

BUSINESS LAW

UNIT 1: The Indian Contract Act, 1872

TOPIC- CAPACITY TO CONTRACT

Capacity of Parties

As per Sec. 11 -Every person is competent to contract who is of the **age of majority** according to the law to which he is subject, and who is of **sound mind**, and is **not disqualified from contracting** by any law to which he is subject. Thus, the following persons are incompetent to contract:

1. Minor- person domiciled in India who is under 18 yrs of age
2. Person of unsound mind
3. Person disqualified from contracting by any law

MINOR (person <18 yrs)	PERSONS OF UNSOUND MIND - Idiot, lunatic, person under alcohol influence , person who is hypnotized, person having mental decay due to oldage / long illness	DISQUALIFIED PERSONS
<p>Agreement by minor is absolutely void and inoperative as against him. <i>Mohori Bibi vs Dharmo Das Ghosh</i>- A minor borrowed money by executing a mortgage of his house. When the lender filed suit for recovery of his mortgage money and for sale of the property, it was held that mortgage was void abinitio . So property could not be sold nor money lent could be recovered. Even Doctrine of Restitution doesn't apply</p>	<p>Agreement by person of unsound mind is absolutely void and inoperative as against him</p>	<p>Alien enemies- Aliens are citizens of other countries living in India who become our enemy when India is at war with their countries. During war times he cannot enter into contract with us. Pre war contracts stand suspended and get revived only after war has ended.</p>
<p>Beneficial agreements are valid contracts <i>Raghava Chariar vs Shinivasa</i> - M, a minor, advanced some money to N against mortgage of his immovable property in favour of M. Held, M could enforce the mortgage if N fails to repay .</p>	<p>Beneficial agreements are valid contracts</p>	<p>Foreign sovereigns and ambassadors- they are in a privileged position i.e.while they can sue others to enforce the contracts ,they cannot be sued without the consent of Central Govt.</p>
<p>Minor's liability for necessities <i>Nash vs Inman</i>- Minor, purchased 13 fancy waist coats from N. The minor already had sufficient clothes to wear. Held, these coats were not necessities & N couldn't recover their prices from minor</p>	<p>Liability for necessities</p> <p>Monika Arya, Associate Professor, Bharati College , Delhi University</p>	<p>Convict- During this imprisonment, he cannot enter into contracts nor can he sue on contracts made beforehand. After his release, he can enter into contracts and can sue also</p>

MINOR (person <18 yrs)	PERSONS OF UNSEENED MIND	DISQUALIFIED PERSONS
<p>No ratification on attaining the age of majority <i>Indrani Ramaswamy vs Anthiappa Chettiar-M</i>, a minor, borrowed ₹5000 from N and executed a promissory note in favour of N. After attaining majority M executed another promissory note in settlement of the first one. Held, 2nd promissory note was void for want of consideration.</p>		<p>Insolvent- before discharge he cannot sell his properties as they vest with official liquidator& can not be director of company. But he can incur debts /purchase property/seek employment. After discharge he is like ordinary citizen</p>
<p>Rule of Estoppel does not apply to minor <i>Leslie vs Sheill</i> S, a minor, by representing himself to be of full age induced L to lend him 400 pounds. He refused to repay it and L sued him. Held, the contract was void and S was not liable to pay for the amount. He can plead infancy <i>But equitable doctrine of restitution applies which states that minors have no privilege to cheat man and should restore property\money traceable in his hands</i></p>		<p>Married Women- can enter into contracts in respect of their streedhan only and not in respect of their husbands properties. They can bind husband properties when he doesn't provide her with necessaries and there she can act as agent of her husband</p>
<p>Contracts of apprenticeship and service agreement by minor Contract of apprentice is valid as it enables minors learn certain trades, skills and crafts later on helping them seek employment provided- minor ≥ 14 yrs & contract was made by guardian on minor's behalf. But contract of labour, is void as it exploits the childhood and freedom of child. But Child Labour(Prohibition and Regulation) Amendment Act, 2016 allows minors to work\ help in non- hazardous family enterprises after school hours/during vacations and it allows them to work as artists in films, ads, TV serials, sports activities except circus provided working conditions are safe, hygienic & doesn't affect school education.</p>		<p>Joint Stock Companies cannot enter into contracts beyond MOA or of personal nature</p>

Other Provisions Relating To Minors Agreements

- Specific performance by minor-
 - ✓ Since minor's agreements are void, courts will not direct 'specific performance' by a minor
 - ✓ But if contract is within the authority of the guardian & is for minor's benefit, it may bind a minor
- Minor as partner in firm
 - ✓ Minor, acting through lawful guardian, can be admitted to benefits of partnership(i.e right to share property & profits) with consent of all partners
 - ✓ Cannot participate in management of business and shall not share losses
- Minor as shareholder in company
 - ✓ Being incompetent to contract, a minor cannot become a shareholder of the company
 - ✓ But a minor, acting through his lawful guardian, may become shareholder of the company incase of transfer/ transmission of fully paid up shares
- Minor and insolvency
 - ✓ Minor cannot be adjudged insolvent as he is incapable of contracting debts
 - ✓ Even for necessities supplied to him, he is not personally liable and only his property is liable
- Minor as agent
 - ✓ A minor can be an agent and can bind the principal for the acts done in the course of agency
 - ✓ But he can't be held personally liable for negligence\ breach of duty ,so principal runs a great risk

Other Provisions Relating To Minors Agreements

- Contract by minor and adult jointly
 - Minor has no liability and the contract as a whole will be enforced against the adult
 - Surety for minor
 - Where an adult stands surety for a minor, adult is liable under the contract and not minor
 - Position of minors' parents
 - ✓ Parents of a minor are not liable for agreements made by minor
 - ✓ But under Motor Vehicles Act if minor is caught driving\causing fatal accidents, then his parents\guardians\vehicle owner will be liable for fine\jail\ vehicles' registration cancellation
 - Minors liability in tort(a civil wrong)
 - ✓ Minor is liable in a tort **Burnard vs Haggis**-A minor hired a mare for riding under express instructions not to jump. He lent the mare to his friend who killed it by jumping it. Here minor committed tort of conversion and was held liable and had to pay damages.
 - ✓ If tort is actually a breach of contract then he is not liable **Jennings vs Rundall**- A minor hired a horse for riding and injured it by over-riding, he was not held liable as it was actually a breach of contract and a minor is not liable on a contract
- Juvenile Justice(Care and Protection) Act,2015.** Minors of age 16 to 18 yrs ,accused of heinous crimes like murder, rape, acid attacks can be tried as adults if decided by Juvenile Justice Board