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FREE CONSENT

AUTHORED BY - MOHD YASIN & ISHITA SINGH

WHAT DOES FREE CONSENT MEAN?

Free Consent refers to an agreement when both parties knowingly and willingly enter into a contract of their own will without any interference of others. This involves agreeing to all of its terms and conditions and a mutual level of understanding of the subject matter in the contract of both parties. In simple words, free consent means “when two or more person agree upon the same thing in the same mean for the same purpose”. There should be a ‘consensus ad idem which suggests ‘identity of mind between the parties. When there is no consent or error in consent, there is no contract. Consent is defined under section 13 of the Indian Contract Act, 1872.

THE IMPORTANCE OF FREE CONSENT:

1. It helps to protect the validity of the contract.
2. It prevents all kinds of malpractices.
3. It builds a social relationship with mutual understanding.
4. It helps to develop jointly.

THE DIFFERENCE BETWEEN CONSENT AND FREE CONSENT:

CONSENT-

Without the consent of the parties, the contract cannot take place. Where the parties have different things in mind or understand the same thing in different ways without any mutual understanding is not real consent.

FREE CONSENT-

Free consent is the consent that has been obtained by the free will of the parties. No pressure within the sort of coercion, fraud, undue influence, mistake, and misrepresentation in obtaining the consent.

VIOLATING FACTORS OF FREE CONSENT:

The parties participating in your contract should be aware of these factors and should be cautious for a free flow of the contract without any flaws.

THOSE FACTORS ARE:

1. COERCION (SECTION 45 OF 1860):

Coercion means forcing an individual to try to do something that they might not normally treat making threats against their safety or well-being, or that of their relatives or property. The person making the threats is attempting to realize compliance from a victim through intimidation. The threats can be physical, meaning that pain or injury has been implied or has taken place.

EXAMPLE: Threatening a person to kidnap his sister if he doesn't give his consent for the contract.

2. UNDUE INFLUENCE (SECTION 16):

It occurs when one among the opposite parties dominates the opposite party in any aspect. There is a chance of taking unfair advantage because of their dominating position on the other party to step down another party. The principle behind Undue Influence is the doctrine of Equity. The effects of undue influence lead to the voidability of the contract of free consent.

EXAMPLE: A from a rich family buys a phone from his father's money and influences B from a poor family to buy the same phone and B ends up stealing a big amount of money from his relative's house.

3. FRAUD (SECTION 424):

Fraud is a deliberate act to obtain an unauthorized benefit, either for oneself or for the institution, by using deception suggestions false promises or suppression of truth, or other unethical means, which are believed and relied upon by others. And may cause deep harm to the person experiencing fraud.

EXAMPLE: Institute A promises to deduct 50% fees on promoting their institute on social media every day for 1 month from different accounts and end up denying this promise intentionally.

4. MISREPRESENTATION (SECTION 18):

Misrepresentation is nothing but showing false information at the beginning of the contract itself. The facts which are committed at the ground level may not be reliable then it is considered as the misrepresentation of the contract. Misrepresentation is of two types the one is Innocent misrepresentation and the other is a negligent misrepresentation.

EXAMPLE: Negligent misrepresentation - A sells his unstable property to B by spreading a thick layer of temporary sand to show that the land is perfect but was not.

Innocent misrepresentation – seller sells a defective material to the buyer.

5. MISTAKE (SECTION 20 21 22):

One, or both, of the parties, could also be working under some misunderstanding or misapprehension of some fact concerning the agreement. Such contracts are said to be caused by mistake.

EXAMPLE: A agrees to buy a certain dog from B. It seems that the dog was dead at the time of the discount, though neither party was conscious of the very fact, The agreement is void on account of mistake.

CONCLUSION:

Hence we can understand that free consent is the mutual agreement with two parties with the same purpose and the same mental status by considering the various factors which lead to violating the contract. Amongst them, coercion and undue influence play a vital role. So the party should keep noted and not mislead the contract which takes you to the cancellation of the entire contract. Then only the business will run smoothly and both the parties will enjoy fruitful results.