

Business Laws

As per new B Com CBCS syllabus 2017 for CU

Sujit Kumar Das

Former Principal

New Alipore College, Kolkata

Pankaj Kumar Roy

Principal

Jogesh Chandra Chaudhuri College, Kolkata

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Features of

Case Study **Gousmohoddin versus Appasahib A.I.R. (1976) Knt. 90**

Fact of the case A landlord filed a case against his tenant for possession of premises and arrears of rent. The suit was decreed in his favour. In the process of execution, landlord obtained an order for attachment of moveable property of the tenant. The landlord allowed the tenant one month time for payment of the decreed amount and to vacate the premises in consideration that the tenant would not appeal against the decree.

Decision The agreement was valid.

Point of discussion An abstinence or forbearance, which is obtained from doing something, is also a valid agreement.

Case Study **Royal British Bank versus Turquand**

Date of judgment —1856

Facts of the case The articles of association of the Royal British Bank incorporated a provision that directors have the power to borrow money through bonds by taking a resolution in the general meeting of the company. The directors borrowed money from Turquand without passing resolution in the general body meeting of the shareholders.

Decision of the case It was held that Turquand could recover the bond amount from the company on the plea that an adequate resolution has already been passed. The outsider is aware of the external situation and not the indoor management of the company.

Reason Doctrine of indoor management has been completely violated.

Cases

Provides numerous case studies to explain various laws.

Tables

A large number of tables are provided for easy understanding of concepts.

Table 7.1 Difference Between Coercion and Undue Influence

Coercion	Undue Influence
Consent obtained under threat is an offence. In this, consent is obtained by threatening to commit some act harmful and forbidden by IPC.	Particular relationship is exploited to dominate the will of a person for obtaining the consent to an agreement of a person under moral influence.
It is an act of threatening or detaining person or his property.	In this case consent is obtained under a mental or moral influence intentionally.
Coercion involves physical power or use of physical or violent force.	Involves. It influence is of moral threat to use of physical or violent force. Character involves use of mental pressure.

Table 31.1 Difference between equity share and preference share

S.No.	Point of difference	Equity share	Preference share
1.	Nominal value	Normally the face value of equity share is much lower than Preference Share.	Normally the face value of preference share is much higher than Equity Share.
2.	Owner	Equity shareholders are the owners of the company and have the voting right in all respects including the election of directors.	Preference shareholders have the voting right only to protect their interest.
3.	Risk	As they are the owner of the concern, they have to take risk of the company.	Preference shareholders are not the owners of the concern they have to bear less amount of risk.
4.	Redemption	Except buy-back equity holders cannot get their money-back.	Redeemable preference share of a company at the time of liquidation get their money-back.
5.	Preference	Equity shares have no preference.	Preference shares have preference in two ways at the time of getting dividend prior to equity and at the time of liquidation they got their money-back prior to equity.

the Book

Exercises

Includes relevant questions at the end of every chapter for students to practice.

EXERCISES

Short Questions (2 marks)

1. What is a partner by holding out? [CU, B.Com 2001, 2011, 2013(H)]
2. What is partnership by estoppels? [CU, B.Com 2012, 2014(H)]
3. What is partnership at will? [CU, B.Com 2012, 2013(G), 2015(G)]

Long Questions (12 marks)

1. Distinguish between partnership and private limited company. [CU, B.Com 1992]
2. How does a partnership differ from co-ownership? [CU, B.Com 2015(G)]

Selected Readings

1. Kapoor, N.D. (2009), *Elements of Mercantile Law*, Sultan

Medium Questions (6 marks)

EXERCISES

Short Questions (2 marks)

1. Define Promoter. [CU, B.Com 1993]
2. Define Articles of Association. [CU, B.Com 2012, 2013]
3. What do you understand by Certificate of Incorporation? [CU, B.Com 1997, 2005, 2007]
4. What do you understand by commencement of business? [CU, B.Com 2008, 2010]
5. What is pre-incorporation contract? [CU, B.Com 2008, 2010]

Medium Questions (6 marks)

1. State the usual steps to be taken in the formation of a company. [CU, B.Com 1993, 1996, 2003]
2. Discuss the legal position of a promoter to the company. [CU, B.Com 2011]
3. Discuss the steps involved in the formation of a company.

4. Briefly explain the procedure for registration of a public limited company. [CU, B.Com 2015(G)]
5. State the procedure for registration and incorporation of a public company. [CU, B.Com 2015(H)]
6. Discuss the duties and liabilities of a promoter of a company? [CU, B.Com 2012]
7. Discuss briefly the steps to be taken for the formation of a public limited company under the Companies Act, 2013. [CU, B.Com 2007, 2010, 2011]
8. Discuss the steps involved in the formation of a company. [CU, B.Com 2011]
9. Discuss briefly the steps to be taken for the formation of a public limited company under Companies Act. [CU, B.Com 2012]

Selected Readings

1. Kapoor, N.D. (2009), *Elements of Mercantile Law*, Sultan

Jitendra Kumar Mitra (2008), *Company Law*, World Press, Act, 1932, (Bare Act), Universal Ltd, 2010.

(2011), *Business Law*, Everest

Model Question Papers (without answers)

FIRST SET

Group – A

8 × 2 = 16

1. (a) "A threat to commit suicide"
- (b) What is a standing offer?
- (c) What is meant by passing
- (d) What are ordinary damage
- (e) Define "Contract of sale"

Model Question Papers (with answers)

FIRST SET

Group – A

- Question A-1(a)** What is Countermanding of a cheque? 2 × 8
Answer "Countermanding of a cheque" means cancellation of a cheque. It may be done by the drawer of a cheque by issuing "Stop payment" by the drawer of a cheque to the bank. Under some circumstances a cheque may be countermanded by the banker.
- Question A-1(b)** Are promissory notes bearer instruments anymore?
Answer Normally, a promissory note cannot be payable bearer on demand. It is prohibited by Section 31 of the Reserve Bank of India Act, 1934. Only Reserve Bank of India or The Central Government can issue negotiable promissory note.
- Question A-1(c)** Define acceptance for honour.
Answer When a bill of exchange or promissory note is dishonored for non-acceptance or non-payment;

Solved and Model Question Papers

Helps to understand and prepare for the university examination.

Preface

The laws governing the appropriate ways to carry out business in India date back to the late nineteenth century. The laws created then, such as the Indian Contract Act, 1872, are still relevant and in effect today. Some of the Acts have been amended from time to time to make them relevant to modern business practices. Still others, like the Companies Act, 1956 have been thoroughly overhauled to make them contemporarily relevant. Moreover, new laws have been framed when entirely new methods of transacting businesses have come up, such as the IT Act, 2000 which was necessitated due to influences of modern-day technologies such as computers and the Internet.

The University of Calcutta (CU) has combined the study of several relevant Acts, which are crucial to a student of commerce, in its first semester course Business Laws. The aim of the course is to provide a thorough understanding of various laws that a business practitioner will need to know.

About the Book

Business Laws is designed to serve as a textbook for first semester undergraduate commerce students of the CU. It aims to provide simple and easy coverage of various laws through its lucid explanations of relevant sections, discussion of case law, and landmark cases with facts and judgements.

Key Features

- Appropriate diagrams are used wherever necessary for clear understanding of the concepts.
- Three sets of University Question Papers are provided with solutions to short questions. Two sets of model questions are also provided for practice.
- Exercises are provided at the end of every chapter. They are divided into short, medium, and long questions in keeping with the university examination pattern.
- A chapter-wise question bank of solved questions is provided at the end of the book.
- Case studies along with facts of the case and decision of the case are given in sufficient numbers to enrich the book.
- A separate collection of case laws is provided at the end of the book.
- Several illustrative examples are provided throughout the book to make learning of difficult laws more easy and understandable.
- A glossary of keywords is provided at the end of each chapter to recapitulate the new legal words that the students learn while reading the chapters.

Structure and Content of the Book

The book comprises 28 chapters. A brief description of the contents of each chapter is provided below:

Chapter 1 introduces the subject by discussing the evolution and necessity of business laws.

Chapter 2 deals with jurisprudence. It explains the philosophy behind law.

Chapters 3 to 10 deal with the Indian Contract Act, 1872. The Contract Act is considered to be fundamental to business law and it lays down the foundation of other laws.

Chapters 11 to 14 cover the Sale of Goods Act, 1930, which deals with sales and agreement to sales and is considered as the cornerstone of business deals.

Chapters 15 to 20 deal with the Indian Partnership Act, 1932, which defines and amends the law relating to partnership and different types of partnership.

Chapter 21 to 23 cover The Negotiable Instrument Act, 1881. The Act deals with exchange of money with national and international implication.

Chapters 24 to 27 cover the Consumer Protection Act, 1986. The Act deals with the rights of the consumers and the roles played by the District forum, the State Council, and the National Council. Chapter 28 covers Limited Liability Partnership Act, 2008 which deals with the laws concerned with the setting up of partnership firm with limited liability, perpetual existence, and separate entities.

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We would like to thank Dr Ila Das and Sweta Roy for their illustrative support, Prof. Pranab Kumar Bhattacharjee and Dr Tarashankar Roy for acting as fountains of inspiration, and also Indranil Das and Swapnil Roy for assisting us in the development of this book.

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Sujit Kumar Das
Pankaj Kumar Roy

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6

Capacity of Parties to Contract

Chapter Outline

- Parties competent to enter into a contract
- Persons incompetent to enter into a contract
- Who is a minor?
- Why should minors be protected?
- Law regarding minor's agreement
- Minor's liability for necessities
- Position of a minor's guardian
- Company share held by a minor
- Persons of unsound mind
- Other persons considered to be disqualified for contract

INTRODUCTION

A contract must be made between the persons who are competent to perform the contract. This is the main essence of Section 11 of Indian Contract Act, 1872. Accordingly, every person entering into a contract must have the capacity to enter into a contract. Section 10 of Indian Contract Act, 1872, provides that 'All agreements are contracts if they are made by the free consent of parties *competent to contract*.' Section 11 of the Indian Contract Act regarding the competence of the parties provides or states that 'Every person is competent to contract who had reached the age of majority according to the law to which that person is a subject, and who is of sound mind and is not disqualified from contracting by any law to which he is a subject.'

PERSONS INCOMPETENT TO CONTRACT

According to Section 11 of the Indian Contract Act, the following persons are not competent to enter into contract:

- Minors,
- Persons of unsound mind, and
- Persons disqualified by any law to which they are subjected to.

The above persons cannot enter into a contract. Any contract of which either party belongs to any of the above category is void.

Who is a Minor?

A person is considered a minor who has not reached the age of a major according to the Indian Majority Act, 1875. A major person has been defined in the Indian Majority Act, 1875, as 'Every person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of 18 years and not

before. In the case, however, of a minor of whose person or property or both, a guardian has been appointed by a court, or of whose property the superintendence is assured by a court of words, before the minor has attained the age of 18 years, when he has completed the age of 21 years (Section 3 of Indian Majority Act, 1875). Therefore, the age of majority in India is generally 18 years. The age of majority is to be determined according to the law to which he is subjected to. According to the act, a minor is a person who has not attained the age of 18 years. There are, however, two exceptions to this rule.

WHY SHOULD MINORS BE PROTECTED?

The minors are always unable to understand what is good and fair for them. They are very often exploited, and their properties may be taken away. Law provides that the court should be careful and protect them and safeguard their properties against unwanted interference into their interests because of their lack of knowledge and experience.

Nature of minor's agreement

Section 10 of Indian Contract Act, 1872, requires that the parties to the contract must be competent and Section 11 of the Indian Contract Act provides regarding the competence of the parties that a person competent to contract must be of the age of a major. In addition, it is clear that a minor cannot enter into a contract. The judiciary committee of the Privy Council in the year 1903 resolved the controversy of the role of a minor in a contract. In the case of *Mohori Bibee versus Dharmodas Ghose* (1903) 30IA 114; 30 ca l539, Sir Lord North observed that 'minors are appearing in public life today more frequently than before. A minor has to travel, to get his dress tailored or cleaned, and to visit cinema halls. He has to deal with educational institutions and purchase so many things. In any one of such cases, if the other party to the contract could brush aside the minor on the ground that the agreement is void, a minor has to face much more trouble.'

LAW REGARDING MINOR'S AGREEMENT

An agreement with or by a minor is void and inoperative as initio

An agreement by a minor is void and inoperative. In the year 1903, the judiciary committee of the Privy Council declared that agreement by a minor is void and not enforceable in the case of *Mohori Bibee Versus Dharmodas Ghose* (1903) 30IA 114; 30 cal 539.

In this case, a minor mortgaged his property in favour of a moneylender to secure a loan of ₹20,000 out of which the mortgagee paid the minor a sum of ₹8,000. Subsequently, the minor sued for setting aside the mortgage, stating that he was underage when he executed the mortgage. Held, the mortgage was void and therefore, it was cancelled. Further, the moneylender's request for the repayment of the amount advanced to the minor as part of the consideration for the mortgage was also not accepted. When giving the judgement, Sir Lord North observed that 'looking at Section 11, their Lordships are satisfied that the act makes it essential that all contracting parties should be competent to contract and expressly provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the act. The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant.'

A minor can be promisee or a beneficiary

A minor in whose favour a mortgage has been executed can get a decree for the enforcement of the mortgage. [*Raghavachariah versus Srinivas* 40 Mad, 308] Similarly, a promissory note executed in favour of the minor can be enforced.

An agreement under which a minor has received a benefit can be enforced as against the other party. Any agreement for the minor's education, service, or apprenticeship, and agreements that enable him to settle him in life are binding provided they are not detrimental to his interest.

Example D, an infant professional boxer, held a licence from the British Boxing Board under which his money was to be stopped if he was disqualified. D sued to recover it. Held, the contract was for his benefit and was binding on him. [*Doyle versus White City Stadium* (1985) 1 K.B. 110].

Example A minor under a contract of sale delivered goods to the buyer. Held, he was entitled to maintain a suit for the recovery of price. [*Abdul Ghaffar versus Prem Piare Lal*. AIR (1934) Lah 480]

Minor's liability for necessities

A person who has supplied necessities to a minor or anyone whom the minor is bound to support can claim reasonable price for the necessities and the minor's property is liable for such payment. What is a necessary article is to be determined by the status and social position of the minor. What price is reasonable is to be determined by the circumstances, and the 'reasonable price' and not the 'agreed price' would be paid by the minor. The minor's property is liable for the payment and the minor is not personally liable.

The subject of necessities supplied to a person incapable of contracting is covered by Section 68 of the Indian Contract Act, which provides that 'if a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied with necessities suited to his condition of life, by another person, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person'. It is, therefore, the minor's liability towards supply of necessities does not arise out of contract.

Example Inman, an infant in the undergraduate college of Cambridge bought eleven fancy waistcoats from Nash. He was at that time adequately provided with clothing. Held, the waistcoats were not necessary, and hence the price could not be recovered. [*Nash versus Inman* (1908) 2 KB 1]. Learned Judge Fletcher Milton in this case observed that 'the basis of the action is hardly a contract. Its real foundation is an obligation that the law imposes on the infant to make a fair payment in respect of needs satisfied.'

Law regarding compensation or restitution

A minor cannot be compelled to compensate for any benefit that he has received under a void agreement. Section 65 of the Indian contract act provides for restitution in the case of an agreement that is discovered to be void. However, it has been held in a number of cases that the court may, on cancelling an instrument at the instance of a minor, require the minor to make compensation to the other party. Section 41 of the specific relief Act 1877 empowers the court to do so. The provision of the act follows as 'on adjusting the cancellation of an instrument, the court may require the party to whom such relief is granted to make any compensation to the other which the justice may require so.' Section 41 of the specific relief Act 1877 provides in similar terms for cases where a contract is rescinded.

Example A minor sells a house for ₹10,000. Later, he files a suit to set aside the sale on the ground of minority. He may be directed to refund the purchase money received by him.

He can always plead minority (no estoppel)

A minor who falsely represents himself to be a major, and thereby that minor induces another person to enter into an agreement with him can nevertheless plead minority as a defence of an action on the agreement. He cannot be sued either in contract or in tort for fraud because if the injured party were allowed to sue for fraud, it would be giving him an indirect means of enforcing a void agreement. There cannot be estoppels against a minor [*Sadik versus Jaikishore* (1928) AIR PC 1152]. In the English case *R Leslie versus Shell*, the Court of

Appeal held that where an infant obtains a loan by falsely representing his age, he cannot be compelled to pay the amount of the loan as damages for fraud, nor can he be compelled in equity to repay the money. In India, however, it has been held that the court can direct the minor to pay compensation to the other party in such cases.

No ratification

A minor cannot ratify an agreement entered into by him when he was minor on attaining his majority. It is because a void agreement cannot be validated by any subsequent action. 'An agreement by a minor is void *ab initio*' [*Mahendra versus Kailash* 55 Cal 41]. 'Consideration that passed under the earlier contract cannot be implied into the contract that the minor enters on attaining majority.' [*Nazir Ahmed versus Jivan Dass*, AIR (1938) Lah. 159]. Consideration given by a minor is no consideration. If a new contract is entered into by the minor to compensate the previous agreement after attaining majority, the agreement is required to be supported by a fresh consideration. [*S. Shanmugam Pillai versus K.S. Pillai*. (1973) 2 SCC 312].

Example B, a minor, borrows ₹5,000 from D and executes a promissory note in favour of D. After attaining majority, another promissory note was executed in settlement of the earlier note. The second promissory note is void for want of consideration. [*Indran Ramaswamy versus Anthiappa Chettiar*, (1906) 6 M.L.J. 422]

Example K, an infant, speculated on the stock market and became liable to the stockbroker for £547. Subsequently, when he attained majority, he executed two bills for £50 each in satisfaction of the original debt. Held, K was not liable on the bills. [*Smith versus King*, (1895) 2B 543]

Services rendered by a person at the desire of the minor expressed during his minority and continued the same at his request after his majority from a good consideration for a subsequent express promise by him in favour of the person who provided the services. [*Sindha versus Abraham*, (1985) 20 Bom. 755]

No specific performance

There cannot be any specific performance of an agreement entered into by a minor. An agreement by a minor is void *ab initio*. A contract entered into on behalf by his parent/guardian or the manager of his estate can, however, be specifically enforced/performed against the minor, provided (a) the contract is within the scope of the authority of the parent/guardian/manager, and (b) for the benefit of the minor.

A minor cannot enter into a partnership

A minor cannot be entered into a contract of partnership, but he may be admitted into the benefits of partnership with the consent of existing partners of an existing partnership.

No insolvency

A minor cannot be declared insolvent even if there are some dues payable from the properties of the minor. It is because he is incapable contracting debts.

A minor can be an agent

A minor can act as an agent of a principle and can bind others except himself. A minor becomes an agent by negotiating an agreement with a major person. No liability is arising out of the agreement against the minor, but the agreement can be enforced against the major person.

A minor is liable in tort (a civil wrong)

A minor is liable for tort, but where a tort arises out of a contract a minor is not liable in tort as this can be an indirect way of enforcing an invalid contract. [*Leslie versus Shiell* (1914) 3 K.B.607]

MINOR'S LIABILITY FOR NECESSARIES

A minor is liable to pay out of his properties for necessities supplied to him. A person who has supplied necessities to a minor or anyone whom the minor is bound to support can claim reasonable price for the necessities and the minor's property is liable for such payment. What is a necessary article is to be determined by the status and social position of the minor. What price is reasonable is to be determined by the circumstances, and the 'reasonable price' not the 'agreed price' would be paid by the minor. The minor's property is liable for the payment and the minor is not personally liable.

The subject of necessities supplied to a person incapable of contracting is covered by Section 68 of the Indian Contract Act, which provides that '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 of life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person'. It is, therefore, the minor's liability towards supply of necessities does not arise out of contract. The term '*necessaries*' has not been defined in the Indian Contract Act. It has been defined by The English Sale of Goods Act 1893 in Section. 2 as 'goods suitable to the condition in life of such infant or other person, and to his actual requirement at the time of sale or delivery'. Such goods need not necessarily belong to a class of useful goods, but they must be (i) suitable to the position and financial status of the minor, and (ii) necessities both at the time of sale and at the time of delivery.

What are necessities for a minor is determined by their status and social position and will include the followings:

1. Physical goods not only for bare necessities but also for reasonable comforts and luxuries to which the minor is habituated. Not only bare necessities like bread and butter, shelter, cloth but also a watch or a bicycle may be considered to be necessities considering his status. An engagement ring may be a necessary, but a vanity bag bought for her fiancée is not.

Learned Judge Martin B. in a case [*Byrant versus Richardson*, (1866) 14 L.T. 24] said that 'a coat of superfine broadcloth may be a necessary for the son of a nobleman, although it is impossible not to say the coarse material of a ploughman's coat would be sufficient to keep a nobleman's body warm'. The learned Judge Bramwell, B. said in [*Ryder versus Wombell*, (1868) L. R. 3 Exch. 90] that 'earrings for a male, spectacles for a blind man, a wild animal. . . . a daily dinner of turtle and venison (the edible flesh of a wild animal taken by hunting) for a month for a clerk with a salary of one a week' could not be necessities.

2. Services required by the minor could be a teacher for him, a nurse for an infant, etc. It has been held that reasonable expenses for this purpose will include education, training for a trade, medical advice [*Chappel versus Cooper*, (1844) 13M & W 252], provision for expenses for marriage of the minor, marriage of his sister, expenses legal advice and of proceedings for defending him in civil and criminal proceedings, funeral expenses of his near relatives, and expenses for *shadh* ceremonies of his ancestors.

Example 1 A supplied B, a minor reasonable food necessary for his consumption. Now A can recover the price from B's property.

Example 2 A minor G entered into a contract with R, a renowned Billiard player, for training and advised him during a world tour, and agreed to pay him money. R spent time and money in arranging matches. Held, G was liable to pay as the agreement was for necessities and was 'for teaching, instruction, and employment and was reasonable and for the benefit of the infant'. [*Roberts versus Gray*. (1913) 1 K.B. 520]

Example 3 When a minor is engaged in a business, the contracts entered into by him for business purposes and cannot be considered as necessities and the contracts are not binding on the minor.

3. Loans were taken by a minor for obtaining necessities. In such cases of requirement, a minor incurs loan for his necessities and that minor is bound to repay the loan. The lender can recover the amount

from the property of the minor. However, the minor is not responsible personally. [*Martin versus Gale*, (1876) 4 Ch.D. 428]

POSITION OF A MINOR'S GUARDIAN

A minor cannot enter into an agreement. Even if he enters, it is not enforceable. However, an agreement by a guardian on behalf of a minor stands on a different footing. It is valid and enforceable provided the obligations undertaken are within the powers of the guardian. The powers of a guardian are determined by the personal law of the minor and by the Guardian and Wards Act. An agreement entered into by the guardian is binding on the minor if it is for the benefit of the minor or is for a legal necessity.

COMPANY SHARES HELD BY A MINOR

A minor cannot apply for a share in a company. If by mistake, a minor is allotted a share and his name is recorded as a member in a company, the company can rescind the transaction and remove his name from the register. The minor can also repudiate the transaction and get his name removed from the registrar. Where a minor has become a member and, after attaining a majority, he received and accepted dividends, he will be stopped from denying that he is a member. [*Fazalbhoy versus The Credit Bank of India* 39 Bom. 331]

PERSONS OF UNSOUND MIND

It is essential that the parties involved in a contract are of sound mind and capable of understanding the terms and conditions of the contract and their interests. Section 12 of the Indian Contract Act is related with the provisions regarding what is a sound mind for the purpose of contracting. It provides/states as follows;

- (a) 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 forming a rational judgement as to its effect upon his interests;
- (b) A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.
- (c) A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Examples

- (i) A person in a lunatic asylum, who is at intervals, of sound mind, may contract during those intervals.
- (ii) A same person, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgement as to its effect on his interests, cannot contract while such delirium or drunkenness lasts.

Soundness of mind depends on the following issues:

1. Incapacity of a person to understand the subject matter of the contract, and
2. Inability of a person to form a rational judgement as to its effect upon his interest involved in it. If a person suffers from both, he is suffering from incapacity and considered to be a person of unsound mind. Whether a person is of unsound mind or not is a matter to be decided by the court. If a person relies on unsoundness of mind, he has to prove it sufficiently before the court.

Unsoundness may arise from insanity or lunacy, idiocy, drunkenness, and similar factors. Mental decay brought about by old age or disease also comes within the definition.

Lunacy or insanity

A person is considered to be lunatic if he has certain imbalances of mind. This may be due to a disease of the brain or mental strain or old age. As a consequence, his mental powers are deranged so that he cannot form a rational judgement on any subject. Lunacy or insanity can be cured, but there are cases where he suffers from intermittent intervals of sanity and insanity. A contract entered into by such a person is valid if it is done during the period when he is of sound mind.

Idiocy

An idiot is a person who has totally lost his mental balance permanently. That person cannot exhibit any understanding even in normal matters. Idiocy is incurable and any contract with an idiot is void.

Drunken or intoxicated person

A person under the influence of alcohol cannot take any decision in the normal process. Drunkenness or intoxication produces temporary incapacity to contract. A person when he is drunk his mental faculties are clouded for the time being, and he becomes incapable to participate in a contract temporarily. The position of an intoxicated person is that of a lunatic.

OTHER PERSONS CONSIDERED TO BE DISQUALIFIED FOR CONTRACT

There are some other persons who are also considered to be disqualified for entering into a contract.

Alien enemies

A person who is not a citizen of India is an alien. He may either be an alien friend or an alien enemy. An alien friend is a person whose state is not at war with India. An alien enemy is a person who is a citizen of a country at war with the Republic of India. Contracts with an alien friend are valid subject to certain restrictions. An alien living in India is free to enter into contracts with citizens of India. Contracts with an alien enemy may be discussed under (a) contracts during the war, and (b) contracts made before the war.

During the continuance of war, an alien enemy cannot enter into a contract with an Indian subject. Contracts made before the war may either be suspended or dissolved. For this purpose, if an Indian subject is residing voluntarily in a hostile country or carrying a business in that country, that person will be considered as an alien enemy and any agreement with such a person will be considered unenforceable.

Foreign sovereigns, diplomatic staffs

A foreign sovereign can enter into an agreement with an Indian subject. However, such an agreement cannot be enforced unless they voluntarily submit to the jurisdiction of the local court. An Indian citizen has to obtain a prior sanction of the Central Government for proceeding against them in our courts [*Meghell versus Sultan of Johore*, (1894) 1 Q.B 149].

Foreign sovereigns and governments can enter into contracts through their agents who are residing in India. In such a case, the agent becomes personally liable for the performance of the contract.

Companies and corporations

Companies and corporations are body corporate and considered to be artificial persons created by law, having a legal existence apart from its members. A corporation formed by an act of legislature has the capacity to contract subject to the act of its formation. The contractual capacity of a company is regulated by the terms of the Memorandum of Association and the provisions of the Companies Act. If it exceeds its powers, the contract is *ultra vires* and is void.

Professional persons

In England, barristers are not allowed to sue for realizing their fees. Similarly, the members of the Royal College of Physicians cannot sue for their fees. They can, however, be sued or sue for implementation of any contract other than professional one. In India, however, there is no such restriction.

Insolvent

An insolvent also barred for entering into a contract.

Convicts

A convict is incapable of entering into a contract so long as he is in custody. His incapacity comes to an end when the period of sentence comes to an end.

Women

In India, there is no difference between a man and a woman so far as the contractual capacity is concerned. Women married or single can enter into contracts, deal with their properties, and even a married woman can bind her husband's properties for necessaries supplied to her.

KEYWORDS

Alien enemies, Insanity, Persons incompetent to contract, Minors, Majors, Liability for necessaries, Restitution, Estoppel, Ratification, Specific performance, Insolvent, Tort, Unsound mind, Lunatic, Competent to contract, Convicts, Beneficiary, Idiot.

EXERCISES

Short Questions (2 marks)

1. What do you mean by capacity to contract? [CU, B Com 2008]
2. Who is a minor? [CU, B Com 2003]
3. Can a minor be declared be insolvent? [CU, B Com 2007]

Medium Questions (8 marks)

1. Discuss the validity of contract by minor. [CU, B Com 1993]

2. 'Minor's agreement is void *ab initio*.' Discuss [CU, B Com 2012]

Long Questions (16 marks)

1. What do you understand by capacity to contract? What is the effect of any agreement made by persons not Qualified to contract? [CU, B Com 2008]
2. Discuss the validity of contract by minor. [CU, B Com. 1993]

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