

Unit 3 (Other Essential Elements of a Contract.)

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Capacity of Parties →

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

Who are competent to contract → Section 11.

Every person is competent to contract who →

→ has attained age of majority.

→ is of sound mind.

→ is not disqualified from law to which he is subjected to.

1. Age of majority →

As per Indian Majority Act, 1875 →

→ Every person who is domicile in India shall attain age of majority on completion of 18 years of age.

→ A person below 18 years of age would be called as minor.

2. Law related to minor →

a) Contract made with or by minor is void ab initio →

→ A minor is not competent to contract and any agreement with minor is void ab initio. (void from beginning)

(Case law ... Mohira Biwi vs Dharmodar Das)

(valid here)

b) No ratification after attaining majority →

→ A minor cannot ratify agreement on attaining majority as originally it was void ab initio.

c) 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 can't become partner in partnership firm but he can be admitted to benefits of firm.

d) Minors can always plead for minority →

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

→ Rule of Estoppel do not apply on minor

→ He can always plead for minority in his defence.

e) liability for necessary → (Section 68)

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

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

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

→ Only property shall be liable and not personal liability will occur.

Minors 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.

Necessary → @beingcommerce

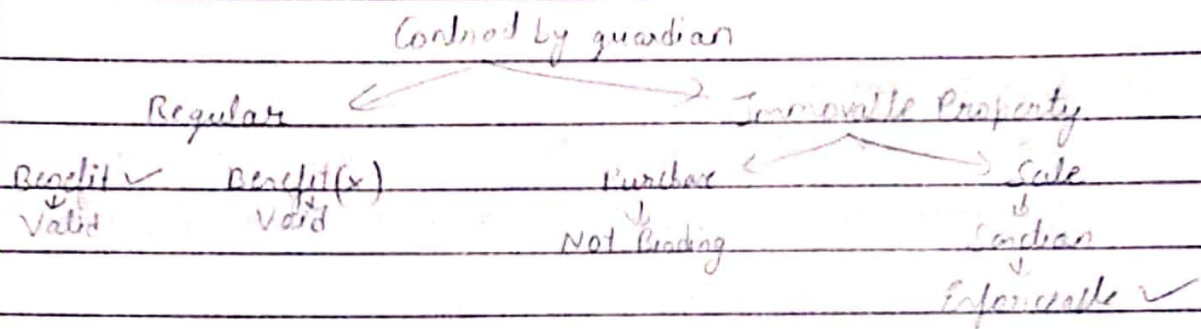
→ Those things which are Essentially needed by minor according to class or society of minor.

→ They do not include cost of luxurians or costly or unnecessary activities.

→ Necessary means all such activities which person to supply to infant in a class of society to which he belongs.

→ Expenses on minor's education & any other funeral Exp. are also included in necessary.

- f) Contract by guardian → (How far enforceable)
- minors agreement is void however guardian in some cases may contract on behalf of minors.
 - Contract when beneficial for minors is valid but it should also be within competence.
 - All Contract by guardian are not valid such as purchasing of Immovable property.
 - But if guardian with sanction of Court Enters into a Contract for sale of immovable property is valid.

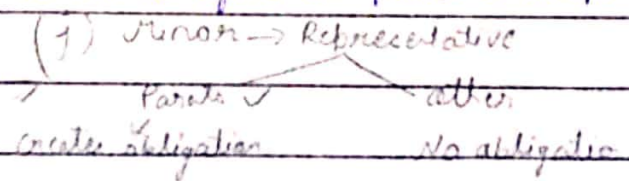


- g) No Specific Performance →
- Minor agreement is void ab Initio therefore Question of Specific performance do not arise.

- h) No insolvency →
- A minor can't be declared insolvent since he is not Capable of Contracting Debts.

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- i) Partnership →
- A minor is incompetent to Contract therefore he can't be a partner in firm.
 - However minor can be admitted to benefits of partnership firm.



- j) Minor can be agent →
- Minor can act as agent but he will not be liable to principle for his act.

k) Minor can't bind parent or guardian →
→ When minor act as a agent of parent than they shall be liable.
→ In case of absence of Express or Implied Contract minor shall not be liable.

l) Joint Contract by minor & adult →
→ In such case only adult shall be liable in Contract and not minor.

m) ^{guarantee} (Surety) for minor →
→ In Contract of guarantee, when an adult stands in surety for minor than adult is liable as there is contract b/w surety and third party.

n) Minor as a Shareholder →
→ Minor being incompetent to Contract can't be shareholder of Company.
→ If by mistake he becomes shareholder than Company can resign such transaction.
→ If a minor through lawful guardian becomes shareholder or fully paid up share than it is valid.

o) 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.

3. Person of Sound mind →

As per Section 12. A person is said to be sound mind when he is capable of understanding terms and Conditions & 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 of sound mind is capable of making contract when he is of sound mind.

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4. Contract by disqualified person →

→ Competencies to contract may arise from political status, corporate status & legal status.

Following person are in this category →

→ Foreign sovereign, Alien Enemy, Convicts Insolvent etc.

Free Consent → (Section 13)

Two or more persons 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 → (Section 14)

C → Coercion

U → Undue Influence

F → Fraud

M → Misinterpretation

M → Mistake.

(Physical pressure on person/property.)

✓ 1. Coercion → (Section 15)

Penal Code
Indian Penal Code
Court

→ Committing or threatening to commit any act forbidden by IPC.

→ 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 → (Section 19)

→ Contract induced by coercion is voidable at the option of aggrieved party.

→ Aggrieved Party can rescind Contract and if he has received any benefit any profit under contract than he is bound to restore it.

→ If any party has received any money under contract than he is bound to return it. (Section 72)

position = use karna. (Mental pressure)

2. Undue Influence (Section 16)

→ A contract is said to be induced by undue influence when there exists relation b/w parties such that one person is in a position to dominate will of other person and uses this position to obtain unfair advantage.

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

→ Where he holds a real or apparent authority.

→ Where he stands in a fiduciary relationship.

→ Where person makes contract with a person whose mental capacity is temporarily or permanently affected.

Essentials of Undue Influence are →

(i) Relation b/w parties →

→ A party must be in near relation with each other.

(ii) Position to dominate the will →

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

a) Real & Apparent authority →

→ When person holds real authority over other person.

Ex → Master & Servant, Teacher & Student.

b) ~~Fiduciary~~ fiduciary relationship →

→ Where relation of trust & confidence exist b/w party of contract

Ex → father & son, Solicitor & client.

c) Mental Distress →

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

d) Unconscionable Bargain →

→ Where one of parties to contract is in a position to dominate will and contract is apparently appear to be unfair it is presumed to be obtain by undue Influence.

Obtives Objectives →

→ Dominant party should obtain undue/unfair advantages over other party.

Burden of Proof →

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

Contract mai chage karke valid karne dena

Section 19A

→ 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 at such terms that Court may decide.

Intentionally chutya banana. AP KD

3. FRAUD → (Section 17)

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

Following are Acts →

→ The suggestion as to the fact which is not true by one who does not believe it to be true.

→ Active concealment of fact by one having knowledge of fact.

→ Promise made without intention of performing it.

→ Any other act fitted to deceive.

Effect of fraud upon validity of Contract →

→ He can rescind contract within reasonable time.

→ He can sue for damages.

→ He can insist on performance on such condition/term that contract shall be put in such position 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.

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Silence is fraud when →

a) Duty of person to speak →

→ Where under contract it is duty of person to speak.

Eg. Contract of good faith (*Ubermae fidei*)

Following are contract under this category →

(i) Fiduciary Relationship → *trust relationship.*

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

b) Contract of Insurance → Marine / Health.

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

c) Contract of Marriage →

→ Every material fact must be disclosed by the parties of Contract of marriage.

d) Contract of Family Settlement →

→ It require full disclosure of material facts within knowledge of parties.

e) Share allotment Contract →

→ Person issuing prospectus at time of public issue of shares & debentures of Company have to disclose material facts.

Silence is itself equivalent to fraud.

ii) When silence is itself is Equivalent to sleep →

Exception Sec 19 →

In Case of fraud Contract is not voidable if Aggrieved party had option to discover truth by ordinary diligence.

4. Misrepresentation → (Section 18)

It means & includes →

→ The positive ascertain in a manner not warranted by information by person making it which is not true but person believes it to be true.

→ Any breach of duty without intention to deceive, gains & advantages to a person committing it.

→ Causing however innocently a party to an agreement to make a mistake as to substance of thing which is subject to agreement.

As per Section 19 →

→ When an consent is caused by coercion, undue Influence, fraud & misrepresentation contract is voidable at option of Aggrieved Party.

→ If contract is caused by fraud & mis-representation than Aggrieved party may also insist on performance of Contract as per the terms if representation has been made true.

Exception to Section 19 →

→ In case of fraud Contract is not voidable if Aggrieved Party had option to discover truth by ordinary diligence.

→ Contract will be voidable only when other party has been misled by person committing it.

5. Mistake →

→ It refers to innocent or Erroneous belief which leads other party to misunderstand others.

→ Mistakes can be unilateral or bilateral.

Bilateral mistakes → It is a mistake when both parties to a Contract are under mistake.

Unilateral mistakes → It is when one party to a contract is under mistake.

Effect of Mistake →

a) Mistake of law →

→ A mistake of law does not render contract void as one can't take benefit of ignorance of law of one's own country.

→ Mistake of foreign law is Exusable & is treated as mistake of fact.

b) Mistake of fact →

→ When contracting parties misunderstood each other & that to for cross person it is bilateral mistake. In such case, Contract is void.

→ Unilateral mistake maybe valid or void.

Legality of object and Consideration →

(Section 23) : Consideration & Object of Contract are lawful unless :-

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1. Forbidden by law →

→ Act 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 & object defeats provision of law.

→ It means act which are against intention of law which is expressed.

→ Court will look into real intention of party and if intention is to defeat provision of law than it will not enforce it.

3. When it is fraudulent.

→ Agreement which are entered to promote fraud is void.

5. When consideration involves injury to a person and property of another → Injury means criminal or ^{wrongful} harm.

→ In even case agreement are void.

40 When Consideration defeats any rule for time being enforce in India.

6. When consideration is immoral →

→ When Contract contains consideration which is against morality are void in nature.

70 When Consideration is apposed to public policy →

a) Trading with enemy → (Main enemy)

→ Any trade with person owing allegiance to govt. at war with India without license of govt. is void.

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

b) Stifling prosecution →

→ An agreement to stifle prosecution i.e. on agreement to present proceeding already instituted from running their normal course using force — abusive of justice therefore such agreement is void.

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

As per Indian Criminal Procedure code →

There are two codes of offences

1. Compoundable offences → can be settled and such Contract are valid.

2. Non Compoundable offences → cannot be settled and such Contract are void in nature.

c) 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 a promise to handover portion of proceeds of action.

- Agreement of maintenance & champerty is valid unless →
- It is unreasonable so as unjust to other parties.
- It is made with malicious motive like gambling & in litigation.

Creating a 2nd & 3rd to make themselves Superior.

d) Trafficking related to public offices →

- It is an agreement oppose to public policy as it interfere appointment of best suitable qualified person for services.
- Policy requires that there should be no money consideration 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) Inference in 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 is unlawful in part →

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

Void Agreements →

i) Agreement in restraint of marriage → (Section 26)
→ Every agreement in restraint of marriage is void other than that of minor.

ii) Agreement in restraint of trade → (Section 27)
→ An agreement by which any person who is restrained from exercising lawful profession, trade or business of any kind is void in nature.

Exception to above rules →

→ In case where a person sales goodwill of business & agrees with a buyer to refrain from carrying out similar business within which specified local limits. As long as buyer & his successor carries on business therein is valid in nature.

→ In Case of Partnership firm, where outgoing, continuing or Incoming partners make an agreement regarding not to carry on some similar business is valid.

→ An Employee agreement of service where Employee binds himself not to carry similar business for specified term is valid.

iii) Agreement in restraint of legal proceedings → (Section 28)

→ An agreement where one person is restricted from enforcing his rights under contract through Court is void.

Exception of rule →

→ Where there is an agreement any dispute in party shall refer to arbitration is valid Contract.

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

(iv) Agreement the meaning of which is uncertain :-
→ An agreement meaning of which is uncertain is void in nature.

v) Wagering Agreement ^{Depend on uncertain event} →
→ An agreement by way of wager is void.
→ It is any agreement involving payment of sum of money upon determination of uncertain event.
→ Essence of wager is that each side of Contract should stand to win or lose depending upon uncertain event.
→ In event neither party should have legitimate interest.

Essentials of wager →

- There must be promise to pay money or money's worth.
- Promise must be conditional at event happening or non-happening.
- There must be uncertainty of Event.
- Common intention to bet.
- Parties should have no Interest Except for Stake.

Transaction similar to wager →

Wager Transaction are void agreement.

a) Lottery Transaction →

- It is a game of choice and not of skill & knowledge.
- Prime motive of participant is gambling.
- Even lottery sanction by CrOI is wagering transaction but person running will not be punishable under Indian Criminal Procedure.
- Even collateral transaction are tainted with illegality.

b) Crossward Puzzle & Competition →

→ Where prices depends upon Correspondence of Competitor's solution with previously prepared solution kept with editor of newspaper is lottery any wagering transaction.

→ Puzzles or Competitors where prices are awarded on basis of skill & intelligence are valid.

→ As per price Competition Act, where price money does not Exceed 1000 are valid.

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c) Speculative Transaction →

→ An agreement or share market transaction where parties intend to settle difference b/w Contract price & market price on specified day is valid.

d) Horse Race Transaction →

A horse race transaction Competition where price payable to bet winner is more than 500 is a wager.

Transaction resembling with wager but not valid →

a) Chit fund →

→ It does not come within scope of wager.

→ In chit fund, certain number of person decides to contribute a fixed sum for specified period and at end of month sum is payable to Every draw winner.

b) Commercial transaction / Share Market transaction →

→ Transaction where delivery of goods and share is intended does not amount to wager.

c) Game of skill & Athletic Competition →

→ Crossword puzzles Athletic competition where prizes are awarded on basis of skill and intelligence are valid.

→ As per prize Competition Act, Prize money should not Exceed 1000.

d) A Contract of Insurance →

→ A Contract of Insurance is contingent contract and is valid.

→ It is different from wagering contract.