

Chapter-6

⇒ Capacity of Parties to Contract
or parties Competency to
Contract.

Meaning of Contractual Capacity :-

For a valid Contract it is essential that parties promisor and promisee must be capable to enter into Contract because a Contract creates legal obligations and to meet it, Contractual Capacity of parties is essential. Therefore,

the party should be able in understanding the subject matter and facts of Contract. They should also be able in forming a rational judgement as to its effect upon their interests. These persons are known as parties competent to Contract.

According to Section 11 of the Indian 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. We can easily indicate the persons incapable of entering into a Contract as under :-

(1) MINOR'S CONTRACT :-

A minor is not Capable of entering into Contract According to Section 3 of the Indian Majority Act, 1875, a minor is a person who has not Completed 18 years of age. However, in the following cases, a minor attains Majority after 21 years of age :-

ii) If a guardian of minor's person or property has been appointed under the Guardians and Wards Act 1890, or

iii) If the Superintendence of



Minor's property is assumed by a Court of Wards. Thus, in India Law a person attains Majority after the age of 18 years or 21 years of age. Under English Law a person attains Majority after the age of 21 years of age.

According to Salmond :-

"The Law protects these (infants) persons, preserves their rights and estates, excuses their lapses, and assists them in their pleadings, the judges are their counsels, the jury are their servants, and Law is their Guardian."

Legal position of a Minor or effects of Minor's Agreement :-

Law protects interest of these minors so that nobody can take undue advantage of the inability and inexperience



of the minors. The Legal position of minor's Contract and Various rules regarding minor's agreement can be produced as under:

1) A Contract or agreement with or by a minor is Void.

2) A minor can be promisee or beneficiary.

3) No ratification.

4) No estoppels against a minor.

5) Liabilities necessary for existence.

6) A minor cannot become partner.

7) A minor can be an agent.

8) Minor as shareholder or



member of a Company.

9) No liability of minor under the Sale of Goods Act.

10) Minor as a principal.

11) Minor and negotiable Instruments.

12) Minor in joint Document.

(II) PERSONS OF UNSOUND

MIND (SECTION-11 & 12)

Section 11 of the Indian Contract Act says that for a valid contract each party to the contract must have a sound mind. Contract made by a person of deficient mind is void.

According to this Section:-

“ A person is said to be



of unsound mind for the purpose of making a contract, if at the time when he makes it, he is incapable of understanding it, and of forming a rational judgment as to its effect upon his interests."

This section further says that:-

(a) A person who is usually of unsound mind, but occasionally of sound mind, may take a contract when he is of sound mind; for example.

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

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

If a person is incapable of both, he suffers from



Unsoundness of mind, To decide whether a party, at the time of entering into the Contract, is of Sound mind or not is a Question of fact.

According to Section- 68 :-

The liability for necessaries of Life Supplied to a person of Unsound mind is the Same as for minor.

The position of Contract by persons of Unsound mind Can be Summed up as below :-

1) Idiot :-

A person who is permanently of Unsound mind is known as idiot. An idiot is incapable of entering into a Contract.

2) Lunatic or Insane Person :-

Unsoundness of Mind May arise from Lunacy. Lunacy



is a disease of the brain.

3) Drunkard or Delirious persons: -

A person due to his drunk, intoxicated or delirious stage from fever position is incapable of understanding the effect of contract and so cannot enter into valid contract.

4) Mental Decay: -

Mental Decay is an account of old age etc. He is incapable of making any rational judgement. These person cannot enter into a contract.

5) Hypnotism: -

In the case hypnotism a person is found under the influence of artificially induced sleep. Hypnotism causes temporary incapacity to enter into a contract.



(III) DISQUALIFIED BY LAW

OR

DISQUALIFICATIONS ACCORDING TO STATUS

According to Section 11 of the Indian Contract Act, persons disqualified by any law to which they are subject, are not capable to enter into contract. They are incomplete to contract, partially or wholly, so that the contracts of such persons are void.

1) Alien Enemy and Friend:-

An alien is a person who is the citizen of a foreign country and not a subject of India. A foreigner may be an alien friend, or an alien enemy. An alien friend is a person whose sovereign is at ~~war~~ with India. peace with



India Contract with an alien friend is valid. However, an alien friend cannot be employed as Master or principal officer of a ship, he is prohibited to acquire property or ownership in a ship.

In relation to contracts entered into before the war, contracts which are against the public policy or are such which would benefit the enemy, stand dissolved. Other contracts are merely suspended in form during the duration of the war and revived after the war is over.

2) Ambassadors and foreign Sovereigns :-

Foreign Sovereigns or Ambassadors have been given honourable status and, therefore they enjoy some special privileges. Indian honours the Sovereigns and Ambassadors

of other countries and they honour our Sovereigns and Ambassadors.

Above privilege is available only to the present Sovereign and not to the ex-members foreign Sovereigns and Ambassadors

~~of other countries and they honour our Sovereigns and Ambassadors.~~

Can enter into contracts with the Indian Citizens through their agents and their agents will be personally liable.

3/ Insolvent:

An Insolvent cannot enter into contract. He is incompetent to contract until he obtain a Certificate of discharge

4/ Married Women:-

A woman have equal Contractual Capacity Like a man.
A woman married or



Unmarried can enter into a contract if she is Major, has sound mind and is not disqualified by any law.

5) Convict :-

A convict while undergoing imprisonment cannot enter into a contract. When his imprisonment is over he is pardoned, he becomes capable of contracting.

6) High Professionals :-

Doctors and advocates fall in this class. A High professional is not disqualified for claiming his fees.

7) Corporations or Companies or Incorporated Bodies :-

- A company can enter into a contract which is not ultra vires its Memorandum of Association.



8) President of India:-

No suit cannot be filed in any court of India against the president.

