

Advanced Contracts, Tendering and Public Procurement
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Lecture 10: Formation of Contract – Free Consent Part 01

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5. Free consent

- Coercion/Economic duress
 - Ranganayakamma v Alwar Chetty
 - Hawker Pacific Pty Ltd v Helicopter Charter Pty
- Undue Influence
 - Inequity of bargaining power: Position of domination of will
 - Presumed undue Influence: [Fiduciary] Allcard v Skinner/burden of proof
 - Actual undue Influence: Tate v Williamson

Free Consent

Consent of parties is valid in the following cases:

Consent	Undue Influence	Coercion	Mistake
• All parties are free	• No position of dominance	• No threat of physical force	• No mistake of fact

The first ground on which someone's consent to a contract can be invalidated is coercion. According to the Indian Contract Act, it is explicitly stated that individuals cannot be compelled to enter a contract against their will. The act of entering a contract is a matter of personal choice and not an obligation.

Coercion, as defined in the Indian Contract Act, holds special significance as it refers to acts that are punishable under the Indian Penal Code of 1860. This demonstrates the interrelation between the Indian Contract Act of 1872 and the Indian Penal Code of 1860. In essence, any act of force used to obtain consent, which is an offense under the Indian Penal Code, or any act that involves the threat of committing a forbidden act under the Indian Penal Code, can be considered as coercion.

For instance, if someone compels you to sign a contract by threatening you with a weapon or by using physical force, such actions are clearly prohibited by the Indian Penal Code. There are punishments in place for threatening someone's well-being or property.

Coercion is a ground for invalidating consent to a contract, and it involves acts that are punishable or threatening under the Indian Penal Code.

All actions that are covered under the Indian Penal Code and can be classified as coercion can serve as grounds to invalidate consent and argue against the enforceability of a contract. This includes situations where someone attempts to commit suicide to force another party to sign a contract. Although there may not be a punishment for attempting suicide in Section 309 of the Indian Penal Code, there is still a prohibition on suicide, threats of suicide, or aiding and abetting suicide. Courts recognize such actions as coercion, providing a basis for setting aside the contract.

It is important to note that coercion can involve both physical force and mental pressure. Mental forces, such as emotional manipulation or threats of self-harm, can also constitute coercion and invalidate consent. Blackmail and threats, whether physical, verbal, or online, are examples of coercive tactics that may be employed to make someone sign a contract. These issues extend to cases where children blackmail their parents into signing release deeds or gift deeds, which can create contractual troubles.

The concept of free consent and its significance in contract enforcement raises larger concerns. In both common law and India, the notion of duress encompasses coercion, which can be exerted upon a person or their property. For example, someone may refuse to release funds unless certain conditions are met, which constitutes duress to property. Economic duress is a modern form of duress that considers imbalanced bargaining power in contracts, particularly evident in government contracts where the government holds a superior position. The misuse of this power can lead to situations where contractors feel compelled to sign documents under economic duress to protect their future business interests.

Challenges may arise when a party claims that their consent was obtained under duress, coercion, or economic duress. For instance, a government contractor may argue that their signature on a declaration was forced due to threats and economic duress. Economic duress involves using a dominant position to extract consent in a contract. It is important to be cautious of these issues and understand the implications of economic duress.

There are various interesting cases related to economic duress, such as workers going on strike and demanding unreasonable or illegitimate bonuses. Legitimate salary requests would not amount to economic duress, but unreasonable and illegitimate demands can create economically pressurized situations where the management may feel compelled to comply, as failing to do so could lead to business consequences, such as company liquidation.

Actions covered by the Indian Penal Code that qualify as coercion can invalidate consent to a contract. Coercion can encompass physical force as well as mental pressure. Economic duress is a modern form of duress that involves the use of dominant positions to extract consent in contracts. Understanding these concepts is crucial for addressing issues of consent and contract enforcement.

Unreasonable and illegitimate demands made during strikes or negotiations can be considered under economic duress, rendering any consent or promises made under such circumstances questionable. Economic duress involves leveraging someone's economic situation to coerce them into an agreement, which can be seen in scenarios like flight cancellations where airlines may refuse refunds unless alternative options are chosen. It is crucial to distinguish between legitimate and illegitimate demands, as only the latter would fall under economic duress and potentially make a contract unenforceable.

Persuasion, motivation, and negotiation are permissible actions to obtain consent in contracts if they do not cross the line into coercion. Coercion occurs when the green line is crossed, surpassing the limits of permissibility. Therefore, individuals can utilize their oratory skills, convincing abilities, and negotiation skills without engaging in coercion. Understanding the distinction between coercion and permissible actions is essential.

Moving forward, it is important to grasp the concept of undue influence. While due influence is acceptable, where parties are influenced through appropriate means, undue influence arises when someone exploits their dominant position to harm the other party for personal advantage. Certain parties naturally hold dominant positions, such as hospitals, banks, teachers, or employers. Being in a dominant position is not inherently wrong, but abusing that position to gain unfair advantages is problematic.

Abusing a dominant position involves obtaining unfair advantages from the influence wielded due to dominance. The determination of what constitutes an unfair advantage is subjective, and it depends on the specific circumstances of the transaction. Vulnerable individuals, such as elderly citizens or minors, are more susceptible to the misuse of power or abuse of dominant positions. The law acknowledges this vulnerability and, in certain cases, presumes undue influence unless proven otherwise. Fiduciary relationships, characterized by trust and confidence, require the dominant party to demonstrate that the transaction was fair and not influenced by undue factors.

Unreasonable and illegitimate demands during strikes or negotiations can fall under economic duress, potentially invalidating consent or promises made under such circumstances. Understanding the boundaries between coercion and permissible actions is crucial. Exploiting a dominant position to gain unfair advantages constitutes undue influence, which must be refuted by the dominant party. Vulnerable individuals, such as the elderly or minors, may be particularly susceptible to undue influence, and the law acknowledges this by presuming undue influence in certain relationships of trust and confidence.

In all relationships where a dominant party holds a position of influence, such as bankers or doctors, it is their responsibility to present their case in court, demonstrating that no errors of consent were committed, their influence was fair, and no unfair advantage was gained. The burden of proof shifts to the dominant party because vulnerable individuals, such as the elderly, should not be required to prove undue influence, which can be challenging due to the difficulty of providing evidence or recalling specific details of the influence exerted.

Undue influence commonly occurs when elderly individuals create wills, expressing their intentions for property management after their passing. Cases where an elderly person leaves their property solely to a servant, excludes certain family members, or bequeaths it to a lawyer often raise suspicions of undue influence. Elderly individuals, due to their age and dependence on those who care for them, may be more susceptible to undue influence. While it is acceptable to allocate property to those who have provided care, it becomes an issue if the influence is abused.

A notable case illustrating undue influence is *Alkart versus Skin*, involving an Oxford student burdened by significant debts and seeking advice from his uncle. The uncle directed the student

to a cousin who was a property dealer. Recognizing an opportunity, the cousin exploited the student's distress, his lack of knowledge about property matters, and convinced him to sell the property at a significantly lower price than its market value. This advisor knowingly took advantage of the situation, gaining an unfair advantage through exploitation.

It is important to note that advisors, such as lawyers or policy brokers, are entrusted with providing independent and unbiased advice. Misuse of their position for personal gain, as seen in the example of the spiritual guru coercing someone to give away all their property, would be considered an abuse of trust. Undue influence is often exerted by individuals in positions of power who feel they can exploit their influence for personal gain, resulting in unfair advantages and contractual differences. This kind of behavior is not permissible, especially when the vulnerable party gives their consent to the contract due to the influence exerted upon them.

If the party who agreed to the contract under undue influence later realizes the nature of the situation, they have the right to approach the court to set aside the contract and declare it void. Thus, this protection is granted to those who have not given their consent freely and willingly in a contract.

In today's context, contracts are often documented on paper, and while they may not carry the same weight as witnessed events, the potential for undue influence still exists. Even in modern-day contracts, one should not assume that simply because it is on paper, it is valid and binding. The possibility of falling victim to undue influence, such as signing away property in the presence of a spiritual advisor who exerts a captivating aura or hypnotism, remains.

Although these concepts may have traditional connotations, they remain relevant in the modern economy. They can be used as evidence, arguments, and proof to challenge the validity of consent in contracts. Understanding these factors is crucial in discerning which contracts are enforceable and which are not. In conclusion, when considering factors that can impact free consent, it is necessary to differentiate between actual instances of undue influence and instances where undue influence is presumed.

Actual undue influence is proven by presenting evidence to the court, demonstrating that your consent was obtained through the exertion of undue influence. On the other hand, presumed undue influence is a legal concept where the law presumes that certain types of relationships

carry a higher probability of undue influence, placing the burden on the dominant party to prove that no undue influence was exercised.

Instances of presumed undue influence often arise in relationships where one party holds a position of dominance or power. There have been instances, both in India and abroad, where famous film actors have claimed to have been under undue influence while being associated with spiritual or religious ashrams.

A notable case that highlights the influence that can be exerted on one's mind is the *Alkart v Skin* case. In this case, a woman joined a religious institution and, during her stay, decided to donate a significant portion of her property to the institution. However, after leaving the institution, she realized her mistake and sought to reclaim her property, alleging undue influence. The court was inclined to grant her relief, but due to the technical matter of exceeding the three-year limitation period, she was not successful. It is important to note that in cases of fiduciary relationships, such as the one between a spiritual advisor and a disciple, there is a presumption of undue influence, which the advisor must refute. The court must be satisfied that no unfair advantage was gained through the advice provided. If an advisor misuses their position of trust and gains an unfair advantage, the courts are inclined to set aside such contractual arrangements.





It should be noted that there are time limitations within which one can exercise the right to treat a contract as voidable in cases of undue influence. If the affected party approaches the court within the specified time frame, relief may be granted. However, if the limitation period has expired, the chances of obtaining relief diminish.

Understanding the distinction between actual and presumed undue influence is essential in identifying instances where undue influence may invalidate a contract. The courts are inclined to protect individuals from situations where unfair advantages are gained through the misuse of trust and confidence.

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Free Consent: contd.

- Misrepresentation: innocent or negligent
 - *caveat emptor*
 - *Uberrimae Fidei* [O Sarojani v UOI]
 - Conditions & Warranties



Misrepresentations are a common occurrence in today's market, where the demand and supply dynamics often lead to exploitation of consumers. The Consumer Protection Act of 2019 in India specifically addresses the protection of consumer interests in cases of misrepresentations. However, even the Indian Contract Act recognized the need to safeguard buyers from misrepresentations. Misrepresentation can occur not only in consumer contracts but also in business contracts, particularly in the context of online purchases or service hires.

When we analyze the term "misrepresentation," we can break it down into two categories: innocent misrepresentation and negligent misrepresentation. Vendors often engage in what is known as "puffery" or exaggeration to promote their products. This can sometimes lead to innocent misrepresentation, where the seller innocently conveys information that later proves to be untrue. On the other hand, negligent misrepresentation occurs when the seller makes statements without verifying their accuracy or truthfulness.

Counterarguments for misrepresentation focus on the concept of "caveat emptor" or "buyer beware." Buyers also have a responsibility to exercise due diligence and not solely rely on the representations made by sellers. This places a higher obligation on the buyer to verify the information provided before making a purchase.

Another important principle related to misrepresentation is "uberrima fidei" or utmost good faith. Insurance contracts, for example, fall under this category and require the insurer to disclose all relevant information without being prompted. Failure to disclose such information can result in a breach of contract through misrepresentation.

In addition to these concepts, the Sale of Goods Act of 1930 further categorizes representations into conditions and warranties. Conditions are fundamental to the contract and their breach gives the buyer the right to terminate the contract and seek a refund. Warranties, on the other hand, are performance-related representations that do not render the contract voidable but can entitle the buyer to claim damages for the misrepresentation.

It is important to note that while misrepresentation renders the contract voidable in both cases, the remedies differ depending on whether the misrepresentation was a condition or a warranty. The Sale of Goods Act also implies certain conditions and warranties by law, such as the seller's title to the goods.

Misrepresentations can occur in various types of contracts, and understanding the distinctions between innocent and negligent misrepresentation, as well as the principles of caveat emptor and uberrima fidei, is crucial. The Sale of Goods Act provides further clarity on the remedies available for misrepresentation based on whether the representation was a condition or a warranty.