

CONTRACTUAL CAPACITY

The parties who enter into a contract must have the capacity to do so. All persons cannot make a valid contract.

Eligible persons:

A person who is of the age of majority, is of sound mind is not disqualified from contracting by any law, a make a valid contract.

So, the following persons are not competent to contract 1) minor 2) persons of unsound mind 3) other persons, disqualified by law.

MINOR:

According to sec 3 of the Indian Majority Act, 1875, 'A minor is a person, who has not completed 18 years of age'. In the following two situations, he attains majority after 21 years of age.

- i. If there is any guardian, appointed by the court(or).
- ii. If the properties of minor are in superintendence of the court.

Minor's agreement: The law regarding minor agreement is as follow

1) An agreement with or by a minor is void and inoperative:

Generally the agreements entered into by a minor are void and the other party cannot enforce the claim in a court of law. A party who has advanced money or obtained mortgage on the properties of a minor cannot recover the amount and the mortgage is void. (Mohiribibi Vs Dharmados Ghose).

In this case, a minor executed a mortgage deed for Rs.20,000 but received only 8,000...later, he filed a case to cancel the agreement and the creditor (the money lender) claimed the refund of Rs.8000. Held, the agreement is void and the amount cannot be recovered.

2) Minor can be beneficiary or a promisee or apayee:

In some cases, contracts entered into a minor are voidable and they are enforceable at the option of the minor and not at time option of the other party. Ex., if a person has advanced money to a minor it cannot be recovered and the contract is void. On this contrary, if a minor has advanced any loan to a party, this contract is enforceable at the option of the minor and the other party cannot refuse to repay the amount. Thus the contract is voidable. Ex. M aged 17 agreed to buy a second-hand bike for Rs.5,000 from S. He paid Rs.200 as advance and agreed to pay the balance the next day and collect the bike. When he came with money the next day, S told M that he had changed his mind and offered to return the advance. S cannot avoid the contract though M may, if he likes.

3) Valid contract in the case of necessities:

Some contracts made by the minor are perfectly valid and they can find the minor, if they are for their “necessaries”. If a person supplies necessities to a minor or lends money to the minor to purchase necessary things, or to meet his educational or medical expenses, such an amount can be recovered. Hence, the contracts by minor with minor for necessary goods or necessarily services to mine become valid absolutely. His properties can be held for this purpose, but he is not personally liable for this case.

4) Notification:

Notification means the act of confirming, or make as valid. The minor cannot satisfy his agreement after attaining the age of majority. For eg: A minor borrows Rs.5000 from “A” and executes a promissory note in favor of “A”. After attaining the age of majority, he executes another promissory note in settlement of the first note. The secondary promissory note is void.

5) No restitution:

The minor cannot be ordered to make compensation for a benefit obtained under a void agreement. In other words, if he has received only benefit under a void agreement, he need not return back the benefit; he need not give any compensation for it.

6) He can always plead minority:

If a minor by misrepresenting his age, makes a contract with another person, he cannot be sued. **Eg:** “J” a minor, by fraudulently representing himself to be full age, induced “L” to lend him the money. Held, the contract was void and “J” was not liable to repay the amount.

Hence the principle of estoppels is not applicable to minor.

7) No specific performance:

Specific performance means the actual carrying out of the contract as agreed. Since an agreement by a minor is void, the court will never direct “specific performance” of such an agreement but a contract entered into by his guardian or his manager of the estates. (Behalf of the minor) can bind the minor, if the following conditions are fulfilled.

- a. The contract should be within the authority of the guardian or manager.
- b. It should be for the benefits of the minor.

8) Minor as a partner:

Generally a minor cannot become a partner in a partnership firm. But, he may be admitted to the benefits of an existing partnership firm as a partner, with the consent of the entire partner. But, his liability is limited.

9) The minor can act as an agent.

The acts done by the minor as the agent are binding the principal if they are done within the scope of authority given to him.

10) The minor cannot be declared as insolvent.

- a) The partner or guardian, are not capable for agreement. Made by the minor on though the agreement is for necessities.
- b) The minor is not liable, if he is a surety in a contract of guarantee.

INCAPACITY OF CONTRACT

Thus incapacity makes contracts invalid, and incapacity may be broadly classified into two:

- a) Incapacity arising from status.
- b) Incapacity arising from mental deficiency.

Incapacity arising from status:

Person is disqualified to make a valid contract because of this position/status, they are as follows:

I) Foreign Ambassador:

This person enjoys special status. They are competent to enter into a valid contract. But they can be sued only if they submit themselves to the jurisdiction of the court. Further contract without their permissions are also essential to suit them.

II) Alien enemy:

An alien is a person who is not a subject of the Republic of India. He may be (i) an alien friend or (ii) an alien enemy

During normal time, trade can be takes place between trades of two different nations, but if war breaks out, the enemy countries is regarded as alien enemy, and no contract can be entered into during the time of war with it. Contracts made before the war may either be suspended or dissolved.

III) Convicts:

Persons who are undergoing imprisonment cannot make a contract during the convictionsperiod.

IV) Insolvent:

Persons who are adjudicated as insolvents or bankrupt cannot there after enter into a contract and all the contracts entered previously by them also comes to anend.

V) Company:

A company cannot enter into a contract which requires physical capacity or physical entry. The contract entered into by a company will be valid only if its contractual capacity permits in objects clause of Memorandum of Association.

VI) Married women:

Married women are having capacity to make valid contract, they can their husbands for their basic committees. A married woman may sue or be sued in her own name in respect of her separate property.

INCAPACITY ARISING FROM MENTAL DEFICIENCY:

Person who is mentally deficient cannot make a valid contract. The following persons are having mental deficiency and they are disqualified from making contracts.

i) Minor:

Minor is a person who has not obtained the age of majority as per 20 c (3) of the Indian Majority Act 1875. The persons who are below the age of 18 years. A minor is mentally not matured and he is incompetent to make a valid contract.

ii) Idiots:

A person who has completely lost his mental powers and who is incapable of forming a rational judgment is called an idiot. Idiocy is a permanent one. An idiot or a natural fool is a