

Analogy of law

Definitions of law

It is possible to describe law as the body of official rules and regulations, generally found in constitutions, legislation, judicial opinions, and the like, that is used to govern a society and to control the behaviour of its members, so Law is a formal mechanism of social control.

John Austin (English jurist born 1790) defined law as "A rule laid down for the guidance of an intelligent being by an intelligent being having power over him."

Professor Hart (Oxford Professor of jurisprudence, born 1907) in his "The Concept of Law" (1961) defined law as a system of rules, a union of primary and secondary rules,

Thomas Hobbes (English philosopher born 1588) defined law as "Law is the formal glue that holds fundamentally disorganized societies together."

Normative jurisprudence asks "what should law be?", while analytic jurisprudence asks "what is law?" John Austin's utilitarian answer was that law is "commands, backed by threat of sanctions, from a sovereign, to whom people have a habit of obedience". Natural lawyers on the other side, such as Jean-Jacques Rousseau, argue that law reflects essentially moral and unchangeable laws of nature. The concept of "natural law" emerged in ancient Greek philosophy concurrently and in connection with the notion of justice, and re-entered the mainstream of Western culture through the writings of Thomas Aquinas, notably his Treatise on Law.

In 1934, the Austrian philosopher Hans Kelsen continued the positivist tradition in his book the Pure Theory of Law. Kelsen believed that although law is separate from morality, it is endowed with "normativity", meaning we ought to obey it. Law tells us what we "should" do. Thus, each legal system can be hypothesized to have a basic norm (Grundnorm) instructing us to obey. Kelsen's major opponent, Carl Schmitt, rejected both positivism and the idea of the rule of law because he did not accept the primacy of abstract normative principles over concrete political positions and decisions. Therefore, Schmitt advocated a jurisprudence of the exception (state of emergency), which denied that legal norms could encompass all of political experience.

Bentham's utilitarian theories remained dominant in law until the 20th century. Later in the 20th century, H. L. A. Hart attacked these theories for simplifications.

Legal philosophy has many branches, with four types being the most common. The most prevalent form of jurisprudence seeks to analyze, explain, classify, and criticize entire bodies of law, ranging from contract to tort to Constitutional Law. Legal encyclopedias, law reviews, and law school textbooks frequently contain this type of jurisprudential scholarship. The second type of jurisprudence compares and contrasts law with other fields of knowledge such as literature, economics, religion, and the social sciences. The purpose of this type of study is to enlighten each field of knowledge by sharing insights that have proven to be important in advancing essential features of the compared discipline.

The third type of jurisprudence raises fundamental questions about the law itself. These questions seek to reveal the historical, moral, and cultural underpinnings of a particular legal concept. The Common Law (1881), written by Oliver Wendell Holmes jr., is a well-known example of this type of jurisprudence. It traces the evolution of civil and criminal responsibility from undeveloped societies where liability for injuries was based on subjective notions of revenge, to modern societies where liability is based on objective notions of reasonableness.

The fourth and fastest-growing body of jurisprudence focuses on even more abstract questions, including, what is law? How does a trial or appellate court judge decide a case? Is a judge similar to a mathematician or a scientist applying autonomous and determinate rules and principles? Or is a judge more like a legislator who simply decides a case in favor of the most politically preferable outcome? Must a judge base a decision only on the written rules and regulations that have been enacted by the government? Or may a judge also be influenced by unwritten principles derived from theology, moral philosophy, and historical practice.

Four schools of jurisprudence have attempted to answer these questions: formalism proposes that law is a science; realism holds that law is just another name for politics; Positivism suggests that law must be confined to the written rules and regulations enacted or recognized by the government; and naturalism maintains that the law must reflect eternal principles of justice and morality that exist independent of governmental recognition.

It is worthwhile for practitioners and students of the law alike to possess an understanding of the basic principles of logic that are used regularly in legal reasoning and judicial decision making. This understanding requires, in important part, skill in navigating the processes of inductive reasoning — the methods of analogy and inductive generalization — by which inferences are drawn on the basis of past experience and empirical observation. The common law method of case law development, as well as the general prescript often referred to as “the Rule of Law” — that like cases be decided alike — are grounded logically in inductive reasoning.

These are the classic forms of deductive argument consisting of a major premise, a minor premise, and a conclusion. It was this aspect of logic that a century ago stirred such virulent opposition to formalism. And it is this aspect of logic which was so severely downplayed throughout the twentieth century. Yet even a rudimentary understanding of deductive logic gives lawyers, judges, and students of the law a valuable tool for determining whether an argument in a legal opinion or brief is valid or fallacious.

Law, to be sure, involves more than logic. Yet the myriad of factors that contribute to good lawyering and fair judging suggest that the “life of the law,” while not logic alone, is a manifold of activities that all use and depend upon reason in specialized ways. The precision of detail required in the drafting of contracts, wills, trusts, and other legal documents is a rational precision; the care in planning and strategizing demanded of trial attorneys in deciding how to present their cases is a rational care; the skill in written and oral argumentation required for appellate practice is, quite obviously, a rational skill; the talent expected of administrative law judges in crafting coherent findings of fact and conclusions of law is a rational talent; and the ability of trial and appellate court judges to separate, dispassionately and without bias, the kernel of argument from the rhetorical and emotive chaff of adversarial presentation, so as to render judgments that are justified under the law, is a rational ability.

Analogy and law

Arguments from precedent and analogy are two central forms of reasoning found in many legal systems, especially ‘Common Law’ systems such as those in England and the United States. Precedent involves an earlier decision being followed in a later case because both cases are the same. Analogy involves an earlier decision being followed in a later case because the latter case is similar

to the earlier one. The main philosophical problems raised by precedent and analogy are these: (1) when are two cases the 'same' for the purposes of precedent? (2) When are two cases 'similar' for the purposes of analogy? and (3) in both situations, why should the decision in the earlier case affect the decision in the later case?

The study of precedent and analogy is of interest for a number of reasons: some theorists claim that precedent involves a form of reasoning different to reasoning using rules; Although arguments from precedent are extremely common in many institutional and quasi-institutional settings, not merely the law, there is no consensus on the rational basis for their force, nor indeed on whether such arguments have any rational force; some theorists argue that the use of analogies in law is not a form of 'reasoning' at all; and finally, even if there is an intelligible form of analogical reasoning, it is unclear why the similarity between two situations provides a reason for treating them both in the same manner.

The law presents a useful context for considering these issues because its use of precedent and analogy is well articulated and explicit.

The Law of Torts and the Logic

Tort law, which governs civil wrongs, coalesced during the late nineteenth century as courts became increasingly willing to compensate injured people. Its history, however, has been told without reference to issues of race or compensation for slavery and its aftermath. In the novel *The Marrow of Tradition* (1901), Charles Chesnutt stretches tort discourse by using its principle of corrective justice to theorize liability for racial injustice

Nuisance

A legal action to redress harm arising from the use of one's property.

The two types of nuisance are private nuisance and public nuisance. A private nuisance is a civil wrong; it is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual Trespass or physical invasion to the land. A public nuisance is a criminal wrong; it is an act or omission that obstructs, damages, or inconveniences the rights of the community.

Public Nuisance

The term public nuisance covers a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. Violators may be punished by a criminal sentence, a fine, or both. A defendant may also be required to remove a nuisance or to pay the costs of removal. For example, a manufacturer who has polluted a stream might be fined and might also be ordered to pay the cost of cleanup. Public nuisances may interfere with public health, such as in the keeping of diseased animals or a malarial pond. Public safety nuisances include shooting fireworks in the streets, storing explosives, practicing medicine without a license, or harboring a vicious dog. Houses of prostitution, illegal liquor establishments, Gaming houses, and unlicensed prizefights are examples of nuisances that interfere with public morals. Obstructing a highway or creating a condition to make travel unsafe or highly disagreeable are examples of nuisances threatening the public convenience.

A public nuisance interferes with the public as a class, not merely one person or a group of citizens. No civil remedy exists for a private citizen harmed by a public nuisance, even if his or her harm was greater than the harm suffered by others; a criminal prosecution is the exclusive remedy. However, if the individual suffers harm that is different from that suffered by the general public, the individual may maintain a tort action for damages. For example, if dynamiting has thrown a large boulder onto a public highway, those who use the highway cannot maintain a nuisance action for the inconvenience. However, a motorist who is injured from colliding with the boulder may bring a tort action for personal injuries.

Some nuisances can be both public and private in certain circumstances where the public nuisance substantially interferes with the use of an individual's adjoining land. For example, Pollution of a river might constitute both a public and a private nuisance. This is known as a mixed nuisance.

Private Nuisance

A private nuisance is an interference with a person's enjoyment and use of his land. The law recognizes that landowners, or those in rightful possession of land, have the right to the unimpaired condition of the property and to reasonable comfort and convenience in its occupation.

Examples of private nuisances abound. Nuisances that interfere with the physical condition of the land include vibration or blasting that damages a house; destruction of crops; raising of a water table; or the pollution of soil, a stream, or an underground water supply. Examples of nuisances interfering with the comfort, convenience, or health of an occupant are foul odors, noxious gases, smoke, dust, loud noises, excessive light, or high temperatures. Moreover, a nuisance may also disturb an occupant's mental tranquility, such as a neighbor who keeps a vicious dog, even though an injury is only threatened and has not actually occurred.

An attractive nuisance is a danger likely to lure children onto a person's land. For example, an individual who has a pool on his property has a legal obligation to take reasonable precautions, such as erecting a fence, to prevent foreseeable injury to children.

Trespass is sometimes confused with nuisance, but the two are distinct. A trespass action protects against an invasion of one's right to exclusive possession of land. If a landowner drops a tree across her neighbor's boundary line she has committed a trespass; if her dog barks all night keeping the neighbor awake, she may be liable for nuisance.

Logic and Labour Law

Labour law is the outcome of struggles between different social actors and ideologies, of power relationships. Labour laws are used by people to pursue their own goals, and sometimes they need rights such as to a minimum wage or to freedom of association simply in order to survive. The interplay between collective self-regulation and legislative intervention from the very beginning characterized labour law. The main goal always has been to compensate the inequality of the bargaining power.

The slogan 'labour is not a commodity' is basic to the articulation of the ILO's normative vision in particular and labour law's in general. But like 'inequality of bargaining power' it stands in need of explication. They both make for good slogans, but need to be elaborated upon.

Partial disablement

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in

1. In the application of the Act to Bengal, a new clause (ff) has been ins. here by the Workmen' s Compensation (Bengal Amendment) Act, 1942 (Ben. 6 of 1942), s. 3. 2. Ins. by Act 8 of 1959, s. 2 (w. e. f. 1- 6- 1959).

the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified 1 in Part II of Schedule I] shall be deemed to result in permanent partial disablement;

WHAT IS DISABLEMENT

Disablement is the loss of the earning capacity resulting from injury caused to a workman by an accident.

Disablement's can be classified as (a) Total, and (b) Partial. It can further be classified into (i) Permanent, and (ii) Temporary, Disablement, whether permanent or temporary is said to be total when it incapacitates a worker for all work he was capable of doing at the time of the accident resulting in such disablement.

Total disablement is considered to be permanent if a workman, as a result of an accident, suffers from the injury specified in Part I of Schedule I or suffers from such combination of injuries specified in Part II of Schedule I as would be the loss of earning capacity when totaled to one hundred per cent or more. Disablement is said to be permanent partial when it reduces for all times, the earning capacity of a workman in every employment, which he was capable of undertaking at the time of the accident. Every injury specified in Part II of Schedule I is deemed to result in permanent partial disablement.

Temporary disablement reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident.

Industry in Labour law

Sec.2 (j) of the Industrial Disputes Act, 1947 defines 'industry' as any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen".

An industry exists only when there is relationship between employers and employees, the former is engaged in business, trade, undertaking, manufacture

or calling of employers and the latter is engaged in the calling, service, employment, handicraft or industrial occupation and avocation.

Sec. 2(j) gives the definition of industry, which was elaborated upon by the Supreme Court in the Bangalore Water Supply and Sewerage Board v. R. Rajappa[i]. The term industry has been given a wide scope and the judgment overruled several earlier decisions. The court held-

1. Any activity will be industry if it fulfills the 'triple test', as under:

Systematic and organized activity

With the cooperation between Employers and employees

For the production and distribution of goods and services whether or not capital has been invested for this activity.

2. It is immaterial whether or not there is profit motive or whether or not there is capital.

3. If the organization is a trade or business it does not cease to be one because of philanthropy animating the triple test, cannot be exempted from scope of definition of industry.

4. Dominant nature test – whether there is complex of activities, the test would be predominant nature of services and integrated nature of departments. All departments integrated with industry will also be industry.

5. The exceptions to industry are- Casual activities (because they are not systematic).

Small clubs, co – operatives, research labs, gurukuls which have an essentially non employee character.

Single door lawyer taking help from clerk (because there is no organized labour).

Selfless charitable activities carried on through volunteers e.g. free legal or medical service.

Sovereign functions – strictly understood, i.e., maintenance of law and order, legislative functions and judicial function.

Logic and Contract

Fraud

Section 17 of the Act defines fraud as –

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract.

Section 17 (1) – the suggestion as to a fact of that which is not by one who does not believe it to be true – is known as SUGGESTIO FALSI or suggestion of falsehood.

Section 17 (2) – the active concealment of a fact by one having the knowledge or belief of the fact – is known as SUPPRESIO VERI or suppression of a fact.

Section 17 (3) – a promise made without any intention of performing it. It means a promise made falsely with the intention of inducing the other party to make a reciprocal promise and thereby enter into a contract. Section 17 (4) – any other Act fitted or designed to deceive.

Section 17 (5) – any such act or omission as the law specially declares to be fraudulent

Explanation to Section 17

This Explanation states a very important proposition of law. According to Explanation to Section 17 – the mere silence as to a fact likely to affect the willingness of a person to enter into a contract is not fraud. However, such silence is to be held as fraud, if the circumstances of the case that –

It is the duty of the person keeping silence – to speak

That his silence in itself is equivalent to speech.

Essentials of Fraud

Analyzing the definition of fraud under Section 17, we get the following essential elements of fraud –

Party to the contract –

The Act of fraud must be done –

By the party to the contract himself

With his connivance

Or by his agent

There must be a false representation or assertion – Section 17 (1)

To constitute fraud there must be conjugation of 2 things –

A representation or assertion of a fact which is not true and

The person making such representation or assertion of fact does not believe it to be true.

This is what is meant by suggestio falsi or suggestion of falsehood coupled with the knowledge of its falsity.

There must be active concealment of fact – Section 17 (3)

By active concealment of certain facts there is an effort to see that the other party is not able to know or discover the truth. He is made to believe something is true whereas that is false. This is known as SUPPRESSIO VERI or suppression of fact purposefully.

The implication of such active concealment is graver where it is the duty of the person to disclose – fiduciary relationship.

Illustration -

B having discovered a vein of iron ore in the estate of A adopts means to conceal and is successful to conceal the existence of the ore from A. through A's ignorance he buys that estate at an under value.

It is a voidable contract under Section 2(1) of the Act. So A may cancel the contract because it is a fraud committed against him by B. the fraud is a fraud of concealment of fact.

A promise made without the intention of performing it – Section 17(3)

When a person makes a promise then it is deemed to be an undertaking by him that he will perform the promise. According to Section 17(3) if there is no such intention to perform the contract, at the time when the contract was made, it amounts to fraud.

Any other Act fitted or designed to deceive – Section 17(4)

This provision is general in nature and is intended to include other means of trick and unfair means intended to deceive anyone other than by means of suggestio falsi, suppressio veri or a promise made without the intention to perform it. Under this Section, any such acts will amount to fraud.

Any such acts of omission as the law specially declares to be fraudulent – Section 17(5)

According to Section 17(5) fraud includes any such acts of omission which specially declares it to be fraudulent. For instance under the TP Act 1882, under Section 55, the seller of immovable property is bound to disclose to the buyer all material latent defects in the property. Not doing so will amount to fraud.

Representation must relate to a fact-

The representation, assertion, intention or suggestion under Section 17(1) must relate to a material fact.

Any superfluous opinion or exaggerated statement or flourishing description are not regarded as representation of facts.

Illustration –

A while selling rings to B says – "the rings are as good as that of Y." this is a mere statement of opinion which cannot be regarded as amounting to fraud.

Wrongful intention –

To constitute a fraud it is necessary that a person should intentionally make a false statement to deceive another party and thereby induce him to enter into a contract. If the intention to deceive the party is absent, there is no fraud – vide case of DERRY vs. PEEK.

The acts must have in fact, deceived the party –

A mere attempt to deceive the party is not fraud under the ICA unless the party is actually deceived. Fraudulent misrepresentation must have been made with an intention to deceive. According to the Explanation appended to Section 29 of the Act, deceit which does not deceive does not amount to fraud and cannot hence make the contract voidable.

The other party must suffer loss –

To constitute a fraud, under the ICA, it is necessary that the other party must have suffered some material loss as a consequence of the deceit. Hence, there is no fraud without damage.

Mere silence / non-disclosure vis-a-vis Fraud

According to Section 11, in order to constitute fraud there must be a false representation or assertion of a fact – vide Section 17(1). In other words, there could be suggestio falsi coupled with the knowledge of its falsity.

Active concealment of a fact has also been considered as amounting to fraud because in that case there is a positive effort to conceal the truth from the other party. He is made to believe as true that fact which false. This is what is known as suppressio veri – vide Section 17(2).

At the same time it may be mentioned here that Explanation to Section 17 lays down that mere silence as to facts does not amount to fraud. It states that – mere silence as to facts does not amount to fraud unless it is the duty of the person keeping silence to speak or when his silence is equivalent to speech.

Thus a person is required by law to refrain from intentional or active concealments as to facts. But it does not mean that he is to disclose all material defects of the contract to the other party. A contracting party is under no compulsion or obligation to point out the defects as to the subject matter of the contract to the other party.

Illustration -

If a person is to sell his goods he is under no obligation to disclose the defects in his goods, but if he makes an intentional false statement as to the quality of his goods, it will amount to fraud as under Section 17(1). If he indulges in any Act amounting to active concealment of facts it will constitute to fraud under Section 17 (2). But if he merely keeps silence it will not constitute fraud subject to certain exceptions.

In case of sale of goods, the rule which is applicable is caveat emptor – or the doctrine of let the buyer beware. It means that it is the duty of the buyer to be careful while purchasing the goods as there is no implied condition or warranty as to quality or fitness of goods.

Illustration –

A sells by auction to B, a horse which A knows is of unsound mind. A says nothing of the unsoundness of the horse. A has not committed fraud as mere silence does not amount to fraud.

Fraud and Misrepresentation

Fraud' means a willful misrepresentation while 'Misrepresentation' means a bonafide representation which is false. There might be certain confusion in understanding these two, as they are a little similar. They are also the two barriers in the free consent of the parties to contract apart from Coercion and Undue influence. Come, let's start understanding the difference between Fraud and Misrepresentation.

Comparison Chart

FRAUD	MISREPRESENTATION
Meaning - A deceptive act done intentionally by one party in order to influence the other party to enter into the contract is known as Fraud.	The representation of a misstatement, made innocently, which persuades other party to enter into the contract, is known as misrepresentation.
Defined in Section 2 (17) of the Indian Contract Act, 1872	Section 2 (18) of the Indian Contract Act, 1872
Purpose to deceive the other party Yes	No
In a fraud, the party making the representation knows that the statement is not true.	In misrepresentation, the party making the representation believes the statement made by him is true, which subsequently turned out as false.
The aggrieved party, has the right to claim for damages	The aggrieved party has no right to sue the other party for damages.
The contract is voidable even if the truth can be discovered in normal diligence.	The contract is not voidable if the truth can be discovered in

Mistake Section 20 in The Indian Contract Act, 1872

20. Agreement void where both parties are under mistake as to matter of fact.—Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void. Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact. Illustrations

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void. (a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void."

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void. (b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void."

(c) A, being entitled to an estate for the life of B, agrees to sell it to C, B was dead at the time of agreement, but both parties were ignorant of the fact. The agreement is void. (c) A, being entitled to an estate for the life of B, agrees to sell it to C, B was dead at the time of agreement, but both parties were ignorant of the fact, the agreement is void.

Undue influence

In jurisprudence, undue influence is an equitable doctrine that involves one person taking advantage of a position of power over another person. This inequity in power between the parties can vitiate one party's consent as they are unable to freely exercise their independent will.

S. 16 of Indian Contract Act

(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position

to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other ; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section III of the Indian Evidence Act, 1872. (1 of 1872.)

Illustrations

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in

the ordinary course of business, and the contract is not induced by undue influence.]

Free consent

According to Section 13, "two or more persons are said to be consented when they agree upon the same thing in the same sense (*Consensus-ad-idem*). According to Section 14, Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Elements Vitiating free Consent

1. Coercion (Section 15): "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under (45,1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. For example, "A" threatens to shoot "B" "if he doesn't release him from a debt which he owes to "B"."B" releases "A" under threat. Since the release has been brought about by coercion, such release is not valid.

2. Undue influence (Section 16): "Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

(Section 16(2)) States that "A person is deemed to be in a position to dominate the will of another;

- Where he holds a real or apparent authority over the other. For example, an employer may be deemed to be having authority over his employee. An income tax authority over to the assessee.
- Where he stands in a fiduciary relationship to other, For example, the relationship of Solicitor with his client, spiritual advisor and devotee.
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of age, illness or mental or bodily distress"

3. Fraud (Section 17): "Fraud" means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent or to induce him to enter into the contract. Mere silence is not fraud. A contracting party is not obliged to

disclose each and everything to the other party. There are two exceptions where even mere silence may be fraud, one is where there is a duty to speak, and then keeping silence is fraud. Or when silence is in itself equivalent to speech, such silence is fraud.

4. Misrepresentation (Section 18): "causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

5. Mistake of fact (Section 20): "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void". A party cannot be allowed to get any relief on the ground that he had done some particular act in ignorance of law. Mistake may be bilateral mistake where both parties to an agreement are under mistake as to the matter of fact. The mistake must relate to a matter of fact essential to the agreement.

Terminally ill

A patient who has such an illness may be referred to as a terminal patient, terminally ill or simply terminal. Often, a patient is considered terminally ill when their estimated life expectancy is six months or less, under the assumption that the disease will run its normal course.

The physician's role with the terminally ill patient.

The physician encounters many issues and problems when working with the terminally ill. It is important to remember that the most important aspect of care for the dying is to maintain open and honest communication among the doctor, the patient, and the family. In brief, the physician should play a major role in helping the dying patient. Open communication and support must be continually provided by the physician, both to the dying patient and to the family. All it takes, basically, is common sense and human compassion. No matter how often the physician treats dying patients, he or she should never be casual or matter-of-fact about death. Death should always command respect and awe, but it need never terrorize us or cause us to turn away from providing help to the dying patient. Those who care for the terminally ill may find, to their surprise, that great satisfaction can be derived from this work. One becomes enriched by observing the courage of many dying patients. Therein lays the challenge and the reward.