

**FREE CONSENT**

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- ⦿ Consent- It means the act of assenting or agreeing to an Offer.
  - ⦿ Two or more persons are said to Consent when they agree upon the same thing in the same sense.(Sec.13)

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○ **What is Free Consent?**

**A Consent is said to be free when it is not caused by**

**1.Coersion (Sec.15)**

**2.Undue Influence (Sec.16)**

**3.Fraud (Sec.17)**

**4.Misrepresentation(Sec.18)**

**5.Mistake,subject to the provisions of  
Sec.20,21 and 22 (Sec.14)**

# Case (Bala Debi v.S.Majumdar, 1956, Calcutta)

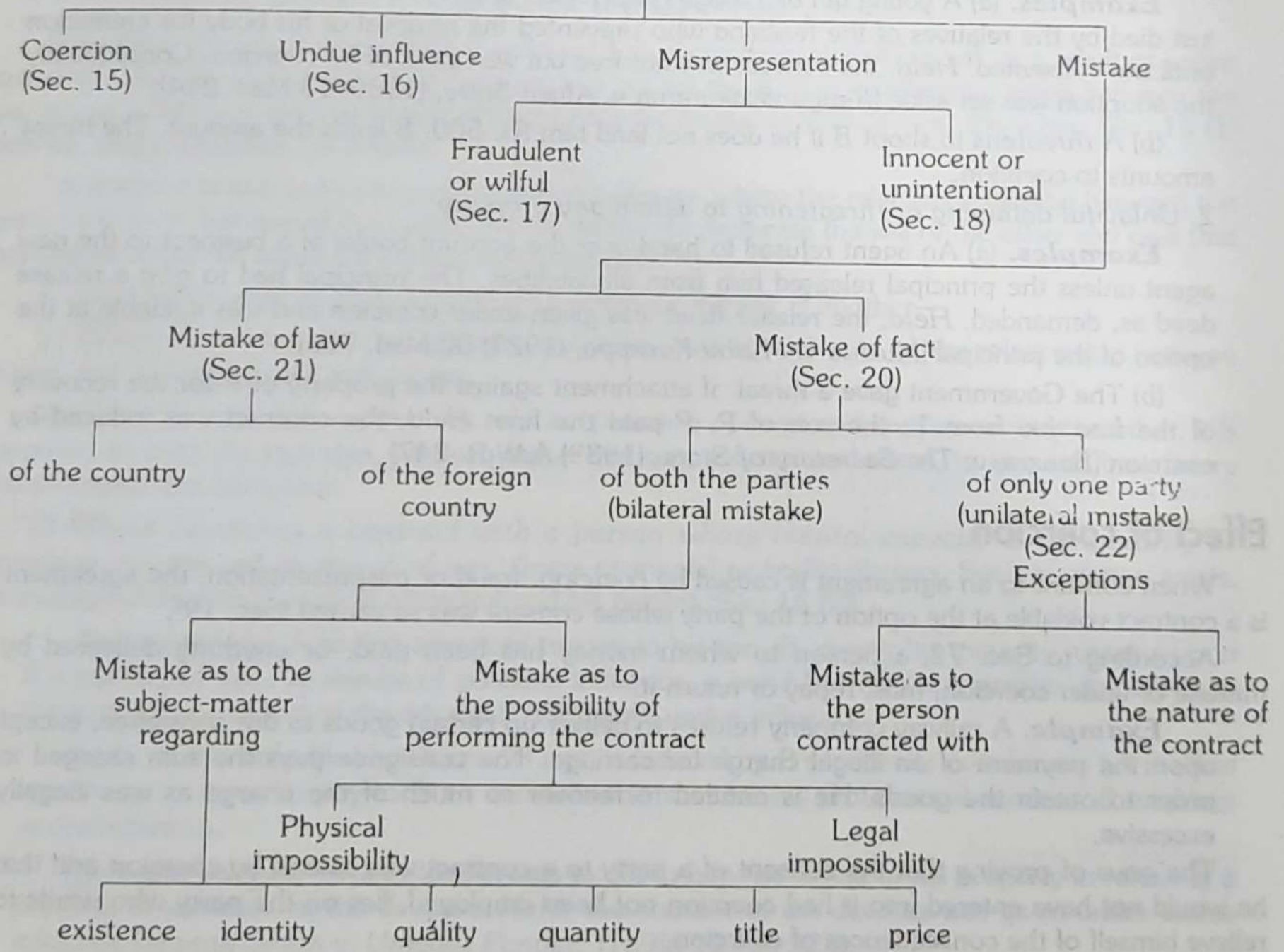
## EXAMPLE

- An illiterate woman executed a deed of gift in favour of her nephew under the impression that she was executing a deed authorising her nephew to manage her lands. Whereas the deed was created by the defendant to transfer her property fraudulently in his name.

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- It was held by the Court that the deed was void and inoperative as the woman never intended to execute such a deed ,nor was the deed ever read or explained to her

- ⦿ In the above case there is Consent but not free.
- ⦿ Where the Consent is caused by Coercion, undue influence, fraud or misrepresentation, such contract is voidable at the option of the party whose consent is so caused.

# Flaw in Consent



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- ⦿ Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code, 1860 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
  - ⦿ It is immaterial whether the Indian Penal Code is or is not in force in the place in which the Coercion is used.



# Effect of Coercion

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- ◉ When Consent to an agreement is caused by Coercion, Fraud or misrepresentation the agreement is voidable at the option of the Party whose consent was so caused.
- ◉ In the case of *Amiraju v. Seshamma* (1917, Madras) the question arose whether a threat to commit suicide amounts to coercion. It was held to be Coercion

# Undue Influence

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- Section 16 of the Indian Contract Act states that
- 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 that position to obtain an unfair advantages over the other.

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- The following relationships usually raise a presumption of Undue Influence
  - Parent and Child
  - Guardian and Ward
  - Trustee and Beneficiary
  - Religious advisor and Disciple
  - Doctor and Patient
  - Solicitor and Client
  - Fiance and Fiancee

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- ◉ There is no presumption of undue influence in the relationship of
  - ◉ Landlord and Tenant
  - ◉ Creditor and Debtor, and
  - ◉ Husband and Wife

# Misrepresentation and Fraud

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- ⦿ A Statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter into a contract is known as a representation.
- ⦿ It may be expressed by words spoken or written or implied from the acts and conduct of parties.

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- A representation ,when wrongly made , either innocently or intentionally ,is a misrepresentation.
  - Mis-Representation may be
    - (i)An innocent or unintentional misrepresentation
    - i)An intentional ,deliberate or willful misrepresentation with an intent to deceive or defraud the other party.