

B. Com. Sem. III

Subject - Business Law

Topic - Free Consent (Part-5)

Mistake

According to Sec. 20-22, Mistake may be defined as erroneous belief concerning some fact. Parties entering into contract must not be under any error should agree on the same thing in the same sense. There should be ad idem. Parties must give their genuine consent where parties do not agree upon in the same sense, there will be no contract.

In other words, Mistake means erroneous belief, when there is an error in the mind of both the parties to a contract regarding something, that contract is considered to be influenced by mistake.

Mistake may be divided into two types -

I. Mistake of fact - It can be divided as under:

a. Bilateral Mistake - The main characteristics of a bilateral mistake are as follows -

1. The mistake must be committed by both the parties.
2. The mistake must be related to a matter of fact.
3. The fact about which the mistake is made must be an essential part of the agreement.

Types of Bilateral Mistake -

a. Mistake as to the Subject matter
Subject matter can be the following types -

- | | |
|-------------------|------------------|
| (i) Re-existence | (ii) Re-title |
| (iii) Re-identity | (iv) Re-price |
| (v) Re-quality | (vi) Re-quantity |

b. Mistake as to impossibility of performance of contract - It may be of the following two types.

- (i) Physical impossibility
- (ii) Legal impossibility

II Mistake by Law - Mistake at law can be divided into two types -

1. Mistake as to Indian Law
2. Mistake as to Foreign Law.

According to Act, when both parties to the contract make a mistake as to an essential fact, the contract becomes void.