

Capacity to Contract

Module – I Chapter -3

Who is competent to make a contract

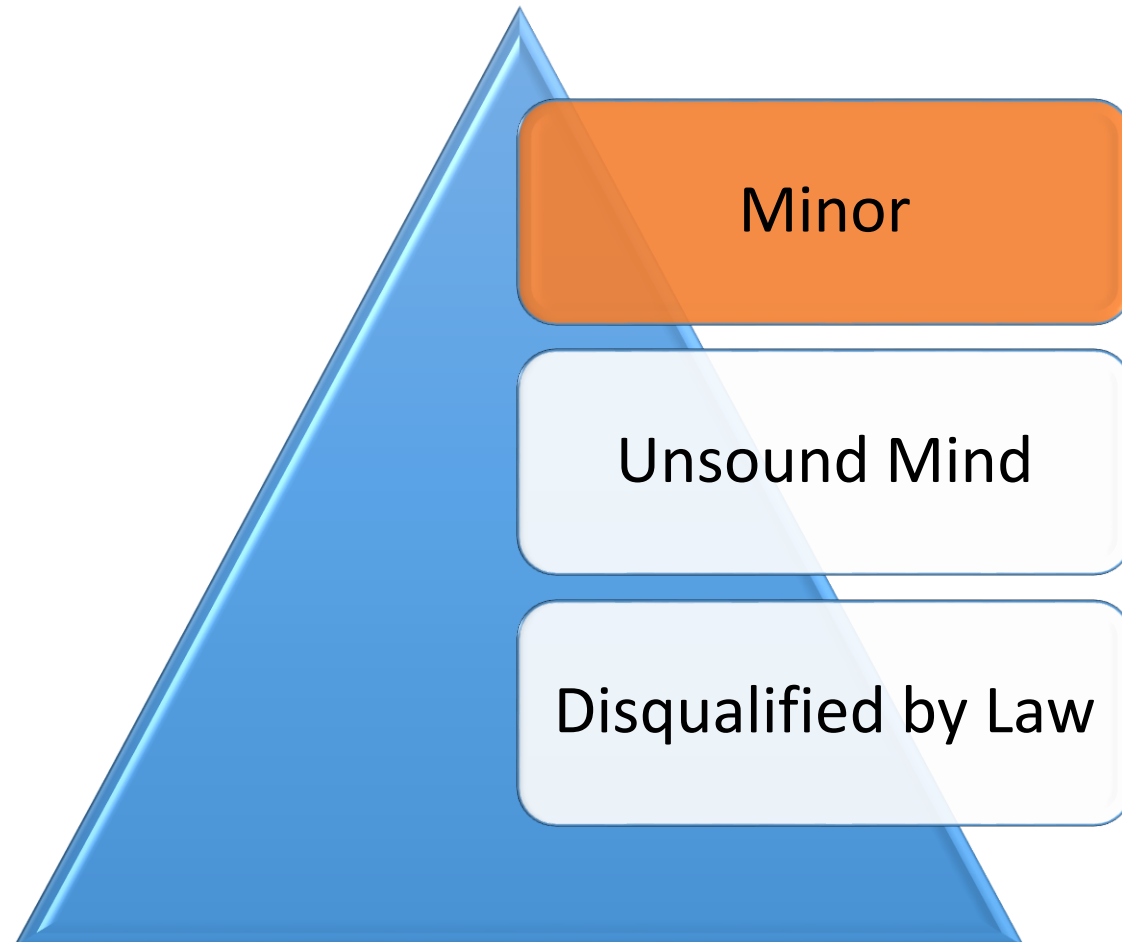
Section 11. Every person is competent to contract who is of ***age of majority*** according to the Law to which he is subject, who is of ***sound mind*** and not is ***disqualified from contracting*** by any Law to which he is subject.

Age of majority:- According to ***section 3 of Indian majority Act-1875*** every person domiciled in Indian attains majority on the completion of 18 years of age.

- **Exception: - 21 years-** Where a guardian of a minor's person or property is appointed under the Guardian and wards Act, 1890.



Parties unable to enter into a contract



Position of Agreements by Minor:-

- ***Validity: - An agreement with a minor is void-ab-initio***
[Mohoribibee v. Dharmodas Ghose]

Example :

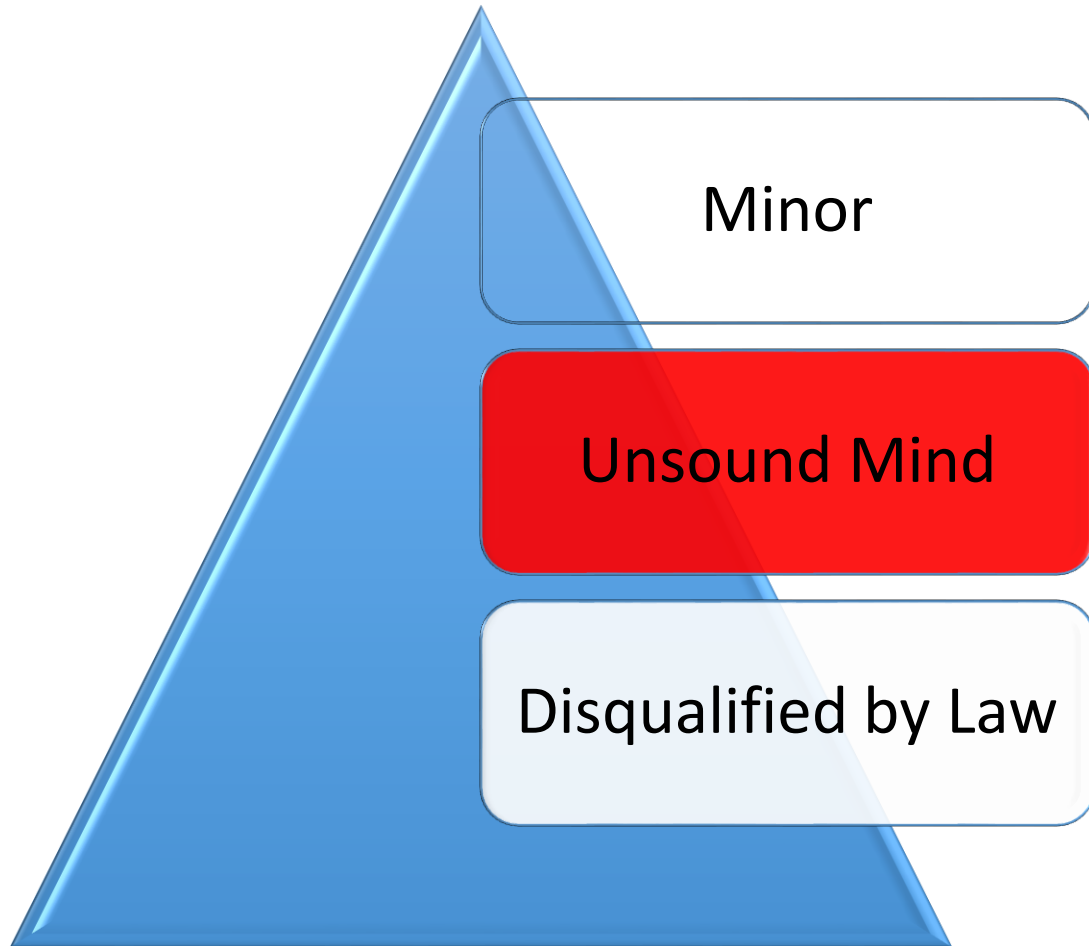
- Mr. D, a minor, mortgaged his house for Rs.20000 to a money – lender, but the mortgagee, i.e. the money – lender, paid him a sum of Rs.8000. Subsequently, the minor sued for setting aside the mortgage. Held that the contract was void, as Mr. D was minor and therefore he is not liable to pay anything to the lender.

- A minor's has received any benefit under a void contract, he cannot be asked to return the same.
- Fraudulent representation by a minor- no difference in the status of agreement. The contract remains void.
- A minor with the consent of all the partners, be admitted to the benefits of an existing partnership.
- Contracts entered into by minors are void-ab-initio. Hence no specific performance can be enforced for such contracts

- A minor can act as an agent but not personally liable. But he cannot be principal.
- A minor cannot become shareholder of a the company except when the shares are fully paid up and transfer by share.
- A minor cannot be declared insolvent.
- Minor as an agent: As an agent is only representing the Principal, a minor can be an agent. But he will not be personally liable to his principal as an agent.

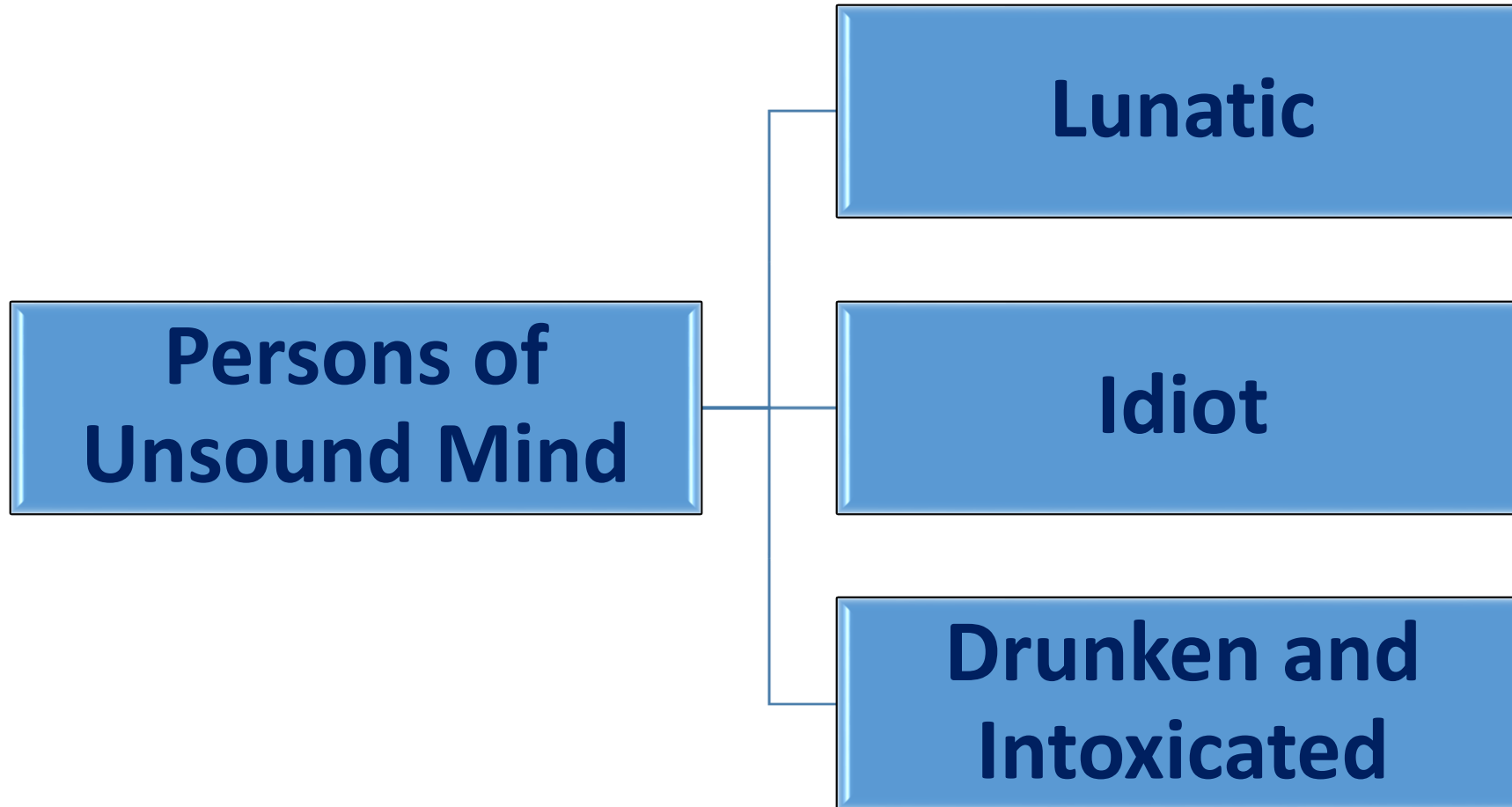
- Liability of a person with minor as a co-surety- When a major along with a minor makes a promise to a third person, only the major will be held liable.
e.g. 'A' a major, and 'B' a minor promise to pay Rs. 1,000 to 'C' for the value received. Here, 'A' alone would be liable as B's contract is void.
- A parent or guardian can enter into an enforceable agreement on behalf of a minor provided *the agreement is for the minor's benefit* or the *parent/ guardian is capable of performing, if the minor fails to perform*

Parties unable to enter into a contract



Person of Unsound Mind

A person who is usually of unsound mind, but occasionally of sound mind can make a contract when he is of sound mind. Similarly, a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.



At time of entering into a contract, a person must be sound mind. Law presumes that every person is of sound mind unless otherwise it is proved before court. An agreement by a person of unsound mind is void.

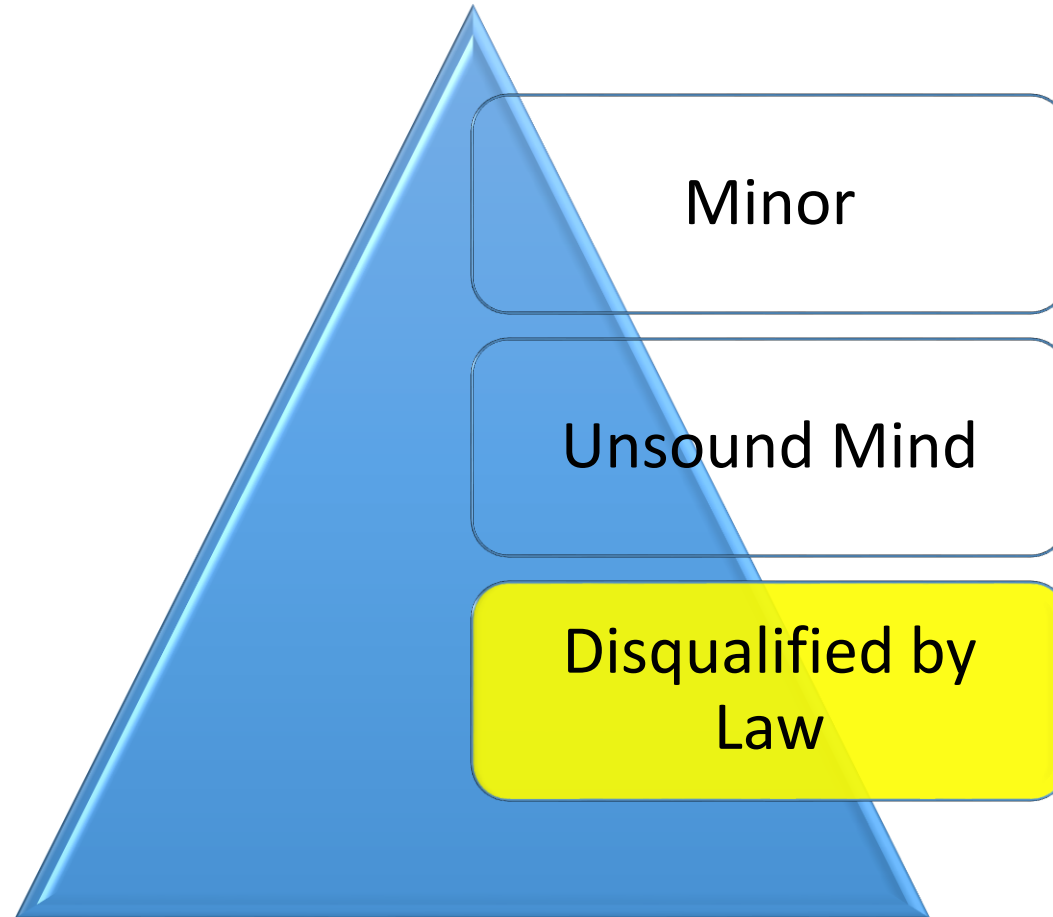
The following are categories of a person considered as person of a unsound mind.

- **An idiot**

An idiot is a person who is congenital (by birth) unsound mind. His incapacity is permanent and therefore he can never understand contract and make a rational judgment as to its effects upon his interest. Consequently, the agreement of an idiot is absolutely void ab initio. He is not personally liable even for the payment of necessaries of life supplied to him.

- **Delirious persons** - A person delirious from fever is also not capable of understanding the nature and implications of an agreement. Therefore, he cannot enter into a contract so long as delirium lasts.
- **Hypnotized persons** - Hypnotism produces temporary incapacity till a person is under the effect of artificial induced sleep.
- **Mental decay** - There may be mental decay or senile mind due to old age or poor health. When such person is not capable of understanding the contract and its effect upon his interest, he cannot enter into contract.
- ***Lunatic is not permanently of unsound mind - He can enter into contract during lucid intervals i.e., during period when he is of sound mind.***
- **Drunken person** - An agreement made by intoxicated person is void.





Person Disqualified by Law

Body corporate or company or corporation - Contractual capacity of company is determined by object clause of its memorandum of association. Any act done in excess of power given is ultra – virus and hence void.

Alien enemy

- An 'alien' is a person who is a foreigner to the land. He may be either an 'alien friend' or an 'alien enemy. If the sovereign or state of the alien is at peace with the country of his stay, he is an alien friend. An if a war is declared between the two countries he is termed as an alien enemy.
- During the war, contract can be entered into with alien enemy with the permission of central government.

- **Convict** can't enter into a contract while he is undergoing imprisonment. But he can enter into a contract with permission of central government while undergoing imprisonment. After the imprisonment is over, he becomes capable of entering into contract. Thus the incapacity is only during the period of sentence.
- **Insolvent** - When any person is declared as an insolvent, his property vests in receiver and therefore, he can't enter into contract relating to his property. Again he becomes capable to enter into contract when he is discharged by court.
- **Foreign sovereigns, diplomatic staff and representative of foreign staff** can enter into valid contract. However, a suit cannot be filed against them, in the Indian courts without the prior sanction of the central Government.