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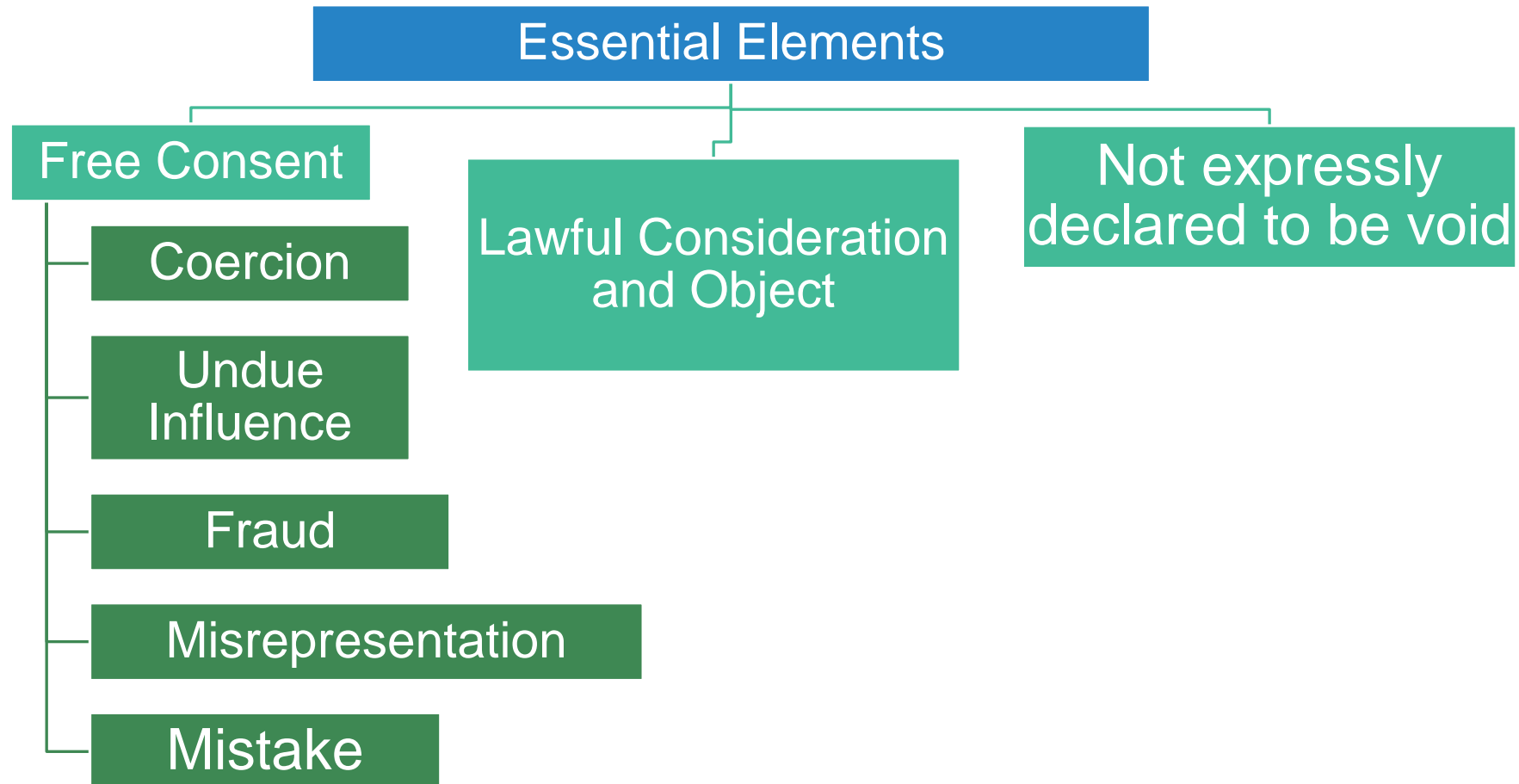
# **VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI**

## **FOUNDATION LEVEL PAPER 2A: BUSINESS LAWS**

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# Other Essential Elements of a Contract





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# FREE CONSENT



# Meaning – Free Consent

Consent means “willingness”. The willingness of the parties to a contract must be free. According to **Section 14**, consent is said to be free when it is not caused by:-

- COERSION
- UNDUE INFLUENCE
- FRAUD
- MISREPRESENTATION
- MISTAKE





# Coercion – Section 15

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- Coercion means to force or to compel him or her to act in a particular manner.
- In other words, a person uses ‘coercion’ against another if he threatens that other person.





# Effects of Coercion

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- Example - A threatens to shoot B if he (B) does not release him (A) from a debt which A owes to B. B releases A under the threat. The release has been brought about by Coercion.
- When consent to an agreement is caused by coercion, the agreement is a contract voidable at the option of the party whose consent was so caused (**Section 19**).
- A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.



# Undue Influence – Section 16

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- Undue influence occurs when an individual is able to persuade another's decisions due to the relationship between the two parties.
- Often, one of the parties is in a position of power over the other due to elevated status, higher education, or emotional ties





# A person is deemed to be in a position to dominate the will of another

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- (a) Where he holds real or apparent authority over the other. E.g., the relationship between master and servant, doctor and patient.
- (b) Where he stands in a fiduciary relation. [Relation of trust and confidence] to the other. E.g., father and son, trustee and beneficiary, lawyer and client.
- (c) Where he makes a contract with person whose mental capacity is temporarily or permanently affected by reason of age, illness or bodily distress. E.g., Between a medical attendant and his patient.





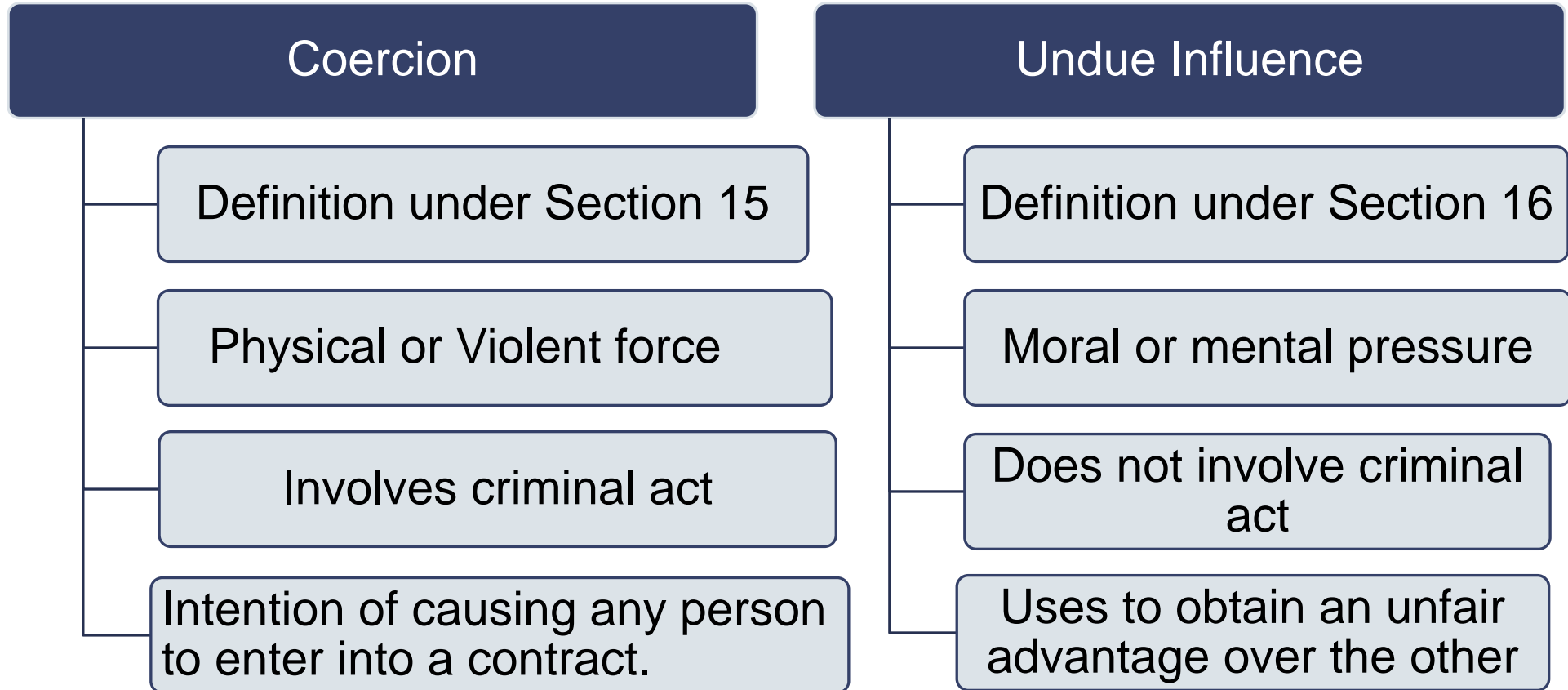
# Examples

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- (a) A spiritual guru induced his devotee to gift to him the whole of his property in return of a promise of salvation of the devotee. Held, the consent of the devotee was given under undue influence. Here the relationship was fiduciary relationship between Guru and devotee and Guru was in a position to dominate the will of devotee.
- (b) An illiterate elderly woman made a deed of gift of practically the whole of her property to her nephew who managed her affairs. Held, the gift should be set aside on the ground of undue influence.



# Coercion Vs Undue Influence





# Fraud - Section 17

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1. The suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true;
2. The active concealment of a fact by a person having knowledge or belief of the fact;
3. A promise made without any intention of performing it;
4. Any other act fitted to deceive;
5. Any such act or omission as the law specially declares to be fraudulent.



# Mere silence is not fraud

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1. H sold to W some pigs which were to his knowledge suffering from fever. The pigs were sold with all faults and H did not disclose the fact of fever to W. Here there was no fraud { *Word Vs Hobbs (1978)* }
2. A sells by auction to B, a horse which A knows to be unsound, A says nothing to B about the unsoundness of horse. This is not fraud by A.



# Misrepresentation – Section 18

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A misrepresentation is a false statement of a material fact innocently made by one party which affects the other party's decision in agreeing to a contract .

“***Misrepresentation***” is a misstatement of a material fact made innocently with an honest belief as to it’s truth or nondisclosure of a material fact, without any intent to deceive the other party.



# Examples

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- A while selling his mare to B, tells him that the mare is thoroughly sound. A genuinely believes the mare to be sound although **he has no sufficient ground** for the belief. Later on B finds the mare to be unsound. The representation made by A is a misrepresentation.
- A makes a positive statement to B that C will be made the director of a company. A is making this statement on the basis of information received from M and not from C. B applies for shares on the faith of statement which turns out to be false. The statement amounts to misrepresentation because the information received second hand did not warrant A to make the positive statement to B.



# Misrepresentation Vs Fraud

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The statement may be:

- (I) An innocent or unintentional misrepresentation, or
- (II) An intentional, deliberate or wilful misrepresentation with an intent to *deceive or defraud the* other party.

The former is called “**MISREPRESENTATION**” and the latter “**FRAUD**”



# Mistake

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In contract law, a mistake is said to have occurred where the parties intending to do one thing **by error** do something else. There are two kinds of mistakes:

- (1) Mistake of law, or
- (2) Mistake of fact







# Types of Mistake





# LEGALITY OF OBJECT AND CONSIDERTION

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- An agreement is a contract if it is made for a lawful consideration and with a lawful object (**Sec. 10**)
- Every agreement of which the object or consideration is unlawful is void.
- Example: A, B and C enter into agreement for the division among them of gains acquired by fraud. The agreement is void, as its object, i.e., acquisition of gains by fraud is unlawful.



# LEGALITY OF OBJECT AND CONSIDERTION

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The consideration or object of an agreement is unlawful, if

1. it is forbidden by law; or
2. if it is of such a nature that, if permitted it would defeat the provisions of any law; or
3. it is fraudulent; or
4. it involves or implies injury to the person or property of another; or
5. the Court regards it as immoral, or
6. opposed to public policy.



# VOID AGREEMENTS

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A void agreement is one which is not enforceable by law.

The following agreements are declared to be void.

1. An agreement made by incompetent persons (Sec.11).
2. Agreement made under mutual mistake of fact (Sec.20)
3. Agreements the consideration or object is unlawful (Sec.23)
4. Agreements the consideration or object is unlawful in part. (Sec.24)
5. Agreement made without consideration is void ( Sec.25)



# VOID AGREEMENTS

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6. Agreement in restraint of marriage (Sec.26)
7. Agreement in restraint of trade (Sec.27)
8. Agreement in restraint of legal proceedings (Sec.28)
9. Agreement the meaning of which is uncertain (Sec.29)
10. Agreement by way of wager (Sec.30)
11. Agreement to do impossible acts (Sec.56)



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**THANK YOU**