

16th September, 2020

MISTAKE OF LAW IN CONTRACTS AND ITS IMPLICATIONS



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A Introduction

- 1 The Contractual relationship between various parties are framed, validated and governed under the Indian Contract Act, 1872 (for short “**the said Act**”).
- 2 In the Contract, both parties must give their consent voluntarily and it must be genuine. The principle of consensus-ad-idem is followed which means that the parties entering into the contract ‘must mean the same thing in the same sense’.
- 3 If the consent of the parties to a Contract is given under a “Mistake” than this will raise the question pertaining to the validity of the Contract.
- 4 In layman language, the term “Mistake” refers to an incorrect belief that is innocent in nature, which leads one party to misunderstand the other. The term “Mistake” is not defined in the said Act. However, the concept related to Mistake is dealt under Section 20, 21 and 22 of the said Act.
- 5 There may be two kinds of mistake – (1) Mistake of Law and (2) Mistake of Fact. The exact demarcation between legal error and factual error is often blurred and hard to determine.

B Concept of Mistake of Law

- 1 Mistake of Law means any contract which is performed by the parties in ignorance of the law, which is essential for the performance of that Contract.
- 2 Section 21 of the said Act deals with ‘Effect of Mistake as to law’ and it states that:
“A contract is not voidable because it was caused by a mistake as to any law in force in India; but a mistake as to a law not in force in India has the same effect as a mistake of fact.”
- 3 In general language, Section 21 of the said Act states that relief is not given against the mistake of law. A person cannot go back upon what he has deliberately done or excuse himself from the liability of wrongful act or offense, merely because he alleges that he acted under a misrepresentation of law.

C Concept of Mistake of Law

- 1 A mistake of law may relate to the mistake of the Indian Laws, or it can be a mistake of Foreign Laws.
- 2 Mistake with regard to Indian Law:
 - a “Ignorantia Juris non excusat” is a Latin maxim which means “Ignorance of the law is not excused”. This means either party cannot simply claim, it was unaware of the law.
 - b If, a person takes part in a contract without knowing any specific provisions of Indian Law (which is essential for that contract), then Contract is not voidable because everyone is supposed and expected to know the law of his country.
 - c Therefore, no party shall be allowed to claim any relief on the grounds of ignorance of Indian law. This will also include a wrong interpretation of any legal provisions.
 - d For example: As per the provisions of Indian law, A has to recover the amount of loan within 3 months from the due date, after that time-barred debt is imposed. Now if, A does not show any interest in the recovery of loan amount during these 3 months because of not knowing the law (mistake of law), then A cannot take it up as an excuse or defence.
- 3 Mistake with regard to the Foreign Law:
 - a As per Section 21 of the said Act, ignorance of a foreign law is not given a similar treatment as given to the ignorance of Indian Law.
 - b Ignorance of the foreign law is given some leeway, the parties are not expected to know all the law of other foreign countries and their meaning.
 - c Hence, a mistake of foreign law is in fact treated as a mistake of fact under the said Act and the Mistake of fact is governed by Section 20 and 22 of the said Act.
 - Section 21 states that when consent to a contract is gained due to a bilateral mistake of fact (i.e. mistake by both the parties to a contract) then the Contract is said to be void.
 - But when the mistake occurs due to a unilateral mistake of fact (i.e. mistake by one party to a contract), then the

- Contract is not voidable as per Section 22 of the said Act.
- d As such, in case of mistake of foreign law by both the parties, the contract is said to be void. But in case of mistake of foreign law by one party, the contract is not voidable.
- D Circumstances under which Mistake of Law may serve as a defense:**
 - 1 In most cases, only mistakes of fact can serve as defense. But, there are a few situations in which a mistake of law can be a defense and the same are as follows:
 - a When the law is not published
 - b When relied upon a statute that was later overturned or held to be unconstitutional
 - c When relied upon a judicial decision
 - d When relied upon an interpretation by an appropriate official may include judges or Government Authorities

E Conclusion:

- 1 The validity of a contract is hindered, when the consent of the parties to a contract is gained due to a mistake.
- 2 Mistake of law and/or ignorance of law is not an excuse for the non-performance of duties under the contract.
- 3 In case of mistake of law in force in India, the Contract is not voidable and the parties are bound by the terms and conditions contained in the Contract.
- 4 However, in case of mistake with regard to foreign law:
 - a By both the parties, the Contract is said to be void.
 - b By one party - Contract is not voidable i.e. no effect on Contract and the parties are bound by the terms and conditions contained in the Contract.