

CAPACITY OF PARTIES TO
CONTRACT

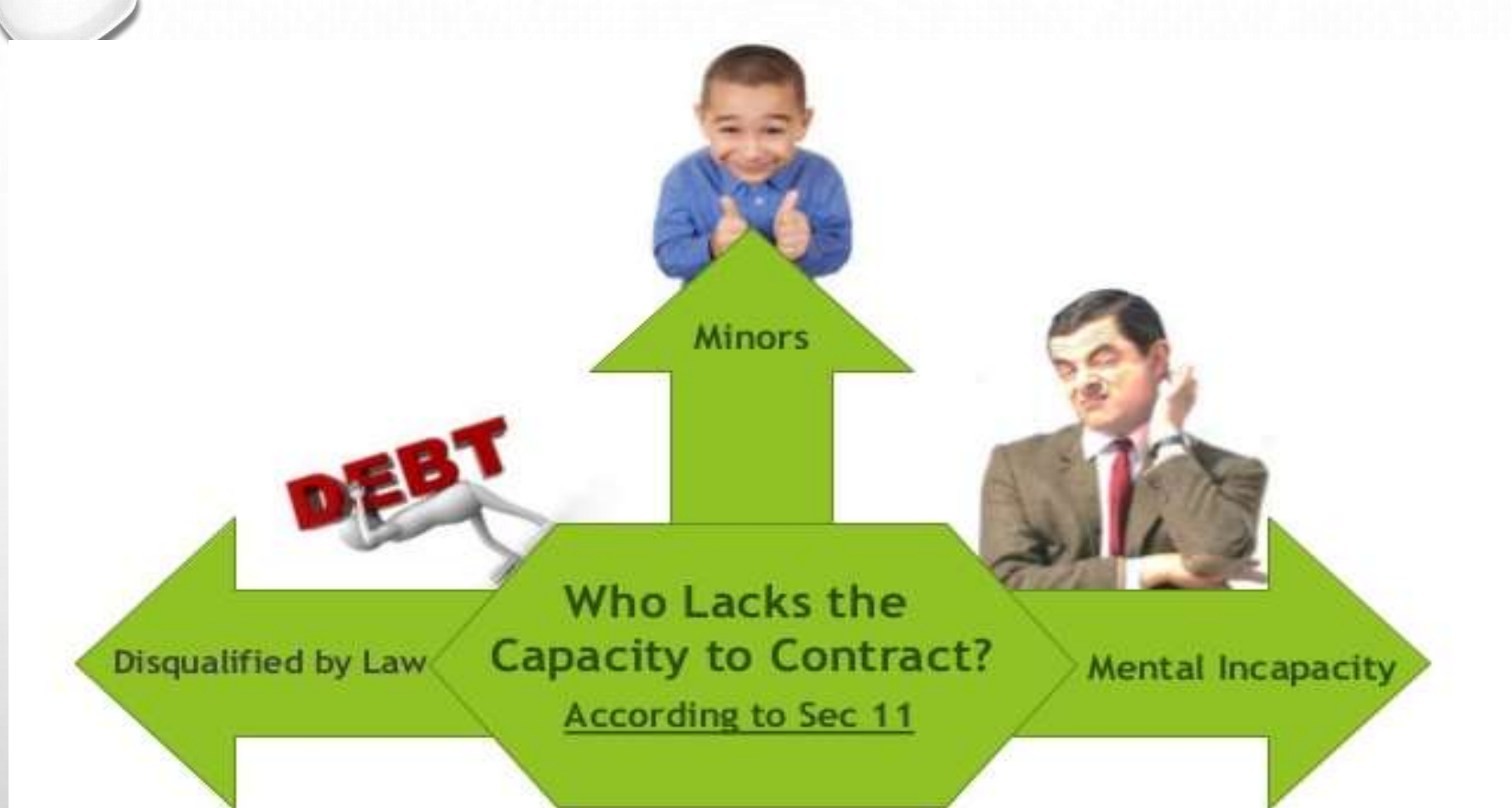
PRESENTED BY:
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CAPACITY : DEFINED

Capacity In Relation To Contract Means Competence Or Ability Of The Parties To Enter Into A Valid Contract.

SECTION 10 OF ICA, 1872 (CAPACITY AS ONE OF THE ESSENTIAL FOR VALID CONTRACT)

WHAT AGREEMENTS ARE CONTRACTS. —ALL AGREEMENTS ARE CONTRACTS IF THEY ARE MADE BY THE FREE CONSENT OF **PARTIES COMPETENT TO CONTRACT**, FOR A LAWFUL CONSIDERATION AND WITH A LAWFUL OBJECT, AND ARE NOT HEREBY EXPRESSLY DECLARED TO BE VOID.



Rationale behind such lacking:

It is being presumed that the minors, and persons of unsound mind lacks ability to decide what is good or bad for them. Law seeks to protect the interest of these parties whose capacity is limited. Similarly, law also puts restrictions on the ability of the certain persons for protecting the public.


MINORS HAVE NO CAPACITY TO CONTRACT

- MINOR (S.3 INDIAN MAJORITY ACT 1872)- A PERSON WHO HAS NOT TO COMPLETED 18 YEARS OF AGE.
- AGE OF MAJORITY IS 21 UNDER FOLLOWING CASES
 1. GUARDIAN APPOINTED OF MINOR`S PERSON OR PROPERTY UNDER GUARDIANS AND WARDS ACT, 1890
 2. MINOR`S PROPERTY UNDER SUPERVISION BY COURTS OF WARDS
- GENERAL RULE: AGREEMENT WITH/BY MINOR IS VOID AND INOPERATIVE AB INITIO [**MOHIRI BIBI V. DHARMODAS GHOSE (1903) 20 CAL. 539**]

AGREEMENT WITH MINORS

- CAN BE A PROMISEE OR BENEFICIARY
- CAN'T BE COMPELLED TO COMPENSATE OR PAY FOR BENEFIT RECEIVED UNDER VOID AGREEMENT
- DOCTRINE OF RESTITUTION IS APPLICABLE AGAINST MINOR IF PROPERTY IS STILL IN HIS POSSESSION (S.33 OF SPECIFIC RELIEF ACT)
- NO SPECIFIC PERFORMANCE OF AGREEMENT ENTERED INTO BY MINOR UNLESS THE CONTRACT IS ENTERED BY GUARDIAN OR MANAGER OF MINOR ON HIS BEHALF PROVIDED (A) GUARDIAN OR MANAGER IS COMPETENT TO ENTER SUCH CONTRACT ON BEHALF OF MINOR AND (B) CONTRACT IS FOR MINOR'S BENEFIT
- CANNOT RATIFY AGREEMENT ON ATTAINING AGE OF MAJORITY
- CANNOT BE ADMITTED INTO PARTNERSHIP BUT CAN BE ADMITTED TO THE BENEFITS OF PARTNERSHIP (S. 30 THE INDIAN PARTNERSHIP ACT)
- CAN PLEAD MINORITY IN CASE OF MISREPRESENTATION OF HIS AGE
- PARENTS/GUARDIAN NOT LIABLE FOR THE CONTRACT ENTERED INTO BY MINOR
- LIABLE FOR TORT COMMITTED UNLESS TORT IS DIRECTLY CONNECTED TO A CONTRACT.
- NOT PERSONALLY LIABLE FOR THE NECESSARIES SUPPLIED



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- CANNOT BE ADJUSTED INSOLVENT
 - HE CAN BE AN AGENT

NECESSARIES

- MINOR LIABLE TO PAYOUT OF HIS PROPERTY FOR THE NECESSARIES SUPPLIED TO HIM OR TO ANYONE WHOM HE IS LEGALLY BOUND TO SUPPORT (S.68 ICA, 1872- QUASI CONTRACT)
- NECESSARIES MEANS THINGS NECESSARY WITHOUT WHICH AN INDIVIDUAL CANNOT REASONABLY EXIST [**CHAPPEL V. COOPER [1884] 13 M & W 252**]
- NECESSARIES INCLUDE :-
 1. **NECESSARY GOODS** – BUYING OF FANCY WAISTCOATS ARE NOT NECESSARIES [**NASH V. INMAN, (1908) 2 K.B. 1**]
 2. **SERVICES RENDERED**- ‘NECESSARIES’ INCLUDE NOT ONLY THINGS WHICH ARE ABSOLUTELY NECESSARY FOR SURVIVAL, BUT ALSO ALL THOSE WHICH ARE REQUIRED FOR A REASONABLE EXISTENCE. FOOD AND CLOTHING ARE OBVIOUSLY COVERED, BUT SO ARE MEDICAL ASSISTANCE AND EDUCATION [**CHAPPEL V. COOPER [1884] 13 M & W 252**]

LOAN TAKEN BY MINOR TO OBTAIN NECESSARIES BINDS MINOR AND IS RECOVERABLE BY LENDER AS IF HE HAS SUPPLIED NECESSARIES [**MARTIN V. GALE (1876) 4 CH. D. 428**]



MENTAL INCAPACITY (UN SOUND MIND)

- PARTY SHOULD BE OF SOUND MIND BEFORE ENTERING INTO CONTRACT
- A PERSON IS SAID TO BE OF SOUND MIND IF AT THE TIME OF ENTERING THE CONTRACT HE IS CAPABLE OF UNDERSTANDING IT AND FORMING A RATIONAL JUDGEMENT AS TO ITS EFFECT ON HIS INTERESTS (S.12 ICA,1872)
- PERSONS OF UNSOUND MIND ARE LIABLE TO PAYOUT OF THEIR PROPERTY FOR THE NECESSARIES SUPPLIED TO THEM OR TO ANYONE WHOM THEY ARE LEGALLY BOUND TO SUPPORT (S.68 ICA, 1872- QUASI CONTRACT)
- EFFECT ON CONTRACT WITH FOLLOWING PERSONS :-
 1. Lunatics- He suffers from intervals of sanity and insanity. Contract entered during the period of sanity is valid.
 2. Drunken/intoxicated persons- Position similar to that of lunatics
 3. Idiots- persons with complete and permanent loss of mental powers. An agreement of idiot is like that of minor, is void.



DISQUALIFIED PERSONS

AT TIMES CERTAIN PERSONS ARE DISQUALIFIED BY LAW FROM ENTERING INTO A CONTRACT WITH A VIEW TO PROTECT THE PUBLIC FROM BEING CHEATED OR BEING LEFT WITHOUT ANY REMEDY TO ENFORCE SUCH CONTRACTS.

SUCH PERSONS INCLUDES FOLLOWING:-

- **ALIEN ENEMIES-** IF AN ALIEN ENEMY ENTER INTO CONTRACT DURING WAR, IT IS VOID AND NON-ENFORCEABLE.
- **CORPORATIONS-** CONTRACTUAL CAPACITY IS REGULATED BY M.O.A. . CANNOT ENTER INTO CONTRACT WHICH IS BEYOND THE POWERS PROVIDED UNDER M.O.A. .
- **INSOLVENT-** HE IS DEPRIVED OF THE POWER TO DEAL WITH HIS PROPERTY DIVISIBLE AMONG CREDITORS. HOWEVER, ON BEING DISCHARGED FROM INSOLVENCY HE IS COMPETENT TO ENTER INTO CONTRACT
- **CONVICT-** HE IS DEPRIVED FROM ENTERING INTO CONTRACT WHILE UNDERGOING IMPRISONMENT
- **FOREIGN SOVEREIGNS AND AMBASSADORS-** THEY CAN ENTER INTO AND ENFORCE THE CONTRACTS IN INDIAN COURTS BUT CANNOT BE SUED WITHOUT PRIOR SANCTION OF CENTRAL GOVERNMENT

CONCLUSION

ANY CONTRACT ENTERED INTO BY ANY (A) MINOR, (B) PERSON WITH UNSOUND MIND & (C) DISQUALIFIED PERSON IS ABSOLUTELY VOID. NEITHER THE INCOMPETENT PERSON NOR THE OTHER CONTRACTING PARTY INCURS ANY LIABILITY FROM ANY SUCH AGREEMENT EXCEPT UNDER CERTAIN CIRCUMSTANCES.



Contract

