

WHAT IS A CONTRACT?

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Section 2(h) of the Indian Contracts Act 1872 defines a contract as an agreement that is enforceable by law. Section 10 of the Act lists out the requisites that make the agreement enforceable. One such requirement is the capacity of the parties to contract. To make a valid contract, Parties should make sure that the contract must contain these six elements:

- Offer
- Acceptance
- Consideration
- Capacity
- Intent
- Legality

CAPACITY TO CONTRACT

Capacity to contract means competency of the parties to contract. Section 11 of the Act declares the people who are competent to enter into a contract. So as per the Section, every person is competent to a contract given the person is of the age of majority and is not disqualified as per the law to which he is subjected and he/she should be of sound mind. Capacity to contract means **the competency to enter into a valid contract legally**. The capacity to contract binds the parties of the contract with a promise to oblige by it. But only certain persons have the competency or the capacity to make a contract.

COMPETENT TO CONTRACT

To make a contract, only certain people are eligible. The following are the people who can contract:

- Those with a sound mind
- People who have crossed the majority age (Above 18 Years)
- Solvent Person
- Persons who are not disqualified by law

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Only the above parties are competent to contract as per the Indian Contract Act, 1872.

INCOMPETENT TO CONTRACT

Incompetent to contract means that a person is not legally allowed to enter into a contract when he/she comes into any of the categories which are as follows:

Persons of Unsound Mind: According to the Indian Contract Act 1872, A person with an unsound mind cannot enter into a contract because of his mental state but he/she can enter into a contract when he becomes of sound mind. In *J. Ghattacharjee v. S. B. Bora* (AIR 1994 Gau 99), the person in question filed cases against family members, remained away from home for long periods, transferred family properties to the extent of making the family homeless, the court said that all this was sufficient to indicate that the vendor was not normal and was not mentally sound at the time of sale. The purchaser adduced no evidence that the under was of sound mind.

Minor: A minor is one who has not attained the age of 18, and for every contract, the majority is a condition precedent. By looking at the Indian law, the minor's agreement is avoided one, meaning thereby that it has no value in the eye of the law, and it is null and void as it cannot be enforced by either party to the contract. If a party is from India and another party is from a foreign country, then there will be more than one law that will be applicable in the contract. In such cases, the *TNS Firm v. Muhammad Hussain* has set specific guidelines. The age of the majority for ordinary mercantile transactions will depend upon the law of the country where they make the contract. The age of the majority for land transactions will depend upon the law where the land is located.

However, the judicial committee of the privy council in the landmark case of *MohiriBiwi vs. Damodardas Ghosh* held that the agreement with the minor was VOID lacking all the contractual obligations on either side. The rationale propounded by the council was that a child may exhibit poor judgment in making a contract that may adversely affect its interests. Hence, deeming the agreement with the minor as void may best serve his interest. The contract which is for the benefit of the minor and within the competence of the guardian is enforceable.

EFFECTS OF A MINOR'S AGREEMENT

No estoppel against a minor: Minor is not estopped from setting up the defense of infancy. The policy of the law of contract is to protect persons below age from contractual liability and naturally, the doctrine of estoppel cannot be used to defeat that policy.

No liability in tort arising out of the contract: A minor's agreement is in principle devoid of all legal effects due to his incapacity to give consent. Hence, a minor cannot be held responsible for anything which would be an indirect way of enforcing his agreement. So consequently, if a tort is directly connected with a contract, the minor would not be held liable in tort as enforcing it would have the effect of suing an infant. In *Burnard vs Haggis* (1863), it was held that where the tort is independent of the contract, the mere fact that a contract is involved will not absolve the minor from his liability.

CAN A MINOR ENTER INTO A CONTRACT FOR BENEFITS?

One can bring a minor into a contract if he is the beneficiary of the contract. The minor does not have a restriction to be a promisee or payee in a contract. Thus a minor can purchase an immovable property and also can sue for the possessions upon the tender of the money. One cannot order a specific performance against a minor.

Section 68 of the Indian Contract Act, 1872

Section 68 states that if a person does not have the capacity of being in a contract receives necessaries from another person. He has the power to reimburse the incapable person. Though section 68 makes minors liable for the necessaries, it does not define the necessaries. The necessaries will be decided upon in the case. To have reimbursement for the necessaries the party supplying the necessaries must prove that the good and reasonable. They have also to confirm that the provided necessaries are the only support for the minor and that they do not have any sufficient supply with them. The Indian Apprentices Act of 1850 allows minors to enter into arrangements (through their guardians) that are similar to service contracts. Its very objective is to enable poor children and orphans to learn certain vocational skills in their minority so that they can gain a livelihood when they become adults. Nevertheless, it was held by Desai J. in *Raj Rani v. PremAdib* that the minor cannot be held liable in such a contract as he or she is a beneficiary, and his or her contract is void. In such case, no reimbursement can be claimed for training, rather the minor ought to be paid for the work.

POSITION OF A MINOR IN A CONTRACT OF AGENCY

It is important to highlight that even if a minor enters into contractual agreements through an authorized agent acting on his behalf, the agreement would still be considered void. So, a contract that is entered by a minor (acting as a principal) through his agent is void. The rationale behind this is that 'an agent is said to act on behalf of the principal'; so, it would mean enforcing a contract by a principal who is a minor, viz., someone not allowed by law to contract. Although the minor cannot act as a principal, he or she can be an agent as an agent function only as a connecting link between two parties. Moreover, he can be absolved from liability as an agent on account of his minority.

Person Disqualified by Law: If the law does not accept any person, then he cannot enter into a contract or hold by the court as a convict that is a person convicted for the crime of a certain offense. The law should qualify a person for them to be a part of a contract. These include several types of people. First is alien enemies i.e. according to Section 83 of the Civil Procedure Code (hereinafter 'CPC'), no one is allowed to come into a contract with an alien if any war is subsisting unless the government allows for the same. The second is regarding the foreign sovereigns which are embodied under Section 86 of the CPC. The next is an insolvent person, who cannot be subject to any contractual agreement because when he is declared insolvent, his properties are with the official assignee and he or she can only enter into a contract in correspondence with that property as per Section 141(1)(b) of the Insolvency and Bankruptcy Code, 2016. And lastly, contracts with the government are also to have complied with some formalities, and if not done, then it would be deemed to be void. This is not an exhaustive list, but some of the categories which come under the ones that are disqualified by law.

Alien Enemies: The foreign country citizens living in India are alien enemies. Such persons can enter into a contract with the Indians only during peace times. Such a contract is also subject to the restrictions of the Government. If there is a war declaration between his country and India, then he will become an alien enemy, and so he cannot enter into a contract. If the person from the foreign country enters into a contract before the declaration of the war, then the contract will stay suspended during the period of war. The contract can be revived after the end of the war if it has not barred the time limit.

Insolvent: An adjudged insolvent can enter into a contract of certain types. The insolvent can incur debts, be an employee and purchase a property, but he cannot sell the property. He has certain disqualifications like he cannot be a magistrate, cannot be a company director, or he cannot be a local body member. The insolvent person has the capacity of a contract except for his property. He becomes an ordinary citizen after the order of discharge.

Married Women: A married woman cannot enter into a contract relating to the property of her husband. But the wife can be an agent for her husband and bind his property if he fails to provide her with the necessaries.

Corporation Incorporated under a Special Act and Joint Stock Company: Such a corporation or company will be an artificial person formed by the law. It cannot contract outside the powers of the Memorandum of Association or the Special Act.

Judges, Legal Practitioners, or Officers: The judges, legal practitioners, or officers who have a connection with the business interest in actionable claims cannot enter into a contract.

Officers and Employees of the Patent Office: The officers and the employees of the patent office cannot take rights, obtain or take an interest in the patent issued by them during the period of appointment.

CONCLUSION

In nutshell, minors, people of unsound minds, people disqualified by law, and many others who are prescribed by the Indian Contract Act, 1872 are incompetent to contract. Competency to contract is of great importance for its absence renders the agreement void. Hence, the aspect of the capacity to contract attracts greater attention at the time of agreeing. **The competency of parties to contract is one of the most important requirements to make an agreement valid and enforceable in a court of law.** A contract made by a person who does not possess the mental capacity to understand the nature and consequences of the contract is void ab initio.