

Unit - 3 Capacity of Parties

Other Essential Elements of a Contract

* Capacity to or of Parties

meaning : It means parties should be competent to make contract. It is one of the essential element to form valid contract

Sec 11: Who are competent to contract

Every person is competent to contract who :

1. Has attained age of majority
2. Is of sound mind.
3. Is not disqualified from law to which he is subjected to

* Age of majority :

→ As per Indian Majority Act, 1875 every person who is domiciled in India shall attain age of majority on completion of 18 years of age.

→ A person below 18 years of age

would be considered as a minor.

→ Law relating to minor:

① Contract made with or by a minor is void-ab-initio

→ A contract with minor is not competent to contract and any agreement with minor is void-ab-initio.

case law: Mohori Bishnu vs Dharamdas Ghosh.

② No ratification after attaining majority

• A minor cannot ratify agreement on attaining majority as originally it was void-ab-initio.
subsequent approval

③ Minor can be beneficiary or can take benefit out of contract.

• A minor though not competent to contract but nothing prevents him from making other party bound to him.

• A promissory note duly executed in favour of minor is valid.

• Minor cannot become partner in partnership firm but he can be admitted to benefits of firm.

④ Minor can always plead for minority :

→ A minor can always plead for minority and is not stopped to do so even if he has taken any loan or entered into contract by falsely representing that he was major.

→ Rule of estoppel donot apply on minor.

→ he can always plead for minority in his defence.

⑤ Liabilities for necessary :

→ In case of necessary supplied to minor or to any other person to whom he is legally bound to support. is governed by **Section 68**.

→ Claim for necessary supplied to minor is valid. - enforceable by

law.

→ He shall be liable for value of necessary supplied to minor.

→ Only property shall be liable and no personal liability will occur.

* Minor estate shall be liable only if following conditions are fulfilled.

1. Contract should be for goods which should reasonably support in his life.
2. A minor must not have already sufficient supply of necessary.
3. Necessary means those things which essentially needed by minor.
4. They do not include cost of the luxury or costly or unnecessary articles.
5. Necessary means all such articles which person to supply to infant in a class of society to which he belongs.

Expenses on minor's education and any other funeral expenses are included in necessary.

6. Contract by Guardian :

→ How far enforceable

① Minor's agreement is void but however guardian in some cases may contract on behalf of minor.

② Contract which is beneficial for minor is valid but it should also be within competence.

③ All contract by guardian are not valid such as purchasing of immovable property

④ but if guardian with sanction of court enters into a contract for sale of immovable property is valid

7. No specific performance :

→ Minor agreement is void-ab-initio therefore question of specific performance do not arise.

8. No Insolvency :

→ A minor cannot be declared insolvent since he is not capable of contracting debt.

9. Partnership :

→ A minor is incompetent to contract therefore he cannot be a partner in firm.

→ However minor can be admitted to benefits of partnership firm.

10. Minor can be agent.

→ Minor can act as agent.

→ But he will not be liable to principal for his acts.

11. Minor cannot bind parent or guardian :

→ When minor act as a agent of parent then they shall be liable.

→ If minor In case of absence of Express or implied contract minor shall not be liable.

12. Joint Contract by minor and Adult:

→ In such case only adult shall be liable in contract and not minor.

13. Surety for minor:

→ In case of contract of guarantee, when an adult stands in surety for minor then adult is liable as there is contract between surety and third party.

14. Minor as a shareholder

→ Minor being incompetent to contract cannot be shareholder of company.

→ If by mistake he become shareholder then company can rescind (cancel) such transaction.

→ If a minor through lawful guardian becomes shareholder of fully paid up share then it is valid.

15. Liability for torts:

→ A tort is a civil wrong doing

→ A minor is liable for tort unless tort in reality is a breach of contract.

* Person of sound mind.

Section : 12 A person is said to be sound of mind when he is capable of terms and conditions and form rational judgement.

→ A person who is usually of sound mind but occasionally unsound mind is capable of making contract when he is of sound mind.

→ A person who is usually of unsound mind but occasionally sound mind is not capable of making contract when he is of unsound mind.

* Contract by disqualified Person :

→ Competency to contract may arise from political status and legal status and corporate status.

→ Following person are in this category

- foreign sovereign,
- Alien enemy
- convicts
- insolvent

* Free Consent :

Section 13 : Two or more person are said to be in consent when they agree upon same thing in same sense.

→ Consent is said to be free when not caused by.

- Coercion
- Undue influence
- Fraud
- Mistake
- Misrepresentation

Section : 15 Coercion

→ Committing or threatening to commit any act forbidden by Indian Penal Code.

→ Detaining or threatening to detain any property to prejudice of any person with an intention of causing any person to enter into agreement.

* Effect of Coercion

1. Contract induced by coercion is voidable at the option of aggrieved party.
2. Aggrieved party rescinded contract and if he has received any benefit under contract then he is bound to restore it.
3. If any party has received any money under contract then he is bound to return it.

Section 16: Undue Influence

→ A contract is said to be induced by Undue Influence when there exist relations between parties such that one person is in a position to dominate will of other person and uses this position to undue advantage.

→ A person is deemed to be in a dominant position :

1. Where he hold a real apparent authority.
2. Where he stands in a Fiduciary Relationship.
3. Where person makes contract with a person whose mental capacity is temporarily or permanently affected.

* Essentials of Undue Influence

1. Relation between parties :

A parties must be in near relation with each other.

2. Position to dominate the will:

A person is deemed the will to be in a position to dominate will in a following circumstances:

→ 1. Real and apparent authority.

• When person holds real authority over other person.

e.g. master & servant
Doctor & patient.

2. Fiduciary Relationship:

→ Where relation of trust & confidence exist between parties of contract.

e.g. father & son
solicitor & client

3. Mental Distress:

→ An undue influence can be used against person whose mental capacity is temporarily or permanently affected by reason of age, illness or bodily distress.

4. Unconscionable Bargain:

• where one of parties to contract is in a dominant position to dominate will and contract is apparently appears to be unfair it is presumed to be obtained by undue influence

• Objective - 1

Dominant party should obtain undue/unfair advantage over other party

• Burden of Proof:

→ Dominant party should prove that no undue advantage/influence was there at time of making contract.

* Section 19 A: - Power to set aside contract by Undue Influence.

→ Contract is voidable at option of aggrieved party whose consent was so caused.

→ Any such contract may be set

aside either absolutely or on such terms that court may decide

Sec 17 : Fraud

→ Fraud means and includes any of following act committed by party to a contract or with his connivance or by his agent with an intention to deceive another party to induce him to enter into contract

Following are acts :

1. The suggestion as to the fact which is not true by one who does not believe it to be true.
2. Active concealment of fact by one having knowledge of fact
3. Promise made without intention of performing it.
4. any other act fitted to deceive.

* Effect of fraud upon validity of Contract:

1. He can rescind contract within reasonable time.
2. He can sue for damages.
3. He can insist on performance of such condition / term that contract shall be put in such position as if representation had been made true.

* Mere silence is not fraud.

→ A party to a contract is under no obligation to disclose whole truth to other party.

→ As per Doctrine of caveat emptor which means let the buyer beware, seller is not responsible for telling truth.

→ It is no duty to disclose facts which are within knowledge of both parties.

* Silence is not a fraud when duty of

→ duty of person to speak.

• where under a contract, it is duty of person to speak.

e.g. contract of good faith.

[Umbermae Fedei]

* Following are contract under this category

1. Fiduciary Relationship:

A person in whom confidence is reposed is under duty to act with utmost good faith and make full disclosure of all facts concerning agreements.

2. Contract of Insurance:

In contract of marine, fire and life insurance, there is implied condition that full disclosure of material fact shall be made otherwise insurer can avoid contract.

3. Contract of marriage:

Every material fact must

be disclosed by the parties to a contract of marriage.

4. Contract of family settlement:

It requires full disclosure of material fact within the knowledge of parties.

5. Share allotment contracts:

Person issuing prospectus at time of public issue of shares and Debenture of company have to disclose all material facts.

* where silence is equi in itself equivalent to speech.

Exception to Section 19

→ in case of fraud contract is not voidable If Aggrieved party had option to discover truth by ordinary diligence.

sec 18 : Misrepresentation

It means and includes

- ① The positive assertion in a manner not warranted by information by person making it which is not true but person believes it to be true.
- ② Any breach of duty without intention to deceive, gains & advantage to a person committing it.
- ③ Causing however innocently a party to an agreement to make a mistake as to substance of thing which is subject to agreement.

ec : 19

→ When an consent is caused by CUFM contract is voidable at option of AP

→ If contract is caused by fraud and misrepresentation then aggrieved party may also insist on performance of contract as per the term if Repⁿ had been made true.

Exception: If such consent was caused by mis-representation or by silence, fraudulent within the meaning of sec 17, the contract is not voidable, if party consent was so caused had the means of discovering truth with ordinary diligence.

- contract will be voidable only when other party has been misled by person committing it

* Mistake:

→ It refers to innocent or Erronous belife which leads other party to misunderstand others. Mistake can be unilateral, or bilateral

Bilateral mistake is a mistake when both parties to a contract are under mistake.

Unilateral mistake is when one party to a contract is under mistake.

* Effect of Mistake

a) Mistake of law:

1. A mistake of law doesnot render contract void as one cannot take

benefit of ignorance of law of one's own country.

2) mistake of foreign law is excusable and is treated as mistake of fact.

b) Mistake of fact:

a) when contract parties misunderstood each other and that too for cross purpose it is bilateral mistake. In such case contract is void.

b) unilateral mistake may be valid or void -

* Legality of object and consideration:

section 23: consideration and object of contract are lawful. Unless

① it is forbidden by law -

- Acts forbidden by any law are void.
- It includes all acts which are punishable under any statute as well as prohibited by regulation & order.

(2) When consideration and objects ^{defeats} defeat the provision of law.

→ It means acts which are against intension of law which is expressed.

→ court will look into real intension of parties and if intension is ~~to~~ to defeat provision of law then it will not enforce it.

(3) when it is fraudulent

→ Agreements which are entered to promote fraud are VOID.

(4) when consideration defeats any rule for time being in force in India.

(5) when consideration involves injury to a person and property of another.

- injury means criminal or wrongful harm.

- in such case agreement are void.

(6) when consideration is immoral;

- when contract contains consideration which is against morality are void in

① When consideration is against public policy.

(a) → (a) **Trading with enemy** :

① any trade with person owing allegiance to govt at war with India without licence of govt is void.

② such trade is against public policy by tending to prejudice interest of state at time of war.

(b) → (b) **Stippling proceecution**

→ an agreement to stipple proceecution i.e. an agreement to prevent proceeding already instituted from running their normal course or using force - is abusive of justice therefore such agreement is void.

→ Purpose is one should not trade or make a trade of felony.

(b) → As per **Indian Criminal Procedure Code** there are two types of offences - compoundable & non-compoundable.

able offences can be settled and such contract are valid on the other hand. non compoundable offences cannot be settled and such contract to settle are void in nature.

2) → Maintenance & champerty

→ Maintenance is an agreement in which person promises to maintain suit in which he has no interest.

→ Champerty is an agreement in which person agrees to assist another in litigation in exchange of promise to handover portion of proceeds of action.

→ Agreement of maintenance & champerty unless

① It is unreasonable so as unjust to other parties

② It is made with malicious motive like gambling in litigation

(d) Trafficking related to public offices

→ It is an agreement in oppose to public policy as it interferes with appointment of best suitable qualified person for service.

→ Policy requires that there should be no money consideration for appointment to an office in which public is interested.

(e) Agreement tending to create monopoly.

→ Such agreement are void in nature.

(f) Marriage brokerage contract.

→ An agreement to negotiate marriage for reward - is void in nature.

→ An agreement to procure wife by paying money consideration is void.

→ Marriage Bureau only provides info and do not negotiate for marriage.

(g) Interference with the course of Justice :

→ an agreement whose object is to induce and judicial officer of state to act partially or corruptly is void.

(h) Interest against obligation:

→ Agreement made with a person to provide interest against his obligation which he is bound to perform by law is VOID.

(i) Consideration unlawful in part.

→ A single consideration for one or more object or any of part of several consideration which is unlawful is VOID.

* Void Agreement:

1. Agreement in restraint of marriage.

→ Every agreement in restraint of marriage is void other than that of minor.

IM.P
2. Agreement in restraint of trade.

(Sec 27)

→ An agreement by which any person

who is restrained from exercising
lawful profession, trade or
business of any kind - is void in
the nature.

* Exception to the above rule:

① In case where a person sells
goodwill of business and
agrees with a buyer to refrain from
carrying out similar business within
specified local limits as long as
by buyer and his successor carries on
business therein, such an agreement is
valid.

② In case of partnership firm where
outgoing or continuing or incoming
partner makes an agreement regarding
not to carry on similar business is
VOID VALID

③ An employee agreement of service
where employee binds himself not
to carry similar business for specified
term is VALID

Follow the river and will reach the sea.

IMP = IGSI R

3. Agreement in restraint of legal proceedings:

→ An agreement where one person is restricted from enforcing his rights under contract through court is VALID VOID

→ However there are exception to the rule:

① where there is an agreement that any dispute between the parties shall refer to arbitration is valid contract.

② All such agreement may be related to past, present or future matters and it must be in writing.

4. Agreement the meaning of which is uncertain:

→ An agreement meaning of which is uncertain is void in nature.

5. Wagering Agreement:

→ An agreement by way of wages is VOID

→ It is an agreement involving payment of some of money upon determination of uncertain event.

→ Essence of wages is that each side should stand to win or lose depending upon uncertain event.

→ In event neither party should have legitimate interest.

Essentials of wager

1. There must be promise to pay money or money's worth.

2. Promise must be conditional on event happening or not happening.

3. There must be uncertainty of event.

4. There must be two parties to win or lose.

5. common intention to bet.

6. Parties should have no interest in the event except for stake.