

## **CHAPTER 9-03 CONSENT**

### **9-03-01. Requisites of consent.**

The consent of the parties to a contract must be:

1. Free;
2. Mutual; and
3. Communicated by each to the other.

### **9-03-02. Absence of free consent - Effect.**

A consent which is not free is not absolutely void, but may be rescinded by the parties in the manner prescribed by chapter 9-09.

### **9-03-03. What renders apparent consent not free.**

An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or
5. Mistake.

### **9-03-04. When consent deemed voidable.**

Consent is deemed to have been obtained through duress, menace, fraud, undue influence, or mistake only when it would not have been given except for one or more of them.

### **9-03-05. Duress defined.**

Duress consists in:

1. Unlawful confinement of the person of a party to a contract, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
2. Unlawful detention of the property of any such person; or
3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

### **9-03-06. Menace defined.**

Menace consists in a threat:

1. Of unlawful confinement of the person of a party to a contract, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife, or of confinement of such person, lawful in form but fraudulently obtained, or fraudulently made unjustly harassing or oppressive;
2. Of unlawful and violent injury to the person or property of any person specified in subsection 1 hereof; or
3. Of injury to the character of any such person.

### **9-03-07. Fraud classified.**

Fraud is either actual or constructive.

### **9-03-08. Actual fraud defined.**

Actual fraud within the meaning of this title consists in any of the following acts committed by a party to the contract, or with the party's connivance, with intent to deceive another party thereto or to induce the other party to enter into the contract:

1. The suggestion as a fact of that which is not true by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true though that person believes it to be true;

3. The suppression of that which is true by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or
5. Any other act fitted to deceive.

**9-03-09. Constructive fraud defined.**

Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under that person, by misleading another to the other's prejudice or to the prejudice of anyone claiming under the other; or
2. In any such act or omission as the law specially declares to be fraudulent without respect to actual fraud.

**9-03-10. Actual fraud is question of fact.**

Actual fraud is always a question of fact.

**9-03-11. Undue influence defined.**

Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another or who holds a real or apparent authority over that person, of such confidence or authority for the purpose of obtaining an unfair advantage over that person;
2. In taking an unfair advantage of another's weakness of mind; or
3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

**9-03-12. Mistake classified.**

Mistake may be either of fact or of law.

**9-03-13. Mistake of fact defined.**

Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in:

1. An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or
2. Belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing which has not existed.

**9-03-14. Mistake of law defined.**

Mistake of law constitutes a mistake within the meaning of this title only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it and all making substantially the same mistake as to the law; or
2. A misapprehension of the law by one party of which the others are aware at the time of contracting, but which they do not rectify.

**9-03-15. Mistake of foreign laws.**

Mistake of foreign laws is a mistake of fact.

**9-03-16. Mutual consent defined.**

Consent is not mutual unless the parties all agree upon the same thing in the same sense. In certain cases defined in chapter 9-07, they are to be deemed so to agree without regard to the fact.

**9-03-17. Communication of consent.**

Consent can be communicated with effect only by some act or omission of the party contracting by which the party intends to communicate it, or which necessarily tends to such communication.

**9-03-18. Mode of communication of acceptance.**

If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to. In other cases any reasonable and usual mode may be adopted.

**9-03-19. When consent communicated.**

Consent is deemed to be communicated fully between the parties as soon as the party accepting a proposal has put that party's acceptance in the course of transmission to the proposer in conformity to section 9-03-18.

**9-03-20. Acts constituting acceptance.**

Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

**9-03-21. Acceptance must be absolute.**

Except as provided by section 41-02-14, an acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest and which will conclude the person accepting. A qualified acceptance is a new proposal.

**9-03-22. When proposal revocable.**

A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards, except as provided by section 41-02-12.

**9-03-23. How proposal may be revoked.**

A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party in the manner prescribed by sections 9-03-17 and 9-03-19 before the latter's acceptance has been communicated to the former;
2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;
3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or
4. By the death or insanity of the proposer before acceptance of the proposal.

**9-03-24. Ratification as consent.**

A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

**9-03-25. Acceptance of benefit equivalent to consent.**

A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it so far as the facts are known or ought to be known to the person accepting.