



Impact of Contractual Capacity of Minor

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Meaning of Minor

With some exceptions, a contract made by a minor is voidable. The minor, in other words, may avoid the legal liability under a contract. Upon reaching the age of majority, a minor may affirm or ratify the contract and therefore make it contractually binding on him. Any expression of the minor's intention to avoid the contract will accomplish avoidance.

A minor can only avoid a contract during his minority status and only for a reasonable time after he reaches the age of majority. After a reasonable period of time, the contract is deemed to be ratified and cannot be avoided.

When a minor avoids a contract, there are certain rules of law regarding the effect on any property received by the minor under the contract. If the minor still has what he received from the other party, he must return it to the other party upon seeking to avoid the contract. If he does not return the property in such a situation, he cannot avoid the contract. If the minor cannot return what he has received pursuant to the contract because it has been spent, damaged or destroyed, he still can avoid the contract. He can avoid the contract and is only required to return that part of the consideration he still has. Even if he has nothing left, or what he has is damaged property, he still can avoid the contract.

Helen, age 17, wanted to buy a motorcycle. She did not have the money to pay cash but persuaded the dealer to sell a cycle to her on credit. The dealer did so partly because Helen said that she was 22 and showed the dealer an identification card that falsely stated her age as 22. Helen drove the motorcycle away. A few days later, she damaged it and then returned it to the dealer and stated that she avoided the

contract because she was a minor. The dealer said that she could not do so because (a) she had misrepresented her age and (b) the motorcycle was damaged. Can she avoid the contract? Yes. In a state that follows the common law rule, neither the damage to the property nor Helen's misrepresentation of her age will prevent her from avoiding the contract. Some states would hold that because of the misrepresentation of age, Helen must pay for the damage that she has done, but she can avoid the contract. A few states would hold that Helen cannot avoid the contract because she misrepresented her age.

After a minor reaches the age of majority, he can ratify the contract. Once the contract has been ratified, the ex-minor cannot change his mind and avoid the contract. Ratification consists of any words or conduct of the minor which shows an intent to be bound by the contract. For example, Smith buys a car from Jones Ford Company for \$10,000.00 when Smith is 17 years of age. Smith finances the car with Jones for 5 years making installment payments each month. Smith reaches his 18th birthday and continues to make payments for two months to Jones and then has a wreck. Smith decides that he is going to avoid the contract and get his \$10,000.00 back. However, the fact that Smith reached the age of 18 and continued to make payments on the car and use the car would keep him from being able to avoid the contract. Smith's conduct constituted a ratification of the contract. However, many Courts refuse to recognize payment as ratification unless further evidence is given of an intent to ratify a contract or an understanding by a minor that payment might constitute a ratification. In the situation with Smith and Jones, Jones would argue that Smith continued to

use the car after he reached 18 as well as made payments on the car.

Parents of a minor are not liable regarding the contracts made by the minor merely because they are the parents of the minor. However, if a minor makes a contract and a parent or any other adult signs along with the minor as a co-signer, the parent or other adult can be held liable. For example, if Smith, who is a minor, buys a car from Jones Auto and Smith's father co-signs the loan documents with Smith, Smith's father can be held liable on the loan even if Smith seeks to avoid the contract.

A person who is mentally incompetent (non compos mentis) lacks the capacity to make a contract. The cause of the mental incompetency is immaterial. It can be the result of a mental illness, excessive use of drugs or alcohol, a stroke, etc. If the person does not have the mental capacity to understand that a contract is being made or the general nature of the contract, the person lacks contractual capacity. A person who is mentally incompetent may ordinarily avoid a contract in the same manner as a minor. If the person later becomes competent, he can ratify or avoid the contract at that time.

ABSTRACT

A contract involves a promise between two persons for the exchange of either good or services.

A contract signifies the free consent of the parties to the contract to be bound by law. For a contract to be valid, it must have these basic elements: mutual assent, consideration, capacity, and legality.

Mutual assent is characterized by offer and acceptance through mutual assent; "consideration," on the other hand denotes any form of compensation with something of value for the goods or services traded. A contract between persons, either natural persons or legal persons, who have no capacity to contract can either be voidable or void depending on the case. Legality gives the condition that should be satisfied for a contract to be excised by the law. Illegal contracts are for example those involving illegal activities. For example one can't bring a plea of damages to a court of law for breach of a contract entered into to kill another person.

The possible remedies for breach of contract are; general damages, consequential damages, reliance

damages, and specific performance. This paper will examine the capacity to contract as pertains to contracts entered by minors minor's. Keywords: capacity, contract, capacity, legality, consideration, mutual assent void/voidable.

Capacity of Minors in Contracts

Capacity to contract relates to both natural and artificial persons. Although the general case is that an adult of sound mind will have full capacity to contract, they may claim that the contract is not enforceable due to such reasons as undue influence, or mental incapacity at the time of entering into the Contract. Contractual capacity also does apply to corporate.

The age of a minor may vary from country to country but the most states put the age at 18 years. The general rule that bound contracts entered with minors are that they are not legally liable for any contract which they enter into whether willingly or not (Koffman & Macdonald, 2007 p. 476). This does not however remove the burden of performing the contract for the other person to the contract. If the breach the contract, they are liable to the minor for damages. If however the minor when they attain the age of minority choose to ratify the contract, they are legally bound from the date of ratification. If the minor upon reaching the age of majority chooses to end the contract, he relieves himself of any liabilities that the contract placed on him.

There are however some contracts which when the minor enters into, he is bound by. These include the contracts for supply of necessities, employment or beneficial contracts and those for analogous supplies. There is another category of contracts which are voidable at the option of the minor but are binding on him upon reaching the age of majority and does not repudiate them within a reasonable time after that (Koffman & Macdonald, 2007).

Among the contracts that form the major part of exception for the general rule of lack of capacity of minors is the contract that relate to provision of necessity. The law require that the other part to the contract to prove that the contract that they entered into with the minor is for necessity (Nash v Inman 1908). Necessities include both goods and services. In chapel v cooper (1844) it was held that a contract entered by a minor to bury his father was a contract of necessity. The case will decide whether the contract is

for necessity subjectively and this will even depends on the social status and age of the minor. Generally, the things regarded as necessary are those which a person can't live without such as food but articles for luxury are mostly disallowed irrespective of the class of the infant contractor (*Chapler v Cooper per Alderson*). The sale of goods act however defines goods of necessity as those goods sustainable to the condition of life of the minor (*peter v Fleming (1840)*) (Contracts, 2010). In this case a breast pin and a watch chain were considered as necessities.

A person cannot rely on the fact that the terms to the contract are harsh or onerous to remove the contract from the "generally beneficial category". This was seen in *Barnes V. Smethurst* where it was the court held that the existence of such terms may make the unenforceable against the minor (*Anson & Huff cut, 1899*). This exception is based on the foundations of the minor's obligation to make fair payments for the goods that they received irrespective of the satisfaction that they get from the goods. This removes the minors liability in case the contract is a purely executor one (*Nash v Inman (1908)*).

The second exemption to the general rule relates to employment and analogous contracts. This is based on the value that prevents a minor from seeking skills that will enable them to earn a living. This is the reason why employment and analogous contracts are enforceable on the minor provided that the contract as a whole is beneficial to the minor (*Koffman & Macdonald, 2007 p. 469*). In *Clement v London and north western railway co. (1894)*, the courts held that the contract as a whole was beneficial to the client and prevented him from claiming under the 1880 act since the insurance contract covered him from even those injuries that were not due to the negligence of the employer. It was therefore ruled that on the overall, the contract was to the advantage of the minor.

There are some contracts that are considered a beneficial to the minor. These include contracts for services such as those of education, training, apprenticeship. If these contracts contain clauses that are not overly beneficial to the minor, the minor's liability to in the contract will be waived such as in *De Francesco v Barnum (1889)*.

Although the law gives a minor protection from contractual obligation on them, they are liable under tort and also if they are emancipated. Minors are

liable, in tort, provided that the tortuous activity is not one that will not amount to enforcement of a contract. In *R. Leslie Ltd V Shiell (1914)*, the court held that the plaintiff could not recover the amount in loan from the minor who had misrepresented his age since the courts would have been enforcing a contract that is not otherwise binding on the minor. This is also the case where a minor guarantees a loan (*Koffman & Macdonald, 2007*).

The law also seeks to provide protection to these who deal with minors. If a minor escapes a contract for example for rent, they can be sued for rent that has accrued during their stay in the house but not that part which is not yet due. To protect the suppliers, the law will prevent the minor from claiming the money that they have already paid whether or not the contract was for the supply of necessities (*Abbott, Pendlebury, & Ward man, 2007*). Equity will not allow the minors to seek specific performance against the other party to the contract since equity will not allow for specific performance against minors. This statute and that of subrogation see to protect the other party to a contract with the minor while at the same time seeking to uphold the interests' o f the minor (*Abbott, Pendlebury, & Ward man, 2007 p. 115*).

Emancipation on the other hand gives the minor some adult rights. Emancipation refers to freeing someone from the control of another. A minor is emancipated from the parents upon getting legally married, when they reach 18 or when in active duty with the armed forces of the United States (*Emancipation of Minors*). When one is emancipated, their parents no longer have control over their affairs and are also not legally bound to pay for damages the minor causes to other's properties. This means that they will be liable for the breach of contract that they enter into regardless of whether they are of necessity or not.

The laws reacting to capacity to contract can vary from state to state to state as well as from country to country. In the US, the major variation on the minor's capacity to contract is o the age of minority which varies from state to state. However, most states put the age at 18 but this ac vary to up to 21 years in other states. Another law tat varies from individual state is that relating to disaffirmance of voidable contracts. Some states will allow disaffirmance for tort violations while others don't if the consideration cannot be returned.

Different countries have different laws regarding minor's capacity in a contract and especially as regards to age of minority. Most countries have the ages of a minor fixed at 18. These include countries like New Zealand, Canada and Australia while others disregard the age especially where the minor engages in serious crimes and he is tried like an adult. In the US, the age is 18 but different states will vary the age based on their cultural diversity (Contracts, 2010).

The US laws allow the minors to consent on matters affecting them such as on use of contraceptives, abortion and treatment for alcohol and drug abuse. They are also allowed to seek expert help from doctors on such matters as reproductive health and other confidential services that they would rather not do with their parents. They can therefore enter into legally binding contract to get those services. The issue of incapacity applies due to the need to protect the person who is incapacitated (or in the case of companies, the shareholders) but at the same time not treat so harshly the other party to the contract. This is always the case because the incapacitated person may not comprehend the effects that the contract as pertains to the on the rights of the other person to the contract.

The laws of capacity of a minor because they help to form legal boundaries that ensure that minors are not exploited. This is especially in regard to minors whose parents have left them vast estates. In such cases, since the minor will not always act in a way that is of best interest to the estates that they inherit, expert trustees are put in charge of taking care of the estate until the person reaches the age of majority when they can make independent and well informed choices.

Standardization of the legal age and the rules that govern contracts with minors is important to those who deal with them since although the contract with a minor creates legal liability to the other party to the contract and not the minor, standardized definition of the minor is helpful to avoid losses that accrue due to contracts with incapacitated persons

Conclusion

The law of contract is especially important since most of the transactions that we carry out on a day to day basis involve contracts. As such it is important to lay guidelines as to when a contract is valid and can be exercised by law and when it's void.

Contracts with minors on the other hand present special challenges since minors may not always act in their best interests. The laws of different states have well laid down laws that are the basis for dealing with cases that involves minor contracts. Most of these laws are based on UK common law and the law of equity.

Equity will seek to protect the other party to the contract from the actions of the minor to ensure that they don't suffer unduly when they deal with the minor. The two important statutes of equity are those based on subrogation and specific performance.

Agreements made by minors are not contracts.

Mental Incapacitation

Mental incapacitation is a legal term that refers to individuals who cannot enter into contracts because of psychological disabilities. In the majority of jurisdictions, mental capacity is defined as the ability to understand the full meaning and effects of the contract. If the person is not able to cognitively delineate all of her rights and responsibilities under the contract, then she is not of legal capacity to enter the contract. Some states have also adopted a "motivational test" to measure capacity. If there is a motivation to enter the contract, then the person may be considered to have legal capacity. Ultimately the courts will rely on expert witnesses to determine legal capacity, because the situations can vary dramatically between people with differing levels of psychological disability.

Under the Influence

Individuals who are under the influence of alcohol or drugs are normally not considered to have the capacity to enter contracts. In some cases, however, the courts force those who have voluntarily intoxicated themselves to uphold the obligations they've made while under the influence. This is a sticky situation, though, because most courts have also agreed that the sober party should not take advantage of someone intoxicated by drugs or alcohol. In business settings, therefore, it is best to avoid selling products and services to anyone who appears to be under the influence.

Voidable Contracts

If an agreement is made with someone who does not have the legal capacity to enter a contract, that agreement or contract is said to be voidable. This means that the person who lacks legal capacity is said

to have misrepresented herself, even if unintentionally. The other party to whom the misrepresentation was made may void the contract and all of its terms and conditions. This is called rescinding the contract. The courts may also rescind or void a contract if legal capacity is not met. Once the contract is voided, it is no longer binding, and the court will attempt to restore the parties to the position they were in before the agreement was made. This means returning money and property where at all possible.

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