

Capacity to Contract

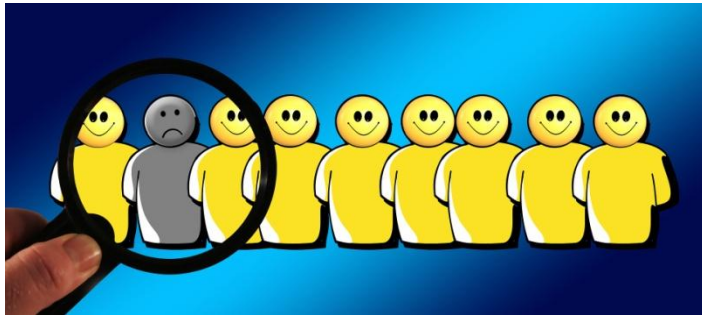
One of the most essential elements of a valid contract is the competence of the parties to make a [contract](#). Section 11 of the [Indian Contract Act, 1872](#), defines the capacity to contract of a person to be dependent on three aspects; attaining the age of majority, being of sound mind, and not disqualified from entering into a contract by any law that he is subject to.

Capacity to Contract

According to Section 11, “*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.*”

So, we have three main aspects:

1. Attaining the age of majority
2. Being of sound mind
3. Not disqualified from entering into a contract by any [law](#) that he is subject to



1] Attaining the Age of Majority

According to the Indian Majority Act, 1875, the age of majority in [India](#) is defined as 18 years. For the purpose of entering into a contract, even a day less than this age disqualifies the person from being a party to the contract. Any person, domiciled in India, who has not attained the age of 18 years is termed as a minor.

Let's look at certain laws governing a minor's agreement:

A Contract made with a Minor is Void

Since any person less than 18 years of age does not have the capacity to contract, any agreement made with a minor is void ab-initio (from the beginning).

Example, Peter is 17 years and 6 months old. He needs some money to go on vacation with his [friends](#). He approached a moneylender and borrows Rs 25,000. As security, he signs some papers mortgaging his laptop and motorcycle. Six months later, when he attains the age of majority,

he files a suit declaring that the mortgage executed by him when he was a minor is void and should be cancelled. The Court agrees and relieves Peter of all [liability](#) to repay the [loan](#).

Also, if a minor enters into a contract, then he cannot ratify it even after he attains majority since the contract is void ab-initio. And, a void [agreement](#) cannot be ratified.

A Minor can be a Beneficiary of a Contract

While a minor cannot enter a contract, he can be the beneficiary of one. Section 30 of the [Indian Partnership Act, 1932](#), also specifies that while a minor cannot become a partner in the [partnership firm](#), the benefits of the firm can be extended to him.

Example, Peter lends some money to his neighbour, John and asks him to mortgage his house as security. John agrees and the mortgage deed is made favouring Peter's 10-year-old son – Oliver. John fails to repay the loan and Peter, as the natural guardian of Oliver, files a suit against John to recover his money. The Court holds the case since a minor can be a beneficiary of a contract.

A Minor is always given the Benefit of being a Minor

Even if a minor falsely represents himself as a major and takes a loan or enters into a contract, he can plead minority. The rule of estoppel cannot be applied against a minor. He can plea his minority in defence.

Contract by Guardian

Under certain circumstances, a guardian of a minor can enter into a valid contract on behalf of the minor. Such a contract, which the guardian enters into, for the benefit of the minor, can also be enforced by the minor.

However, guardians cannot bind a minor by a contract for buying immovable property. But, a contract entered into by a certified guardian of a minor, appointed by the Court, with approval from the Court for the sale of a minor's property can be enforced.

Insolvency

A minor cannot be declared insolvent as he cannot avail [debts](#). Also, if some dues are pending from the properties of the minor and he is not personally liable for the same.

Joint contract by a Minor and an Adult

In case of a joint contract between an adult and a minor, executed by the guardian on behalf of the minor, the [liability](#) of the contract falls on the adult.

2] Person of Sound Mind

According to Section 12 of the Indian Contract Act, 1872, for the purpose of entering into a contract, a person is said to be of sound mind if he is capable of understanding the contract and being able to assess its effects upon his interests.

It is important to note that a person who is usually of an unsound mind, but occasionally of a sound mind, can enter a contract when he is of sound mind. No person can enter a contract when he is of unsound mind, even if he is so temporarily. A contract made by a person of an unsound mind is void.

3] Disqualified Persons

Apart from minors and people with unsound minds, there are other people who cannot enter into a contract. i.e. do not have the capacity to contract. The reasons for disqualification can include, political status, legal status, etc. Some such persons are foreign sovereigns and ambassadors, alien enemy, convicts, insolvents, etc.