

OTHER REQUIREMENTS FOR A VALID CONTRACT

NB - a contract is an agreement (based on *consensus*) between legal subjects who have *contractual capacity* to do so and which is *lawful*, physically *possible*, *certain* and complies prescribed *formalities* reached with intention of creating a legal obligation with resulting *rights and duties*.

LEGAL SUBJECTS

1) Natural Persons

2) Juristic Persons

A legal subject is a *bearer of rights and duties*.

Only legal subjects have contractual capacity.

To reach valid consensus, all the parties to the contract must have the necessary *contractual capacity*.

Requirements for contractual capacity:

(1) the ability to *form a will*, and

(2) the ability to act with *sound mind and judgement*.

The party must be able to **understand** the nature of the contract and the **consequences** of entering into at the **time of entering** into the contract.

Juristic Persons

OTHER REQUIREMENTS FOR A VALID CONTRACT (cont)

Has a separate legal personality and may contract in its own name. *However*, its contractual capacity is not unlimited. It is shaped by:

- **formalities** (statutory and internal compliance requirements)

- **legality** (lawful authority and lawful purpose)

Qaukeni and Others v F V General Trading CC 2010 (1) SA 356 (SCA)

- Non-compliance with services procurement formalities.

- **The SCA** ruled that the contract was *invalid* and could not be *extended*.

Natural Persons

Contractual capacity - **Age of majority & sound mind**

Vallaro v Road Accident Fund 2021 (4) SA 302 (GJ)

Facts: an advocate concluded a *Contingency Fee Agreement* with an adult male with severely impaired mental faculties.

Court held: agreements entered into by persons who lack juristic capacity to do so is **void**. No life can be breathed into an agreement that is *void* by a curator through *ratification*.

NATURAL PERSONS WITHOUT CONTRACTUAL CAPACITY

This category of persons **cannot appreciate** the **nature and consequences** of their acts.

(1) **Infans**

(2) Mentally ill persons

(3) **Intoxication:** may result in the temporary loss of contractual capacity but only if the person was under the *influence of drugs/alcohol* to a degree that he/she either did not know that he/she was *entering into an agreement*.

- Contracts are **VOID**.

- **BURDEN OF PROOF:** *he who alleges*.

MENTAL ILLNESS

Consumer Protection Act 68 of 2008

S39(1)(a) purports to change common-law position if a person has been **declared mentally incompetent**.

In terms of this section, the contract is *only void* if:

- the supplier *'knew or could reasonably have determined'* that there was a court order.

S39(2) further provides that the contract will be **valid** if the mentally ill consumer created the **impression** that there was **no limit** on her *capacity to contract*.

PERSONS WITH LIMITED CONTRACTUAL CAPACITY

(1) Minors - **7-18 years**.

(2) Married persons (**ICOP**)

(3) **Insolvent** persons

(4) Prodigals

MINORS

Assisted by parents/guardians.

- *without* assistance they obtain **rights NOT duties**. e.g. acceptance of donation.

- contracts concluded without assistance are **NOT VOID** but **voidable**.

Emancipation of Minors

Express or tacit general consent by parent/guardian for the minor to enter into specific type of agreements without obtaining **additional consent or assistance**.

- rights and duties: minor **not** parents

High Court (HC) (Upper Guardian) can consent if parent/guardian refuses.

- can **set aside** consent.

- minors **bound by such consent** but contract can be set aside if it can be shown that it was **prejudicial** to the minor *at the time of contracting*.

Restitutio in integrum

- an action to **return the parties to the position that they were in prior** to contracting.

PERSONS WITH LIMITED CONTRACTUAL CAPACITY (cont)

- can be done even if the *guardian assisted*, if the contract was **prejudicial** to the minor.

- will be **denied** if the minor **fraudulently** pretended to be a *major* at the time of the conclusion of the contract.

MARRIED PERSONS (ICOP)

Co-owners of the *joint estate* in equal and undivided shares.

Parties can generally contract on *behalf* of the joint-estate **without consent**.

However, in certain transactions, the spouses' contractual capacity is limited by the MATRIMONIAL PROPERTY ACT 88 OF 1984. These include:

(1) **selling or pledging household furniture**, or **donating** any asset of the joint estate,

(2) **withdrawing money** from the other spouse's bank account, or **selling shares or investments** (**written consent**)

(3) **selling or encumbering immovable property** or **binding oneself as surety** (**written consent with TWO witnesses**)

- Transactions in the **ordinary course of business** of the other spouse's business are **exempted** from this requirement.

INSOLVENTS

PERSONS WITH LIMITED CONTRACTUAL CAPACITY (cont)

Insolvency **does not** affect contractual capacity.

Unless a *court order of insolvency* places the person's estate under the **sequestration (S23 & S24 of the INSOLVENCY ACT 24 OF 1936)**

- **during sequestration**, the insolvent person may still *validly* enter into contracts, provided that the person does not *purport to dispose off any assets of the insolvent estate*.

- furthermore, the insolvent person requires a **written consent** of the *trustee* for any contract that is likely to *affect the insolvent estate adversely (S23 & S24 of the INSOLVENCY ACT)*

PRODIGALS

A person who has been **declared a prodigal** by a *court of law* has **limited contractual capacity**:

- needs to be **assisted** by their *curator* to conclude contracts.

- *without such assistance*, a prodigal may contract **only to obtain rights** but **not incur duties**.

A person who is incapable of *controlling their financial affairs*, but **has not** been declared a prodigal, has **full contractual capacity**.

NATURAL PERSONS WITH FULL CONTRACTUAL CAPACITY

If a person does not fall into one of the other previous categories, then they are considered to have **full contractual capacity**.

- subject to various **statutory provisions**, such as a *person who is guilty of fraud being disqualified from being appointed as a company director*.

JURISTIC PERSONS

Juristic persons do have **contractual capacity**, subject to:

- entities such as **partnerships and trusts do not have their own contractual capacity**, but is rather **the contractual capacity of the partners and trustees** which is relied upon.

- even juristic persons with contractual capacity **need to have natural persons act on their behalf in the exercise of their contractual capacity**. These natural persons in turn need to be *duly appointed* representatives.

THE STATE

The state and its various organs have contractual capacity.

- state **cannot** contract out of its *powers and responsibilities*.

THE STATE (cont)

- its ability to contract **freely** is **limited** owing to its various **regulations**, most notably *tender procedures*.