

OTHER ESSENTIAL ELEMENTS OF A CONTRACT

CAPACITY OF PARTIES

- Capacity :- Capacity refers to the competence of parties to make a contract.

It is one of the essential elements to form a valid contract under sec 10 of ICA, 1872

- Who is competent to contract as per Section 11 ?

Every person is competent to contract who is

→ Age of majority acc to law to which he is subject

→ who is of sound mind

→ NOT disqualified from contracting by any law to which he is subject.

★ Indian Contract Act 1872, doesn't specify the exact Majority of age. It is defined as per the law.

Law Relating to Minor Agreements

Acc. to Section 3 of Indian Majority Act, 1872, a person domiciled in India who is under 18 years of age is minor.

When age of 18 years becomes completed, they becomes major.

(1) An agreement with a minor is void-ab-initio

An agreement with a minor is absolutely void and inoperative.

This rule was established by the Privy Council in the famous case Mohini Biji v. Dharmodas Ghose

(2) No ^{change} Ratification after attaining Majority

A minor's agreement being a nullity & void-ab-initio has no ^{no value} existence in the eyes of law.

As original agreement is void-ab-initio and a void agreement can never be ratified.

(3) Minor can be a beneficiary

Any contract which is of some benefit to the minor & under which he is required to bear no obligation is valid.

All contracts made by guardian on behalf of a minor are not void.

(4.) A minor can always plead Minority.

A minor is not **estopped** from **pleading** his **infancy** in order to avoid a contract, even if he has entered into an agreement by falsely representing that he was of full age.

Rule of estoppel does not apply to minor

(5.) Liability for Necessaries (रिी, कपडा, मकान)

A minor is **not personally liable** for the necessaries supplied to him. But his property is liable for payment.

As per **Sec 68**, 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 **reimbursed the property** of such incapable person.

(6.) Contract by Guardian

If there is no express or implied authority, a minor can't bind his parents or guardian, even

for necessities.

★ Parents will be liable only if the child acts as an agent for parents.

(vii) No Specific Performance

Since an agreement by a minor is absolutely void, the court will never direct 'specific performance' of such an agreement by him.

(viii) No insolvency

A minor can't be ^{declared by court} adjudicated an insolvent for he is incapable of contracting debts.

Even for necessities supplied to him, he is not personally liable, only his property is liable [Sec 68]

(ix) Partnership

A minor being incompetent to contract can't be a partner in a partnership firm but under Sec 30 of Indian Partnership Act, he can be admitted to the benefits of partnership.

(x) Minor can be agent [Sec 184]

A minor can be an agent. He shall bind the principal by his acts done in the course of such an agency, but he can't be personally liable.

for breach of duty.

Thus in appointing a minor as an agent, the principal runs a great risk.

(xi) Contract by Guardian

Where the guardian makes a contract for the minor which is within his competence and which is for the benefit of the minor, there will be a valid contract which the minor can enforce.

(xii) Joint Contract by Minor and Adult

In such case, adult will be liable on the contract and not the minor.

Related Case law :- Sain Das v. Lam Chand

(xiii) Surety (Guarantor) for a minor

In a contract of guarantee when an adult stands as surety for a minor then surety is liable to third party as there is direct contract b/w the surety & third party.

(xiv) Minor - as shareholder

A minor can become a shareholder of fully paid shares through transfer, if he applies for registration through his guardian.

If a minor makes application for shares, the company will rescind to allot him shares because of being incompetent.

(xv) Liability for Torts → जानबूझकर person या उसकी property में Harm करना।

A tort is a civil wrong. A minor is liable for the torts which do not arise from a contract.

⇒ Person of Sound Mind

As per sec 12, a person is said to be of sound mind for the purposes of making contract if, at the time when he makes it is

- ① capable of understanding it and of forming a
- ② rational judgement as to its effect upon his interests.

Section 12 further states that :-

- (i) A person who is usually of unsound mind, but occasionally of sound mind, may make a contract

When he is of sound mind. → Lucid Interval

(ii) A person who is usually sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

⇒ Contract By Disqualified Person

The third type of incompetent person as per sec 11 are those who are 'disqualified' from contracting by any law to which they are subject. These are :-

(a) Alien enemies

An alien living in India can enter into contract with citizen of India & that too subject any restriction imposed by the govt.

On the declaration of war by his country, he becomes alien enemies & cannot enter into contracts.

(b) Foreign Sovereigns and Ambassadors

Foreigner sovereigns and Ambassadors can sue Indian but Indian can't sue them. They can't be sued in Indian Courts, except in following cases :-

- (i) Where they voluntarily submit themselves to the court [surrender by themselves]
- (ii) Where the person intending to sue them obtains the approval of central govt.

(c) Convict (अक्रिम)

Convict is one who is found guilty & is **imprisoned**.
During those days, he is incompetent

→ to enter into contracts

→ to sue on contracts made before conviction.

On the expiry of the **sentence**, he is at **liberty** to **institute** a suit and the law of limitation is held in **abeyance** during the period of his sentence.

(d) Insolvent

An adjudged insolvent is competent to enter into certain types of contracts i.e. incur debt, purchase property or be an employee but he can't sell his property which **vests** ^{acquired} in the official Receiver.

Before discharge he also suffers from certain disqualifications.

After ~~at~~ the order of discharge, he is just like an ordinary citizen.