

CAPACITY TO CONTRACT

Ss. 10 & 11

CAPACITY TO CONTRACT

S. 10 requires that the parties shall be competent to contract.

S. 11. Who are competent to contract.-

Every person is competent to contract who is of

- the age of majority according to the law to which he is subject, and
- who is of sound mind, and
- is not disqualified from contracting by any law to which he is subject.

Persons incompetent to contract

Minor

Persons of
Unsound
Mind

Persons
Disqualified
by Law

Age of Majority?

Indian Majority Act, 1875

a person attains majority on completion of 18 years of his age

when a guardian of a minor person or property has been appointed by the court, he attains majority on completion of 21 years of age

NATURE OF MINORS AGREEMENT

- S. 10 mandates that the agreement shall be between parties competent to contract
- S. 11 indicates that the minor is incapable of entering into contract.
- But neither section provides as to the effect of agreement entered into by a minor.
- This led to a controversy

Mohoribibi v. Dharmadas Ghose

FACTS: dt. a minor mortgaged his properties in favour of pt., a money lender to secure the loan of Rs. 20,000/-, after some money was advanced pt. came to know about infancy of the dt. He filed a suit to repudiate the contract and recover the money advanced

HELD: Minor not liable because Minor's agreement is void ab initio

REASONS:

- the question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant (minor).
- General presumption that every man is the best judge of his own interests is suspended in the case of minor.

Ruling is generally followed in India and applied both to the advantage and disadvantage of minor.

Mir Sarwanjan v. Fakhruddin Mohd. Choudhury

FACTS: A contract to purchase certain immovable property by a guardian on behalf of minor – minor sued for specific performance.

Held: Specific performance Rejected

It was not within the competence of the minor or his manager to bind the minor in contract for purchase of immovable property; as the minor was not bound by contract there was no mutuality and consequently minor could not obtain SP”

Subramanyam v. Subbarao

FACTS: contract by mother of minor on his behalf for the purpose of discharge of father’s debts.

HELD: Overruling earlier decisions and ruled that it is within the power of the minor to contract for debts of his father.

Courts started noticing the necessity to relax the application of rule in the best interest of minor only.

Effects of Minor's Agreement

1. No estoppel against minor

When a minor by misrepresenting his age induces another to contract with him no estoppel is available against him – there cannot be estoppel against statute – policy of law is to protect minor from contractual liability – doctrine of estoppel cannot be applied to defeat the policy - An infant is not estopped from setting up the defense of minority.

2. No liability for tort based in contract - *Johnson v. pye*

Minor's agreement is devoid of all consequences in law

A contract cannot be converted into a tort to sue an infant - Minor is not liable for tort connected with contract, but he is not absolved from liability for independent tort.

3. Doctrine of equitable restitution - when an infant obtained property or goods by misrepresenting his age, he can be compelled to restore it, but only so long as the same is traceable in his possession. If the minor has resold those goods he cannot be made to repay the value of goods and it is not applicable when the minor has received money instead of goods.

Leslie v. Sheill - dt. A minor misrepresenting his age obtained loan from the pt., who sued to recover on the **grounds-**

- Minor is liable for damages for fraud
- Minor shall be compelled in equity to restore the money.

Leslie v. Sheill

HELD:

Lord Sumner – “When an infant obtained an advantage by falsely stating his age, equity requires him to restore ill-gotten gains but scrupulously short of enforcing a contractual obligation entered in to while he was an infant even by means of fraud. The money was paid over in order to be used as dt’s own and he has so used it. There is no question of tracing it, no possibility of restoring the very same thing got by fraud. Compulsion to repay an equivalent sum out of his present and future resources would amount to enforcing a void contract.”

4. Liability to restore benefits

- Where a minor seeks the help of court for the cancellation of his contract, the court may grant the relief subject to the condition that he shall restore all benefits obtained by him under the contract, the court may grant relief subject to the condition that he shall restore all benefits obtained by him under the contract or make suitable compensation to the other party.
- *Khangul v. Lakhasingh* – dt. fraudulently concealing his age agreed to sell a plot of land, received Rs. 17,500/-, refused to perform his promise – pt sued for possession or refund of consideration
- HELD: agreement was void - no possession – payment of consideration ordered

Khangul v. Lakhasingh

- REASONS: Shadilal CJ., “There is no real difference between restoring the property and refunding money except that property can be identified but cash cannot be traced. It must be remembered that while in India all contracts made by infants are void, there is no such general rule in England. Therefore, there should be a greater scope in India than in England for the application of the doctrine of equitable restitution.”
- Later courts deviated from the rule and preferred Lord Sumner’s opinion.

S. 33. Specific Relief Act

- Where a defendant successfully resists any suit
- on the ground that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract
- under section 11 of the Indian Contract Act, 1872,
- the court may, if the defendant has received any benefit under the agreement from the other party,
- require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

5. Beneficial contracts are enforceable by minor

- Law laid down in *Moharibibi* has been generally followed and growingly limited to cases where minor is charged with obligations and the other contracting party seeks to enforce those obligations against the minor.
- The principle “*minor’s agreement is void*” means law will not enforce any contractual obligation of a minor, i.e., a minor is allowed to enforce an agreement which is of some benefit to him and under which he is required to bear no obligation.
- Eg. Mortgage executed in favour of minor, minor’s suit for recovery of possession of property on sale, enforcement of promise by the other after minor performs his promise.

6. No Ratification

- A person cannot on attaining majority ratify an agreement made by him during his minority. Ratification relates back to the date of making the contract and therefore a contract which was then void cannot be made valid by subsequent ratification.
- Eg. Executing promissory note on attaining majority. – fresh consideration may make it valid – no recovery of amount paid under such agreement.

7. Liability for Necessaries

S 68. Claim for necessaries supplied to person incapable of contracting, or on his account.

- ◆ If a person, incapable of entering into a contract, or
- ◆ any one 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.

Illustrations

(a) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Persons of unsound mind

English Law

- A person of unsound mind is **competent** to contract but he can avoid it by satisfying the court that –
 - **he was incapable of understanding the contract** and
 - **the other party knew it**
- Contract is **voidable** at his option and becomes binding if he affirms it.
- Position of the drunken person is the same.
- *Campbell v. Hooper* - mortgagee sought a decree for repayment of debt – evidence showed mortgagor was lunatic when contracted – mortgagee was unaware of it
- **HELD:** “mere fact of lunacy cannot make a contract invalid. If the other party had knowledge of it, it becomes voidable at the option of the lunatic.”

Indian Law

- Agreement of a person of unsound mind, like that of a minor, is absolutely void

S. 12 What is a sound mind for the purposes of contracting.-

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 judgment** as to its effect upon his interests.
- 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.

ILLUSTRATIONS

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) 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 judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Persons disqualified by law

1. Alien enemies
 2. Foreign Sovereigns and Ambassadors
 3. Insolvents
 4. Convict
 5. Corporations
 6. Married woman
 7. Professionals
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