

Free Consent and Void Agreements

CONSENT · COERCION · UNDUE INFLUENCE · FRAUD · MISREPRESENTATION · MISTAKE · EXPRESSLY VOID AGREEMENTS

Comprehensive Exam Revision Handout

1 CORE CONCEPT — CONSENT & FREE CONSENT

Consent S.13

Two or more persons consent when they **agree upon the same thing in the same sense** (identity of minds). No consent → **no agreement**.
Babar offers to Azam's Alto; Azam accepts thinking of his Cuore → no consent at all.

Coercion S.15

Undue influence S.16

Fraud S.17

Misrepresentation S.18

VOIDABLE at option of the party whose consent was so caused

Bilateral mistake of fact / foreign law

VOID agreement

Unilateral mistake / mistake of Pakistani law

VALID — not voidable

2 COERCION S.15

Coercion = committing or threatening to commit any act forbidden by the Pakistan Penal Code, or unlawfully detaining or threatening to detain any property, to the prejudice of any person, with the intention of causing any person to enter into an agreement.

PPC in force? Immaterial

It is immaterial whether the PPC is in force where coercion is employed — if the suit is in Pakistan, PPC applies.
Criminal intimidation on an English ship; suit at Karachi → coercion.

By / against anyone

May be exercised **by any person** and directed **against any person** — even a **stranger** to the contract.
Threat to kill seller's daughter → coercion.

Effects

- **Voidable** at option of coerced party **S.19**
- Rescinding party must **restore benefits** received **S.64**
- Money paid / thing delivered under coercion must be **repaid / returned** **S.72**

3 UNDUE INFLUENCE S.16

Where the relations between the parties are such that one is **in a position to dominate the will** of the other **and uses that position to obtain an unfair advantage**.

Presumed position to dominate — a person is deemed to dominate where:

(a) Real or apparent authority

Tax officer—taxpayer · Police officer—accused · Employer—employee

(b) Fiduciary relation

Parent—child · Guardian—minor · Advocate—client · Trustee—beneficiary · Fiancé—fiancée

(c) Mental capacity affected

(temporarily/permanently) by age, illness, mental or bodily distress
Doctor—patient · Medical attendant—patient · Family member—enfeebled old man

Burden of proof S.16

If the dominant person contracts with the other and the transaction appears **unconscionable**, the burden of proving **no undue influence** lies on the **person in a position to dominate**.
Teacher sold land to student at market price, full facts given, independent advice taken → valid.

Effect S.19A

Voidable at option of the influenced party. Court may set it aside **absolutely**, or, if that party received benefits, on **terms the Court thinks just**.
Money-lender's double bond → Court may order repayment of original sum with just interest.

4 COMPARISON — COERCION vs UNDUE INFLUENCE

Basis	Coercion	Undue Influence
1. Consent	By threat of / committing an offence	By dominating the will
2. Pressure	Physical	Moral (mental)
3. Relationship	May or may not be related	Parties are related in some way
4. Objective	To compel entry into contract	To obtain unfair advantage
5. Criminal liability	Incurred — illegal	Not incurred
6. On whom	May be on a stranger	Only on the party whose consent is desired
7. By whom	May be by a stranger	Only by a party to the contract
8. Onus of proof	On the party seeking relief from coercion	On the party in a position to dominate
9. Benefit	Aggrieved party has to restore benefit	May or may not restore

5 FRAUD S.17

Acts committed by a **party to the contract**, or with his **connivance**, or by his **agent**, with **intent to deceive** the other party (or his agent) or to **induce him to enter** the contract:

(a) False suggestion

Suggesting as a fact what is **not true**, by one who **does not believe** it true.
Local goods sold as imported.

(b) Active concealment

of a fact by one having knowledge or belief of it.
Cracks in furniture hidden by polish.

(c) Promise without intention

of performing it.
Buying on credit knowing oneself insolvent.

(d) Any other act fitted to deceive

Prospectus implying profits when dividends came from reserves.

(e) Act/omission declared fraudulent by law

Not disclosing a mortgage when legally obliged.

Mere opinion / self-praise

"In my opinion my TVs are the best" → **not fraud**.

🗣️ Silence as fraud — Rule & Exceptions

Mere silence about facts affecting willingness

NOT fraud (seller silent about unsound horse at auction)

UNLESS

(a) **Duty to speak** — e.g. fiduciary relation (father selling to daughter just come of age)

(b) Silence is **equivalent to speech** ("if you don't deny, I'll assume it's sound")

Note: Islamic commercial law emphasises transparency and prohibits concealment of material defects; hence the silence provisions are not practically applicable in Pakistan.

6 MISREPRESENTATION S.18 & REMEDIES S.19

(a) Unwarranted assertion

Positive assertion, **not warranted by the maker's information**, of what is untrue, **though he believes it true**.
Incorrect facts about a mine, honestly believed.

(b) Breach of duty

Without intent to deceive, gains an **advantage** by misleading another to his prejudice.
Not informing buyer that sales fell from Rs. 50m to 35m.

(c) Innocent mistake as to substance

Causing, however innocently, a party to make a **mistake as to the substance** of the subject matter.
"Bike is free from defects" — built-in defect.

Remedies of the deceived party

- Contract is **voidable** at his option — may **rescind**
- Or **insist on performance** and be put in the position he would have been in **if the representation were true**

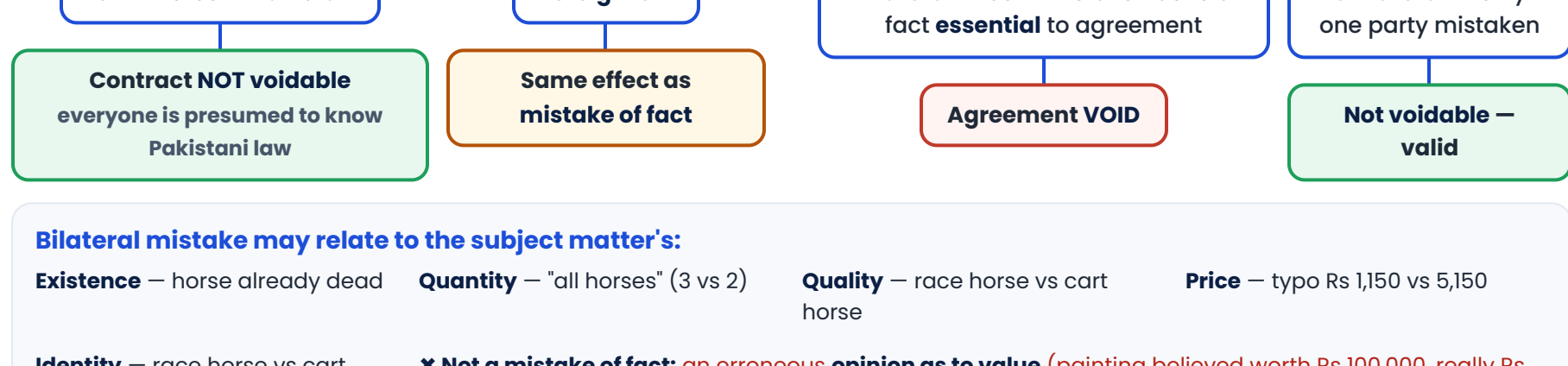
Cannot rescind if...

- The fraud/misrepresentation **did not cause** his consent (e.g. statement made **after** purchase)
- He had the **means of discovering the truth with ordinary diligence** (misrepresentation / fraudulent silence)

Basis	Fraud	Misrepresentation
Intention	Intention to deceive	Innocent — no intent to deceive
Remedy	Civil wrong — damages in addition to cancellation	Only avoid the contract; damages at Court's discretion

7 MISTAKE — DECISION ROADMAP

Mistake (not defined in the Act) = an **erroneous belief, at contracting, that certain facts are true**. Effect depends on: **law or fact?** and, if fact, **bilateral or unilateral?**



Bilateral mistake may relate to the subject matter's:

Existence — horse already dead **Quantity** — "all horses" (3 vs 2) **Quality** — race horse vs cart horse **Price** — typo Rs 1,150 vs 5,150

Identity — race horse vs cart horse **✖ Not a mistake of fact: an erroneous opinion as to value** (painting believed worth Rs 100,000, really Rs 10,000 → valid)

S.72: Money paid or anything delivered **by mistake** (or under coercion) must be **repaid or returned**.

8 EXPRESSLY DECLARED VOID AGREEMENTS & EXCEPTIONS

Agreement	Rule — VOID	Exception — VALID
Restraint of marriage S.26	Restraint of marriage of any person other than a minor <i>Promise not to marry Salman.</i>	Restraint of marriage of a minor . A promise to marry a particular person is not a restraint.
Restraint of trade S.27	Restraint from a lawful profession, trade or business — void to that extent <i>Rival paid to stop business in a locality → void.</i>	Sale of goodwill: seller may agree not to carry on a similar business , within specified local limits , so long as buyer (or his successor) carries on a like business there — limits must be reasonable to the Court. <i>Not in Multan for 2 years → valid; anywhere in Pakistan → void.</i>
Restraint of legal proceedings S.28	Restricting a party absolutely from enforcing rights by usual legal proceedings, or limiting the time to enforce them — void to that extent <i>"Must sue within 2 years" when limitation is 3 years → void.</i>	Not absolute; restriction: written agreement to refer disputes to arbitration ; agreements not to appeal to a higher court; choosing one of two equally competent courts .
Uncertain agreements S.29	Meaning not certain or capable of being made certain <i>"100 tons of oil" — kind unknown → void.</i>	If capable of being made certain — e.g. a coconut-oil dealer's "100 tons of oil".
Wagering agreements S.30	Bet — money/thing payable on happening or not of an uncertain event . No suit to recover winnings or amount entrusted to abide the result. <i>Rs. 10,000 on whether it rains today.</i>	Contribution to a plate/prize of Rs. 500 or above for the winner of a horse race . Not wagers: wrestling prize from ticket sales; genuine share purchases; games of skill.
Collateral to wager S.30A	Agreements knowingly made to further, assist, effect, secure or guarantee a void wager <i>Credit to bet on cricket; stakeholder; commission for support; guardian paying ward's bet.</i>	—

9 APPLICATION TO SCENARIOS

Fiancé takes jewellery

Haroon (fiancé) gets Ghazala's jewellery & apartment for a small profit share → presumed **undue influence** (fiduciary); voidable; **burden on Haroon**.

Caretaker buys land cheap

Zain (caretaker of 90-yr-old Karim) buys Rs. 5m land for Rs. 0.5m → **undue influence**: fiduciary relation / affected mental capacity.

Customer threatens showroom

Threat to damage displayed products to get a new AC → **coercion**; voidable at the seller's option.

Silent on structural defects

Buyer asks about defects; seller stays silent → silence = **speech** → fraud; buyer may affirm and claim repair cost (Rs. 5m).

Private price information

Rice trader doesn't disclose price info → **no fiduciary duty** → **not fraud**; repudiation unjustified.

"No court" clause + supply deal

Supply agreement valid; clause barring courts **void** — party may still approach the **Court**; arbitration clause would be valid.

10 COMMON EXAM TRAPS

❗ Coercion must be applied **where PPC is in force** → **immaterial where** it was applied.

❗ Bilateral mistake of fact → **voidable** → **VOID**. Unilateral → **valid**.

❗ Threat to commit **suicide** to get a contract → **coercion** (offence under PPC), **not undue influence**.

❗ Mistake of law has same effect as fact only for **foreign law** — **not Pakistani law**.

❗ Undue influence burden lies on the **dominated person** → **dominant person** (where unconscionable).

❗ Restraint of marriage of a **minor** is **valid**; promise to marry a particular person is not a restraint.

❗ **Creditor-debtor: no presumption** of domination — debtor must prove undue influence.

❗ Prize competitions on **skill** are **wagers** → **not wagers**; Government lottery ticket agreement → **valid**.

❗ Unsoundness of mind affects **capacity**, **not free consent**.

❗ Price "to be fixed by our eldest brother" → **capable of being made certain** → contract binding from the original date.

11 QUICK REVISION BOX

5

Factors vitiating free consent (S. 14)

3

Presumed domination: authority · fiduciary · capacity

9

Coercion vs undue influence differences

Rs. 500+

Horse-race prize — wager exception

- **S. 13** Consent · **S. 14** Free consent · **S. 15** Coercion · **S. 16** Undue influence
- **S. 17** Fraud · **S. 18** Misrepresentation · **S. 19 / 19A** Voidable
- **S. 64** Restitution · **S. 72** Repay/return
- **S. 26** Marriage · **S. 27** Trade · **S. 28** Legal proceedings
- **S. 29** Uncertainty · **S. 30** Wager · **S. 30A** Collateral to wager

Void list & exceptions: Marriage → **minor** · Trade → **goodwill** · Legal proceedings → **arbitration** · Uncertain → **capable of certainty** · Wager → **horse-race prize**.