

COERCION

The section 15 does not require that coercion must proceed from a party to the contract; nor is it necessary that subject of the coercion must be the other contracting party, it may be directed against any third person whatever. The essential ingredients of coercion are, Committing or threatening to commit any act forbidden by the India Penal Code, or the unlawful detaining or threatening to detain any property to the prejudice of any person whatever, or With the intention of causing any person to enter into an agreement, or It is to be noted that is immaterial whether the India Penal Code is or is not in force at the place where the coercion is employed.

Coercion and Undue Influence

Definition of Coercion

Definition of Coercion: 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.

Effects of Coercion

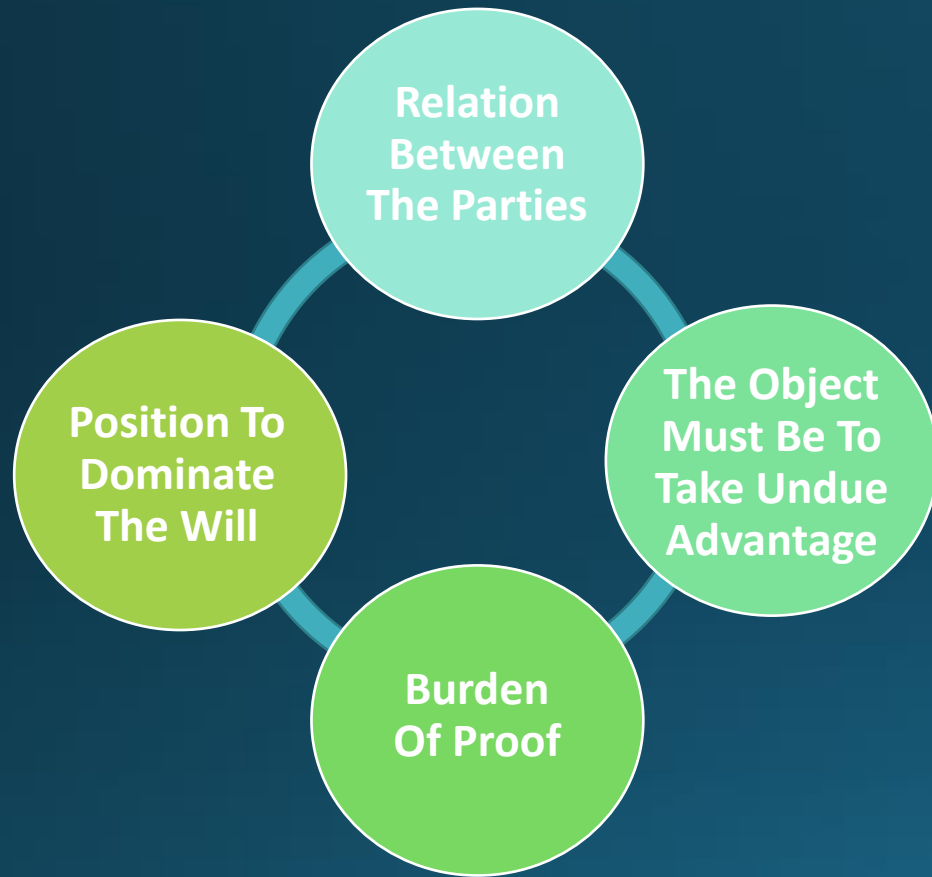
Effects of coercion: Contract induced by coercion is voidable at the option of the party whose consent was so obtained. As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received. A person to whom money has been paid or anything delivered under coercion must repay or return it.

Definition of Undue Influence

Undue Influence: "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 he uses that position to obtain an unfair advantage over the other".

Power To Set Aside Contract Induced By Undue Influence

Power To Set Aside Contract Induced By Undue Influence: 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 it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.



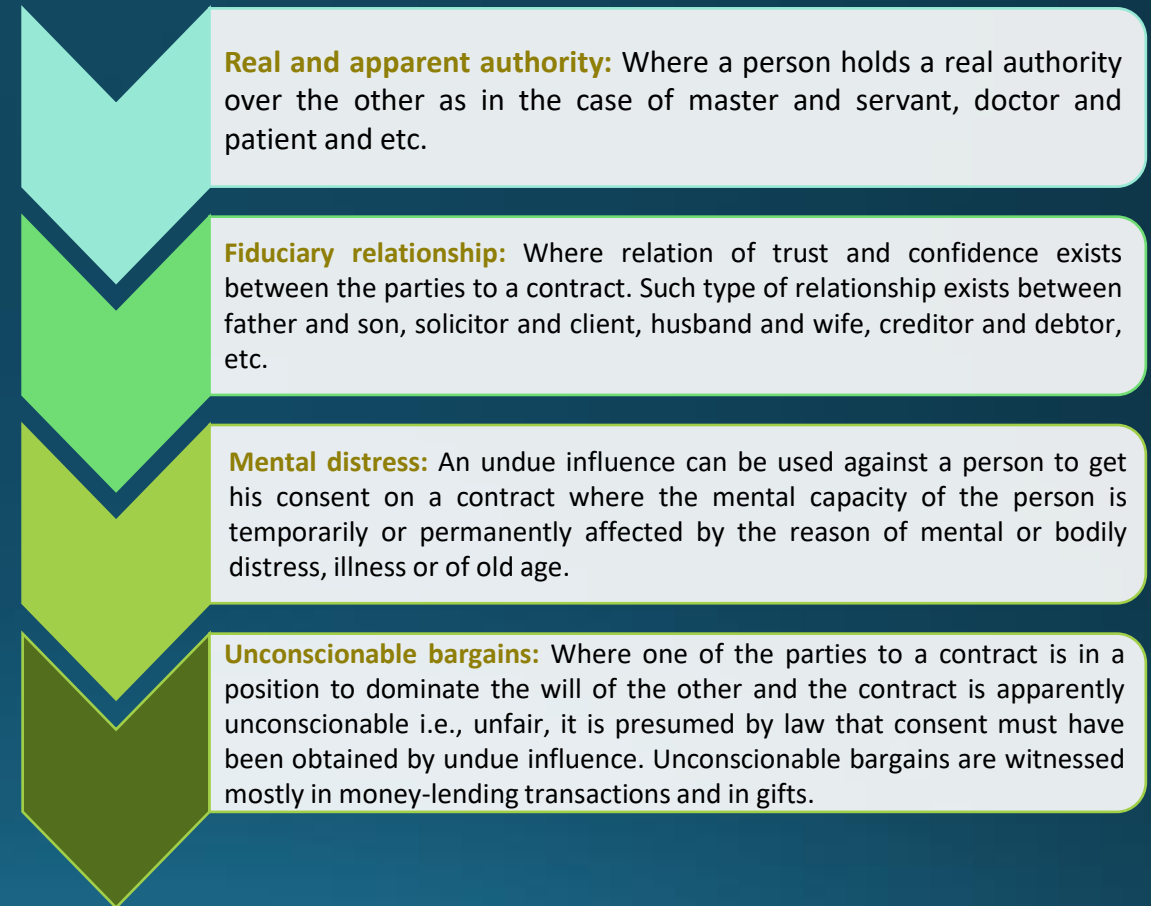
Relation between the parties: A person can be influenced by the other when a near relation between the two exists.

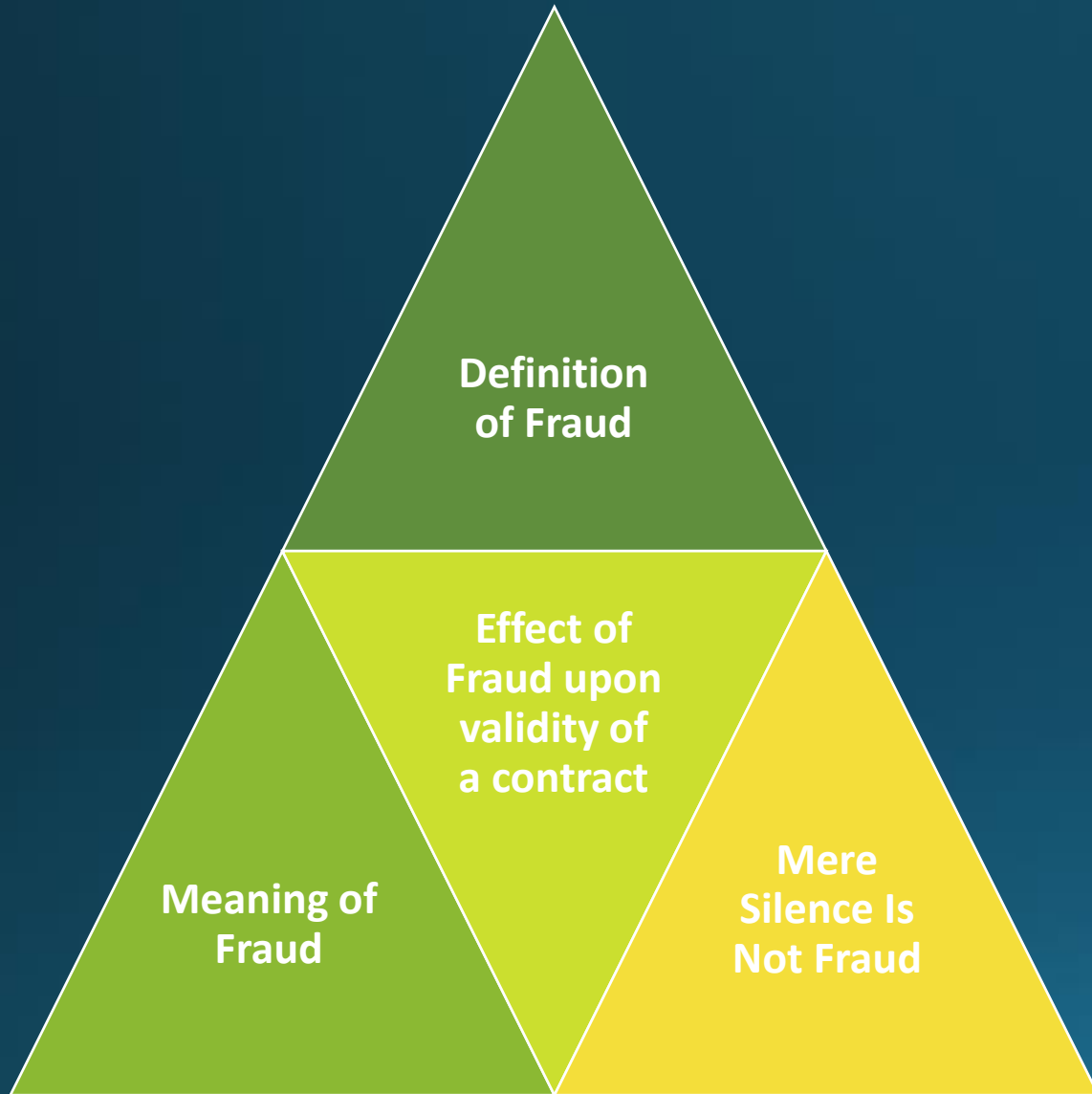
Position to dominate the will: Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the circumstances are, Real and apparent authority, Fiduciary relationship, Mental distress, and Unconscionable bargains.

The object must be to take undue advantage: Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

Burden of proof: The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

Position to Dominate the will Under Undue Influence





Definition of Fraud: 'Fraud' means and includes any of the acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract, any other act fitted to deceive, and any such act or omission as the law specially declares to be fraudulent.

Meaning of Fraud: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Mere silence is not fraud: A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly there is no duty to disclose facts which are within the knowledge of both the parties.

Effect of Fraud upon validity of a contract: When the consent to an agreement is caused by the fraud, the contract is voidable at option of the party defrauded and he has the remedies that, He can rescind the contract within a reasonable time, He can sue for damages, and He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

Duty Of Person To Speak

Contracts of Insurance

Fiduciary Relationship

Contracts Of Family Settlement

Contracts Of Marriage

Share Allotment Contracts

Where The Silence Itself Is Equivalent To Speech

Duty of person to speak: Where the circumstances of the case are such that it is the duty of the person observing silence to speak. For example, in contracts of uberrimae dei (contracts of utmost good faith).

Fiduciary Relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.

Contracts of Insurance: In contracts of marine, re and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.

Contracts of marriage: Every material fact must be disclosed by the parties to a contract of marriage.

Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.

Share Allotment contracts: Persons issuing 'Prospectus' at the time of public issue of shares/ debentures by a joint stock company have to disclose all material facts within their knowledge.

Where the silence itself is equivalent to speech: For example, A says to B "If you do not deny it, I shall assume that the horse is sound." A says nothing. His silence amounts to speech.

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