax officer and assessee.
- ii) **He stands in a fiduciary relation to the other**: It means a relationship based on trust and confidence. The category of fiduciary relation is very wide. It includes the relationship of guardian and ward, spiritual adviser (**guru**) and his disciples, doctor, and patient, solicitor and client, **trustee** and beneficiary, a woman and her confidential managing agent. You should note that by judicial decisions it has been held that undue influence **cannot** be **presumed** between husband and wife, landlord and **tenant**, and creditor and debtor.
- iii) **He makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.**
 - Persons of weak intelligence, old age, indifferent health or those who are illiterate can be easily influenced. **Hence**, the law gives **them** protection. For example, A, an illiterate old man of about **90** years, physically in firm and mentally in distress, executed a gift deed of his properties in favour of B, his nearest relative who was looking after his daily needs and managing his cultivation. The court held that B was in a position to **dominate** the will of A (**Sher Singh v. Prithi Singh**).

4.5.3 Effect of Undue Influence

If the consent of a party is induced by undue influence, the contract is voidable at the option of the party whose consent has been so caused. Section 19 A of the Act states the effect of undue influence as when *consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely, or, if the party who was entitled to avoid has received any benefit thereunder, upon such terms and conditions as the court may seem just.* For example, A, a money-lender, advanced Rs. 100 to B, an agriculturist, and by undue influence, induced B to execute a bond for Rs. 200 with an interest at 6 percent per month. The court may set the bond aside, ordering B to repay Rs. 100 with such interest as may seem just.

In case of coercion, you learnt that if the aggrieved party decides to avoid the contract, he has to return or restore the benefit received by him. But, when a contract is avoided on the ground of undue influence, the **court** has the discretion to ask the aggrieved party for refunding the benefit either in full or in part of set aside the contract without any direction to the aggrieved party to refund the benefit.

4.5.4 Burden of Proof

When a party to a contract decides to avoid the contract on the ground of undue influence, he will have to prove that

- i) **the other party was in a position to dominate his will.** It may be remembered that mere proof of nearness of relations is not sufficient for the court to assume that one person was in a position to dominate the will of the other, the dominating position of the stronger party has to be proved.

- ii) the other **party actually** used his influence to obtain an unfair advantage. The aggrieved party has not only to prove the dominating position of the **stronger** party but he has also to show that the stronger party had actually used his position and influenced his will to obtain an unfair advantage over him.

When the weaker party has proved the above mentioned two points, it is then for the stronger party to prove that he has not used any undue influence and show that the consent of the other party was freely obtained.

The above provision is contained in Section 16 (3) of the Contract Act which 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 face of it or in the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.*

Unconscionable Transactions

You will notice that in Section 16 (3) the term 'unconscionable transactions' has been used. The transaction is said to be **unconscionable** when a person who was in a position to dominate the will of the other makes use of his position and enters into a contract which is of great benefit to himself and is unfair to the other party. In other words, if the stronger party makes an exorbitant profit of the other's distress, the transaction will be unconscionable **i.e.**, it is something which shocks the conscience.

In case of unconscionable transactions, the stronger party has to prove that the contract is not induced by any undue influence. For example, A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

You should note, that simply because the rate of interest is very high, it does not become an unconscionable transaction. For example, A applied to a banker for a loan at a time when there was stringency in the money market. The banker declined to make the loan except at an unusually high rate of interest. A accepted the loan on these terms. This was a transaction in the ordinary course of business and the contract was not induced by undue influence. Thus, a transaction will not be set aside merely because the rate of interest is too high. However, if the rate of interest is so high that the court considers it unconscionable, say when the interest rate is 75 per cent or 100 per cent per annum, the court may modify the rate of interest. Example A, a poor Hindu widow was in great need of money to establish her right to maintenance. She took a loan of Rs. 1,500 bearing a rate of interest of 100% **p.a.** the court held it to be an unconscionable transaction and modified the interest rate to 24% **p.a.** (Ranee Annapurni v. Swaminatha).

You should also note that a party to a contract cannot avoid it on the ground of undue influence by merely **showing** that the transaction is unconscionable. He will also have to prove that the other party was in a position to dominate his will and he has used that position to obtain an unfair advantage.

The presumption of undue influence can be rebutted by showing that

- i) the stronger party had made a full disclosure of all the facts to the aggrieved party before making the contract,
- ii) the price was adequate, and
- iii) the weaker party was in receipt of competent independent advice before entering into the contract.

Contracts with Pardanashin Woman

A pardanashin woman is one who observes complete seclusion **i.e.**, who does not come in contact with people other than her family members. Law provides a special protection to **pardanashin** woman on the ground of their being ignorant so far as the worldly knowledge goes. A contract with a **pardanashin** woman is

presumed to have been induced by undue influence. The burden of proving that no undue influence was used lies on the other party. The other party will have to prove that (i) the terms of the contract were fully explained to her, (ii) she understood the implications, (iii) free independent advice was available to her, and (iv) she freely consented to the contract. Here you should note that this protection is available only to a woman who observes complete parda. Some degree of parda or seclusion is not sufficient to entitle her to get special protection.

4.6 DISTINCTION BETWEEN COERCION AND UNDUE INFLUENCE

In case of both coercion and undue influence the consent is not free and the contract is voidable at the option of the aggrieved party. But there are some basic points of difference between the two. These are summarised as follows:

Coercion	Undue Influence
1) Relationship between the parties is not necessary.	Some sort of relationship must exist between parties.
2) Consent is given under the threat of an offence.	Consent is obtained by dominating the will, no offence is committed.
3) It involves physical force or threat.	It involves moral pressure.
4) It may move from even a stranger and may be against the promisor himself or a person in whose welfare the promisor is interested.	It is employed by the a party to the contract.
5) When the contract is avoided, any benefit received has to be restored or refunded.	When the contract is avoided, it is at the discretion of the court to direct the aggrieved party to restore or refund the benefit received.

Check Your Progress A

1) Define consent.

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2) When is consent said to be **free**?

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3) What is coercion ?

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4) When is a party said to be in a position to dominate the will of another?

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5) What is an unconscionable transaction?

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6) State whether the following statements are True or False.

- i) In the absence of consent, there can be no contract.
- ii) A threat amounting to coercion must necessarily proceed from a party to the contract.
- iii) When consent is obtained by coercion, the contract is void.
- iv) A threat to **commit** suicide amounts to coercion.....
- v) Undue influence involves use of moral pressure.....
- vi) There is a presumption of undue influence in the relationship of creditor and debtor.
- vii) Undue influence can be exercised only by a party to the contract.

4.7 FRAUD

4.7.1 What is Fraud?

Fraud simply means a wilful wrong representation of fact, made by a party to a contract with the intention to deceive the other party or to induce him to enter into a contract. The term 'fraud' is defined by Section 17 of the Indian Contract **Act** as follows:

"Fraud means and includes any of the following acts committed by a party to a contract or by any one 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:

- i) *the suggestion, as to a fact, of that which is not true, by one who does not believe it to be true;*
- ii) *the active concealment of a **fact** by one having knowledge or belief **of** the fact;*
- iii) *a promise made without **any** intention of performing it;*
- iv) *any other act fitted to deceive;*
- v) ***any** such act or omission as **the** law specially declares to be fraudulent."*

From the analysis of the above definition it follows that the following elements must be present in the act to constitute fraud.

- 1) **The fraud must be committed by a party to the contract by or aay one with his connivance, or by his agent.** The fraud by a stranger to the contract does not affect the validity of the contract. For example, A was induced to buy shares of a company on the basis of a false statement made by B, B was neither the director nor the representative of the company, he was a mere stranger. Hence, **A** cannot avoid the contract on the ground of fraud because the false statement was made by a stranger to the contract and not by the

company or its agent. But, if the false statement had been made by a director of the company, A could avoid the contract.

- 2) **The fraud must be committed with an intention to deceive the other party.** For example, A intending to deceive B makes a false statement to him that 100 units are manufactured every month in his factory, though A is aware that only 75 to 80 units are produced every month. B is **induced** to buy the factory. Here **B's** consent is obtained by fraud.
- 3) **There must be a representation or assertion and it must be false.** To constitute fraud there must be some representation or assertion which is false and the party making it knows that it is false. Example, A while selling his scooter to B says that it is brand new knowing fully well that it is a used one. A's statement amounts to fraud.

Sometimes it may so happen that when a representation was made it was true, but before the contract is entered into, it becomes untrue and this fact is known to the party. In such a situation, it must be corrected. If it is not corrected, it will amount to fraud. In this connection you should also note that if the person **making** representation honestly believes his statement to be true, he cannot be held liable for fraud, no matter how ill-advised, negligent or stupid he might have been. In order to constitute fraud, the false representation must have been made intentionally.

- 4) **The representation must relate to a fact.** A mere opinion, a statement of expression or intention or puffing expression is not treated as fraud. For example, A says to B while selling his horse, "my horse is as good as that of Y". This is a statement of opinion. But, if **A** says that this horse cost him Rs. 5,000, it becomes a statement of fact and if it is incorrect it amounts to fraud.
- 5) **Active concealment of a fact also amounts to fraud.** When the party takes positive steps **to** prevent an information from reaching the other party it is called active concealment and this amounts to fraud. For example, A, a horse dealer showed a horse to B. A knew that the horse had a cracked hoof which he had filled up in such a way as to defy detection. The defect was subsequently discovered by B. So, he refused to buy the horse. It was held that the contract could be avoided by B as his consent was obtained by fraud.
- 6) **The fraud must have actually deceived the other party.** The act committed with intent to deceive must actually deceive. The party must have relied on it to accord his consent. In other words, an attempt to deceive the other party by which the other party is not actually deceived, is not fraud. In *Horsefall v. Thomos*, A had a defective cannon. In order to conceal it, he put a metal plug on it. B did not examine the gun and bought it. The cannon burst before the payment was made by **B**. B refused to pay. It was held that B was bound to pay because he was **not** actually deceived. He would have bought the cannon even if the plug had not been inserted, he never examined it. Thus, it can be said that **a deceit which does not deceive is not fraud.**
- 7) **The party acting on the representation must have suffered some loss.** It is a common rule that "there can be no fraud without damage and there can be no damage without an injury". The damage or injury may be in the form of loss of money or money's worth or in some other form.

4.7.2 Does Silence Amount to Fraud?

Mere silence on the part of a party to the contract about certain material facts relating to the subject matter of the contract does not generally amount to fraud. The general rule is that a party to the contract is under no legal obligation to disclose the whole truth to the other party or to give him the whole information in his possession. This rule is given in Explanation to Section 17 which says "**Mere silence as to facts likely to effect the willingness of a person to enter into a contract is not fraud**". For example, A sells by auction to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not a fraud.

However, there are **two** exceptions to this rule in which silence also amounts to fraud. These are as follows.

- 1) Where the circumstances **of** the case are such that, regard being had to them, it is the duty **of** the person keeping **silence** to speak. Such duty to speak arises in the following cases.
 - i) **Fiduciary relationship**
Where **one** party reposes trust and {confidence in the other, the party must reveal the truth. For example, A sells by auction a horse to B, his daughter who has just **come** of age. Here, the relation between the parties are **such** that it becomes A's duty **to** tell B about the unsoundness of the horse.
 - ii) **Contracts of absolute good faith**
Where one party has to depend upon the good faith of the other, the other party is bound to speak. For example, in all contracts of insurance, it is the duty of the proposer to make full disclosure of all material facts to the insurance company. If an assured conceals the material facts like long illness, the insurance company can avoid the contract on the ground of fraud. **Similarly**, contracts of family settlements, marriage and allotment **of** shares, sale of immovable property, guarantee, etc. are such where full disclosure must be made.
- 2) Where the silence **is**, in itself, equivalent to speech. Sometimes, the silence is equivalent to speech. In such cases, the silence of a person amounts to fraud. For example, A is selling his horse to B. The horse appears to be sound. Even then B says to A, "If you don't deny it, I shall assume that the horse is sound" A says nothing. Here A's silence is equivalent to speech.

4.7.3 Consequences of Fraud

When consent to a contract is induced by fraud, the contract is voidable at the option of the party whose consent was so caused. In case of fraud, the aggrieved party usually has the following remedies:

- 1) He can rescind (cancel) the contract, but it must be done within a reasonable time. **The** right to avoid the contract is, however, lost in the following cases.
 - i) When the party whose **consent** was caused by fraudulent silence had the means of discovering the truth with ordinary diligence;
 - ii) Where the party was not defrauded **i.e.**, the party gave the consent in ignorance of fraud;
 - iii) Where a party, after becoming aware of the fraud, takes a benefit under the contract or affirms it in some other way;
 - iv) Where, an innocent third party, before the contract is rescind, acquires, for, consideration; some interest in the property passing under the contract; or
 - v) Where the parties cannot be restored to their original position.
- 2) If the party whose consent was not free thinks it proper to accept the contract, he may do so and insist upon its performance. The second para of Section 19 provides that a party whose consent was caused by fraud 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 made had been true. For example, **A** fraudulently informs B that A's estate is free from encumbrances. B, believing the statement to be true, bought the estate. It was later discovered that the estate was subject to a mortgage. In this case, B may either avoid the contract or insist on its being carried out subject to the mortgage debt being redeemed.
- 3) The aggrieved party can also sue for damages. Fraud is a civil wrong. Hence, compensation can be claimed. For example, a party suffers some injury because **of** the unsound horse. If the fact of the unsoundness of horse was not disclosed despite enquiry, due compensation can be demanded.

4.8 MISREPRESENTATION

4.8.1 What is Misrepresentation ?

The word representation means a statement of fact made by one party to the other, either before or at the time of making the contract, with regard to some matter essential for **the** contract, with an intention to induce the other party to enter into contract. A **representation, when wrongly made, either innocently or intentionally, is called 'misrepresentation'**. You know when a wrong representation is made wilfully with the intention to deceive the other party, **it is called fraud**. But, when it is made innocently **i.e.**, without any intention to deceive the other party, it is termed as 'misrepresentation'. In such a situation, the party making the wrong representation honestly believes it to be true. For example, A **while** selling his car to B, informs him that the car runs **18** kilometers per **litre** of petrol. A himself believes this. Later on, B finds that the car runs only **10** kilometers **per litre**. This is a misrepresentation by A.

Section **18** of the **Contract** Act classifies acts of misrepresentation into the following **three** groups:

- 1) **Positive assertion:** When a person makes a positive statement of material facts honestly believing it to be true though it is false, such act amounts to misrepresentation. For example, A while selling his farm to B, tells him that 100 quintals of rice are produced in his farm. A honestly believes the statement to be true. Later on, it is found that the farm produces only **80** quintals of rice. Here, A has made a misrepresentation.
- 2) **Breach of Duty:** Section **18(2)** says that any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him, amounts to misrepresentation. In such a case, there is no intention to deceive, but party representing commits a breach of duty which he owes to the other party. A breach of duty would also exist where a party bound to disclose certain information does not do so. Such non-disclosure would also amount to misrepresentation. For example, in a life policy, the assured does not disclose the fact that he had previously suffered from some serious ailments. The non-disclosure, however, innocent it may be, would entitle the insurer to avoid the contract on the ground of misrepresentation of facts. Such a duty exists between banker and customer, landlord and tenant and all contracts of **utmost** good faith. Such cases can also be termed as 'constructive fraud'.
- 3) **Inducing mistake about subject-matter:** The subject matter of every agreement must clearly be understood by the concerned parties. If one of the parties, leads the other, even innocently, to commit a mistake regarding the nature or quality of the subject-matter, it is considered misrepresentation. Section **18(3)** of the Act says when a party causes, however innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject-matter of the contract, this is misrepresentation. For example, A chartered a ship to B, which was described in the 'charter party' and was represented to him as being not more than 2,800 tonnage register. It turned out that She registered tonnage was 3,045 tons. A refused to accept the ship in fulfilment of the charter party, and it was held that he was entitled to avoid the charter party by reason of the erroneous statements as to tonnage (**The Oceanic Steam Navigation Co., V. Soonderdas Dhumsy**).

4.8.2 Essentials of Misrepresentation

- 1) The representation should be made innocently, honestly believing it to be true and without the intention of deceiving the other party.
- 2) Misrepresentation should be of facts material to the contract. **A** mere expression of one's opinion is not a statement of facts.
- 3) The representation must be untrue, but the person **making** it should honestly believe it to be true.

- 4) The representation must be made with a view to inducing the other party to enter into contract and the **other** party must have acted on the faith of the representation. **A** party cannot complain of misrepresentation if he had the means of discovering the truth with ordinary diligence.
- 5) The false representation must have been made by one party to the contract to the other who is misled. If it is not addressed to the party who is misled, then it is not misrepresentation. In *Peek v. Gurney*, some false statements were made in the **prospectus** of a company. **A** purchased some shares from **B**, the allottee, on the basis of prospectus. **A** wanted to avoid the contract on the ground of misrepresentation. It was held that he cannot avoid the contract because the prospectus was addressed to the first **allottee** and not to **A**.

4.8.3 Effect of Misrepresentation

Section 19 of Contract Act provides that when consent to an agreement is caused by misrepresentation, the agreement is voidable at the option of the party whose consent was so caused. Thus, the aggrieved party has the following two rights:

- a) He can rescind the contract. This right is available only in such cases where he was not in a position **to** discover the truth with ordinary diligence. For Example, **A** by misrepresentation, leads **B** erroneously to believe that 500 quintals of indigo are made annually at **A's** factory. **B** examines the records of the factory, which show that only 400 quintals of indigo have been produced. After this **B** decides to buy the factory. Here, the contract cannot be avoided **by** **B** on the ground of misrepresentation.
- b) If the aggrieved party thinks it proper, he may accept the contract and insist upon its performance. He may compel the other party to put him in the position in which he would have been if the representation made had been true.

Loss of Right to rescind the contract: You have seen that the party whose consent was caused by misrepresentation can avoid or rescind the contract. However, this right is lost in the following cases:

- i) If he could discover the truth with ordinary diligence.
- ii) If his consent is not induced by misrepresentation.
- iii) If he, after coming to know about the misrepresentation, expressly affirms the contract or acts in such a manner which shows that he has accepted it.
- iv) If, before the contract is rescinded, the third party acquires **some** right in the subject-matter in good faith and for some consideration.
- v) If the parties cannot be restored to their original position.

4.9 DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION

Fraud and misrepresentation have many points in common. For example, in both cases a false representation is made by a party. Similarly, in both cases the contract is voidable. But there are many points of difference. These are summarised as follows:

Fraud	Misrepresentation
1) Wrong statement is made intentionally.	Wrong statement is made innocently.
2) The person making the wrong statement does not believe it to be true.	The person making the wrong statement believes it to be true.
3) There is an intention to deceive.	There is no intention to deceive.

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| 4) Besides rescinding the contract, the aggrieved party can also claim damages. | The aggrieved party can rescind the contract but cannot claim damages. |
| 5) Except where the silence amounts to fraud, the contract is voidable even if the party defrauded had the means of discovering the truth with ordinary diligence. | The aggrieved party cannot avoid the contract if he had the means of discovering the truth with ordinary diligence. |
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Check Your Progress B

1) Define 'Fraud'

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2) What is 'Misrepresentation' ?

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3) What are the consequences of fraud ?

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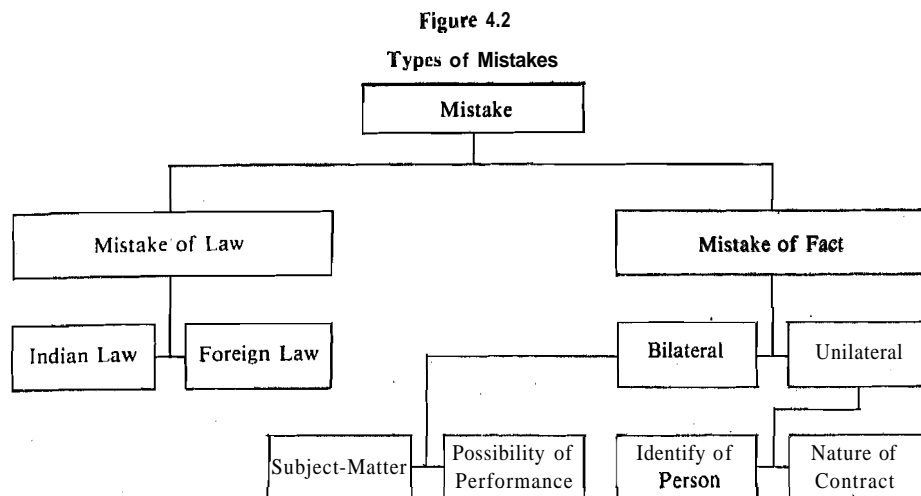
4) State whether the following statements are True or False.

- i) When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true, there is misrepresentation.
- ii) A contract induced by fraud is voidable at the option of either party to the contract.
- iii) A mere attempt to deceive is fraud whether the other party has been deceived or not.
- iv) Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.
- v) If there is no damage, there is no fraud.
- vi) The aggrieved party in case of active fraud loses the right to rescind the contract if he had the means of discovering the truth by ordinary diligence.

4.10 MISTAKE

You know that if the consent is obtained by coercion, undue influence, fraud, misrepresentation or mistake, it is not considered as free consent. You have learnt about coercion, undue influence, fraud and misrepresentation. We shall, now discuss about 'mistake'.

Mistake may be defined as the erroneous belief concerning something. Whenever an agreement is made under a mistake, there is no consent, and the agreement is not valid. Broadly speaking, Mistake may be of two types: (1) Mistake of Law and (2) Mistake of fact. Mistake of law can be further classified into (a) mistake of Indian law, and (b) mistake of foreign law. Similarly, mistake of fact can be (a) bilateral mistake or (b) unilateral mistake. Look at figure 4.2, for detailed classification of mistakes.



4.10.1 Mistake of Law

As stated earlier, mistake of law may be (a) mistake of Indian Law, or (b) mistake of foreign law.

- a) **Mistake of Indian Law:** The general rule is that mistake of law of the land is no excuse. Section 21 lays down that a *contract is not voidable because it was caused by a mistake as to any law in force in India*. It is because every one is supposed to know the law of the country and if a person does not know the law of his country, then he must suffer the consequences. Thus, a mistake of Indian law will not affect the validity of the contract. For example, A and B make a contract grounded on the erroneous belief that a particular debt is time barred by the Indian Law of limitations. This contract is valid.
- b) **Mistake of Foreign Law:** A person is supposed to know the laws of his country but he cannot be expected to know the laws of other countries. Therefore, the rule that 'ignorance of law is no excuse' cannot be applied to foreign law. A mistake of foreign law is treated as a mistake of fact. Section 21 lays down that *a mistake as to a law not in force in India has the same effect as a mistake of fact*. Hence, the contract will be void, if both the parties are under a mistake as to a foreign law.

4.10.2 Mistake of Fact

You have learnt that mistake of fact may be classified into two groups viz.,

- (a) Bilateral mistake, and
- (b) Unilateral mistake. Let us now understand the nature and effect of such mistakes.

Bilateral Mistake: When both the parties to an agreement are under a mistake of fact essential to the agreement, the mistake is known as bilateral mistake of fact. In such a situation, there is no agreement at all because there is complete absence of consent. Section 20 of the Act, provides *where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void*. Thus, for declaring an agreement void under this section, the following three conditions must be satisfied.

- i) Both the parties **must** be under a mistake: The **mistake must** be mutual, For example, A, having two cars, a Fiat **and another** Maruti, offers to sell his Fiat car to B and B **not** knowing **that** A has two cars, thinks of the Maruti car and agrees to buy it. In this case, there is no consent whatsoever. Therefore, the agreement shall be void.

- ii) **Mistake must be of fact and not of law:** Explanation to Section 20 provides that an erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not treated as mistake relating to a matter of **fact**. For example, A buys a painting believing it to be worth Rs. 10,000 while in fact it is worth only Rs. 2,000. The contract remains valid. A will have to blame himself for ignorance of the true value of the painting.
- iii) **Mistake must relate to a s essential fact:** The **mistake** must relate to a matter of fact which is essential to the agreement. In other words, **only** such mistake of fact that goes to the root of the **agreement**, renders the agreement void. For example, A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void, because the mistake relates to something **i.e.**, the horse, which is essential to the contract.

A bilateral mistake may be (a) **mistake** as to the subject-matter, or (b) mistake as to the possibility of **performance**.

- a) **Mistake as to the subject-matter of the contract:** Where both the parties to an agreement are under a mistake relating to the subject-matter of the contract, the agreement is void. A mistake as to the subject-matter may take following forms.
 - i) **Mistake as to the existence of the subject-matter:** When both the parties are under a mistake regarding the existence of the subject-matter, the agreement is void. For example; A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship carrying the cargo had been cast away and the goods lost. Neither the party was aware of these facts. The agreement is void.
 - ii) **Mistake as to the identity of subject-matter:** Where the parties to a contract have different subject-matter in their minds **i.e.**, one party had one thing in mind and the other party had another, the agreement is void because there is no consensus-ad-idem. For example, A offers to sell his old Delhi house to B. A had another house in South Delhi. B thinks he is buying the South Delhi's house. There is no agreement between A and B.
 - iii) **Mistake as to the title of the subject-matter:** Sometimes the buyer already owns the property which a person wants to sell to him, but the concerned parties are not aware of this fact. In such a case, the agreement is void as there is a mistake about the title of the subject-matter (**Cooper v. Phibbs**).
 - iv) **Mistake as to the quantity of the subject-matter:** Where both the seller and the buyer make a mistake regarding the quantity of the subject-matter, the agreement is void. In the case of **Henked v. Pape**, P inquired about the price of rifles from H suggesting that he **might** buy fifty rifles. On receiving the quotation, P telegraphed "send three rifles". But, because of the mistake of the telegraph authorities, the message transmitted was "send the rifles" H despatched fifty rifles. P accepted three rifles and returned the remaining forty seven rifles. It was held that there was no contract. However, P was liable to pay for three rifles on the basis of an implied contract.
 - v) **Mistake as to the quality of the subject-matter:** If the subject-matter is something essentially different from what the parties thought it to be, the agreement is void. For example, A contracts to sell a particular horse to B. A and B believe it to be a race horse. **But**, it turns to be a cart horse. The agreement is void.
 - vi) **Mistake as to the price of the subject-matter:** Where there is a mutual mistake as to the price of the subject-matter, the agreement is void. For example, where a seller of certain goods mentioned in his letter the price as Rs. 1,250 when he really intended to write Rs. 2,250, the agreement is void. In this connection, you should remember that an erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not treated as a mistake of fact.

- b) **Mistake as to the possibility of performance:** If the parties to the agreement believe that the contract is capable of performance, while in fact it is not so, the agreement is treated as void on the ground of impossibility. It may be (i) a physical impossibility or (ii) a legal impossibility.
- i) **Physical impossibility:** A contract for the hiring of a room for witnessing the coronation procession of Edward VII was held to be void because unknown to the parties the procession had already been cancelled and there is no question of witnessing *if*. (**Griffith v. Brymer**).
 - ii) **Legal impossibility:** An agreement is void if it provides that something shall be done which cannot legally be done.

Unilateral Mistake

The term 'unilateral mistake' means where only one party to the agreement is under a mistake. Generally, a unilateral mistake does not make the agreement void. According to Section 22, 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*. If a man due to his own negligence or lack of reasonable care does not ascertain what he is contracting about, he must bear the consequences. For example, A sold oats to B by sample and B, thinking that they were old oats, purchased them. In fact, the oats were new. It was held that B was bound by the contract, (**Smith v. Hughes**).

In some cases, however, a unilateral 'mistake may be fundamental and may affect the character of the contract. In such a situation, the agreement is void. Thus, in the following cases, even though the mistake is unilateral, the agreement is void.

- I) **Mistake as to the identity of the person contracted with:** Mistake as to the identity of the person violates a contract. For example, where A intends to contract only with B, but enters into a contract with C believing him to be B, the contract is void. It should be noted that a mistake about the identity of the contracting party will render the contract void only if (a) the identity of the party is of material importance to the agreement, and (b) the other party knows that he is not intended to be a party to the agreement. The following cases illustrate this point.

In the case of **Cundy v. Lindsay**, one Blenkarn, knowing that Blenkiron & Co., were the reputed customers of Lindsay & Co. placed an order with Lindsay & Co. by imitating the signature of Blenkiron. The goods were then sold to Cundy, an innocent buyer. In a suit by Lindsay & Co. against Cundy for recovery of goods, it was held that as Lindsay never intended to contract with Blenkarn, there was no contract between them and as such even an innocent buyer (Cundy) did not get a good title. Hence, Cundy must return the goods or make payments of price.

In the case of **Lake v. Simmons**, a woman, by falsely misrepresenting her to be the wife of a well known Baron (a millionaire) obtained two pearl necklaces from a firm of jewellers on the pretext of showing them to her husband before buying. She pledged them with a broker, who in good faith, paid her Rs. 10,000. It was held that there was no contract between the jeweller and the woman and even an innocent buyer or a broker did not get a good title. The broker must return the necklaces to the jeweller. Here the jeweller intended to deal not with her but with quite a different person, i.e., the wife of a Baron.

In the case of **Said v. Butt**, S knew that on account of his criticism of the plays in the past, he would not be allowed entry at the performance of a play at the theatre. The managing director of the theatre, gave instructions that a ticket should not be sold to S. S, however, obtained a ticket through one of his friends. On being refused admission to the theatre, he sued for damages for breach of contract. It was held that there was no contract with S, as the theatre company never intended to contract with S.

Mistake as to the nature of the contract: A contract is void when one of the parties, at any fault of his own, makes a mistake as to the very nature of the contract. Thus, when a person is induced to sign a written document

containing a contract fundamentally different in nature from what he thinks he is signing, the contract shall be void.

In the case of *Foster v. Mackinnon*, an old illiterate man was induced to sign a bill of exchange, by means of a false representation that it was a mere guarantee. Held, he is not liable for the bill as he never intended to sign a bill of exchange.

4.10.3 Effect of Mistake

While discussing various types of mistakes, the effect of each type of mistake has been clearly stated. It can now be summarised as follows:

- 1) Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.
- 2) In most cases of unilateral mistake, the contract is not void. But, where unilateral mistake defeats the true consent of the parties, the agreement is treated as void.
- 3) Any person who has received any advantage under such agreement, he is bound to restore it, or to make compensation for it, to the person from whom he had received it.
- 4) A person to whom money has been paid or anything delivered by mistake must repay or return it.

Check Your Progress' C

1) What is Mistake ?

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2) What do you understand by mistake of fact ?

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3) What is a unilateral mistake ?

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4) State whether the following statements are True or False.

- i) Where both the parties to an agreement are under a mistake as to a matter of fact, the agreement is voidable.
- ii) If both the parties believe the subject-matter of a contract to be in existence, which in fact is non-existent, the contract is void.
- iii) An agreement which is not capable of being performed is void.
- iv) Ignorance of law is no excuse.
- v) A mistake regarding the identity of the person contracted makes the contract voidable.
- vi) A contract is void if one of the parties to the contract is under a mistake of fact.

4.11 LET US SUM UP

Two or more persons are said to consent when they agree upon the same thing in the same sense. Consent is said to be free when it is not **caused** by i) coercion, ii) undue influence, iii) fraud, iv) misrepresentation, or v) **mistake**.

Coercion is the 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 whatever, with the intention of causing any person to enter into an agreement. In this case the contract is voidable.

Where the relations subsisting between the parties are such that one party can dominate the will of another and by using this position he obtains an unfair advantage over the other, the consent is said to have been caused by undue influence and the contract is voidable.

A person is **deemed** to be in a position to dominate the will of another (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other, or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by **reason** of age, **illness** or mental or bodily distress.

Where a person who was in a strong position to dominate the will of the other and the transaction appears to be unconscionable, the burden of proving **that** the contract was not induced by undue influence shall lie upon the **person** who was in a strong position.

Willful wrong representation of material facts with the intention to deceive the other party is fraud. For a fraud, it is necessary that (i) a false **representation** or assertion is made, (ii) it must be of a fact, (iii) it must be made **with** the knowledge of its falsehood or without belief in its truth or is made **recklessly**, (iv) it must be made with the intention to deceive the other party, (v) the other party must have acted on the basis of such representation, and (vi) the other party must have suffered some loss. In case of fraud, the contract is **voidable** and the aggrieved party can also claim the damages.

Misrepresentation refers to a mis-statement of material facts made **innocently** or the non-disclosure of a material fact without any intention to deceive the other party. In case of misrepresentation, the contract is **voidable** but the damages cannot be claimed.

Mistake is an erroneous belief concerning something. Mistake may be a mistake of law or a mistake of fact.

Mistake of law can be of two types— (i) mistake **regarding** the law of the land (Indian laws), and (ii) mistake regarding foreign laws. A **mistake** of Indian law is not excusable, while a mistake of foreign law is treated **as a mistake of fact**. A mistake of fact can also be divided into two groups : (a) bilateral **mistake**, (b) unilateral mistake.

Bilateral mistake may relate to the subject-matter or **the** possibility of performance. Mistake of fact regarding subject-matter may be as **to** (i) existence of the subject-matter, (ii) identity of the subject-matter, (iii) title of the subject-matter, (iv) quantity of the subject-matter, (v) quality of the subject-matter, (vi) price of the subject-matter. Such mistake of fact make an agreement **void**.

A unilateral mistake, generally does not render the agreement void. But when there is a mistake regarding the identity **of the** person contracted with or it relates to the nature of the contract, the agreement is **void**,

4.12 KEY WORDS

Aggrieved Party : The party to an agreement whose consent is not free.

Bilateral Mistake : Where both the contracting parties are working under a common mistake.

Coercion : Committing or threatening to commit any act forbidden by the Indian Penal Code or detaining or threatening to detain any property of another to his prejudice with the intention of causing him to enter into an agreement.

Free Consent : Consent to an agreement without influence or pressure of any type.

Fraud : A false representation made wilfully with a view to deceive the other party.

Misrepresentation : A false representation made innocently, without any intention to deceive the other party.

Purdanashin Women : A woman who by custom of the country or usage of the particular community she belongs, is obliged to observe complete seclusion.

Undue Influence : Use of a position to dominate the will of another to obtain any unfair advantage over the other in connection with an agreement with him.

Unilateral Mistake : Where only one party to the contract is under a mistake.

4.13 ANSWERS TO CHECK YOUR PROGRESS

- A) 6) i) True, ii) False, iii) False, iv) True, v) True, vi) False, vii) True
B) 4) i) True, ii) False, iii) False, iv) True, v) True, vi) False
C) 4) i) False, ii) True, iii) True, iv) True, v) False, vi) False.

4.14 TERMINALS QUESTIONS/EXERCISES

- 1) Define Consent. When Consent is said to be free?
- 2) What is the effect of coercion on the validity of the contract?
- 3) Does a threat to commit suicide amount to coercion?
- 4) When is a person deemed to be in a position to dominate the will of another?
- 5) Define fraud and point out its effects on the validity of the contract.
- 6) "Mere silence as to facts is not fraud". Explain with examples.
- 7) Distinguish between :
 - i) Coercion and undue influence
 - ii) Fraud and Misrepresentation
- 8) What is the position of a contract made with a purdanashin woman?
- 9) Define mistake and explain various types of mistakes.
- 10) Explain and illustrate the effect of a 'mistake of fact' on contracts:
- 11) On whom the burden of proof lies in case of undue influence? State the cases in which undue influence is presumed.
- 12) Answer the following problems giving reasons for your answer:
 - i) A threatens to shoot B if he does not sell his scooter to him (A) for Rs. 1,000. B signs the necessary documents for the sale of scooter. Later on, B wants to avoid the contract. Will he succeed? If so, why?
(Hint: B can avoid the contract on the ground of coercion).
 - ii) Mahesh was suffering from some disease and was in great pain. His doctor agreed to treat him provided he signs a promissory note for Rs. 20,000. On recovering from the disease, Mahesh refused to honour the pro-note. Can the doctor recover the amount of the promissory note?

(Hint : Doctor has employed undue influence on Mahesh. Mahesh is liable to pay only reasonable fee).

- iii) Hari sells his horse to Rajesh. Hari knows that the health of the horse is unsound. Hari says nothing to Rajesh about the unsoundness of the health of horse. Is this contract valid?

(Hint : Yes, this contract is valid, because it is not the duty of the seller to disclose defects).

- iv) N entered into a jeweller's shop and selected some jewels. He gave a cheque in the name of G.B., a man of repute. The jeweller accepted the cheque and allowed N to take the jewels. N pledged the jewels with B who had no knowledge of the fraud. Can the jeweller recover the jewels from B?

(Hint : No, the jeweller cannot recover the jewels from third party. It is not a mistake regarding the identity of person contracted with, but only about her attributes.)

- v) Avinash, while selling an unsound horse to Rakesh puts on the stable's door a forged certificate from a veterinary doctor that the horse is sound. Rakesh sees the horse casually but does not notice the certificate and buys the horse. Rakesh wants to terminate the contract on grounds of fraud. Will he succeed?

(Hint : Rakesh will not succeed. His consent was not affected by the forged certificate).

- vi) A sells a painting to B saying that it is an original work of Picasso. Unknown to both the parties, the original painting was stolen and its copy was placed there. Is the contract valid?

(Hint : The contract is void on ground of bilateral mistake as to the quality of the subject-matter).

- vii) Prem offers to sell a painting to Vikas which Prem knows is the copy of a well known masterpiece. Vikas, thinking that the painting is the original one, decides to buy it at a very high price. Is this a valid contract?

(Hint : Yes, the contract is valid. Vikas has a wrong impression about the value of the painting),

Note : These questions and exercises will help you to understand the unit better Try to write answers for them. But do not send your answers to the University. These are for your practice only.

SOME USEFUL BOOKS FOR THIS BLOCK

Gulshan, S. S. and G. K. Kapoor, 1989. *Business Law*, Wiley Eastern Limited: New Delhi (Chapters 1-5)

Kapoor, N. D., 1988. *Mercantile Law*, Sultan Chand & Sons: New Delhi (Chapters 1-5)

Kuchhal, M. C., 1989. *Mercantile Law*, Vikas Publishing Private Limited: New Delhi (Chapters 1-5)

Maheshwari, R. P. and S. N. Maheshwari, 1989. *Business Law*, National Publishing House: New Delhi (Chapters 1-5)

Shukla, M. C., 1987. *A Manual of Mercantile Law*, S. Chand & Co., New Delhi (Chapter 1).