

Capacities of Parties

Capacity or competence to contract means legal capacity of parties to enter into a contract. In other words, it is the capacity of parties to enter into a legally binding contract.

Who are Competent to Contract?

Every person is legally competent to contract if he fulfills the following three conditions:

- i. He has attained the age of majority;
- ii. He is of sound mind; and.
- iii. He is not disqualified from contracting by any other law to which he is subject.

1) MINORS

Any person, who has not attained the age of majority prescribed by law, is known as minor. Section 3 of the Indian Majority Act prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years :

- (i) Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890) or
- (ii) Where the minor's property has been placed under the superintendence of a Court of Wards.

2) PERSONS OF UNSOUND MIND

A person is said to be of sound mind for the purpose of making a contract (a) if he is capable of understanding the contract at the time of making it, and (b) if he is capable of making a rational judgment as to the effect upon his interests.

Types of Persons of Unsound Mind and their Contracts:

- a. Idiot
- b. Lunatic
- c. Delirious persons
- d. Drunken or intoxicated persons
- e. Hypnotized persons
- f. Mental decay

3) PERSONS DISQUALIFIED BY OTHER LAWS

There are certain persons who are disqualified from contracting by the other laws of our country. They are as under:

- a. Alien enemy
- b. Foreign sovereigns, diplomatic staff etc.
- c. Corporations and companies
- d. Insolvents
- e. Convicts

Rules /effects as to or Nature of Minor's Agreements:

1. **Void ab-initio:** - Minor's agreement is absolutely void from very beginning, i.e. void ab- initio. It is nullity in the eye of law. An agreement with minor, therefore, can never be enforced by law.
2. **Minor can be a promise or beneficiary:** - A minor can enforce such agreements in which he is a beneficiary or promise and does not create any obligation on his part.
3. **No ratification:-** A minor cannot be ratify even after attaining the age majority because void agreement cannot be ratified.
4. **Restitution/ Compensation possible:** - If a minor has received benefits under an agreement from the other party, the Court may require the minor to restore the benefit (so far as may be), to the other party at the time of rescission of the agreement. The minor may be asked to restore the benefit to the extent he or his estate has been benefited.
5. **Contract by parent/ guardian/ manager:** - A minor's parent/ guardian/ manager can enter into contract on behalf of the minor provided:
 - i) The parent/ guardian/ manager acts within the scope of his uthority
 - ii) The contract is for the benefit of the minor.
6. **No liability of parents:** - The parents (guardian) of a minor are not liable for agreements made by their minor ward. However, they can be held liable if the minor makes agreement as their authorized.
7. **Minor as an agent:** - A minor is not entitled to employ an agent; he can be an agent himself for someone else. As an agent he ca represent the principal, and bind him for his acts done in the course of agency. But the minor is not responsible to the principal for his acts.
8. **Minor and insolvency:** - A minor cannot be declared insolvent because he is not competent to contract.
9. **Minor as joint Promisor:** - A minor can be a joint promisor with a major, but the minor cannot be held liable under the promise to the promises as well as to his co-promisor. But the major promise cannot escape liability. The major joint promisor can be forced to perform the promise.
10. **Minor shareholder:** - A minor can become a shareholder or member of a company if (a) the shares are fully paid up and (b) the articles of association do not prohibit so.
11. **Liability for necessities of life:** - A minor is incompetent to contract. A minor, therefore, is not personally liable for the payment of price of necessities of life supplied to him or to his legal dependents. However, the person who has furnished such supplies is entitled to be reimbursed from the property of the minor.
12. **Minor Partner:** - According to the Partnership Act, 1932, a minor cannot make a contract of partnership though he may be admitted to its benefits with the consent of all the partners. A minor partner cannot be made personally liable for any obligation of the firm, but his share in the firm's property can be made liable.
13. **No estoppels against minor:** - The term 'estoppels' means prevention of a claim. When a minor enter into contract, representing that he is a major, but in reality he is not, then later on he can plead his minority as a defence and cannot be estopped (prevent) from doing so.

Free Consent

Meaning of consent :- sec 13 of the contract act defines consent

“Two or more persons are said to consent when they agree upon the same thing in the same sense at the same time.”

MEANING OF FREE CONSENT

Sec. 14 describes the cases when the consent is not free. It lays down that consent is not free if it is caused by coercion, undue influence, fraud, misrepresentation, etc. if the consent is not free, the agreement is avoidable at the option of the party whose consent was not free.

1) COERCION

Coercion simply means forcing a person to enter in to a contract. Sec. 15 defines coercion as, “Committing or threatening to commit, any act forbidden by the Indian Penal Code, or 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”.

The essential elements of coercion are

- (1) Committing or threatening to commit any act forbidden by Indian Penal Code.
- (2) Unlawful detaining or threatening to detain any property.
- (3) The act of coercion may be directed at any person and not necessarily at the other party to the agreement.
- (4) The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement.

2) UNDUE INFLUENCE :

It is kind of moral coercion. Sec. 16(1) defines undue influence as, “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 other and uses that position to obtain an unfair advantage over the other”.

- (a) Where he holds a real or apparent authority over the other e.g., in the relationship between master and servant.
- (b) Where he stands in fiduciary relation to the other. It implies a relationship of mutual trust and confidence.
- (c) Where a contract is made with a person whose mental capacity is affected by reason of age, illness, or mental or bodily distress. Any innocent or unintentional false statement or assertion of fact made by one party to the other during the course of negotiation of a contract is called a misrepresentation.

3) MISREPRESENTATION

As per Sec. 18, misrepresentation is a wrong statement of fact made innocently, i.e., without any intention to deceive the other party. It may be caused.

- By positive statement
- By breach of duty
- By mistake regarding the subject matter of the agreement.

Essential of misrepresentation

- There must be a representation or omission of a material fact.
- The representation or omission of duty must be made with a view to inducing the other party to enter into contract.
- The representation or omission of duty must have induced the party to enter into contract.
- The representation must be wrong but the party making the representation should not know that it is wrong.

4) FRAUD

Fraud is the intentional misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

Sec. 17 defines fraud as, any of the following acts committed by a party to a contract (or with his convenience or by his agent) with intention to deceive another party thereto (or his agent) or to induce him to enter into the contract.

- The suggestion that a fact is true when it is not true by a person who does not believe it be true.
- The active concealment of the fact by a person having knowledge or belief of the fact.
- A promise made with out any intention to perform it.
- Any other act fitted to deceive.
- Any such act or omission as the law specifically declares to be fraudulent.

5) MISTAKE

Acc. To Sec. 20 mistake means erroneous belief concerning some fact. The parties are said to consent when they agree upon the same thing in the same sense. If they do not agree upon the agreement in the same sense, there will be no contract.

When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake.

Mistake may be of following types:

1) Mistake of law,

- Mistake of law of the country
- Mistake of foreign law.

2) Mistake of Fact

➤ Bilateral mistake:-

- mistake as to the existence of the subject matter
- mistake as to the identity of the subject matter
- mistake as to the title of the subject matter
- mistake as to the quantity of the subject matter
- mistake as to the quality of the subject matter

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➤ **Unilateral mistake:-**

- Mistake as to the identity of the person contacted with
- Mistake as to the nature of the contract