

Business laws:.

The Indian Contract Act, 1872:(Competency of the parties)

One of the essential elements of a valid agreement is that the parties to the contract must be competent to enter into a legally binding agreement.

Certain conditions must be fulfilled to bring enforceability to an agreement. According to section 10 of the Act other conditions are: competence to contract; free consent; legality of object and consideration; and that agreement should not be expressly declared void under the Act.

Parties concerned must be legally competent to bind themselves by promises. For knowing the certain conditions which must be fulfilled to bring enforceability to an agreement is section 10 and meaning and definition of contract.

DEFINITION OF CONTRACT UNDER THE INDIAN CONTRACT ACT 1872- The definition of Contract is given under S. 2(h) of the Indian Contract Act, which provides 'a contract is an agreement enforceable by law'. Thus a contract is an agreement made between two or more parties which the law will enforce.

From the definition of the term 'contract', it is clear that every kind of agreement is not a contract, an agreement which creates legal right / obligations, liabilities between the parties and which has some value in the eye of law is a contract.

For example: A promises to pay 100 rupees to B if B kidnaps C, this agreement is not enforceable at law although there is a promise as well as consideration because the agreement being unlawful and is not enforceable at law.

Competency of the parties: An agreement will become contract if it is entered into by parties who are competent to contract, section 10 of the contract act requires the parties to be competent to make a valid contract, It states:

"all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void".

In this regard section 11 is very clear. It states that:

"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."

It follows that the following persons are incompetent to contract

(1) Minors

(2) Persons of unsound mind and (3) Persons disqualified by any law to which they are subject.

Who is a Minor?

According to section 3 of the Indian Majority Act, 1875, every person domiciled in India shall attain majority (i) in general cases, when he has completed the age of 18 years and not before; or (ii) in two special cases, where a guardian of minors person and property has been appointed by the court under the Guardian and Wards Act, 1890, or where a minor is under the Guardianship of court of Wards (before the age of 18 years), a minor shall attain majority when he has completed the age of 21 years and not before.

Legal Position of a Minor in Indian Law:

Indian Contract Act protects minors and provides a number of privileges to them. Law protects these persons and preserves their rights and estates, excuses their negligences, and assists them in pleadings.

Thus, in a minor's case, the law behaves like his guardian.

The provisions of law governing agreements with a minor in India may be dealt with as follows:

1. An agreement with or by a Minor is void ab initio (from the very beginning): An agreement with a minor is void since very beginning. It is altogether void against the minor. Therefore a minor is not liable either to perform what he has promised to do under the contract nor to repay the money that he has received under it.

Leading Case: *Mohori Bibi Vs Dharmodas Ghose* (1903) LR 30 Cal 539, it is an established rule in India that an agreement with a minor is void ab initio, namely, since its conception and inception. Dharmodas, a minor borrowed 8000 rupees from the husband of Mohori Bibi and executed a mortgage bond for his property as security. After the death of her husband, Mohori Bibi filed a suit against Dharmodas for the recovery of loan. The court held that as the minor's contract was absolutely void no question of refunding money could arise in these circumstances. Mohori Bibi could not recover the loan.

2. Minor can be a beneficiary: The law does not regard a minor as incapable of accepting a benefit. If an agreement is made for his benefit, he can bind the other party and can claim such benefit. That is to say that the minor is entitled to all the benefits available to him, under the contract. For example, if a promissory note is duly executed in favour of a minor, it is a valid and can be enforced in the Court of Law. (*Sharaf Ali vs Noor Mohd.*, AIR 1924 Rang 136).

3. No Ratification of Agreement: An agreement made by a minor cannot be confirmed by him on attaining majority. This is because, a minor's agreement is void ab initio, and, therefore cannot be made valid by ratification.

4.No estoppel against a minor – There can be no estoppel against a minor where a minor has entered into a contract by misrepresenting his age, he cannot be made liable on the contract. But court may direct the minor to restore the property to the other party as “minors can have no privilege to cheat men”.

5.No insolvency – A minor cannot be declared insolvent.

6. No specific performance except in certain cases– The court will never direct ‘specific performance’ of an agreement by minor. But a contract entered into by the guardian or manager on minor’s behalf can be specifically enforced if it is within the authority and it is for the benefit of the minor.

7.Minor as Partner – A minor cannot be a partner in a firm. However, according to section 30 of Indian partnership act, 1932, he can be admitted to the benefits of partnership with the consent of all partners.

8. Minor as an agent – A minor can be appointed as an agent but he will not be personally liable for any of his acts.

9. Surety for minor – A minor cannot be surety as he is not liable to pay under a contract. Where an adult stands surety for a minor, the adult is liable to third party.

10. Liability for necessaries– According to section 68 of Indian contract act, 1872, a minor is not personally liable, it is his property only which is liable. If he has no property, the supplier will get nothing for necessaries supplied. If he has property, supplier will get reasonable price only. The word necessaries include articles required to maintain a particular person in the state, degree and station in life in which he is. In India, food, clothing, shelter and education have been held to be necessaries.

The law protects minor's right because they are not mature and may not possess the capacity to judge what is good and what is bad for them.

The legal position of the contracts, entered into with or by a minor,have been summarised at one place as under:

1.A contract with or by a minor is absolutely void and not just voidable.

2.He can be a promisee or a beneficiary.

3.The minor,even on his attaining the majority,cannot ratify his old agreement.

4.A minor can always take the plea of being a minor.

5.If a minor has happened to receive some benefits under a void contract,he cannot be asked to return or refund such benefits.

6.The estate of a minor is liable to a person who supplies the necessaries of life to him.

7.A minor can act as an agent,and bind the principal,but not himself.

8.A minor cannot become a partner in any partnership firm.However, he may be admitted to the benefits of an already existing partnership firm.

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