***Question # 7***

***Page 1 of 3***

**FREE CONSENT** **(Hand out)**

**Preamble/Introduction**

Consent is one of the major essential of a Contract. A contract cannot be made without consent or when consent to an agreement is caused by Coercion, Undue Influence, Fraud or Misrepresentation the agreement is voidable at the option of the party whose consent was so caused.

**Relevant Law/Provision:** Section: 14, 15, 16, 17, 18, 20

**The following can make the consent untrue.**

1. Coercion
2. Undue Influence
3. Fraud
4. Misrepresentation
5. Mistake
	1. Mistake by Law
		1. Mistake of Pakistani Law
		2. Mistake of Foreign Law
	2. Mistake by Fact
		1. Bilateral Mistake
		2. Unilateral Mistake
6. **COERCION**

“ Coercion is the committing or threaten to commit any act forbidden by the

Pakistan Penal Code or the unlawful detaining or threaten to detain any Property, to the Prejudice of any person whatever with the intension of causing any person to enter into an agreement”.

**We may summarize the above mentioned definition in the following points:**

**a.** Committing or Threaten to Commit (Bansraj Vs. Secretary of State)

1. Detention of Property
2. Threat against third Party
3. Enforcement of Pakistan Penal Code (PPC)

**2. UNDUE INFLUENCE**

“A contract is said to be induced by undue influence where the relations between the parties are such that one of the parties is in a position to dominate the will of the other and uses the position to obtain an unfair advantage over the other.”

The following Essentials may be ruled out from the above definition:

**a.** Position to Dominate (Mannu Singh Vs. UmadatPandey)

1. Unfair Advantage
2. Real or Apparent Authority

|  |  |  |
| --- | --- | --- |
| **d.** | Fiduciary Relation | (I Gariah Vs. Sheikh Allie Bin Umar) |
| **e.** | Mental Distress | (RanneeAnnapuri Vs. Swaminatha) |

**3. FRAUD**

“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 or his agent to induce him to enter into the contract”

***Question # 7***

***Page 2 of 3***

**Fraudulent Acts**

1. False Statement
2. Active Concealment of Facts
3. Intentional Non- Performance
4. Intention to Deceive
5. Act or Omission forbidden by Law

**ESSENTIALS OF FRAUD**

* + The representation must be False/Fake
	+ Representation must relate to a fact
	+ Representation made to deceive the other party
	+ Representation made before formation of Contract
	+ The other party must have relied on such representation
	+ The other party must have suffered Loss
1. **MISREPRESENTATION**

“Misrepresentation means an innocent misstatement of fact about the contract, made by one party to induce the other party to enter in to a Contract”.

**An inference of Misrepresentation may be drawn from the following cases:**

|  |  |
| --- | --- |
|  Unjustified Statements | (Sheffield Nickel Co. Vs. Unvin) |
|  | Breach of Duty | (With Vs. O’ Flanagan) |
|  | Innocent Mistake |  |

**The followings things are necessary to prove Misrepresentation:**

* Innocent statement believing it to be true
* Must relate to fact essential to the contract
* Must be Untrue
* Must induce the other Party
* Must be without the desire to deceive other Party
* Other party must have Suffered a Loss

**5. MISTAKE**

“Where the Parties give their Consent under any Error, there is no agreement. It means that there should Consensus ad- idem. Mistake can be divided into following kinds:

|  |  |
| --- | --- |
| **Mistake of Fact** |  |
| **a.** | Bilateral Mistake | (A mistake by both of the Parties) |
| **b.** | Unilateral Mistake | (A mistake by one Party) |

**Mistake of Law**

1. Mistake of Pakistani Law
2. Mistake of Foreign Law

**Mistake of Fact**

**a. Bilateral Mistake**

“Where both of the parties to an agreement are under a mistake as to the matter of fact, essential to the agreement, there is a bilateral mistake and the agreement is void.”

***Question # 7***

***Page 3 of 3***

**Bilateral Mistake of fact may have the following errors:**

**It may be the Mistake regarding:-**

 The existence of subject matter (Couturier Vs. Hastie)

 The identity of the subject matter (Raffles Vs. Wichelhaus)

 The ownership of subject matter

 The quantity of the subject matter (HankelVs Pope)

 The quality of the subject matter

 The Possibility of performance (Galloway Vs. Galloway)

**a. Unilateral Mistake**

“When in a contract only one party is at mistake regarding the terms of the agreement, the mistake is a unilateral Mistake.”

**The Effect of Unilateral Mistake on Contracts is outlined as follows**: **When it is Valid**

If a person due to his own negligence or carelessness makes a wrong contract, he must blame himself and can’t avoid the Contract. Meaning thereby the Contract remains Valid.

 **When it is Voidable**

If the Unilateral Mistake is caused by Fraud or Misrepresentation on the part of other Party, the contract is voidable.

 **When it is Void Agreement**

o Mistake regarding the Identity of the Party

* 1. Mistake regarding the Nature of the contract
1. **Mistake of Law:**

**a. Mistake of Pakistani Law:**

If there is a mistake of the law of the country, the contract is binding because everyone is supposed to know the law of his Country. In other words mistake of

Pakistani law doesn’t affect the validity of the Contract. **b. Mistake of Foreign Law:**

A Mistake to Foreign law is yet not being enforced in Pakistan. Generally, it is regarded as a Mistake of Fact. Normally too many mistakes in a Contract otherwise makes it void.

**CONCLUSION**

When the consent of the parties in any contract is obtained by Coercion, undue influence, misrepresentation or by fraud, the contract becomes voidable at the option of the aggrieved party. A contract cannot be enforced in such conditions and if such contracts are made doesn’t hold lawful protection.

|  |  |
| --- | --- |
| **Expected University Questions:** |  |
| **1.** | When the consent is said to be not free? Discuss in detail. | **(OR)** |
| **2.** | What is the effect on a contract if it lacks free consent of the parties? Comment. |