What Is Capacity?

- Capacity – the ability to incur legal obligations and acquire legal rights.

- Primary class of people who lack capacity:
  - Minors/infants
  - Persons with mental illness or defects
  - Intoxicated persons
Effect of Lack of Capacity

- A contract in which one or both of the parties lack capacity is **voidable** by the legally incapacitated party.
- A contract is **void** if a party has been previously adjudicated to be mentally incompetent or so impaired that he could not manifest assent.

Capacity of Minors

- Courts granted minors the right to avoid contracts to protect them from their own improvidence and adult overreaching.
- **Disaffirmance** – exercise of the right to avoid a contract.
- The right to disaffirm is personal to the minor and may be exercised at the minor’s discretion.

Exceptions to the Minors’ Right to Disaffirm

- In most states, minors may not disaffirm the following contracts:
  - Marriage
  - Agreements to support their children
  - Educational loans
  - Life and medical insurance contracts
  - Contracts for transportation by common carriers
Period of Minority

- In most states, the age of majority for contracting is 18.
- Emancipation – the termination of a parent’s right to control a child and receive services and wages from him.
- In most states, the fact that a minor is emancipated does not give him to legal capacity to contract.

Time of Disaffirmance

- A minor may disaffirm at any time while a minor and at reasonable time after reaching majority.
- The exception is for contracts concerning real estate which cannot be disaffirmed until majority.

Ratification

- Ratification – the act of affirming the contract and surrendering the right to avoid the contract.
- Ratification can be done effectively only after the minor reaches majority (18 in most states).
- Once a contract is ratified, it can no longer be disaffirmed.
- Ratification can be express in an oral or written statement or implied by conduct by the former minor.
Duties Upon Disaffirmance
- If neither party has performed any part of the contract, their duties are canceled by disaffirmance.
- Each party returns any consideration if performance has already occurred.
- There is a split of authority among jurisdictions about what to do if the consideration to be returned by the minor is lost, damaged, or destroyed.

Obligation to Pay Reasonable Value for Necessaries
- Necessaries – something that is essential for the minor’s continued existence and general welfare.
- Minor’s liability is quasi contractual—liable for the reasonable value of the necessaries actually received.

Effect of Misrepresentation of Age
- Traditionally, a minor’s misrepresentation of his age does not affect his right to disaffirm a contract.
- State law in many states the minor is estopped from asserting his infancy as a defense if he misrepresented his age.
Capacity of Mentally Impaired Persons

- People who suffer from a mental illness or defect are at a disadvantage in protecting their own interests in the bargaining process.
- The contracts of mentally impaired persons are either void or voidable, depending on circumstances.

Test for Mental Incapacity

- Traditionally, the court asked whether the person had sufficient mental capacity to understand the nature and effect of the contract.
- The Restatement (Second) approach is to ask whether he is unable to act in a reasonable manner concerning the transaction and did the other party know this.
- Jurisdictions use the first, second, or both tests together.

The Effect of Incapacity Caused by Mental Impairment

- In most cases, a contract with a person with a mental impairment is voidable.
- In some cases, the person’s contract is void:
  - Person who has been adjudicated incompetent prior to contracting.
The Right to Disaffirm

- To avoid the contract, the formerly incapacitated person must disaffirm the contract once he regains his capacity.
- Failure to disaffirm constitutes ratification.
- Any consideration given by the other party must be returned.
- The formerly incapacitated person has quasi contractual liability for necessaries.

Intoxication and Capacity

- A contract formed by an intoxicated person may be voidable
- The intoxication must be so extreme that the person is unable to understand the nature, purpose, and effect of his actions.
- The rules governing disaffirmance and necessaries are similar to those for minors or the mentally impaired.
- Courts traditionally have been less sympathetic with persons who are intoxicated at the time of contracting than with minors or those with mental defects.

Capacity to Contract

End of Chapter 14