**Question # 6**

**Page 1 of 3**

**CAPACITY OF PARTIES (Hand out)**

**Preamble/Introduction:** The Contracting Parties must be competent to contract. Everyperson is competent to contract who is of the age of Majority, of Sound mind and is not disqualified from contracting by any law.

**Relevant Provision/ Law:** Section 11, 12 & 68

**Who is a Minor:** “Aminor is a person who has not completed 18 years of age. According to

Majority Act, 1875; where a guardian of minor’s person or property has been appointed or court of wards has taken charge of minor’s property, a minor will attain the age of majority after 21 years”.

**NATURE OF MINOR’S AGREEMENTS**

|  |  |  |
| --- | --- | --- |
| **1.** | Void Agreement | (ShiamLal Vs. Ram Piyary) |
| **2.** | Minor & Power of Ratification | (SurajNarain Vs. SukhuAhir) |
| **3.** | Minor & Estoppel | (Sadiq Ali Khan Vs Jai Kishore) |
| **4.** | Minor & Repayment | (Khan Gull Vs. Labha Singh) |
| **5.** | Minor & Necessaries | (Nash Vs. Inman) |
| **6.** | Agreement by Guardian on behalf of Minor | (GujobaTulsiramVsNilkanth) |
| **7.** | Minor can be a Beneficiary | (Abdul GhaffarVsPiyarayLal) |

1. Minor may act as an Agent
2. Minor may be a Partner
3. Surety for a Minor
4. Minor may be a member of a Company
5. Minor and Insolvency

**13.** Contract by Minor & Adult Jointly (JamnaBai Vs. VasantaRao)

**1. Void Agreement**

A contract with minor is not recognized by law since he couldn’t judge good or bad for himself. An agreement with minor is considered void ab-initio (Invalid since start).

**Case Law Reference/Example:** A, a minor sold his shop to B but the sale deed couldn’t beregistered since A was a minor. B filed a suit in the court but was decided that B couldn’t recover the amount by A, because A was a minor.

**(ShiamLalVs. Ram Piyary)**

**2. Minor &Power of Ratification** ( Ratification = To confirm)

Ratification means an act of confirmation. An agreement with minor is since void ab-initio; therefore a minor cannot ratify any agreement after gaining the age of majority.

**Example:** X, a minor sold a house to Y and wrote on the affidavit that he shallconfirm the said agreement after one year when he will attain the age of majority. Since it’s a void ab initio agreement therefore X doesn’t have any power to ratify his promise.

**3. Minor & Estoppel** (Estoppel = Asserting something contrary to)

Where a minor represents fraudulently that he is of full age and induces another to enter into contract with him, he is not bound to continue the contract. Since minor cannot be estopped what he has said in the beginning.

**Case Law Reference/ Example:** M, a minor fraudulently showed to N of his competencyto make contract to sell his house. Later on M refused to sell his house, N cannot sue M.

**(Sadiq Ali Khan Vs Jai Kishore)**

***Page 1 of 3***

**Question # 6**

**Page 2 of 3**

**4. Minor & Repayment**

Minor cannot be enforced to return the benefit which he fraudulently received but the benefit can be returned to the other party if the suit/case has been filed by the minor himself. If the minor loses any received benefit or advantage, he cannot be compelled to return the same.

**Case Law Reference/ Example**: M, a minor got Rs 17,500 as advance and promised tosell his land, Later on he refused. The court ordered M to refund the money since he acted fraudulently while showing him of major age. **(Khan Gull Vs. Labha**

**Singh)**

**5. Minor & Necessaries**

If a minor is supplied by the necessities of life by a person to whom he is bound to pay, such supplier can recover the amount from the estate/property of the minor, if he doesn’t have, supplier is unable to recover the price.

**Example:** A supplied general necessities of life to a minor Y. A can recover the amountfrom Y’s Property if he is not paid by the minor.

**6. Agreement by Guardian on behalf of Minor**

Guardian is a person who is appointed by the court; therefore if a contract is made by the guardian on behalf of the minor is valid, provided guardian was authorized for such contract.

**Example:** X a guardian if makes a contract to sell a form house of a minor, suchcontract would be considered a valid one, since guardian has been lawfully authorized for such an act.

**7. Minor can be a Beneficiary**

A minor is capable of accepting benefits. Though an agreement with minor is void ab-initio but minor is entitled to receive benefits. Therefore a contract which is for the benefit of the minor and where he is not bound to perform any liability is considered valid.

**Example:** X a minor delivered some goods to Y, Y refused to pay him the money. It wasdecided by the court that X can recover the money from Y.

**8. Minor may act as an Agent**

Minor can be an agent of his principle but the whole responsibility of the agreements made by the minor lies on the shoulders of the principle. Therefore a minor cannot be held for his acts.

**Example**: A, a principle appoints W, a minor as his agent and he sells the house of aperson M, is a valid contract.

**9. Minor may be a Partner**

Minor cannot become the partner of a firm due to age restriction, but he can receive benefits from the firm through his guardian.

**Illustration:** if A, a minor wants to earn some profit while investing an amount in a PrivateBank, he may make a contract with such Bank through his guardian. His contract to get interests would be considered valid.

**10. Surety for a Minor**

In a contract of Guarantee, the adult or guardian if stand as a surety for minor shall be held answerable and not the minor.

**Example:** T, a minor makes a contract with F, and H stands as his guarantor/surety, it’s avalid contract.

**11. Minor as a member of a Company**

A minor may become share holder of a company when he pays the price of shares by full payment. But law doesn’t confer a right to the minor to inspect the accounts of the company.

**Example:**X has bought fully paid shares of a company; he dies and leaves M, a minor ashis legal representative. Now company is bound to transfer the shares to M.

***Page 2 of 3***

**Question # 6**

**Page 3 of 3**

**12. Minor and Insolvency (Insolvency= Bankruptcy)**

Minor cannot be declared insolvent even he has received benefits. He is not personally held liable, only his property is liable. In other words in case of any debt received by the minor shall be recovered after disposing of his property.

**Example:** T, a minor got a loan of 20 Lac Rupees from a bank for a period of 2 yearsthrough his guardian and was unable to return within due time. It was held that minor will not be held personally liable, only his property will be held liable.

**13. Contract by Minor & Adult Jointly**

When a minor and adult jointly enter into a contract, the adult is held liable and not the minor.

**Case Law Reference/Example:** A, a minor and an adult jointly agreed to pay someamount and wrote a bond. Both of them couldn’t pay the money. It was held by the court that adult person was liable and not the minor. **(JamnaBaiVs. VasantaRao)**

**Conclusion:**

Minor is a person who has not attained the age of majority that is 18 years. He may enter into a contract but in the guardianship of an elder. Law doesn’t held him responsible in case of short comings in his commitments and declares a contract void ab-initio if made with a minor. Though he can enter or make contracts with other but subject to certain conditions. Moreover minor is also not personally held liable in case of default; it’s only his property which is held liable.

**Expected University Questions**

1. What do you understand by the capacity to contract? What is the nature of agreement made by the person incompetent to contract?

**(OR)**

**2.** Discuss the law relating to validity of contracts by a minor.

***Page 3 of 3***