

CAPACITY TO CONTRACT

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Â Â CAPACITY TO CONTRACT

A contract may have all the required contents: offer, acceptance, consideration and intention to create legal relations. However it could still be regarded as unenforceable if some laws in relation to privileged persons are not fully complied with. Thus, it is not all persons that can engage in a contract. This aspect would deal with the capacity to contract. In doing this, the outline below would be utilized:

- Who is an illiterate
- The Illiterate Protection Act
- Limitations to the Illiterate Protection Act
- Contracts Entered into by infants
- Contracts made by lunatics
- Contracts made by drunkards

Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Who is an Illiterate

An illiterate is generally referred to as a person that can neither read nor write. This definition is correct in its own right It is however not complete in relation to the law. Under the law, an illiterate as defined by the court in *PZ & Co ltd vs Gusau & Kantonma*, is a person who is not literate in the language in which the contract is conducted.

The Supreme Court also in the case of *Otitoju vs Governor of Ondo State* defined an illiterate as someone who cannot read or write in the language in which the contract was executed.

Â Â Â Â Â Â Â Â Â The Illiterate Protection Act

This act is a statute that helps to protect illiterates from being exploited by other members of the society. According to S.2 of the Act, in a contract with an illiterate, the name and address of the writer of the contract should be provided. Also, there should be a statement to the effect that the provisions of the document has been explained to the illiterate before he appends his signature or thumbprints.

In order for one to fully understand the implication of the provisions of the law, it would be best if the meaning of the writer in relation to the act is explained. Literally, a writer would be understood as the person who wrote the document.

However, in the case of *PZ & Co Ltd vs Gusau & Kantonma*, the document was typed by the typist of the plaintiff company, but the name, address and other requirements of the Act were filled in by the manager of the plaintiff company. In this situation it was decided that the writer was the manager, not the typist.

Non-compliance with the provisions of the act could render the contract void, voidable or illegal. Also, if the contract is defective, it cannot be enforced at the instance of writer. It can however be enforced at the instance of the illiterate.

Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Limitations To The Illiterate Protection Act

The Illiterate Protection Act would not be applicable in a number of situations. These situations would be discussed.

One of such situations is when the contract is an oral one. This is fairly obvious considering the fact that literacy doesnâ€™t affect oral agreements to a large extent.

Another contentious situation is one which borders on whether the illiterate can make the contract void even though there is ample evidence to prove that he clearly understood the intent of the document.Â In the case of *Lawal vs GB Olivant Nigeria Ltd*, the Western Court of Appeal held that even if the provisions of the act are not followed, if the illiterate knows what the document entails, the contract is valid. However, this was jettisoned by the Supreme court on appeal. The Supreme Court held that the provisions of the law should be strictly followed.

Luckily, in a later case, the Supreme court in the case of *Anaeze vs Anyaso* ruled that mere technical non-compliance would not avail an illiterate the opportunity to defraud others. In order for the contract to be nullified, he has to prove that he didnâ€™t understand the document.

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Â Â Â Â Â Â Â Â Contracts Entered Into By Infants

Originally, under the common law, an infant is a person who is below the age of 21. However, England through the Family Law Reform Act of 1969 made 18 the age of majority. It should be noted that this doesnâ€™t apply to Nigeria since it was made after 1900 in a foreign country. Thus, the age of majority in Nigeria is the common law position which stands at 21.

Thus, an infant according to Nigerian law is a person under the age of 21. Contracts entered into with infants are voidable at the instance of the infant. Thus, in the case of *Labinjoh vs Abake*, the court held that the applicable age of majority was 21. This necessitated in the voiding of the contract for sales of goods entered into with the infant who was

aged 18 at the time.

However, by the provision of **S.2 of the Sale of Goods Act**, contracts for necessities entered into with an infant are binding and enforceable.

In the case of *Chapple vs Cooper*, necessities were defined as those goods that are important to the survival of an individual. They include: food, shelter and clothing. Also, luxury goods could be regarded as a necessary for an infant depending on the societal status of such infant.

Contracts Made By Lunatics and Persons of Unsound Mind.

A contract that is made by a lunatic is voidable on the instance of the lunatic. However, a contract entered into with a lunatic at lucid intervals is a binding one. Also contracts of necessities entered into with lunatics are binding contracts according to the provision of **S.2 SOGA**.

Contracts Made By Drunkards

If a contract is entered into with a drunk, the contract is voidable on the instance of the drunkard. If it can however be proved that the drunk was sober during the contract; then it would be binding on the drunk. Also contracts for the sale of necessities are enforceable whether or not the drunk is sober. This is provided by **S.2 of the SOGA**.

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