

The image features two large, thick black L-shaped brackets. One is positioned on the left side, with its vertical bar extending downwards and its horizontal bar extending to the right. The other is on the right side, with its vertical bar extending upwards and its horizontal bar extending to the left. These brackets frame the central text.

CAPACITY OF THE PARTIES

- Section 10 of the Indian Contract Act specifically requires that the Parties to the Contract must be Competent to Contract.
- Further regarding the Capacity or Competency of a person to enter into a Contract, Section 11 of the Indian Contract Act specifies that every person is Competent to Contract who
 - (a) is of the age of majority according to the law to which he is subject,
 - (b) is of sound mind and
 - (c) is not disqualified from Contracting by any law to which he is subject

- Thus, as per Section 11, the following categories of persons do not have the capacity to enter into a contract.
- (i) Minors
- (ii) Persons of Unsound mind, and
- (iii) Persons Disqualified by any Law to enter into a Contract

Rules Regarding an Agreement with a Minor

- **An Agreement with or by a Minor is Void and inoperative ab-initio**
- It means an agreement with a minor has no existence in the eye of law from the very beginning and is totally void.
- **Mohiri Bibi V. Dharmodas Ghose** is an important case in this regard. Dharmodas Ghose was a minor and was the sole owner of his immovable property. The mother of Dharmodas Ghose was authorized as his legal custodian by Calcutta High court.
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- Dharmodas Ghose went for the mortgage of his own immovable property which was done in the favour of Brahmo Dutta for Rs. 20,000 at 12% interest rate as per year. Brahmo Dutta was the money lender. Dharmodas Ghose's mother sent informed Brahmo Dutta about the minority of Dharmodas Ghose on the date on which such mortgage deed was commenced. And the representative of the defendant (Brahmo Dutta) had knowledge about the incompetency of the plaintiff (Dharmodas Ghose) to perform or enter into contract and also that he was incompetent legally to mortgage his property which belonged to him.
- However, the total sum of loan that was actually provided was less than Rs. 20,000. On receiving a sum which was less than the amount agreed upon Dharmodas Ghose along with his mother brought a legal action against Brahmo Dutta by saying that the mortgage that was executed by Dharmodas was commenced when he was a minor and hence such contract was void and it should be revoked.
- The judges held that any agreement or deed with a minor shall be declared null and void because such agreement is not agreement in the eyes of law. In such cases minors' parents or custodians shall not be liable for the dealing done by the minor without their consent, and hence they will be not liable to return the amount back taken by the minor out of the moral obligation

- **2.A Minor can be a Promisee or a Beneficiary:** A Minor can be a beneficiary to a Contract. Although the minor cannot enter into a contract but the law does not prevent him to become a promisee or beneficiary to a Contract. For example, where a minor delivers goods to the buyer under a contract of sale, the buyer cannot refuse to give money to the seller on the ground that he is a minor.

- **3. On attaining the age of Majority the Minor cannot ratify his agreement:** A minor cannot ratify the agreement made by him during the time of his minority. However, the minor can enter into a fresh contract after he attains the age of majority.
- **4. Minor is not bound to compensate for the benefits availed through any void agreement:** Applicability of Section 65 for restitution in cases where any agreement is found to be void is not applicable in the case of minors.
- **5. Minor can invoke his incapacity:** In cases where the minor by misrepresenting his age has entered into a contract and where it is found at a later stage, the minor cannot be sued by the other party to the contract for any fraud because any contract with a minor is void ab initio.

- **6. Minor cannot enter into a contract of Partnership-** Like other contracts the minor cannot enter into a contract of Partnership. However, he may be admitted to the benefits of any partnership, which is already in existence and not a new one, with the consent of other existing partners.
- **7. A Minor cannot be adjudged insolvent:** Insolvency arises out of obtaining a debt. However, as the minor is not capable of entering into contractual obligations hence, he cannot become indebted and thus cannot be adjudged insolvent.
- **8. Minor is liable for the necessaries supplied to him:** A minor is liable for the necessaries supplied to him.
- **9. A Minor can be an agent:** A Minor is not barred from acting as a agent on behalf of the Principal.

- **10. Minor's parents /guardian are/is not liable for the contract entered into by him:** A Minor's parents /guardian are/is not liable for the contract entered into by him even though the contract is for the supply of necessaries to the minor.
- **11. A minor is not liable in a tort, where the tort results from a contract: Leslie Ltd. v. Sheill (1914)** is the leading case where Sheill obtained loans from Leslie Ltd. by fraudulently misrepresenting his age at the time of contract. Defendant sued him to recover the money.
- The question that came before the court was
 - 1) Whether Leslie Ltd. is entitled to equitable restitution against loan given to the minor, and
 - 2) Whether they could claim restitution under action for tort arising out of contract?
- It was held that in cases where the minor obtains property or goods by misrepresenting his/her age, he/she can be compelled to restore it so long as the same is traceable in his possession. However as in present case as there was neither any possibility of tracing it nor any possibility of restoring the thing obtained by fraud, hence if the court asks the minor to pay the equivalent sum as that of loan received, it would amount to enforcing a void contract.

- Further the Court held that the Minor can't be held liable for a wrong when the cause of action arises out of a contract, because by doing so it would amount to enforcing the contract indirectly. However, if the wrongful act though connected with the subject matter of the contract, but is independent of it in the sense of not being an act contemplated by it, then the minor can be held liable.
- In present case, since an action either on torts or on quasi contractual claim would amount to enforcing the contract by making defendant liable to pay the damages or restitution, hence, no such action lies.

Minor's Liability for Necessaries

- Necessaries for the minor depends on the lifestyle of the minor and is not defined in the Indian Contract Act. It could be categorized as follows:
- **(i) Necessary Goods:** In addition to bare necessities like food and clothing it could include those things which are reasonably required. For example, it may include a smart phone for attending online classes but it cannot include jewelry.
- **(ii) Provision for Services:** In addition to Goods certain services like education, medical service, laundry service, legal service come under the services which are of necessity to the minor.

Persons of Unsound Mind

- In order to be a Party to a Contract one of the pre-requisites is to be of sound mind. As per Section 12 of the Indian Contract Act, a Person is said to be of Sound mind for the purpose of making a contract, if at the time of making of the contract he is capable of understanding it and is able to form a rational judgement as to its effects on his interests.
- Section 12 further states that (i) a person who is usually of unsound mind, but occasionally is of sound mind may make a contract when he is of Sound mind, and (ii) a person who is usually of sound mind but occasionally of unsound mind may not make a contract, when he is of unsound mind.

- The unsoundness of mind arises because of
- **(i) Idiocy:** A Person is said to be an Idiot whose mental faculty does not allow him to understand simple things.
- **(ii) Lunacy:** Lunacy is a condition of lunacy or psychiatric disorder which arises out of too high mental strain or past personal experiences. If a person suffers from lunacy in intermittent intervals and becomes normal in certain other phases then in such cases he can sign a contract when he is of sound mind.
- **(iii) Drunkenness:** A drunken person loses his mental capacity to form a rational judgement temporarily during the period in which he is in the state of drunkenness or intoxication. Thus, such person cannot enter into a contract during the period on which period he is in the state of drunkenness. But he can enter into contract during other periods.

- **Effects of Agreement made by persons of Unsound Mind**

- Agreements made by persons of unsound mind are void. However, the agreement entered into by a person of unsound mind for the supply of necessities for himself or his family is valid and his property can be used for the purpose of repayment. However, he is not personally liable.

Other Persons

- : The rules relating to competency to enter into a contract of some of the other categories of persons not covered in the above categories are as follows:
- **-Alien Enemies:** Aliens are the peoples who are not the citizens of the home country (India) but are the citizens of foreign countries. Aliens are not always treated as enemies but are treated as the enemies when there is a war between the home country and that other country of which the Alien person is the Citizen.
- The contracts made with an alien enemy during the period in which the war between the two countries are in progress will be treated as void ab-initio and the alien enemy cannot sue his Indian counterpart unless and otherwise he receives a license from the Indian Govt.
- The contracts made before the commencement of war will either be suspended to be resumed after the end of the war if it is possible to suspend for the time being or else it will be dissolved if the contract is of such nature that the continuation of it will cause harm to the public. For this purpose of this section any Indian national residing in such other country and making contract with a person residing in India will be treated on the same ground.

- **-Foreign Sovereigns:** Foreign Sovereigns and the diplomatic staffs of a mission including ambassadors are accorded immunity to be sued. Though they can enter into a contract and has the right to sue but they cannot be sued by an Indian Citizen unless prior permission of the Central Govt. is obtained in this regard.
- **-Corporations and Companies:** These Corporations and Companies are formed either by a special act of the legislature or by registration and incorporation under the Companies Act. They are artificial and juridical persons having existence in the eye of the law. As the contracts with these companies are regulated as per the provisions contained in the memorandum of association or the statute governing such corporations in case of a corporation, hence any one entering into contract with these organizations must have knowledge of such documents.

- **Insolvents:** When a person becomes adjudged as an insolvent, he becomes incompetent to deal with his property. The rights to deal with his property lies with the official receiver or official assignee appointed by the court.
- **-Convicts:** A Convict is a person who is guilty of committing any crime. During the period in which the Convict remains inside the jail he has no capacity to enter into a contract. However such incapacity comes to an end when he completes the sentence or when he becomes free from the charge of such offence.