
UNIT 3 CAPACITY OF PARTIES

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3.0 OBJECTIVES

After studying this unit you **should** be able to:

- explain who is competent to contract
- a explain who is a minor and describe the position of agreements with the minors
- identify persons of unsound mind and explain the position of agreements with such persons
- a identify persons disqualified under other laws and describe their position in relation to contract.

3.1 INTRODUCTION

You learnt in Unit 1 that the parties to a contract must be competent to contract. If any one of them is incompetent to contract, the agreement shall be void, **i.e.**, it cannot be enforced by law. In this unit, you will learn as to who are competent to contract and what shall be the exact position of a contract in case any one of the parties thereto is incompetent of contracting.

3.2 WHO IS COMPETENT TO CONTRACT?

Section 11 of the Indian Contract Act clearly states as to who shall be competent to contract. It provides that *every person is competent to contract (i) who is of the age of majority according to the law to which he is subject, (ii) who is of sound mind, and (iii) who is not disqualified from contracting by any law to which he is subject.* Thus, a person to be competent to contract should not be

- i) a minor, or
- ii) of an unsound mind, or

iii) disqualified from contracting

Let us now consider each of the aforesaid elements of competency to contract.

3.3 POSITION OF A MINOR

3.3.1 Who Is 'a Minor'?

According to Section 3 of the Indian Majority Act, a person is deemed to have attained **majority** (i) when he completes 18 years or (ii) where a guardian of person or property or both, has been appointed by a Court of Law (or where his property has passed under the superintendence of the Court of Wards), he attains **majority** on completion of 21 years. In other words, normally a person shall be treated as minor if he has not attained the age of 18 years. In the following two cases, however, **he** is treated as minor until he attains the age of 21 years.

- i) where a guardian of a minor's person or property is **appointed** under the guardians and Wards Act, 1890, or
- ii) where the superintendence of minor's property is assumed by a Court of Wards.

3.3.2 Position of Agreements by a Minor

According to Section 11, as stated earlier, no person is competent to contract who is not of the age of majority. In other words, a minor is not competent to contract. In fact, the law acts as the guardian of minors and protects their rights because they are not mature and may not possess the capacity to judge what is good and what is bad for them. Hence the minor is not bound by any promises made by him under an agreement.

The position with regard to minor's contracts may be summed-up as follows:

- 1) **A** contract with or by a minor is absolutely void and the minor therefore cannot **bind** himself **by** a contract: The Privy Council in the case of *Mohiri Bibee v. Dharmodas Ghosh* held that a minor's agreement is altogether void. The facts of the case were: **Dharmodas** a minor, entered into a contract for borrowing a sum of Rs. 20,000. The lender advanced Rs. 8,000 to him and Dharmodas executed a mortgage of his property in favour of **the lender**. Subsequently, the minor sued for setting aside the mortgage. The Privy Council held that sections 10 and 11 of the Indian Contract Act make the minor's contract void and therefore the mortgage was not valid. Then, the mortgagee, prayed for refund of Rs. 8,000 by the minor. The privy council further held that as a minor's contract was void, any money advanced to him could not be recovered.
- 2) Fraudulent representation by a minor: Will it make any change in case minor is guilty of deliberate **misrepresentation** about his age thereby inducing the other party to contract with him? No! it will make no change in the status of the agreement. The contract shall continue to remain void because if such a thing is permitted, unscrupulous people while dealing with a minor shall, as a first thing, ask him to sign a declaration that he is of the age of majority. It will **thus** defeat the whole objective of protecting his interests.

In the case *Leslie v. Sheill*, S, a minor by fraudulently representing himself to be a **major**, induced L to lend him £ 400. He refused to repay it and L sued him for the money. Held, that the contract was void and S was not liable to repay the amount due.

The same decision was endorsed in the case of *Kanhya Lal v. Girdhari Lal* and the minor was not held liable on the promissory note executed by him,

But, **should** it mean that those younger in age have liberty to cheat the seniors and retain the benefits. The **Lahore** High Court (prior to partition) in *Khan Gul v. Lakha Singh* held that where the contract is set aside the **status quo ante**

should be restored and the court may direct the minor, on equitable grounds, to restore the money or property to the other party. Thus, in such cases, if money could be traced, the court would, on equitable grounds, ask the minor for restitution. Sections 30 and 33 of the Specific Relief Act, 1963 provide that in case of a fraudulent misrepresentation of his age by the minor, inducing the other party to enter into a contract, the court may award compensation to the other party.

- 3) **Ratification of a contract by a minor on attaining the age of majority:** A minor's agreement is void ab initio. Hence, there can be no question of its being ratified even after he attains majority. In **Indran Ramaswamy v. Anthaopa** a person gave a promissory note in satisfaction of one executed by him for money borrowed when he was a minor. The Court held that the claim thereunder could not be enforced because there was no fresh consideration. Consideration given during minority is not a good consideration. It is, however, where a person on attaining majority actually pays the debt incurred by him during minority, it is treated as valid. In law it is to be regarded on the same footing as a gift (**Anant Rai v. Bhagwan Rai**). You should note that an agreement with a minor is merely void and not unlawful and so the sum paid cannot be sued for subsequently.
- 4) **Minor's contract jointly with a major person:** Documents jointly executed by a minor and an adult major person would be void *vis-a-vis* the minor. But they can be enforced against the major person who has jointly executed the same provided there is a joint promise to pay by such a major person (**Jamna Bai v. Vasanta Rao**).
- 5) **Minor as a partner:** A minor cannot be a partner in a partnership firm. However, a minor may, with the consent of all the partners for the time being, be admitted to the benefits of partnership (Section 30 of the Partnership Act, 1932). This means he can share the profits without incurring any personal liability for losses.
- 6) **Minor as an agent:** A minor can act as an agent and bind his principal by his acts without incurring any personal liability.
- 7) **Minor as a shareholder:** There has been a strong controversy as to whether a minor can become a shareholder/member of a company. In view of the provisions of the Indian Contract Act and the Privy Council's decision, a minor cannot become a member of the company (**Palaniappa v. Pasupati Bank**). Thus, if a minor acquires partly paid shares the company will not be able to recover the uncalled amount from the minor. However, there are contrary decisions wherein it has been held that a minor can become a subscriber to the memorandum of association and can acquire shares by allotment. In **Laxon Co.'s case**, it was held that a minor can be a shareholder unless the articles of association of the company prohibit it. In **Dewan Singh v. Minerve Films Ltd.**, the Punjab High Court held that there was no legal bar to a minor becoming a member of a company by acquiring shares (i.e., by way of transfer) provided the shares were fully paid up and no further obligation or liability was attached to them. It may thus be concluded that a minor can become a shareholder/member of a company provided that the shares held by him are fully paid shares and the articles of association do not prohibit it.
- 8) **A minor cannot be declared insolvent because he is incapable of contracting debts.**

Exceptions

- 1) **Contract for the benefit of a minor:** A person incompetent to contract may accept a benefit and be a transferee. Although a sale or mortgage of property by a minor is void, a duly executed transfer by way of sale or mortgage in favour of a minor who has paid to valid consideration is not void. Such a transaction shall be enforceable by him or any other person on his behalf. A minor, therefore, in whose favour a deed of sale is executed is competent to sue for possession of the property conveyed thereby. It was held by a Full Bench of the Madras High Court that a mortgage executed in favour of a minor who has

advanced the mortgage money is enforceable by him or by any other person on his behalf (*Raghva v. Srinivasa*, 1917). Similarly, a minor can be the payee of a cheque or any other negotiable instrument and claim payment thereon. Also, where a minor sells goods to another major person, he shall be entitled to recover its price from him.

- 2) Contract by Guardian: A contract may be entered into on behalf of a minor by his guardian or manager of his estate. In such a case the contract can be enforced by or against the minor provided that the contract (a) is within the scope of the authority of the guardian or manager, and (b) is for the benefit of the minor (*Subramanyam v. Subba Rao*). Thus, a contract entered into by a parent or certified guardian of a minor for the sale of property belonging to the minor can be enforced by either party since it may be for the minor's benefit. However, all contracts made by a guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contract for the purchase of immovable property (*Bholanath v. Balbadra Prasad*). Similarly, a guardian of a minor cannot enter into a valid contract of service on his/her behalf (*Raj Rani v. Prem Adib*).
- 3) Contract for Supply of Necessaries: A Contract for supply of necessaries to a minor or to those who are dependent on him can be enforced against him, not personally, but so far as his property may extend. Section 68 in this regard reads as follows:

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

It may not be possible to draw an exhaustive list as to what shall constitute 'necessaries'. In fact, what may be 'necessaries' for one, may be a luxury for another. Buttons, for example, are a normal part of clothing and may therefore be treated as 'necessaries', but not the gold or diamond buttons (a prince may be an exception). 'Necessaries' must, therefore, be understood in relation to the social status of the person concerned. 'Necessaries' normally include articles required to maintain a particular person in the state, degree and station in life in which he is. The English Sale of Goods Act defines necessaries as goods suitable to the condition in life of the minor, and to his actual requirements at the time of sale and delivery (Section 2). Thus, an item will not be treated as necessaries if a person is already sufficiently supplied with things of that kind. It is immaterial whether the other party knows this or not. In the case of *Nash v. Inman* a minor who was a B. Com. student, bought eleven fancy coats from N. He was, at that time, adequately provided with clothes. **Weld**, not even a single coat, was a necessity. His properties could not, therefore, be attached for its payment. In India, besides food, clothing and shelter the education and marriage of a female have also been held to be necessaries. Any supply of such items or loans for the same shall, therefore, qualify for claim under Section 68.

However, you should note that the payment for necessaries supplied to a minor can only be claimed out of the properties belonging to the minor. He cannot be held personally liable for the same, i.e., he cannot be asked to expend labour in exchange, nor can his income, if any, be attached. This rule is equally applicable to the necessary services rendered to him. Thus, the lending of money to a minor for the purpose of defending a suit on behalf of a minor in which his property is in jeopardy, or for defending him in prosecution, or for saving his property from sale in execution of a decree is deemed to be a service rendered to the minor. Other examples of necessary services rendered to a minor are: provision of education, medical and legal advice, provision of a house on rent to a minor for the purpose of living and continuing his studies.

It should also be noted that the parent or guardian of a minor cannot be held liable unless those goods are supplied (or services rendered) to a minor as the agent of the parent or guardian, that is, the minor has collected them on behalf of his parent or guardian.

Check Your Progress A

- 1) State whether the following statements are True or False.
 - i) A contract with a minor is voidable at the option of the minor.....
 - ii) A contract with a minor is void-ab-initio
 - iii) A contract with a minor cannot be enforced by a minor even for his benefit.
 - iv) A minor cannot recover the price of his goods sold on credit to a major person.
 - v) A minor can be the payee of a cheque.
 - vi) A minor cannot be appointed as an agent.
 - vii) A partnership firm may be created by or with a minor as a partner.....
 - viii) A minor may ratify his contract after attaining majority.
 - ix) A minor is personally liable for the necessaries supplied to him or his dependents.
 - x) Guardian of a minor shall not be held liable for necessaries supplied to his dependent children.

- 2) The guardian of a minor (a) can (b) cannot bind the minor by a contract entered into on his behalf for the purchase of immovable property. Which statement is correct?

- 3) A minor wanted to become a professional billiards player and entered into an agreement with a famous billiards player. Under the contract, the minor would pay a certain sum of money of the billiards player to learn the game and would also accompany the man to play matches during the world tours. Is the agreement valid?

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- 4) A, a minor and an undergraduate student of a university, buys on credit from B, a clothier, seven lengths for his own use. Is C entitled to any payment in respect of the goods?

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3.4 AGREEMENTS BY PERSONS OF UNSOUND MIND

3.4.1 Who is a Person of Sound Mind?

You know that a person while making a contract should be of a sound mind otherwise the contract will have no validity in the eyes of law. Who is a person of sound mind has been amply clarified by Section 12 of the Indian Contract Act which reads *a person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interests.* Thus soundness of mind of a person depends on two facts:

- i) his capacity to understand the terms of the contract, and
- ii) his ability to form a rational judgement as to its effect upon his interests. If a person is incapable of both, he suffers from unsoundness of mind. Idiots, lunatics and drunken persons are examples of those having an unsound mind

Section 12 further states that *a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.*

Examples

- 1) A patient in a lunatic asylum, who is at intervals of sound mind may contract during those intervals.
- 2) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgement as to its effect on his interest, cannot contract whilst such delirium or drunkenness lasts.

Whether a party to a contract, at the time of entering into the contract, is of sound mind or not is a question of fact to be decided by the court.

3.4.2 Burden of Proof

The following rules may be noted in this regard:

- 1) Where a person is usually of sound mind, the burden of proving that he was of unsound mind at the time of execution of a document lies on the person who challenges the validity of the contract (**Tilok Chand v. Mahandu**).
- 2) Where a person is usually of unsound mind, the burden of proving that at the time he was of sound mind lies on the person who affirms it.
- 3) In cases of drunkenness or delirium from fever or other causes, the onus lies on the party who sets up that disability to prove that it existed at the time of the contract.

3.4.3 Position of Agreements by Persons of Unsound Mind

- 1) **Lunatics:** A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. However, he has some intervals of sound mind. He is not liable for contracts entered into while he is of unsound mind. However, as regards contracts entered into during lucid intervals, he is bound. His position in this regard is identical with that of a minor.
- 2) **Idiots:** An idiot is a person who is permanently of unsound mind. Idiocy is a congenital defect. Such a person has no lucid intervals. He cannot make a valid contract. In **Inder Singh v. Parmeshwardhari Singh** a property worth about Rs. 25,000 was agreed to be sold by a person for Rs. 7,000 only. His mother proved that he was a congenital idiot, incapable of understanding the transaction. Holding the sale to be void, Justice Sinha of Patna High Court stated that "it is not necessary that a man must be suffering from lunacy to disable him from entering into a contract. A person may, to all appearances, behave in a normal fashion but at the same time, he may be incapable of forming a judgement of his own as to whether the act he is about to do is in his interest or not. In the present case he was incapable of exercising his own judgement"
- 3) **Drunken Persons:** Drunkenness is on the same footing as lunacy. A contract by drunken person is altogether void. It should be noted that partial or ordinary drunkenness is not sufficient to avoid a contract. It must be clearly shown that, at the time of contracting, the person pleading drunkenness was so intoxicated as to be temporarily deprived of reason and was not in a position to give valid consent to the contract. Illustration (b) to Section 12 of the Indian Contract Act reads: *A sane man is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgement as to its effects on his interest cannot contract while such delirium or drunkenness lasts.*

Exceptions

A contract with a person of unsound mind is subject to the same exceptions as the contract with a minor is. Thus a person of unsound mind (i) may enforce a

contract for his benefit, and (ii) his properties, if any, shall be attachable for realisation of money due against him for supply of necessaries to him or to any of his dependents.

3.5 PERSONS DISQUALIFIED BY LAW

Besides minors and persons of unsound mind, there are some other persons who have been declared incompetent of contracting, partially or wholly, so that the contracts of such persons are void. Incompetency to contract may arise from political status, corporate status, legal status, etc.

Alien Enemy: An alien is a person who is the citizen of a foreign country. Thus, in the Indian context an alien may be (i) an alien friend, or (ii) an alien enemy.

An alien friend, (i.e., a foreigner) whose country is at peace with the Republic of India, has usually the full contractual capacity of a natural born Indian subject. But, he cannot acquire property in Indian ship or be employed as Master or any of other Chief Officer of such a ship.

In the case of contracts with an alien enemy (i.e., an alien whose country is at war with India) the position may be studied under two heads: (i) contracts during the war and (ii) contracts made before the war. During the subsistence of the war, an alien can neither contract with an Indian subject nor can be sued in an Indian Court except by licence from the Central Government. As regards contracts entered into before the war breaks out, they are either dissolved or merely suspended. All contracts, which are against the public policy or are such that may benefit the enemy, stand dissolved. The contracts which are not against public policy are merely suspended for the duration of the war and revived after the war is over, provided they have not already become time-barred under the law of limitations.

It may be observed that an Indian, who resides voluntarily or who is carrying on business in a hostile territory will be treated as an alien enemy.

Foreign Sovereigns and Ambassadors: Foreign sovereigns and accredited representatives of a foreign state (Ambassadors) enjoy some special privileges. They cannot be sued in our courts unless they choose to submit themselves to the jurisdictions of our courts. They can enter into contracts and enforce those contracts in our courts, but they cannot be proceeded against in Indian Courts without the sanction of the Central Government.

The aforesaid immunity of a sovereign continues even if he engages in trade. But, an ex-king is not entitled to this privilege and can thus be sued against in our courts. If, however, a foreign sovereign, etc. enter into a contract through an agent residing in India, the agent shall be held liable on the contract.

Convicts: A convict is not competent to contract during the continuance of sentence of imprisonment. This inability comes to an end with the expiration of the period of sentence. A convict can, however, enter into, or sue on, a contract when on parole or when he has been pardoned by the court.

Company under the Companies Act or Statutory Corporation under special Act of Parliament: A company or a corporation is an artificial person. It exists only in contemplation of law, its contractual capacity, is determined by its constitution. The contractual capacity of a statutory corporation is expressly defined by the statute creating it. The contractual capacity of a company registered under the Companies Act is determined by the objects clause of its memorandum of association. Any act done in excess of the powers given in the memorandum is ultra-vires and void.

Insolvents: When a debtor is adjudged insolvent, his property stands vested in the Official Receiver or Official Assignee appointed by the Court. He cannot enter into contracts relating to his property and sue, and be sued, on his behalf. This disqualification of an insolvent is removed after he is discharged.

Check Your Progress B

1) State whether each of the following statements is True or False.

- i) A person who is usually of an unsound mind cannot enter into a contract even **when** he is of a sound mind.....
- ii) **An idiot cannot** make a contract but a lunatic can.
- iii) A person of sound mind can make a valid contract even when he is so drunk that he is incapable of forming a rational judgement.
- iv) **An alien friend can** acquire property in Indian ship.
- v) A company, though an artificial person, can make all such contracts that an **individual** can.

2) Whom do you regard as a person of sound mind?

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3) What is idiocy?

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.....

3.6 LET US SUM UP

The parties to a contract must be competent to contract, otherwise the contract will not be valid. A person is competent to contract if he (i) is of the age of majority (ii) is of a sound mind, and (iii) has not been disqualified from contracting by any law to which he is subject.

A person is deemed to have attained majority when he completes 18 years (it is 21 years in some cases). Any person who has not attained the age of majority is called a minor and the contract with him is regarded void ab-initio. Not only that, an agreement with a minor cannot be ratified even after he attains majority. He cannot become a partner in a firm but can be admitted to the benefits of the firm. He can, however, become a shareholder in a company provided the shares held by him are fully paid up and the articles of association do not prohibit it. He can also be a promisee or beneficiary. His guardians can act on his behalf within certain limits. His property can be used for the payment of price of the necessaries supplied to him or his dependents.

A person is said to be of a sound mind if, at the time of contracting, he is capable of understanding the terms of the contract and of forming a rational judgement as to its effects upon his **interests**. An idiot, a lunatic and a drunken person are usually regarded as persons of an unsound mind. The position of contracts with persons of unsound mind is similar to that of a contract with a minor.

Besides minors and persons of unsound mind, there **are** others who are disqualified from contracting under **the** provisions of some other **laws**. Such persons are: (i) **alien enemies** (ii) foreign sovereigns, (iii) convicts, and (iv) insolvents. However, though a foreign sovereign or dignitary cannot be **sued** in our courts for claiming the performance of a contract, he can sue in our courts and claim its performance.

3.7 KEY WORDS

Alien: **A** resident of a foreign country.

Convict: A person found guilty of an offence.

Idiot: A person so mentally deficient by birth as to be incapable of ordinary reasoning or rational conduct.

Lunatic: A person affected by lunacy or of an unsound mind. A person can become lunatic at any stage of his life.

Minor: A person who has not attained the age of 18 years (21 years in some situations).

Necessaries: Items necessary for living suitable to the condition in life of an individual and to his actual requirement at the time of sale and delivery.

Void-ab-initio: Void from the beginning.

3.8 ANSWERS TO CHECK YOUR PROGRESS

- A) 1) i) false **ii) true** iii) false iv) false **v) true** vi) true vii) false viii) false
ix) false x) true
- 2) The statement (b) is correct. (**Sarwarajan**, v. Fakhrudin Mohammed)
- 3) Yes, Education is regarded as a necessity. (Roberts v. Gray)
- 4) No, seven coats at a time cannot be a necessity. (Nash v. **Inman**)
- B) 1) i) false ii) true (a lunatic can enter into a contract during lucid intervals)
iii) false iv) false **v) true** (with the exception of contracts of personal nature
e.g., a contract to marry) .

3.9 TERMINAL, QUESTIONS/EXERCISES

- 1) Who is competent to contract? State the position of contracts with a minor.
- 2) What shall be the effect on a contract where a minor, a party to the contract, is guilty of deliberate misrepresentation with regard to his age.
- 3) What are necessaries? When is a minor liable on a contract for necessaries?
- 4) Examine the legal position of (i) a **minor** as a promisee, (ii) a minor as an agent.
- 5) Name persons who are treated as persons of unsound mind. State the legal positions of contracts with such persons.
- 6) Enumerate persons forbidden **under** other laws for the time being in force and state the legal position of the contracts with them.
- 7) Answer the following problems giving reasons for your answer.
 - i) A **minor** was facing a criminal prosecution for dacoity. He borrowed Rs. 2,000 to defend himself. Will the creditor succeed in recovering the amount?
(**Hint**: It is loan for necessaries. It can be recovered from Minor's property)
 - ii) Hari sold **some** goods to Gaurav on credit **not** knowing that Gaurav was a minor. Hari did not receive the payment. Can he sue Gaurav on attaining majority?
(**Hint**: No, a contract with a minor is void ab-initio)
 - iii) A, a minor sold some **goods** to B, a major. Can he recover the price?
(**Hint**: Yes, a minor can be a **promisee**.)

- iv) Anthony, a major, executes a promissory note in favour of Roberts for the necessities supplied by Roberts to Anthony during Anthony's minority. Is Anthony liable to Roberts on the promissory note?
(Hint: No, Anthony is not liable to pay)
- v) Shailendra, on behalf of her minor daughter, entered into a contract with Girish whereby Girish promised to marry her. Later on, Girish refused to marry. Can she sue Girish for damages?
(Hint: Yes, she could maintain a suit for damages as it was for her benefit.)

Note: These questions and exercises will help you to understand the unit better. Try to write answers for them. But do not send your answers to the University. These are for your practice only.