

1 (D) Capacity of Parties

Subject : Commerce

Lesson : Capacity of Parties

Course Developer : Anu Panday

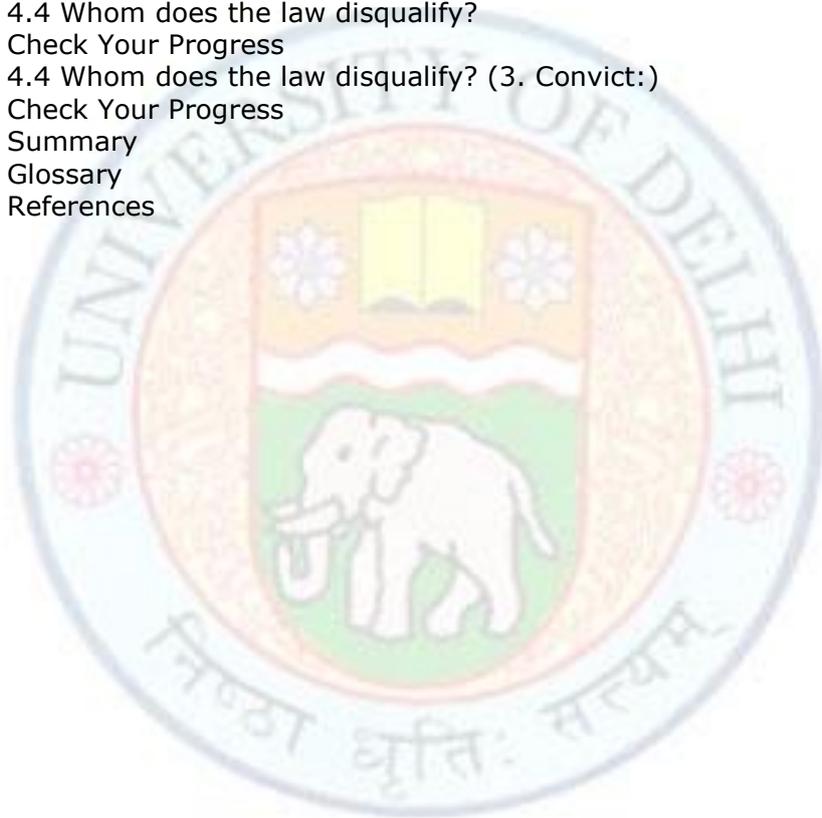
**University /Department: Motilal Nehru College,
Department of commerce, University of Delhi**



1 (D) Capacity of Parties

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1 (D) Capacity of Parties

Capacity of Parties

The scope of the Unit is given below:

- 4.1 Who is competent to contract?
- 4.2 Who is a minor?
 - 4.2.1 What is the position of agreements with a Minor?
- 4.3 Who is of unsound mind?
- 4.4 Whom does the law disqualify?

In India people can make agreements with their friends, neighbours, colleagues but not all agreements can be termed as contract. An agreement becomes a contract only when it fulfills certain requirements. One of the very important requirements is competency to contract.



1 (D) Capacity of Parties

4.1 Who is Competent to Contract?

Section 11 of the Indian contract Act provides that a person is competent to contract if:

- He or she is of the age of majority according to the law he or she is subject to
- He or she is of sound mind
- He or she is not disqualified by the law he or she is subject to



Figure 4.1 Competent to Contract

Thus in order to enter into a valid contract one has to have all the three requirements and if any of these requirements is not fulfilled then he or she is incapable of entering into a valid contract, a contract recognized and enforceable by law.

We can now reverse the question and ask

'Who is not competent to contract?'

The people who are not competent to contract are:

- Minors
- Persons with unsound mind
- Persons disqualified by law

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Check your Progress Competent to contract

Competent to contract

Select the correct answer - Who amongst the following is competent to contract?

- Minors
- Persons with unsound mind
- Persons disqualified by law
- Persons with sound mind

Submit

That is Incorrect. The wrong statement is -Persons with sound mind.



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4.2 Who is a minor?

Section 11 of the Indian Contract Act provides that to be competent to contract a person should be a major. However, section 11 does not say that a minor's contract is void. To put it in other words section 11 of the Indian Contract Act is silent about the legality of a minor's contract. The Privy Council in *Mohiri Bibi vs. Dharamdas Ghose* clarified this position for the first time⁹



Figure: 4.2 A MINOR

Case Law 1

Mohiri Bibi vs. Dharamdas Ghose

In the above-mentioned case the plaintiff was a minor. He borrowed Rs. 8,000 and executed a mortgage for Rs. 20,000 in favour of the defendant who was aware of the plaintiff's minority. The plaintiff filed a suit to set aside the mortgage⁴⁵. So the minor's mortgage was set aside. The defendant contended that the Court while setting aside the mortgage, should direct the minor to make compensation by refunding the amount that he had received. The defendant further contended that the minor's contract was voidable and became void when the minor avoided it. The Privy Council rejected this agreement and held that the minor's contract was void ab initio. There was no question of avoiding it or ratifying it. It needed no avoidance and cured by no ratification. Thus it was already laid down by the Privy Council that a minor's contract was void ab initio.

Under section 3 of the Indian Majority Act 1875 a person in India is a minor if he or she has not attained the age of 18. However there are two situations where a person attains the age of majority at the age of 21.

The two situations are as follows:

- A minor for whose person or property or both a guardian has been appointed under the Guardians and Wards Act, 1890. If a minor hasn't got a parent then in such a case a local guardian is appointed to look after the minor as well as his/her property till he/she attains the age of 21.

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Illustration

Shivani a four-month-old girl (minor) lost her parents in an air crash. Her parents left behind property and bank balance which was now all hers. As Shivani was a minor, an aunty of hers was appointed as her guardian to look after Shivani and undertake all transactions related to her property and bank balance until Shivani attained the age of 21 (major).

4.2.1 What is the position of agreements with a minor?

The law is quite protective towards the minors. The conditions of agreements with a minor are given below:

1. Void Agreement: Agreement with a minor is void. An agreement with a minor is not enforceable by law from the very beginning.

An agreement between two people who are both minors is void.

Both the parties cannot enforce the agreement in the Court of law.

Illustration

Geeta and Priyanka were both sixteen year old and were classmates. Geeta did not have money to buy her geography textbook so she borrowed rupees two hundred from Priyanka and promised to return it in a week. After a week when Priyanka asked for her money Geeta refused to return it. In this case Priyanka cannot sue Geeta for a breach of contract because the agreement they had between them cannot be enforced in a Court of law.

An agreement between two people of which one is a major and the other is a minor is void. In such cases the minor can be a **beneficiary or a promisee**. The minor can enforce the contract and if the minor has benefited from the other party then he or she may be asked to restore (restitute) the benefits he/she has obtained from such agreement to the other party. However **restitution** is allowed only if the money or property (benefit) can be traced. For instance if the minor has borrowed money from a major and spent all of it then he/she cannot be asked to restore it.

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Check your Progress

Position of agreements with a minor

Insolvency

Torts

Necessaries

Negotiable Instrument

Agency

Ratification

Partnership / Company

Void Agreement

Partnership / Company

A Minor cannot enter into a partnership⁴⁶ agreement, therefore he / she cannot be made a partner but he / she can be admitted to the benefits of partnership with the consent of all the partners. Similarly a minor cannot become a shareholder in a company⁴⁷, as he is incompetent to enter into a contract. In case a minor inherits shares (fully paid) then he can become a shareholder acting through a lawful guardian. Here again a minor enjoys only the benefits of shareholding. He cannot be made liable for payment of call money.

Roll your mouse over each Layer to view associated description.

Illustration

Ram a seven-year-old boy asked Raghuvansham a cricket coach to give him coaching classes and Raghuvansham agreed. Ram paid the tuition fee in advance. Raghuvansham gave coaching only for a day and then discontinued on the pretext that the agreement was void. Ram could enforce the agreement though void for breach of contract. In this case Ram a minor was a **beneficiary / promissee** and therefore had a right to enforce the agreement in a Court of law

Illustration

Ram a seven-year-old boy asked Raghuvansham a cricket coach to give him coaching classes and told him that his father would pay him the coaching fee after a week. The coach agreed and started coaching Ram. A week passed but neither Ram nor his father paid the coach. The coach could not enforce the agreement as it was void.

Illustration

Sukrita a sixteen-year-old girl posed as a nineteen-year-old girl to borrow rupees 500 from an old lady called Vibha for buying a party dress. The dress cost Sukrita rupees 490. When Vibha asked for her money Sukrita refused. This is a void agreement therefore Vibha cannot enforce this agreement but she can ask for **restitution**. As Sukrita was left with only rupees 10 therefore she could be asked to restore only rupees 10 to Vibha.

2. Partnership / Company: A Minor cannot enter into a partnership¹⁰ agreement, therefore he / she cannot be made a partner but he / she can be admitted to the benefits of partnership with the consent of all the partners.

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Similarly a minor cannot become a shareholder in a company¹¹, as he is incompetent to enter into a contract. In case a minor inherits shares (fully paid) then he can become a shareholder acting through a lawful guardian. Here again a minor enjoys only the benefits of shareholding. He cannot be made liable for payment of call money.

Illustration

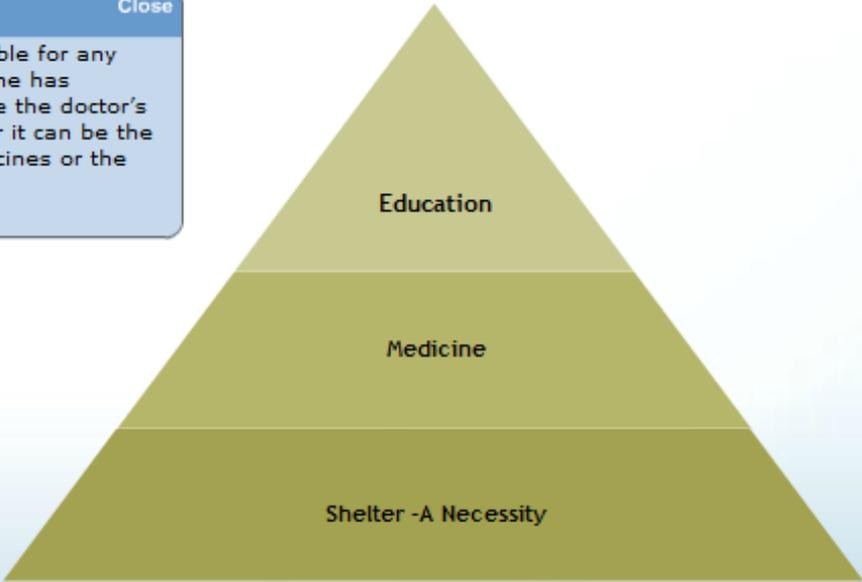
Devendra ran a business with four partners. He died in a road accident. A fifteen-year-old son Gajendra survived him. As Gajendra was a minor, he could not be made a partner in place of his father but with the consent of all the partners he was admitted to the benefits of the partnership firm. He was entitled to all the benefits which accrued to the firm but was not liable for any losses.

Check your Progress

Necessities

Medicine Close

A minor is also liable for any medicinal service he has procured. It can be the doctor's consultation fee or it can be the payment for medicines or the treatment.



Click each level of the Pyramid to know more.

1 (D) Capacity of Parties

4.2 Who is a minor (3. Ratification)

3. Ratification: Ratification means approval or confirmation. If a minor has entered into an agreement he or she cannot ratify the same agreement after becoming a major (18 years of age and above). It is because an agreement entered into by a minor is void and a void agreement cannot be made valid after the minor has attained the age of majority. If he or she wishes to continue then they will have to make a fresh agreement with a fresh consideration.

Illustration

Prabhu was running a partnership firm with his five friends. One day he met with an accident and died. Gajendra his son was fifteen-year-old and after Prabhu's demise was admitted into the benefits of partnership. Gajendra enjoyed the benefits of partnership till he attained eighteen years of age. After becoming eighteen he could no longer continue to enjoy the benefits of partnership, as he had now become a major. If Gajendra still wanted to continue enjoying the benefits of partnership then he would have to make a fresh agreement saying that he is a partner in the firm otherwise it would be inferred that he is no longer in the partnership firm.

Case Law 2

Mohendra vs. Kailash (1927) 555 Cal 841

In this case it was held by the Court that a minor's agreement being a nullity and void ab-initio has no existence in the eye of law. The minor cannot ratify it on becoming a major because an agreement void ab initio cannot be made valid by subsequent ratification.

4. Agency: A Minor can be appointed as an agent. He / she is not liable for any of his / her acts rather the principal will be held responsible to the third party for his / her acts.¹²

Illustration

Sylvia a six-year-old girl went with a piece of cloth to the tailor and asked him to stitch a blouse for her mother. The tailor stitched the blouse but Sylvia's mother refused to pay the money on the pretext that the agreement was void. This was not a void agreement but a contract of agency where the tailor could enforce the agreement and Sylvia's mother who was the principal would be liable to pay.

5. Negotiable Instrument: A minor can draw a negotiable instrument and can enforce the instrument drawn in his / her favour. He/she cannot be made personally liable. Thus a minor can be a promisee or a payee and he /she can also become indorsee by transfer of negotiable instruments¹³

Illustration

Shyam is a sixteen-year-old boy who has been hired by Krishna to clean his cars every day in the morning. Krishna pays Shyam by drawing a cheque in his name for rupees 1000. Shyam deposits the cheque in his bank and the bank dishonors the cheque. Shyam can sue Krishna for dishonoring of the cheque and demand a fresh one with compensation.

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Check your Progress

Unsound Mind

The diagram features a central blue diamond labeled 'Unsound Mind'. Three circles are connected to it: a green circle at the top labeled 'Lunatic', a blue circle at the bottom left labeled 'Idiot', and a red circle at the bottom right labeled 'Drunkard /'. To the right of the diagram is a yellow box with the text: 'Lunatic: An Agreement with a lunatic is void. A lunatic is temporarily incapable of entering into an agreement'. Below the diagram, a red text prompt reads: 'Roll your mouse over each unsound mind type for more details'.

Lunatic
An Agreement with a lunatic is void. A lunatic is temporarily incapable of entering into an agreement

Roll your mouse over each unsound mind type for more details

6. Necessaries: The Person who has supplied necessaries to a minor or to his/her dependents is entitled to be reimbursed from the property of the minor. According to section 68 the term necessaries include goods and services which are required to maintain a person in a condition, state and a station in life in which he/she is. Station in life means the standard of living the person has. Necessaries include food, clothing, shelter, education and marriage in the case of a female. The Minor has to reimburse the supplies of such necessaries and the loans for such necessaries. Claim for payment for necessaries can be made against the minor's property. The Minor cannot be held personally liable for such necessaries.

Education- A Necessity

Education is considered a necessity and therefore a minor is liable for such necessary. However he / she is not personally liable for the payment for such necessaries are made against his/her property.



Figure 4.4 Education

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Illustration

Priya who lost her parents in an accident studied in a school in Delhi. She failed to pay her tuition fee for two consecutive months. She was liable to pay her fee because education is a necessity. However she is not personally liable. She will pay out of her property.

Medicine- A Necessity

A minor is also liable for any medicinal service he has procured. It can be the doctor's consultation fee or it can be the payment for medicines or the treatment.



Figure 4.5 : Medicine

Illustration

Cindia a fourteen-year-old orphan girl was suffering from appendicitis. She was taken to the hospital and was operated upon. Cindia was liable to pay the hospital charges as it was a necessity. Again she was not personally liable. Either her guardians would pay or it would be paid out of her property.

Shelter- A Necessity

Home is essential for any human being and a minor is not an exception. He/she is liable for the payment for his/her shelter. If he/she has taken a house on rent he/she is liable for its rent.



Figure Figure.4.6 Shelter

Illustration

Srikant a seventeen-year-old native of Hyderabad came to Delhi and took admission in Delhi University to do his graduation. Srikant had no hostel in his college and did not have any relatives so he took a paying guest accommodation and agreed to pay a monthly rent of Rs. 4000 to his landlady. After staying for three months Srikant refused to pay the rent. Srikant cannot plead minority here because home is a necessity and he is liable for the necessity.

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7 Torts

A Minor is held liable for tort (civil wrong). A minor cannot be held liable under a contract because an agreement with a minor is void ab initio. If a minor has been negligent in a contract he/she cannot be made liable, hence it cannot be treated as a tort. Tort means a civil wrong whose formation is not on the basis of a contract. Stealing, abusing and destroying public property are civil wrongs and therefore a minor is liable for them.

Illustration

Neha a sixteen-year-old girl hired a music system for her birthday party from Ramesh. She promised to use the music system properly and return it to him once the party was over. Neha used the system negligently and damaged it. Neha was not liable for tort.

Illustration

Neha a sixteen-year-old girl hired a music system for her birthday party from Ramesh and promised to return it once the party was over. She took the music system to her school and used it for dance practice. She used the system improperly and so the system got corrupted. In this case Neha was held liable for tort.

Case Law 3

Burnard vs. Haggis (1863) 14 C.B. 450

In this case a minor hired a horse under express instruction not to jump. The Court held him liable under torts for lending the horse to one of his friends who jumped it, whereby the horse was injured and ultimately died.

Insolvency A Minor can never be declared insolvent because he/she is not capable of entering into a valid contract. Agreements with a minor are void therefore he/she does not incur any liability under any agreement.

Illustration

Pradeep a fourteen-year-old boy had taken loan from Satish for paying his school fees. As this was a necessity therefore he was liable to pay the loan money back out of his property. He did not have enough property to pay the full amount so he paid only a part of it. In this case Satish could not hold Pradeep personally liable for the unpaid money and therefore Pradeep could not be declared insolvent.

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4.3 Who is of Unsound Mind?

Lets us first answer the question 'Who is a person with a sound mind?'

According to section 12 of the Indian Contract Act a person is of sound mind when he / she is capable of

(a)Understanding the terms of a contract

(b)Forming a rational judgment about the effects of the terms of contract on his / her interest

If a person does not satisfy either of the above conditions then he or she is of unsound mind

Unsoundness of mind can be

- Permanent
- Temporary

Permanent unsoundness of mind is found amongst

- Idiots

Temporary unsoundness of mind is found amongst

- Lunatics
- Drunkards / persons under intoxication

Who is an idiot?

The dictionary meaning of an idiot is "an utterly foolish or senseless person. A person who lacks the normal power of thinking and is devoid of a healthy mental development. He /she has a mental age of less than three years and generally is unable to learn connected speech or guard against common dangers". This problem is generally by birth and recovery from it is almost impossible. Therefore it is considered to be a permanent unsoundness of mind.



Figure 4.8 Am I an Idiot?

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Illustration

Ram and Shyam were twin brothers who were mentally challenged. They were twenty years old but their minds were that of a three-year-old child. They once went to a five star hotel and booked a suit for three days and three nights, they stayed in the hotel and while checking out on the fourth day did not pay the bill. As the agreement they had entered into was void therefore they were not liable to pay the bill.

Position of agreements with an Idiot

An idiot is permanently of an unsound mind therefore he / she is incapable of entering into any valid contract. Any agreement entered into with an idiot is void.

Illustration

Gyaneshwar a twenty-year-old man was born an idiot. He went to a five star hotel and ordered a lavish dinner for himself. After the dinner he failed to pay the bill. Gyaneshwar could not be held liable because he was of unsound mind.

Who is a Lunatic?

As per the English dictionary a lunatic is a person who is mentally ill, dangerous, foolish or unpredictable. He or she loses the normal power of thinking due to mental strain, accident or a tragic incident in life. Lunatics are not born insane. They suffer from intervals of sanity and insanity.

Illustration

Gayatri was a 54-year-old lady who lost her husband in a car accident. Ever since she lost her husband who was a businessman, she went into a depression. During this time she entered into an agreement with one of her husband's client. The agreement could be declared void because she signed it while her mental condition was not normal.

Position of agreements with a Lunatic

A lunatic is incapable of entering into a valid contract. However lunacy is a curable ailment, therefore after recovering from insanity he / she can enter into a valid contract. A contract with a person before he / she turns a lunatic is a valid contract and a contract with a person after he / she recovers from lunacy is also a valid contract.

Illustration

Gayatri who had lost her husband in an accident went into depression but after few months she recovered and entered into an agreement to sell her house to Lakshman. The agreement with Lakshman was valid and was enforceable.

Who is a Drunkard / Person under intoxication?

A drunkard is a person who is under the influence of alcohol and therefore cannot think properly and make rational judgments. A person is said to be under intoxication when he/she has consumed drugs or medicines, which have the same effect of depriving him/her of the power of thinking.

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Illustration

Rohit was a drug addict. Once while he had taken drugs he happened to sell his house to Chander. Later when he regained consciousness he repented his act. The agreement could be declared void, as he was not of sound mind when he entered into the agreement with Chander.

Position of agreements with a Drunkard

A drunkard is incapable of entering into a valid contract while he or she is under the influence of alcohol. Similarly a person who has been drugged is also incapable of entering into a valid contract. Any agreement entered into with a drunkard or an intoxicated person is a void agreement. A drunkard will not be under the influence of alcohol all the time. Similarly an intoxicated person will not be under the influence of drugs all the time. A valid contract can be entered into with them during the time they are not under the influence of alcohol and drugs.

Illustration

Sarita was an epileptic patient and was taking strong medicines to counter her illness. After taking the medicines she used to feel very drowsy. This drowsiness used to persist for about four hours. If during that time she entered into any agreement, that agreement would be declared void on the ground of unsoundness of mind. She was quite capable of entering into any valid contract after the hours of drowsiness.

Case Law 4

Jugal Kishore vs. Cheddu (1903) 1 All. L.J. 43

It was held by the Court that an agreement entered into by a person of unsound mind is treated on the same footing as that of minor's, and therefore an agreement by a person of unsound mind is absolutely void and inoperative as against him but he can derive benefit under it.

Some of the other facets regarding the position of agreements with people of unsound mind are as follows:

Beneficiary: Persons with unsound mind can enforce contracts for their benefit. If a person with unsound mind is a beneficiary or a promisee in any contracts he/she can enforce it in a Court of law.

Illustration

Rohit was a drug addict. Once while he was under the influence of drugs he happened to buy Chander's house. Later Chander declared the agreement to be void on the ground of unsoundness of mind. In this case Chander could not declare the agreement void because Rohit though of unsound mind was a promisee / beneficiary in the contract.

Necessities: Persons with unsound mind are not personally liable for necessary goods and services supplied to them instead their property can be attached for realization of money due for necessities supplied to them and to their dependents.

1 (D) Capacity of Parties

Illustration

Rupesh was a mentally challenged boy. Though he was thirty years old, his mind was that of a fifteen-year-old child. Once he went to a shop and purchased a packet of biscuits and ate them. But he did not pay any money to the shopkeeper. Though he was not personally liable, yet his property could be attached for realization of money.

4.4 Whom does the law disqualify?

There are people who are physically and mentally sound yet they are disqualified by law to enter into any valid contract. The people who are disqualified by law are the following:

1. Alien enemy: An alien enemy is a citizen of another country with whom the country at which the alien is located is at war.



Figure 4.10 Disqualification

Illustration

Mir Zafar an Afghani businessman had an American business associate by the name of Tom. They both entered into a business contract but before they could execute the contract America attacked Afghanistan. As a result their contract became void. They no longer remained business associates; instead they became alien enemies.

An alien enemy cannot enter into a contract while his / her country is at war with the country he /she is located in. A contract with a foreign national is valid but becomes void as soon as a war starts. These contracts may again be revived after the war ends if the government is of the opinion that the contract is not against the public interest of the country. A new contract can also be entered into with an alien enemy after the war ends if it is not against public interest.

Illustration

Mir Zafar an Afghani businessman had an American business associate by the name of Tom. They both entered into a business contract but before they could execute the contract America attacked Afghanistan. As a result their contract became void but after the war ended they could easily revive the old contract or could enter into a new contract because they were no longer alien enemies.

2. Foreign Sovereign and Ambassador:

Foreign Sovereigns and their representatives are citizens of foreign countries. They can be tourists, ambassadors and delegates who visit our country for a specific purpose and duration.

1 (D) Capacity of Parties

Illustration

Suzanne is the Canadian ambassador in India. While she was driving in the streets of Delhi she happened to hit a motorcyclist. As Suzanne was a foreign national she could not be tried in an Indian Court.

Foreign Sovereigns and Diplomats are free to enter into a valid contract in our Country and can enforce those contracts in our Courts but the problem is that we cannot sue them in our Courts without the sanction of the government unless they wish to submit themselves to the jurisdiction of our Courts. If the foreign national has entered into a contract through an agent residing in India then in that case the agent can be held responsible and can be sued in the Court of law.

Illustration

John an FBI agent had come to Delhi and was driving a car. While driving he jumped the red light and hit an old woman crossing the road. As John was a foreign sovereign so he could not be tried in our Court.

Check Your Progress

Match the following

Match the following

Unqualified by law

Below 18 years

Unsound Mind

Permanent illness

Lunatic

Minor

Liable for necessities

Convict

Temporary illness

Idiot

Attempt the question and scroll down to click the Submit button for results.

1 (D) Capacity of Parties

WHOM DOES THE LAW DISQUALIFY TO CONTRACT

Company

Insolvent

Convict

Foreign Sovereign and Ambassador

Alien enemy

Insolvent

The Court declares those people insolvent who are unable to discharge their liabilities. Their debts exceed their assets therefore they are unable to pay their creditors. After the Court declares them insolvent their property stands...

Click your mouse on each step to view its description.

Valid & Void Agreements

Alien enemy - Agreement before the war

Valid Agreement

Void Agreement

Click Start to categorize flying text in appropriate bucket categories.

1 (D) Capacity of Parties

4.4 Whom does the law disqualify? (3. Convict:)

3. Convict: A convict is a person who has been declared guilty and convicted of an offence by the Court. A person who has just been accused of committing a crime but not been declared guilty is not a convict.



Figure 4.11 Convicts

Illustration

Pankaj a dacoit had robbed many people. One day he was caught by the police and tried in a Court of law and the Court found him guilty. He was imprisonment for fourteen years. During the years of imprisonment he was not competent to enter into any contract.

A Convict cannot enter into a valid contract while undergoing imprisonment. As soon as the convict's tenure of imprisonment finishes he / she is no longer disqualified to enter into a contract.

Illustration

Radha was found guilty of the crime of theft and undergoing imprisonment. During the years of imprisonment she wanted to buy a property and so entered into an agreement with Shyam Lal a property dealer and purchased a house. The agreement between Shyam Lal and Radha was void as Radha was a convict and so was incompetent to enter into an agreement.

4. Insolvent: The Court declares those people insolvent who are unable to discharge their liabilities. Their debts exceed their assets therefore they are unable to pay their creditors. After the Court declares them insolvent their property stands vested with the official assignee or an official receiver.

Illustration

Shambhu a businessman was running into huge losses for the past five years. He was unable to pay his creditors and so his creditors sued him. The Court declared Shambhu insolvent and his property was vested with the official assignee. Meanwhile Shambhu entered into an agreement of partnership with Ghanshyam. But as Shambhu was an insolvent therefore the partnership agreement was void.

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Insolvents: cannot enter into a valid contract unless they have been discharged of their insolvency. Such people cannot enter into contracts relating to their property. They cannot sue others and others cannot sue them. They cannot enter into a valid contract unless they have been discharged of their insolvency.

Illustration

Rakesh was unable to pay his creditors and so his creditors sued him. The Court declared Rakesh insolvent and his property was vested with the official assignee. As a result he was incompetent to enter into a contract. However he could enter into a contract once he was discharged of insolvency

5. Company: The contractual capacity of a company is normally mentioned in the object clause of the Memorandum of Association. Any act done outside the purview of the memorandum is ultra vires and any agreement entered into for the execution of such an act is void.

Illustration

Ram and Shyam Company were in the business of manufacturing leather bags. The object clause in the Memorandum of Association provided that the company is to manufacture leather bags. One day the director of the company entered into an agreement with a buyer for selling them leather shoes. The agreement was void because it was beyond the scope of business. The company as per its memorandum was to sell only leather bags and not leather shoes. Therefore the agreement was not valid.

Animation

Practical Problems

Ram is a fourteen-year-old boy who goes to the market and buys a geography textbook from a stationary shop. He does not pay the price of the book to the seller.

Is Ram liable to pay for the book?

Yes
 No

Feedback
That is correct. Ram though a minor is liable to pay for the book because the book is a necessity and minors are

Read the question carefully, then answer the question by clicking the appropriate option.

1 (D) Capacity of Parties

Practical Problems

Rishita met with an accident and lost her memory. She entered into an agreement with Rakesh for selling her car.

Is this agreement a valid contract?

Yes
 No

Feedback
This is Incorrect. This is not a valid contract because Rishita lost her memory and therefore was not of

Read the question carefully, then answer the question by clicking the appropriate option.

Practical Problems

Nikita a Bangladeshi diplomat who was in India bought a gold necklace from a jeweler in Mumbai. She paid half the money and promised to pay the other half within one month. She left

Can the jeweler sue Nikita for not paying the full amount \ of the necklace?

Yes
 No

Feedback
This is Incorrect. As Nikita is a foreign diplomat therefore she cannot be tried in our Court of law. If at all she needs

Read the question carefully, then answer the question by clicking the appropriate option.

1 (D) Capacity of Parties

Practical Problems

Raghuveer a fourteen-year-old boy sells potatoes on a wooden cart. Mrs Sharma happens to buy two kilograms of potatoes from Raghuveer and promises to pay him later. Later Mrs Sharma

Is Mrs Sharma right?

Yes
 No

Feedback

This is Incorrect. Though Raghuveer is a minor yet if the minor is the beneficiary / promisee which in this

Read the question carefully, then answer the question by clicking the appropriate option.

Practical Problems

Rajan has been in prison for the last four years and he sells his house to Shikha while in prison.

Is this a valid contract?

Yes
 No

Feedback

This is Incorrect. A convict cannot enter into a valid contract, and as Rajan is still a convict the agreement he has

Read the question carefully, then answer the question by clicking the appropriate option.

1 (D) Capacity of Parties

Summary

Competent to contract (Section 11)

- A Major is a person who has attained the age of majority
- A person with a sound mind i.e. a person who is not a lunatic, an idiot and not under any kind of intoxication
- A person not disqualified by law

Who is a Minor

- **Minor** Below 18 years
- Minor Below 21 years
- A minor for whose person or property or both a guardian has been appointed under the Guardians and Wards Act, 1890.
- A minor whose property is under the superintendence of any Court of wards

Position of agreement with a minor

- An Agreement with a minor is void
- A minor can be a beneficiary or a promisee
- A minor cannot enter into a partnership agreement
- A minor cannot become a shareholder in a company
- A minor cannot ratify the agreement after attaining majority
- A minor can be an agent
- A minor can draw a negotiable instrument and can enforce instrument drawn in favour of him/her
- A minor is liable for necessities
- A minor is liable for torts
- A minor cannot be declared insolvent

Unsound Mind

- **Idiot:** An Agreement with an idiot is void. An idiot is permanently incapable of entering into an agreement
- **Lunatic:** An Agreement with a lunatic is void. A lunatic is temporarily incapable of entering into an agreement
- **Drunkard / intoxicated:** An Agreement with a drunkard is void. A drunkard is temporarily incapable of entering into an agreement

Disqualified by law

Alien enemy

Agreement before the war - valid
Agreement during the war - void
Agreement after the war - valid

Foreign Sovereign and Ambassador

Agreement is void

Convict

Agreement before imprisonment - valid
Agreement during imprisonment - void
Agreement after imprisonment - valid

Insolvent Company

Agreement during insolvency is void
An agreement ultra vires is void

1 (D) Capacity of Parties

Glossary

Glossary of Legal Terms

Type the keyword to view the glossary terms.



1 (D) Capacity of Parties

References

Chadha P.R. & Bagriyal A.K. (2005): *Business Law*, Pragati Publications, New Delhi
Tulsian P.C. (2007): *Business and Industrial Law*, Tata McGraw-Hill Publishing Company Limited, New Delhi

For more information refer the following websites :

http://www.saskschools.ca/curr_content/law30/contract/lesson2/2a.html

[http://en.wikipedia.org/wiki/Capacity_\(law\)](http://en.wikipedia.org/wiki/Capacity_(law))

