

Capacity of parties

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Sir Naeem Baig

INTRODUCTION

Learning outcomes

The overall objective of the syllabus is to give students an understanding of the legal system and commercial laws; and build a knowledge base of corporate laws.

Capacity of parties

LO **On the successful completion of this paper, candidates will be able to demonstrate knowledge of laws relating to competency / capacity of parties.**

LO 2.3.1 Identify circumstances when a person is not competent to contract

LO 2.3.2 Be aware of consequences or enforceability of contracts with persons not competent to contract.

References to Legal Acts

Section number references embedded in the learning materials refer to the following legal acts unless otherwise stated:

Act	Chapters
Contract Act 1872	3-16
Partnership Act 1932	17
Negotiable Instrument Act 1881	18
Companies Act, 2017	19-27
Securities Act 2015	22

Sir Naeem Baig

1 COMPETENT TO CONTRACT

Section overview

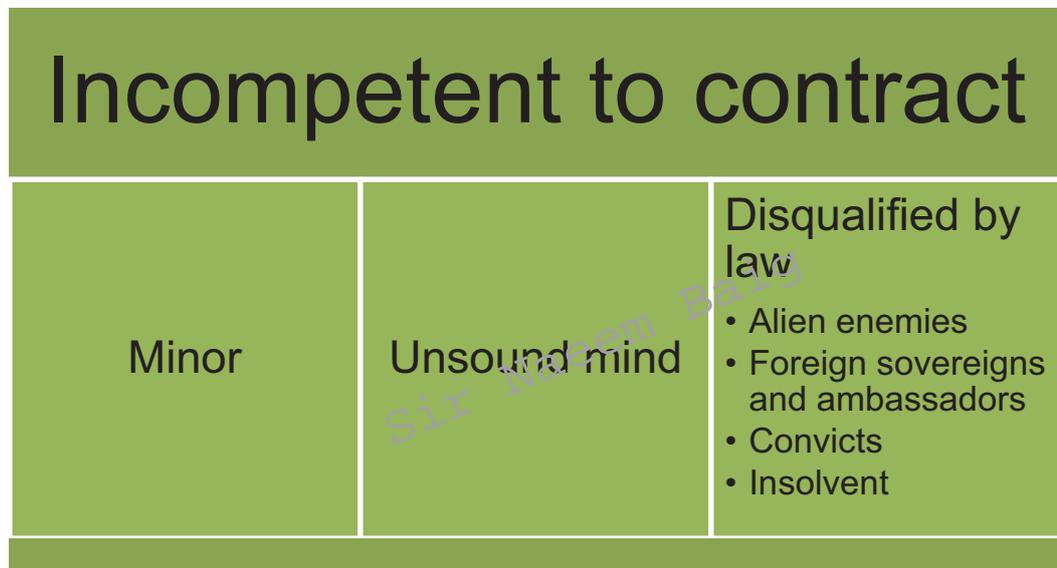
- Who are competent to contract?
- Agreements with a minor
- Agreements by persons of unsound mind
- Agreements with persons disqualified by law

1.1 Who are competent to contract?

According to Section 11 of the Contract Act 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.

The below chart shows the persons who are incompetent to contract:



1.2 Agreements with a minor

In Pakistan a minor is a person who has not attained majority which is:

- 21 years where a guardian of a minor's person or property is appointed by the court of law under the Guardians and Wards Act, 1890; or
- 18 years in other cases.

Position of agreements by a minor

The law pertaining to agreements with a minor is given below:

- An agreement with a minor is void.
- Where an infant / minor represents fraudulently or otherwise that he is of the age of majority and induces another to enter into a contract with him, he will not be liable
- Since ratification has a retrospective application it is necessary that the minor must be competent to contract at the time when the contract is entered into. Therefore, an agreement with a minor cannot be ratified subsequently after he attains majority.

- If a minor enters into an agreement jointly with a major person then such agreement can be enforced against the major person who has jointly promised to perform.
- A minor can be admitted for the benefits of partnership with the consent of all the partners. He cannot be a partner until he attains majority. [Section 30 of the Partnership Act]
- A minor can be agent but cannot be a principal but if anyone acts on behalf of minor principal, he will be personally liable. [Section 184]
- A minor cannot be declared insolvent because he is incompetent to contract.
- A minor can file a suit but cannot be sued.
- If the parent of a minor entered into on behalf of a minor being within the scope of the authority and for the benefit of the minor then such agreements can be enforced by or against the minor.
- A person who supplied necessaries to a minor is entitled to be reimbursed from the property of such minor. Such claim is against the property of the minor and not against the minor personally. [Section 68]

1.3 Agreements by persons of unsound mind

Meaning of sound mind

According to Section 12 of the Contract Act, 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 to understand the terms of the contract,
- to form a rational judgment as to its effect upon his interests.

Thus, if a person is not capable of both, he is said to have suffered from unsoundness of mind.



Example: Meaning of sound mind

The examples of persons having an unsound mind include:

- specific persons/idiots
- lunatics and
- drunken persons.

Specific persons/idiots

A person who is so mentally deficient by birth as to be incapable of ordinary reasoning or rational conduct is said to be a specific person.

Lunatic

A person affected by lunacy is said to be 'lunatic'. A person can become lunatic at any stage of his life.

Position of agreements with a person of unsound mind

The positions of such agreements are given below:

- If a lunatic enters into a contract while he is of unsound mind, an agreement during this period is void.
- If a lunatic enters into a contract while he is of sound mind, an agreement during this period is valid.
- An agreement with a specific person is void.
- A person delirious from fever or drunken person cannot enter into a contract while such delirium or drunkenness lasts and he is not able to understand the terms of the contract or form a rational judgment.

- A person of unsound mind can enforce a contract for his benefits
- A person who supplied necessaries to a person of unsound mind or his defendant entitled to be reimbursed from the property of such person of unsound mind. Such claim is against the property of the person of unsound mind not against the person personally.

Position of a person who is usually of unsound mind but occasionally of sound mind

A person who is

- usually of unsound mind but
- occasionally of sound mind

may make a contract when he is of sound mind



Example: Position of a person who is usually of unsound mind but occasionally of sound mind

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

Position of a person who is usually of sound mind but occasionally of unsound 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



Example: Position of a person who is usually of sound mind but occasionally of unsound mind

A sane man who is so 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 interest cannot enter into contract while such delirium or drunkenness lasts.

Burden of proof

The rules regarding the burden of proof are following:

- If a person is usually of sound mind or in drunkenness or in delirium from fever then the burden of proof that he was of unsound mind lies on the person who questions the validity of contract.
- If a person is usually of unsound mind then the burden of proof that he was of sound mind lies on the person who confirms it.

1.4 Agreements with persons disqualified by law

There are some disqualifications imposed on certain persons in respect of their capacity to contract which are discussed below:

Alien enemies	An alien is a person who is the citizen of a foreign country. He can enter into a contract and be sued during peace time but if a war is declared than an alien enemy can neither enter into a contract or be sued during the period of war. Contracts entered before the declaration of war are either suspended or terminated during the period of war.
Foreign sovereigns and ambassadors	Such persons have immunity unless they choose to submit themselves to the jurisdictions of our courts. They have a right to enter into a contract but can claim the privilege of not being sued.
Convicts	A convict while under imprisonment is incapable of contracting but this disability comes to an end after the expiry of the sentence or when he is on parole.

Insolvent	A person declared as insolvent cannot enter into a contract as his property is dealt with by official assignee or official receiver.
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Note

Companies	A company is an artificial person and a contract entered into by a company will be valid only if it is within the powers granted by the Memorandum of Association.
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Sir Naeem Baig

2 CHAPTER REVIEW

Chapter review

Before moving on to the next chapter check that you now know how to:

- Explain the capacity to contract and persons who are incompetent to contract
- Discuss the position of agreements entered by person incompetent to contract

Sir Naeem Baig