

Corporate Laws

BBA(FIA)

Lecture 6

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Capacity to Contract



Sec 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”.

- Person incompetent: minors, unsound mind person, person disqualified by law.
- Law seeks to protect their interests from being exploited by unscrupulous persons.

Nature of Minor's Agreement



Sec 3 of the Indian Majority Act 1875:

“every person domiciled in India, who has completed his age of 18 years, is deemed to have attained his majority”.

1. An agreement with the Minor is absolutely void
 - Mohori Bibi vs. Dharmodas Ghosh

Case Discussion



Case: Mohori Bibi vs. Dharmodas Ghosh

Facts of the Case:

Dharmodas Ghosh executed a mortgage of some houses on 20th July, 1895 in favour of **money lender Brahmo Dutt** to secure a loan of Rs. 20,000 at 12% interest. Money lender did not take active part in the negotiations. On his behalf negotiations were made by his attorney, Kedar Nath Mitter.

At the time of executing the mortgage, Dharmodas Ghosh was a minor and a guardian had been appointed. While negotiating the transaction the attorney received information that Dharmodas Ghosh was still a minor. Nevertheless, the attorney got a declaration signed by the minor to the effect that he attained the age of majority on 17th June 1895.

On the basis of this declaration a part of loan was actually advanced to the minor. On 10th September, 1895 a suit was filed on behalf of Dharmodas Ghosh to get the mortgage cancelled. The suit was filed by Smt. Jogendranandini Dassai, mother and guardian of minor. The contention of the money lender was that he had no notice of minority and even if minor was a minor the declaration as to age was fraudulently made. So the minor should refund the amount advanced to him. Subsequently, Brahmo Dutt died and his executor (wife Mohori Bibi) made an appeal to the court for recovery of the advance amount.

Case Discussion



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On the basis of this declaration a part of loan was actually advanced to the minor. On 10th September, 1895 a suit was filed on behalf of Dharmodas Ghosh to get the mortgage cancelled. The suit was filed by Smt. Jogendranandini Dassai, mother and guardian of minor. The contention of the money lender was that he had no notice of minority and even if minor was a minor the declaration as to age was fraudulently made. So the minor should refund the amount advanced to him. Subsequently, Brahmo Dutt died and his executor (wife Mohori Bibi) made an appeal to the court for recovery of the advance amount.

Decision: It was held that the money lender was not entitled to get back the money. The agreement was absolutely void.

Nature of Minor's Agreement



2. The rule of estoppel does not apply against minor
 - Sec 115 of the Evidence Act, 1872 defines estoppel as “When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representatives shall be allowed in any suit or proceeding between himself and such other person or his representative to deny the truth of that thing.”

Nature of Minor's Agreement



3. Doctrine of restitution is not applicable against a minor but relief in equity (Doctrine of equitable restitution) is allowed in certain cases.
 - Restitution means re-storing of anything taken from another.
 - English law differs from Indian law on this point.
 - Minor is not liable to repay any money or compensate for any benefit that he might have received under void agreement. Mohori Bibi vs. Dharmodas Ghosh
 - U/S 33 of Specific Relief Act 1963 gives discretion to the court to require the party to whom such relief is given to make compensation to the other. The relief is in equity and not on the contract.
 - Based on principle who seeks equity must do equity.
 - Khan Gul vs. Lakha Singh

Case Discussion



Case: Khan Gul vs. Lakha Singh

Facts of the Case:

Lakha Singh while still a minor, by fraudulently representing his age, contracted to sell a plot of land to Khan Gul. The minor received the purchase consideration of Rs. 17,500 and then refused to deliver the possession of the property. Khan Gul sued for delivery of the possession of the property or in the alternative, for a decree for recovery of the amount paid.

Case Discussion



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Decision:

Court ordered for restitution and ordered Lakha Singh to restore Rs. 17500 to Khan Gul.

Nature of Minor's Agreement



- Minor as plaintiff: minor can be compelled to restore benefits received from other party.
- Minor as defendant: he can be compelled to restore such benefit, including money, to the other party to the extent to which it has benefited him personally such as education or training, or it has benefited his estate **only if traceable**.
 - Money spent by minor on entertainment, eating and drinking cannot be recovered as there is no benefit to him personally or to his estate.
 - Benefit to the estate means that there should be accretion to his estate.
- No restore- court find no reason justifying

Nature of Minor's Agreement



In the following cases restitution is not allowed by a minor:

- Where the other party is **aware** of the minority so that he is not deceived.
- Where the other party is **unscrupulous** in his dealing with the minor.
- Where the other party is so **eager** to enter into the transaction that the false representation by the minor does not influence him.
- Where **justice** does not require the return of property or money by the minor.

Nature of Minor's Agreement



4. Beneficial contracts

- Minor is allowed to enforce a contract which is of some benefit to him and under which he is not required to bear any obligation.
 - Contract is valid and enforceable by him or any person on his behalf.
 - Guardian empowered to do a contract on behalf of minor.
 - So a minor can be transferee.
 - Raghava Charior vs. Srinivasa

Case Discussion



Case: Raghava Chariar vs. Srinivasa

Facts of the Case:

A mortgage was executed on march 23, 2003 in favour of a minor, Raghava Charior who has advanced the whole of the mortgage money to Srinivasa. The suit was filed for the recovery of a sum of Rs. 1,100 due on the mortgage.



Case Discussion



Case: Raghava Chariar vs. Srinivasa

Facts of the Case:

A mortgage was executed on March 23, 2003 in favour of a minor, Raghava Chariar who has advanced the whole of the mortgage money to Srinivasa. The suit was filed for the recovery of a sum of Rs. 1,100 due on the mortgage.

Decision:

Held that the transaction was enforceable by the minor. This is because agreement may be enforced for the benefit of the minor.



Nature of Minor's Agreement



4. Beneficial contracts **Contd.**

- Contract of service: not binding by or against minor
 - Guardian cannot bind minor by service contract
 - Ground for this is lack of consideration because contract is executory.
 - Specific performance cannot be enforced
 - Raj Rani vs. Prem Adib

Case Discussion

Case: Raj Rani vs. Prem Adib

Facts of the Case:

Raj Rani was a minor girl. There was a contract to employ the girl as an artist in Prem Adib's concern called Prem Adib Pictues for a period of one year at the salary of Rs. 9500 to be paid in 12 equally monthly installments. Agreement was entered in by the father of the girl, Dhiraj Singh Muramal. Raj Rani worked for few days and after that Prem Adib gave the role to another girl. Minor sued Prem Adib for breach of agreement claiming damages being the difference between Rs. 9500 and Rs. 791 already received by her. Raj Rani sued Prem Adib.



Case Discussion

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Decision:

The agreement was held void because a minor promise to serve would supply no consideration for the promise of the other to pay her salary.



Nature of Minor's Agreement



4. Beneficial contracts **Contd.**

- Apprenticeship agreements are valid & enforceable
 - Apprentices Act 1961
 - Age more than 14 years
 - Contract made by guardian
 - Learn trade, crafts and employment
- Contract of Marriage
 - Agreement to marry in future is void
 - Subject to provisions of applicable laws as to marriage
 - Child Marriage Restraint Act

Nature of Minor's Agreement



5. Minors agreement cannot be ratified by him on attaining the age of majority
 - Services rendered to a minor at his request or an advance is made to a minor during his minority & services are continued or a further advance is made after he attains majority at his request form a good consideration for a subsequent promise (whole amt. or service) by him in favor of the person who rendered the services
 - Suraj Narain vs. Sukhu Ahir

Case Discussion



Case: Suraj Narain vs. Sukhu Ahir

Facts of the Case:

Sukhu, a minor borrowed a sum of money by executing a promissory note. He after attaining majority, executed a second bond in respect of the original loan plus interest. Later, he defaulted in the payment.

Case Discussion



Case: Suraj Narain vs. Sukhu Ahir

Facts of the Case:

Sukhu, a minor borrowed a sum of money by executing a promissory note. He after attaining majority, executed a second bond in respect of the original loan plus interest. Later, he defaulted in the payment.

Decision:

It was held that the suit upon the second bond was not maintainable as that bond was without consideration.

Nature of Minor's Agreement



6. Minor's liability for necessities:

Section 68: “if a person incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.”

- Liability is not personal, must be reimbursed from the property of the minor.
- Supplier for necessities must prove that at the time of sale or delivery, the minor did not already possess and adequate supply of necessities.
- Necessaries: depends upon the position and status of the minor in society. Articles reasonably necessary, medical expenditures, cost of defending court proceeding.
- Not necessities: Luxury articles, Articles of real use but excessively costly.
- Nash vs. Inman

Case Discussion



Case: Nash vs. Inman

Facts of the Case:

Eleven fancy waistcoats costing Pound 145 were supplied to a minor who was the son of an architect of good position with a town house and a country establishment. The minor was amply supplied with proper clothes suited to his condition in life by his father.

Case Discussion



Case: Nash vs. Inman

Facts of the Case:

Eleven fancy waistcoats costing Pound 145 were supplied to a minor who was the son of an architect of good position with a town house and a country establishment. The minor was amply supplied with proper clothes suited to his condition in life by his father.

Decision:

The court of Appeal dismissed the appeal to recover the cost of waistcoats from the minor as the minor has amply supplied with proper clothes suited to his condition at the time of sale whether the supplier knows this or not. Fancy waist coats were not necessities.

Nature of Minor's Agreement



7. Suit for specific performance
 - Specific performance of agreement made by minors guardian
 - Authorised
 - For benefit of minor
 - Exception: immovable property, service contract
8. Minor partner
 - Cannot be partner
 - Can be admitted to the benefits of the firm
 - Liability limited and no personal liability
 - Cannot take part in management
9. Minor agent
 - Minor cannot employ an agent
 - Sec 183 minor can be an agent
 - Represents principal and binds him for his acts
 - Not personally liable for wrongful acts
 - Principal responsible to 3rd parties for acts of minor agent.

Nature of Minor's Agreement



10. Contracts for purchase of immovable property

- Guardian has no power to bind minor
- Cannot be specifically enforced by or against minor
- Mir Sarwarjan vs. F M. Chaudhary

Case Discussion



Case: Mir Sarwarjan vs. F M. Chaudhary

Facts of the Case:

An agreement was made to purchase immovable property by a guardian on behalf of the minor. Seller refused to give the possession of the property.

Case Discussion



Case: Mir Sarwarjan vs. F M. Chaudhary

Facts of the Case:

An agreement was made to purchase immovable property by a guardian on behalf of the minor. Seller refused to give the possession of the property.

Decision:

It was held that the minor could not sue for getting the possession of property.

Nature of Minor's Agreement



11. Minor and insolvency: minor is not personally liable and cannot be adjudicated insolvent.
12. Contract by minor and adult jointly: adult is liable on contract.
13. Surety for a minor: adult is liable as principal debtor.
14. Position of a minors parents: not liable for agreements done by minor unless minor acts as agent for the parents.
15. Minor Shareholder
 - Acquire shares only by transmission
 - Transfer permitted only when shares are fully paid
16. Minors liabilities in tort: liable for tort
 - Tort is a civil wrong
 - Tortious act must be independent of contract
 - Minor is not liable for tortious act done by him in performance of a contract.

Incompetent Person: Unsound Mind



Sound mind Sec 12:

“A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests”.

- Caused by disease, accident or age
- Lunatic or mentally retarded person, drunkard, idiot
- Lucid intervals
- A person who is usually of unsound mind but occasionally of sound mind, may make a contract when he is of sound mind.
- A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Effects of agreements made by a person of Unsound Mind



- Agreements void
- Property of unsound mind person is liable for necessities supplied to him or to anyone whom he is legally bound to support.
- Disqualified from becoming a partner of LLP.

Other Persons Disqualified from Contracting



Other Disqualified persons:

- Alien enemy: contracts suspended for the duration of war.
- Foreign sovereigns and diplomats: immunity
- Convicts: incompetent during the period of sentence
- Insolvent persons: incompetent related to his property.
- Corporate bodies: beyond powers
- Married persons: for spouse's property



THANK YOU