

**Advanced Contracts, Tendering and Public Procurement**  
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**Lecture 8: Formation of Contract - Capacity to Contract**

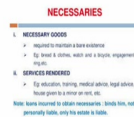
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3. Capacity of parties: Sec. 10

• Mental Incapacity

• Minor

- Mohoribibi v Dharmodas Ghose
- No ratification of minor agreement
- Khan Gul v Lakha Singh [minor concealing age, can he be held liable?]
- Law of contract; exception: Minor liable for necessities of life [sec. 68: Doctrine of restitution]



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- On question of compensation there is a difference of opinion between the High court.
- Lahore High Court
- Khan Gul v Lakha Singh the plaintiff who had advanced a sum of Rs. 12,000 to a minor brought an action against him to recover the amount. The minor was held liable for the same.
- Justice Shah J.L. made a liberal interpretation of the section and applied equitable doctrine of English law.



The Indian Contract Act of 1872 contains a section known as Section 68, which deals with externally imposed obligations, also known as quasi contracts. Quasi contracts are similar to contracts but are not considered full-fledged contracts. They represent contractual relations that resemble contracts to some extent. This section and the subsequent sections from 68 to 72 outline the obligations that can be imposed under these quasi contracts, regardless of whether an actual contract exists or not.

Under the Indian Contract Act, parties can enter into agreements and assume obligations based on their own choices. These obligations are considered self-imposed obligations. However, there are situations where, even in the absence of a present agreement or the presence of the other party, certain obligations can still be imposed due to the nature of the relationship between the parties. Therefore, the Act recognizes that in certain cases, obligations resembling contractual obligations can be enforced, even without a formal contract.

The law of contracts is primarily based on the law of obligations, which are enforced by the legal system. Section 68 of the Indian Contract Act deals with incapacitated persons, including minors, who lack the capacity to enter into contracts. According to this section, if a minor is provided with necessary goods for their life, such as food, clothing, and shelter, the

minor is obligated to pay for those goods. This exception to a minor's liability in contracts ensures that essential goods are not withheld from them.

It is important to note that this obligation of a minor to pay for necessities of life is not a full-fledged contractual obligation but a legal obligation based on the principle of unjust enrichment. If a minor cannot afford to pay, there is an option to return the goods. However, if the goods are retained, payment is expected.

Determining what constitutes necessities of life is subjective and depends on the minor's lifestyle, culture, and background. For instance, items like a marriage engagement ring or a suit for a wedding may be considered necessities of life in certain cases. The definition of necessities can vary from one jurisdiction to another.

Society encourages the provision of necessities to minors, and the law ensures that those who supply these goods will be paid. However, it is the responsibility of the adult supplying the goods to assess whether they qualify as necessities. If the goods do not meet the necessary criteria, the supplier may not be able to recover payment.

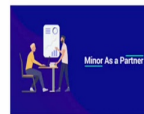
Overall, minors can be obligated to certain quasi-contractual obligations, primarily relating to necessities of life. These obligations ensure that minors are supported and provided with essential goods, even if they lack the full capacity to enter contracts.

Apart from medical advice, legal advice, and rent, which are considered necessary for a minor's well-being, there are other important necessities as well. For instance, a rental agreement can serve as evidence of providing shelter to a minor. Legal advice becomes essential for matters like inheritance, property sales, and the appointment of a guardian. Additionally, items such as bicycles for commuting to college or school have been recognized by courts as necessities. On the other hand, loans and cash do not fall under the category of necessities, as established in the *Mohoribibi versus Dharmodar Das Ghose* case. The law explicitly prohibits entering contracts with minors, especially for loans. Moneylenders are strictly advised against engaging in such transactions, as they are considered void. It is crucial to understand these distinctions, as they shape an interesting discussion on the topic.

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## Capacity: contd

- Exception to minority rule
  - Minor as Negotiable instruments/TP/Labour laws, partnership, service contracts: Beneficial contracts
- Unsound persons [*Inder singh v Parmeshwardhani Singh*]
- Drunkards/intoxication



It is important to note that the law concerning minors and contracts has evolved over time, shifting from a rigid interpretation to incorporating exceptions and allowing for a more flexible approach. Apart from the Indian Contract Act, other legislations have also introduced exceptions to protect the interests of minors. For instance, the Trade Union Act of 1926, which promotes collective bargaining, permits minors to become members of trade unions. This membership emphasizes the rights of workers and laborers in relation to their respective industries and managers.

Additionally, certain statutes have created exceptions allowing minors to enter into contracts. One such example is the negotiable instrument, which is used to understand payment obligations in contracts. While the use of promissory notes and bills of exchange may have diminished in contemporary times, they were significant in ensuring payment obligations. The Negotiable Instruments Act of 1881 does not prohibit minors from executing promissory notes or negotiable instruments.

These statutory exceptions highlight the evolving nature of the law and its recognition of the rights and capacities of minors in specific contexts.

Similarly, the Transfer of Property Act, a law originating from the British era, allows minors to receive gifts of movable or immovable property. This means that a minor can receive a

gift, which entails a beneficial obligation, though not a liability. The Transfer of Property Act of 1882 specifically permits minors to receive immovable property as well.

Moving on to partnership, which is a significant area of contract law, the Partnership Act of 1932 provides interesting provisions. According to Section 30 of the Act, minors can be admitted as partners in a partnership. While being under the age of 18, they are admitted solely for the benefits of the partnership and do not bear the full liability of a regular partner. They can actively contribute to the partnership and derive benefits from it. This provision allows minors to engage in various economic activities, such as business, employment, and entrepreneurship.

These statutory exceptions demonstrate the evolution of the law, allowing minors to participate in certain economic and social activities within defined parameters. It is evident that exceptions have been crafted through different statutes to accommodate the rights and involvement of minors in specific.

The concept of judicial exceptions comes into play when certain contracts are deemed to be solely for the benefit of a minor, such as service contracts. For example, contracts involving young athletes being employed by sports clubs are considered beneficial contracts. These contracts, which contribute to the minor's potential success and benefit society and the nation, are enforceable under common law and in India. Minors have the right to approach the court to enforce such contracts, even if they require the guardian's countersignature. This judicial exception expands the scope of minors' rights to enter contracts, adding an interesting dimension to contract law.

Shifting the focus to mental incapacity, soundness of mind is crucial in commercial transactions where performance and payment obligations exist. While there is no specific test for soundness of mind, legislations such as the Mental Health Care Act address mental health issues and classifications of mental soundness or unsoundness. Traditionally, unsoundness of mind referred to a mental ailment affecting decision-making abilities and rationality. However, it is not solely determined by the presence of discounted or inexplicable sales but also by medical factors, such as mental health conditions or challenges. During periods of unsoundness, individuals lack the capacity to contract, but they regain it when they are of sound mind. Persons who are unsound or intoxicated, including drunkards or those under the influence of substances, are excluded from entering contracts due to their lack of rationality and understanding. However, it is important to note that individuals cannot intentionally

incapacitate themselves and expect legal protection. If the incapacity is self-induced, the law will not intervene. The law will only come to their rescue if the incapacity was induced by external factors without the individual's contribution.

Courts will carefully evaluate and assess these factors, such as unsoundness or intoxication, before deciding whether to intervene in contracts. The courts require a clear understanding of the circumstances and whether the incapacity was self-inflicted or induced by external factors before providing legal protection or invalidating a contract.

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Capacity: contd.

- Physical Incapacity
  - Visually impaired/oldage
- Legal incapacity
  - Juristic person-concept of *Ultra vires* [Ashbury Railway Carriage v Riche]
  - Insolvency



Understanding physical incapacity to contract is crucial alongside mental incapacity, as both factors determine who can enter a valid and enforceable contract. It is important to consider visually impaired individuals in society who may face constraints in entering contracts due to their inability to see and read contractual documents. While they are not prohibited from making oral promises, their physical challenges may hinder their understanding of contractual terms, necessitating alternative methods of contract execution such as signatures or fingerprints. Certain individuals in society may have physical limitations or special challenges that affect their capacity to contract, including visually impaired persons or individuals with physical disabilities.

These physical challenges can impact an individual's cognitive abilities, comprehension of contractual terms, or their ability to read documents properly. Factors such as age, the need for corrective eyewear, or other physical impairments can also affect an individual's contractual capacity. In such cases, there is a presumption that these types of contracts may not be fully enforceable if one party can prove that the contract was influenced or involved some form of mischief. Physical challenges due to age or other physical issues can be grounds to invalidate or set aside a contract, and the courts must take these factors into consideration when enforcing contracts.

Shifting to legal capacity, it is important to note that legal or juristic persons, such as companies, universities, partnerships, cooperative societies, or trusts, are also considered persons in the eyes of the law. However, a juristic person cannot enter a contract on its own;

it requires representatives to act on its behalf. When it comes to the capacity of a juristic person, such as a company, it cannot be represented by a minor or an individual lacking soundness of mind. The capacity of the agent representing the company is a separate topic to be explored under the chapter on agency.

When a legal person, such as a university or a company, is created, it needs to undergo a process of incorporation or registration to attain legal personality status. Incorporation or registration is a crucial step for the legal personality of a company or institution to come into existence. Certain documents are required in this process, and upon their incorporation, the company or institution is considered legally established.

In summary, physical incapacity, alongside mental incapacity, plays a significant role in determining the capacity to enter contracts. Visual impairments or physical challenges may present constraints for individuals, necessitating alternative methods of contract execution. Legal capacity, on the other hand, pertains to the capacity of juristic persons such as companies, which require representatives to enter contracts on their behalf. Incorporation or registration is an essential step for legal personality to come into existence, and specific documents are required in this process.