

## DE JURE NEXUS LAW JOURNAL

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### **THE DOCTRINE OF RESCISSION IN CONTRACT LAW: AN ANALYSIS**

#### **Abstract:-**

*The doctrine of rescission is a legal principle in contract law that allows a party to a contract to have the contract cancelled or rescinded due to some defect or mistake in the formation of the contract. Essentially, rescission allows the parties to the contract to go back to the position they were in before the contract was entered into. In order to rescind a contract, the party seeking rescission must generally show that there was a defect or mistake in the formation of the contract, and that they would not have entered into the contract had they been aware of the defect or mistake. This can sometimes be difficult to prove, especially if the defect or mistake was not obvious or was not discovered until after the contract was signed.*

*If rescission is granted, the contract is generally considered void from the beginning, and the parties are returned to their pre-contract positions. Any payments or benefits that were exchanged under the contract may need to be returned or repaid, depending on the circumstances.*

*It is important to note that rescission is not always available as a remedy in contract disputes. In some cases, the parties may be required to seek other remedies, such as damages or specific performance, depending on the nature of the contract and the circumstances surrounding its formation.*

#### **Introduction**

A **contract** is an agreement having specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration.

Contract law is at the heart of most commercial or business dealings, therefore, it is one of the most significant areas of law and can involve significant variations in circumstances and complexities.

**A contract may be brought to an end by several ways: -**

- By agreement
- Due to Force Majeure
- Due to breach
- By rescission
- By frustration

**Rescission of a contract: -**

**If a contract is not proving to be beneficial depending on the situation, *one has the option to rescind the contract.*** The word “rescission” is derived from the Latin term **rescindere**, which means to cut or tear open. The right of rescission is available under Section 19 of the Indian Contract Act.

***The option of Rescission*** is available to a party as a remedy whose consent, whilst entering the contract, has been invalidated due to following:

- Misrepresentation / false statement of fact made by the other party whilst execution of the contract
- A party is mistaken in the terms of the contract and the other party was aware of the mistake
- A party was unduly influenced by another to enter into the contract (which is considered under Section 19A of the Act).
- Non-disclosure with respect to insurance contracts

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Rescission is an equitable remedy and is discretionary. A court may decline to rescind a contract if one party has affirmed the contract by his action or a third party has acquired some rights or there has been substantial performance in implementing the contract. Furthermore, because rescission is supposed to be imposed mutually upon both sides to a contract, the party seeking rescission normally must offer to give back all benefits he or she has received under the contract (an "offer of tender").

The injured party may rescind the contract by giving notice to the representor. However, this is not always necessary as any act indicating repudiation, e.g. notifying the authorities, may suffice. (*Car & Universal Finance v Caldwell*)

### **How Rescission Works**

Rescission involves canceling a contract and treating it as though it never existed by ensuring that all its effects are eliminated. To return all parties to their original state, things that were exchanged, such as money, must be returned.

Rescinding a contract may be an option if there is proof that there was a material error in the contract. Evidence of fraud, mutual errors, lack of legal or mental capacity, duress and undue influence, or one party not fulfilling its obligation can also lead contracts to be voided.

Laws addressing rescission vary from state to state. However, for certain contracts, such as those exchanged between lenders and consumers, rescission may occasionally be federally mandated.

### **Grounds to Rescind**

Contracts are rescinded when the parties thought they had a deal, but the basis was wrong, or didn't exist.

Accordingly, rescission of a contract is available for causes of action such as:

- **Misrepresentation:** whether innocent, negligent, or fraudulent.  
Rescission for misrepresentation applies in cases where a party relied on a statement by the other party to enter the contract, and the statement was not true.

- law of mistake  
The state of affairs underlying the reason for making the contract was not as one or more of the parties thought it was: one or both of the parties made a relevant mistake at law
- bribery and corruption
- breaches of fiduciary duties  
For example, secret commissions have been procured by an agent for their principal under the contract

Any sort of contract can be rescinded, such as:

- share purchase agreements
- distribution agreements
- intellectual property assignments and licences
- sales of products and services,

provided that (1) restitution in integrum is possible, and (2) the remedy is no longer available, because a bar to rescission applies to the case.

### Steps

Basically, a notice is presented by the aggrieved party, addressed to the opposite party stating the reasons for recession. In that notice, the party declares its intention to rescind the contract and also asks that money be refunded or compensation be paid. The notice results in unilateral rescission.

Sections 27 to 30 of **Specific Relief Act, 1963** deal with the rescission of a contract. It is a type of legal redressal.

- Section 27 deals with a situation where the rescission may be adjudged or refused,
- Section 28 deals with rescission in cases of contracts for the sale or lease of immovable property,
- Section 29 deals with an alternative prayer for rescission and
- Section 30 the court may require the rescinding party to do equity.

**Conclusion-**

Rescission is a legal remedy that allows a party to a contract to seek the cancellation or termination of the agreement, as well as the restoration of the parties to their pre-contractual positions. Rescission can be available in cases where a party has been induced to enter into a contract by fraud, misrepresentation, mistake, duress, or undue influence.

To seek rescission, a party must usually show that there was some defect or problem with the contract, such as a mistake or misrepresentation, and that this defect was a material factor in their decision to enter into the contract. The party seeking rescission must also usually act promptly once they become aware of the defect.

Rescission can be contrasted with other legal remedies, such as damages or specific performance. Damages are a monetary award that compensates a party for any losses suffered as a result of a breach of contract. Specific performance, on the other hand, is a court order that requires a party to fulfill their obligations under the contract.

One of the main advantages of rescission is that it can restore the parties to their pre-contractual positions. For example, if a party was induced to enter into a contract by fraud, rescission would allow them to cancel the contract and return any property or money that they may have transferred to the other party. This can be particularly important in cases where the party seeking rescission has suffered a loss as a result of the contract, such as by paying for goods or services that were never delivered.

Rescission can be a complex area of contract law, and the availability of this remedy can vary depending on the specific circumstances of each case. It is important for parties to seek legal advice if they are considering seeking rescission, as well as to act promptly once they become aware of any defects in the contract.