

position of a contract in case any one of the parties thereto is incompetent to contract.

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## 4.2 WHO IS COMPETENT TO CONTRACT?

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Section 11 of the Indian Contract Act clearly states as to who is competent to contract. It provides that every person is competent to contract (i) who is of the age of majority according to the law to which he is subject, (ii) who is of sound mind, and (iii) who is not disqualified from contracting by any law to which he is subject. Thus, a person to be competent to contract should not be

- i. A minor, or
- ii. Of an unsound mind, or
- iii. Disqualified from contracting

Let us now consider each of the aforesaid elements of competency to contract.

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## 4.3 POSITION OF A MINOR

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According to Section 3 of the Indian Majority Act, a person is deemed to have attained majority (i) when he completes 18 years, or (ii) where a guardian of person or property or both has been appointed by a Court of Law (or where his property has passed under the superintendence of the Court of Wards), he attains majority on completion of 21 years. In other words, normally a person shall be treated as minor if he has not attained the age of 18 years. In the following two cases however he is treated as minor until he attains the age of 21 years.

- i. Where a guardian of a person or property or both is appointed under the Guardians and Wards Act. 1890, or

## 4.4 AGREEMENTS BY PERSONS OF UNSOUND MIND

We know that a person while making a contract should be of a sound mind; otherwise the contract will have no validity in the eyes of law. Who is a person of sound mind has been amply clarified by Section 12 of the Indian Contract Act which reads "A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgments as to its effect upon his interests." Thus soundness of mind of a person depends on two facts :

- i. His capacity to understand the terms of the contract, and
- ii. His ability to form a rational judgment as to its effect upon his interests. If a person is incapable of both, he suffers from unsoundness of mind. Idiots, lunatics and drunken persons are examples of those having an unsound mind. Section 12 further states that a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person, who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind.

### Examples

1. A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
2. A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interest, can not contract whilst such delirium or drunkenness lasts.

Whether a party to a contract at the time of entering into the contract is of sound mind or not, is a question of fact to be decided by the court.