

**53-11-2. Rescission by party to contract--Grounds.**

A party to a contract may rescind the same in the following cases only:

- (1) If consent of the party rescinding or of any party jointly contracting with him was given by mistake or obtained through duress, fraud, or undue influence exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;
- (2) If through fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part;
- (3) If the consideration becomes entirely void from any cause;
- (4) If such consideration before it is rendered to him fails in a material respect from any cause; or
- (5) By consent of all the other parties.

**Source:** CivC 1877, § 965; CL 1887, § 3589; RCivC 1903, § 1283; RC 1919, § 904; SDC 1939, § 10.0802.

## CHAPTER 53-4

### DURESS, FRAUD, UNDUE INFLUENCE AND MISTAKE

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#### **53-4-1. Apparent consent voidable--Grounds.**

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

- (1) Duress;
- (2) Fraud;
- (3) Undue influence; or
- (4) Mistake.

Source: CivC 1877, § 878; CL 1887, § 3502; RCivC 1903, § 1196; RC 1919, § 811; SDC 1939, § 10.0303.

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#### **53-4-2. Consent deemed voidable--Grounds.**

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

Source: CivC 1877, § 879; CL 1887, § 3503; RCivC 1903, § 1197; RC 1919, § 812; SDC 1939, § 10.0304.

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#### **53-4-3. Duress defined.**

Duress consists in:

- (1) Actual or threatened unlawful confinement of the person of the party, or of husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife; or
- (2) Actual or threatened confinement of any such person or persons lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive; or
- (3) Actual or threatened unlawful violent injury to the person or property of any such person or persons; or
- (4) Actual or threatened injury to the character of any such person or persons; or
- (5) Actual unlawful detention of the property of any such person.

Source: CivC 1877, §§ 880, 881; CL 1887, §§ 3504, 3505; RCivC 1903, §§ 1198, 1199; RC 1919, §§ 813, 814; SDC 1939, § 10.0305.

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#### **53-4-4. Fraud, actual or constructive.**

Fraud is either actual or constructive.

Source: CivC 1877, § 882; CL 1887, § 3506; RCivC 1903, § 1200; RC 1919, § 815; SDC 1939, § 10.0306.

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#### **53-4-5. Actual fraud, acts constituting, question of fact.**

Actual fraud in relation to contracts consists of any of the following acts committed by a party to the contract, or with his connivance, with intent to deceive another party thereto or to induce him 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 he believe 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.

Actual fraud is always a question of fact.

**Source:** CivC 1877, §§ 883, 885; CL 1887, §§ 3507, 3509; RCivC 1903, §§ 1201, 1203; RC 1919, §§ 816, 818; SDC 1939, §§ 10.0307, 10.0309.

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**53-4-6. Constructive fraud, acts constituting.**

Constructive fraud consists:

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

**Source:** CivC 1877, § 884; CL 1887, § 3508; RCivC 1903, § 1202; RC 1919, § 817; SDC 1939, § 10.0308.

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**53-4-7. Undue influence, acts constituting.**

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 him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; or
- (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.

**Source:** CivC 1877, § 886; CL 1887, § 3510; RCivC 1903, § 1204; RC 1919, § 819; SDC 1939, § 10.0310.

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**53-4-8. Mistake, classification.**

Mistake may be either of fact or of law.

**Source:** CivC 1877, § 887; CL 1887, § 3511; RCivC 1903, § 1205; RC 1919, § 820; SDC 1939, § 10.0311.

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**53-4-9. 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.

**Source:** CivC 1877, § 888; CL 1887, § 3512; RCivC 1903, § 1206; RC 1919, § 821; SDC 1939, § 10.0312.

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**53-4-10. Mistake of law defined.**

A mistake of law in relation to consent to contract constitutes a mistake resulting in voidable consent 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.

**Source:** CivC 1877, § 889; CL 1887, § 3513; RCivC 1903, § 1207; RC 1919, § 822; SDC 1939, § 10.0313.

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**53-4-11. Mistake of foreign law--Mistake of fact.**

Mistake of foreign laws is a mistake of fact.

**Source:** CivC 1877, § 890; CL 1887, § 3514; RCivC 1903, § 1208; RC 1919, § 823; SDC 1939, § 10.0314.

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**53-4-12. Provision that contract not avoided by errors in description--Right to rescind for fraud or mistake.**

A provision that errors of description shall not avoid a contract or shall be subject to compensation or both does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract and is not capable of exact and entire compensation.

**Source:** CivC 1877, § 966; CL 1887, § 3590; RCivC 1903, § 1284; RC 1919, § 905; SDC 1939, § 10.0803.