

Advanced Contracts, Tendering and Public Procurement
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Formation of Contract- Free Consent IV: Voidable Contracts

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Contracts made void

- Mistake: general
 - Raffles v Wichelhaus [ex-peerless]
 - Mistake unilateral: ITC Ltd v G J Fernandes AIR 1989 SC 839
- Mistake as to identity of parties
 - Phillips v Brooks Ltd
 - Lewis v Avery



The concept of free consent in relation to mistake is a significant aspect addressed by the uniquely designed Indian Contract Act. According to this Act, if a contract is influenced by coercion, undue influence, misrepresentation, or fraud, it becomes voidable at the discretion of the party whose consent was affected by any of these factors.

As the petitioner seeking to invalidate the contract, one can approach the court to exercise the option of voidability. This means that the contract can be declared null and void if coercion or undue influence is proven, or if it is presumed based on your reference, in which case the burden of proof shifts to the other party.

In the case of misrepresentation, you must be an aggrieved party and provide evidence to support your claim. Once established, the court can determine the voidability of the contract and outline the resulting consequences. It's important to note that simply setting aside the contract may not suffice, especially if additional damages have been incurred by the affected party. In such cases, the court may award damages to compensate for the losses suffered.

Fraud, as previously discussed, involves intentional deceit, and carries various legal implications. Now, let us consider the aspect of mistake. Mistake renders a contract void, meaning it has no legal recognition or existence from the very beginning. This is like the

concept of "null and void" used in marriage law, where a marriage is deemed to have never taken place in the eyes of the law.

In contract law, if the court concludes that any of the grounds we have discussed apply, the contract is deemed to be as if it never existed from the outset. Consequently, the contract lacks enforceability. However, it is worth mentioning that void agreements, which lack essential ingredients right from the inception stage, differ from void agreements that are discovered later. Let us delve into this aspect further.

Voidness can enter a contract at a later point in time, even though it was initially assumed to be valid. The existence of certain assumptions is crucial for a contract to be considered valid. If these assumptions are absent, the contract becomes void. However, certain aspects of voidness can arise at a later stage. We will explore this topic in more detail.

In cases where a contract is discovered to be void, section 65 clearly states that the principle of unjust enrichment applies. Despite lacking legal recognition, if the parties have gained unfair advantages or received unjust enrichment, they are legally obligated to return the value acquired. This principle ensures fairness and rectification of any undeserved benefits gained by either party. This is how the law operates in such situations.

Void contracts can have remedies before a court of law, with the final judgment on whether a contract is void or voidable depending on the proven grounds. Mistake is a category that makes an agreement void, and it can be divided into two types: mistake of law and mistake of fact.

Mistake of law occurs when one is unaware of the legal provisions applicable to the contract. However, in a democratic country like ours, ignorance of the law is not considered a valid excuse. The principle of "ignorance of law is no excuse" applies across criminal and civil law. Allowing ignorance as an excuse would set a precedent for others to plead the same, which is why it is not permitted.

Mistake of fact, on the other hand, refers to a misunderstanding or error in judgment. While not everyone is expected to possess perfect knowledge of the law, individuals should be aware of the laws that apply to their business, domain, or contracts. For instance, when driving a car, knowledge of traffic regulations and the requirement of a driving license is necessary. Claiming ignorance of such laws would not be considered a valid excuse.

In the domestic context, mistake of law is not a permissible ground to set aside a contract. The law assumes that individuals should be aware of the laws governing their actions before entering into a contract. However, there is some leniency provided for foreign law or the laws of foreign countries. In cases where a contract involves foreign law, an individual can plead mistake of foreign law. If they can convince the court that there was a genuine misunderstanding of the law, the contract may be set aside as void.

It is not reasonable to expect individuals to have comprehensive knowledge of the laws of every jurisdiction or country. The Indian Contract Act acknowledges this by allowing parties to plead mistake of foreign law when relevant. However, it is crucial for at least one party to have knowledge of the applicable law in their respective jurisdiction. This ensures that both parties have a shared understanding of the legal framework under which the contract is formed.

It is important to note that in India, unlike in common law jurisdictions, mistake of law by only one party is not recognized as a valid ground for setting aside a contract. The requirement is that both parties must have a mutual mistake of foreign law for it to be considered.

"It is not voidability, but rather void. In cases where both parties are under a mutual mistake, particularly a mistake related to foreign law, the court may declare the contract void. This exception applies to mistakes of fact, such as the subject matter of the contract, the identity of the contracting party, quality of goods, quantity, title, or price. However, it's important to note that unilateral mistakes are not recognized as grounds for voiding a contract under Indian law. The Indian Contract Act of 1872 explicitly states that only bilateral mistakes, where both parties are mistaken, can render a contract void.

Looking back at historical case laws, international trade existed even in the past when communication was challenging. Despite the difficulties, trade took place between India and London, and the Silk Route played a significant role as well. These circumstances often led to mistakes of fact, including misunderstandings about the subject matter of the contract. Consensus ad idem, or agreeing to the same thing in the same sense, was difficult to achieve across jurisdictions. For instance, in the case of *Ex-Peerless*, a mistake arose regarding which ship the goods should be sent on—one party referred to the October ship while the other referred to the January ship.

Let us consider an interesting Indian case, ITC versus Fernandez. ITC, a tobacco company, sought to diversify its business into fishing and approached boat maker Fernandez to construct boats for them. Fernandez began building the boats based on the contract. However, when the boats were ready, it became apparent that they were trawlers and not suitable for deep-sea fishing as ITC had expected. This discrepancy created a mismatch of expectations, with ITC seeking to void the contract. However, the court ruled that the mistake in this case was unilateral and not bilateral. Fernandez had fulfilled the contract according to his capacity and understanding, and ITC's lack of proper order and market research contributed to the mistake. Therefore, the court held that the contract could only be voidable, not void, and ITC would need to prove undue influence, coercion, misrepresentation, or fraud for it to be set aside.

While bilateral mistakes of fact can lead to voiding a contract, unilateral mistakes do not hold the same weight under Indian law. Unilateral mistakes can only make a contract voidable, and additional elements like undue influence or misrepresentation need to be proven for it to be set aside. This highlights the challenges surrounding mistakes in contracts, as courts are reluctant to declare a contract void unless both parties genuinely misunderstood the same aspects of the contract.

In contract law, it is important for sellers to have a clear understanding of what they are selling and delivering. If a mistake occurs, it is typically attributed to the workers and not the seller. Unilateral mistakes are generally not accepted as grounds for voiding a contract under Indian contract laws. Courts are usually involved when one party challenges the contract while the other party denies the mistake.

The concept of mistake as to the identity of parties in contract law helps us understand how the law evolved and established rules for acceptable contracts. Two notable cases to study are Phillips v. Brooks Limited and Lewis v. Avery. In the Phillips v. Brooks Limited case, a jeweler mistakenly sold a ring to an imposter who claimed to be a respected individual. The imposter then pawned the ring and disappeared. When the jeweler discovered the fraud, they demanded the ring back from the pawnbroker, arguing that there was a mistake as to the identity of the parties, rendering the contract void.

However, the court ruled in favor of Brooks Limited (the pawnbroker) because they had accepted the pledge in good faith and without knowledge of any defects. The court held that the pledge was valid and enforceable, as it was made in good faith. The court also

emphasized that the jeweler should have exercised more caution and verification before accepting the imposter's claims.

In the *Lewis v. Avery* case, a person claimed to have a valid ticket and took possession of a car based on that claim. Mistake as to the identity of parties was raised as a defense. However, the court shifted its stance over time and started requiring mistakes on both sides of the contract for it to be void. In these cases, the imposter knew the identity of the parties, while the other party made the mistake. Unilateral mistakes were not considered sufficient grounds for voiding the contract.

It is worth noting that the common law cases discussed here reflect the historical context and lenient approach taken by judges at the time. However, Indian contract law has always been clear that for a contract to be void due to a mistake, the error must be mutual, indicating a lack of consensus ad idem (agreement on the same thing in the same sense) by both parties.

To conclude, understanding the concept of free consent in contracts involves recognizing the various grounds that can vitiate consent. Mistake is one such ground, which can make a contract void. However, in India, for a mistake to be recognized, it must be bilateral, and the error of consent should be mutual. Mistakes that result from one party's failure to verify or exercise due diligence are typically not accepted as grounds for voiding a contract.