SHARIAH BAR REVIEWER ON PERSON, FAMILY RELATIONS AND PROPERTY

# Q. Distinguish juridical capacity from capacity to act. Please explain and give examples.

Juridical capacity and capacity to act are fundamental concepts in Shariah law (and civil law in general) concerning the legal capabilities of a person. Here is an explanation of each, along with examples:

**Juridical Capacity**

**Definition:** Juridical capacity is the inherent capacity of a person to acquire rights and to be subject to obligations. It is the capacity to be the subject of legal relations.

**Characteristics:**

* Inherent and inseparable from the person.
* Acquired at birth and lost at death.
* Equal for all persons; does not depend on personal qualities or circumstances.

**Example:**

* A newborn baby has juridical capacity because the baby can inherit property or be a beneficiary of a trust. The baby can be the subject of rights (e.g., the right to be cared for) and obligations (e.g., the duty to pay taxes on inherited property in the future).

**Capacity to Act**

**Definition:** Capacity to act refers to the ability of a person to engage in legal transactions or to act in a way that produces legal effects. It is the capacity to execute acts that create, modify, or extinguish legal relations.

**Characteristics:**

* Not inherent and can vary among individuals.
* Depends on factors like age, mental condition, and legal restrictions.
* Can be acquired and lost; for instance, through attaining majority age or becoming legally incapacitated due to mental illness.

**Example:**

* A 10-year-old child has a juridical capacity but lacks the capacity to act. The child cannot enter into contracts or make legal decisions independently. However, once the child reaches the age of majority (18 in many jurisdictions), they gain the capacity to act and can enter into contracts, marry, or make a will.

**Summary of Differences**

* **Juridical Capacity:** The ability to have rights and obligations possessed by all persons from birth to death.
* **Capacity to Act:** The ability to perform acts that have legal consequences varies based on personal circumstances such as age, mental condition, and legal status.

**Example Illustrating Both Concepts**

Consider a minor who inherits a piece of land:

* The minor has **juridical capacity** because they can be the owner of the land.
* However, the minor cannot **act** to sell or lease the land until they reach the age of majority or are otherwise granted legal capacity by a court or through a guardian's action.

In summary, juridical capacity is the fundamental legal attribute of being a person, while the capacity to act is the ability to perform legal acts and enter into binding agreements.