

# CAPACITIES OF PARTIES

## COVERAGE

1. Contract with Minor
2. Contract with Person of Unsound Mind
3. Contract with Person Disqualified by Law

## INTRODUCTION

Only competent parties can enter into valid contract. Section 506 of MCCA states that following person are not competent to enter into contract:

- Minor
- Person not having sound mind
- Any person not qualified to enter into a specific contract under the prevailing law.

All other person other than above mentioned are competent to enter into valid contract.

## A MINOR

As per section 2(e) of MCCA, a child below the age of 18 is a minor. A minor is inexperienced and is not competent enough to judge what is right and wrong for them in a contract.

### AGREEMENTS WITH MINOR

The law protects the minor which otherwise would enable an adult to take unfair advantage of them. The position of agreements with or by a minor may be summarised as under.

#### **1. An agreement with minor is Void ab initio.**

A minor doesn't have contractual capacity. So an agreement with minor is Void ab initio. (MohoriBibee Vs DharmodasGhose, 1903)

#### **2. In case of Fraudulent representation of age**

Even if a minor has fraudulently concealed the age and pretended to be a major and entered into a contract, the contract is void. However the status quo ante must be restored (i.e. if the minor has obtained money or property, s/he must restore it to its owner.

#### **3. No ratification on attaining majority**

The agreement by a minor is Void ab initio. So it can not be even after attaining the age of majority.

*Example: A minor borrows money and execute a promissory note. When he becomes major, again signs fresh note to substitute and cover the previous note. The promissory note signed after attaining majority is also void being without consideration.*

#### **4. Minor can be a beneficiary or can take benefit out of a contract.**

Though a minor is not competent to contract, nothing in the contract law prevents him from making the other party bound to the minor. Thus a promissory note duly exercised in favour of minor is not void and can be sued upon by him because he though incompetent to contract, may yet accept a benefit.

*Example: A mortgage was executed in favour of minor. Here minor can duly enforce the mortgage.*

#### **5. A minor can always plead minority.**

A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. Rule of estoppel cannot be applied against a minor. It means he can be allowed to plea his minority in defence.

#### **6. Contract on Behalf of minor**

The guardian or patron of a minor may enter into a contract on behalf and for the benefit of minor.

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## 7. Liabilities for Necessaries

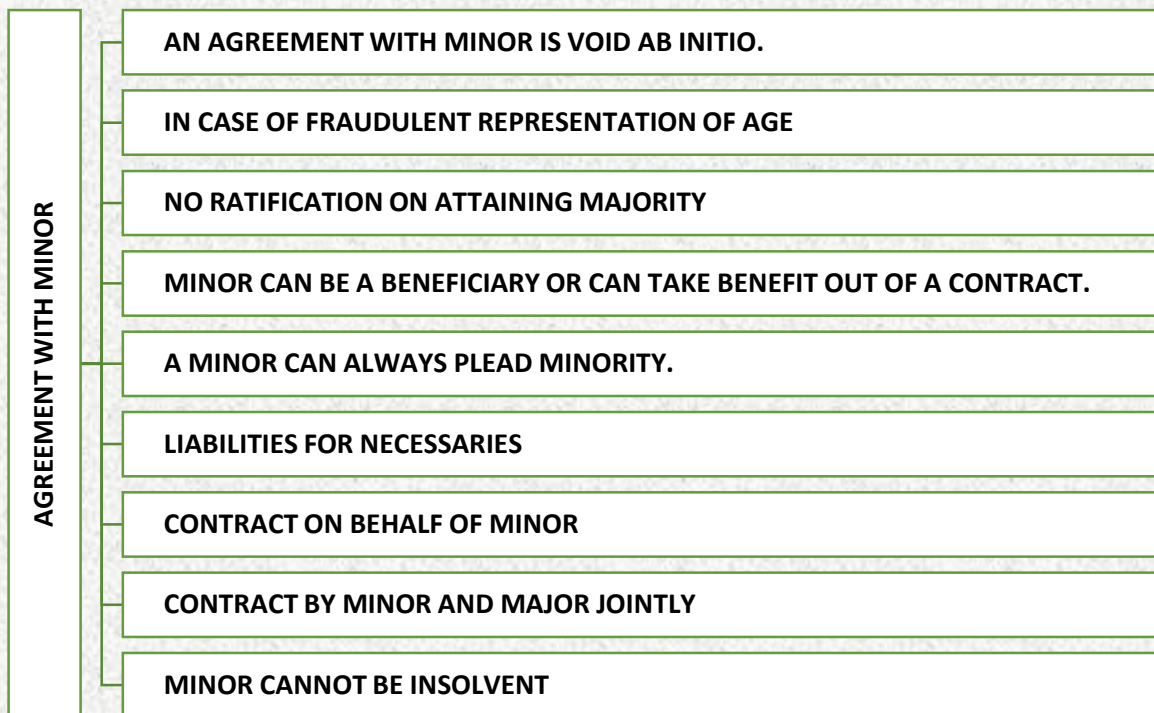
If a person supplied necessities to a minor, then the supplier can recover from the property of the minor. This is for the benefit of the minor himself as no supplier would give credit to the minor unless the law imposed liability. However, minor cannot be made personally liable. Also the guardians or parents are not liable on the child's contract unless the child acts as their agent.

## 8. Contract by Minor and Major Jointly

If a minor and a major jointly enter in to contract with another party, the minor will not be liable for anything but the major will be liable for the whole liability or obligation including even that of minor.

## 9. Minor cannot be Insolvent

A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable.



## B

## PERSON NOT HAVING SOUND MIND

Section 33 of MCCA defines unsound mind as a condition due to the physical and mental circumstances of person whereby he is incapable of rationally understanding work performed by him and its consequences or its effect. A contract entered with a person of unsound mind is Void.

Generally following person are considered to be person of unsound mind.

- **Idiots** – Person who is permanently of unsound mind caused by lack of development of the brain.
- **Lunatics** – A Person who is mentally deranged due to some mental strain or other personal experience but who has some lucid intervals of sound mind.
- **Drunken or Intoxicated person** – Person under the influence of intoxications or drugs.

A person generally having unsound mind but occasionally having sound mind may enter into contract at the time of having sound mind.

A person generally having sound mind but occasionally having unsound mind shall not be entitled to enter contract during the period of having unsound mind.



Besides minors and person of unsound mind, certain other persons who are disqualified by law are also incompetent to enter into contract. The person disqualified by law are as follows:

## **1. Alien Enemy**

Alien is the citizen of foreign country. Alien enemy is the citizen of a country at war with the country in which he lives.

*Example: If war is declared between India and Nepal , Indian citizens living in Nepal during war is alien enemy. An agreement entered into with such alien enemy in Nepal is void.*

Contract made before war may be terminated or suspended. After the termination of war, contract previously held may be revived if it has not crossed legal time limit.

## **2. Foreign Sovereign and Ambassadors**

Foreign sovereign and their representatives usually enjoy certain privileges and immunities. Foreign Sovereigns can enter into contract through their agents residing in Nepal. An action in contract against them can be taken after fulfilling massive legal formalities. So they are not qualified as an ordinary person to contract.

## **3. Convicts**

A convict is a person who has been held guilty of criminal offence and, therefore, undergoing sentence. Such convicts are disqualified from entering into contract in the eye of law and cannot enter into contract, especially, during the period of sentence. This inability comes to an end with the expiry of the period of sentence.

## **4. Insolvents**

An insolvent is a person who is unable to discharge his liabilities and therefore has applied for being adjudged insolvent or such proceedings have been initiated by any of the creditors. During the process of insolvency, an insolvent neither can enter into contracts relating to his property nor has power to sue or can be sued. However, after the order of discharge he can enter into valid contracts.

## **5. Company or statutory corporations**

These are artificial persons created by law. Being artificial persons, they can enter into contract through their agents viz. Board of Directors, Chief executive Officers etc. Further, scope of contract of these is limited to the powers conferred by the Memorandum and Articles of the Association of the company, and special Act of corporation under which it is incorporated. Similarly, a company/corporation cannot enter in to contracts of natural person which can be entered in to by natural person only viz. contract of marriage, supply of food for eating etc.

## **6. Married woman**

Married woman cannot enter into contract with respect to her husband's property without the consent of her husband or son. However, she enjoys absolute power to deal with dowry or self-owned property. Similarly, woman can bind her husband's property for necessities supplied to her in certain cases.

**Notwithstanding anything contained in section 506, where this section deems a person incompetent to contract on a specific matter, whereas, another prevailing law authorizes the person to contract on that matter, the person shall be deemed to be competent to contract on that matter.**