CONSENT IN LAW OF CONTRACT (1999). By Meena Rao. Professional Offset, Eknath Box Mfg. Co. Pp 405.

THE ELEMENT inter-linked with human mind and conscience certainly require exhaustive analysis and interpretation. The search of human conscience has always remained a difficult task, which the author the book under review has undertaken in this exclusive treatise.

In the first part of this book, entitled "Concept of Consent and Factors Affecting Free Consent", the author's attention is focussed on the basic concept of consent and a comparative study of the elements of coercion and undue influence as well as fraud and misrepresentation clubbed therein, which may vitiate freedom of consent.

Chapter one objectively describes the concepts of "true consent" and "free consent" for the purpose of ensuring through understanding thereof. The "subjective" or "consensus" theory of the law of contract has been traditionally placed on the highest pedestal of being the foundation theory upon which the entire structure of the law of contract is erected. Consequently, the genuine, absolute and free consent is regarded as one of the most essential ingredient for the formation of a legally binding contract.

According to the author, the flaw in consent, caused by any of the five factors, namely, coercion, undue influence, fraud, misrepresentation and mistake, technically results into the lack of free consent. These factors may either vitiate or defeat the consent itself. Each of these factors has been exhaustively and elaborately interpreted by the author in her unique art of simplification. With the object of tracing and analysing the integrated relationship between these subjective factors through a comparative study, the combination of the factors has been planned in the subsequent chapters.

Chapter two reflects a comparative portrait of the elements of "coercion and undue influence". Without undue risk of misconception, it may broadly be differentiated that, the coercion produces a physical force or fear which is exerted upon the consenting party through actual or threatened violence against him or detention of his property, whereas the undue influence creates a mental or moral pressure which results from confidential or unequal relationship existing between the contracting parties, wherein the superior party abuses his dominating position by obtaining unfair and undue advantage of the other party. Naturally, consent given under exploitation is not free and it impeaches the contract.

Chapter three not only draws the demarcating line between the elements of "misrepresentation and fraud", but also points out their combination or overlapping. In order to properly visualise the concept of "fraud", the author has found it necessary to adequately peruse the concept of "misrepresentation" since the fraud presupposes the misrepresentation and they are intermingled with each other too.

In the second part of this book, entitled: "Mistake as a Factor Vitiating Consent", the author has deliberately preferred to interpret the concept of "mistake" in depth for the significant reason that the doctrine of mistake formulates independent and complex, but not isolated, branch of the law of contract. From the very inception, the law of contract has traditionally incorporated the doctrine of mistake as a separate branch. Mistake is a vital factor, which severely affects the mind, and either vitiates or nullifies the consent, shaking the root of the contract.

While analysing the concept and classification of mistake in chapter four, the author has presented a comparative study of the jurisprudential views prevailing in the various legal systems in vogue such as, Roman, English, American, German and French systems. The relevant reference has been made to the jurisprudence, the law of restitution and the criminal law, which is conspicuous feature of this chapter.

The author has also highlighted the nature of the dilemma of "mistake" in this chapter. The dilemma has occurred because there has never been precise crystallisation of the legal principles specifying the circumstances, which may demand judicial intervention. And numerous judicial decisions have been subjected to conflicting interpretations. The complexity is further accentuated by the unrealistic and harsh approach of the law towards the innocent third party who may be inadvertently involved in eventuality of mistake.

The different classifications of mistake, accompanied by their original sources, are significantly narrated and analysed. The legal effect of mistake is exhaustively interpreted to visualise operation of mistake upon the contract. Further detailed classifications of each major type of mistake are lucidly elaborated and skilfully analysed in the light of ample discussion on voluminous case-law emanating from the original judgements; but at the same time, simplifying various intricacies in mistakes.

Chapter five specifically incorporates classification of mistake of act and fundamental error. As a general rule, a mistake of fact is legally operative upon a contract. Hence, both traditional and current classifications are dealt with, particularly explaining a bifurcation of the bilateral mistake into the common and the mutual mistakes. Broadly, a mistake of fact is trifurcated into three major categories, each of which is amply discussed in respective following chapters.

The important doctrine of fundamental error, occurring from false and fundamental assumption, is outstandingly dealt with by the author as a compendious conception of all operative efforts.

Chapter six deals amply with the common mistakes as to the subject matter of contract, which is marshalled into five categories i.e. mistakes as to existence of subject matter; title and rights in subject matter; substance and quality of subject matter; quality of subject matter and value of subject matter.

Chapter seven incorporates mutual and unilateral mistakes as to promise. Mutual mistake is referred to in context of ambiguity and identity of subject matter of contract. Unilateral Mistake pertains to a mistake as to the terms of a contract.

Chapter eight comprehends complexity of mistake as to identity of contracting party, which is basically a unilateral mistake. A mistake as to identity is bifurcated into two types of contracts:

1. Contracts inter absentes, *i.e.*, contracts in absence of a party.

2. Contracts inter praesentes, *i.e.*, contracts in presence of each other.

The author has also assessed implications of the Pothier's Test, which has originated from the French Law, for determining operation of mistake as to identity of contracting party.

In chapter nine, the author specifically deals with mistakes as to documents because the nature character and contents of the promise involved in a contract may frequently be contained in a contractual document. This mistake is analysed in light of peculiar defence of *non est factum* which may be available to the signor of the contractual document to plead that the document in reality is not his document despite his signature thereon as his mind did not go with his signature.

In the branch of law relating to mistake in contract, the author's distinct contribution in the farm of her own observations, conclusions and solutions for problems of mistake is surely of immense use not only to the research-scholars but also to the law teachers and professionals.

This book will certainly prove to be a fertile resource of advance study of the principles of law of contract to all those who are concerned with commercial world.

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