

## Lesson Six

### Contractual Capacity of Parties

#### 6.1 Contractual Capacity

The general rule is that any person may enter into a binding contract, but there are special rules of common law and statute law formed for the protection of certain classes of person who by reason of want of age or deficiency in mental ability and understanding may be taken advantage of by experienced and mature adults. These classes include infants or minors, illiterates, mentally disordered persons, drunken persons and married women.

#### 6.2 Contractual Capacity of Infants

The **Electoral Act** provides that anybody above the age of 18 years can vote and be voted for, provided she/he is a citizen of Nigeria. This however, is the voting age and not age of maturity for purposes of contract. For the purpose of contractual capacity; the law is provided in the **infants Relief Act of 1874**. 21 years was recognized as the contractual age and anybody below the age of 21 years was legally an infant and generally exempted from liability from contracts except for the following contracts.

1. Infants contract for necessities e.g. contracts for food, clothing, education and accommodation.
2. Contracts which give the infant an interest of a permanent nature e.g. buying shares in a company or contracts which give an infant an interest in Law. However, for the 2<sup>nd</sup> category, such contracts are voidable. In other words, if the infant reaches the age of 21 years, he could choose whether he wants to be bound by this contract.

This is the position in Nigeria as well. Under **customary law**, there is no accepted age of maturity. What is certain is that 21 years is not the age of maturity under customary law. It has been suggested however, that puberty is the age of maturity.

Under **Islamic Law** a free Muslim who is sane and of age is fully responsible for his contract, and maturity is determined by physical indications, by the declaration of the youth in question or failing this by reaching the age of 15 lunar years.

The Infants relief act provides that an infant may not enter into the following types of contracts:

1. Any agreement for the repayment of money lent or to be lent.
2. Any contract for goods supplied other than necessities.
3. All accounts stated. An account stated is a statement of a balance due agreed by the parties in writing. For example if A sells goods to B for N1000, the balance due from B to A is N1000.

Thus if a minor obtains a loan, any agreement to pay it back is void, and the lender will be unable to take legal action to recover the money. If the minor fraudulently misrepresents his age, the contract is still void and the lender is again without remedy.

However, it is not that minors are free to do as they wish regarding loans. It should be noted that if a minor misrepresents his age fraudulently and obtains money or goods, he renders himself liable to prosecution for dishonestly obtaining the property of another by deception. If goods are obtained by a minor by means of fraud, the civil court may order restoration of those goods to the rightful owner provided that they are in possession of the minor and are identifiable. But if the minor has gotten rid of them the minor cannot be made to pay for them by law, nor can he be made to refund money obtained from the lender.

Fictional example:

There is a popular film in Poland which depicts a fictional situation. A farmer who lived in a remote village left millions of Naira in his fridge and travelled for holidays. Some teenagers who were on a field excursion discovered the empty house in a forest and decided to sleep inside. In the process they discovered the money, and ran away with it. When the farmer returned, he reported to the Police and they started tracing the teenagers. Meanwhile, the teenagers had started spending the money on frivolous living and expensive cars. They learnt the Police were on their trail and started running from city to city. By the time the Police caught up with them, they had spent most of the money. If the teenagers had convinced anyone to enter into a contract with them based on their perceived wealth during this period, such contract would be void because they were underage.

### **6.3 Contractual Capacity of Illiterates**

Generally speaking illiterates have got the same contractual capacity as any person. However, there are certain legislations, which require certain formalities to be complied with.

Any person who writes a letter or a document at the request; on behalf of or in the name of any illiterate person shall also write on such letter or document his own name as the writer of the document and his address. In so doing he will be making a statement that he was instructed to write such document by the person for whom it is written and that the document collectively represents his instructions and the document must have been read and explained to the illiterate person. If the document is signed or a mark is put on it by the illiterate person, that such a document before it was signed or marked was read over and explained to the illiterate person.

The various laws do not however define who is an illiterate person. In cases it has been said that a person who could read and write in Arabic was an illiterate. In other cases it has been held that an illiterate is a person who cannot read and understand the language in which the document is written. However, the better view seems to be that an illiterate is a person who cannot read or write in any language.

Example:

A classical example of an illiterate entering into a contract was when the Chief of Indians was given a document to sign giving away North America to the immigrants. He did not understand well the meaning of the document, and he

signed. However, this contract was never voided, and the immigrants continue to lay claim to North America.

Example:

There was a disused airplane on a stand at the entrance to the Nigerian College of Aviation Technology, Zaria. One day, an Alhaji came and started removing the airplane with the help of some labourers. When he was confronted, he said that someone sold the airplane to him and even produced a receipt. Obviously, he had been duped because the airplane belonged to Nigerian College of Aviation Technology, Zaria. Although the Alhaji was an illiterate, he had capacity to enter into the contract, since the contract was explained to him. However, the seller misrepresented the facts to him and the offer was illegal, therefore the contract is void.

#### **6.4 Contractual Capacity of Mentally Disordered Persons**

In the case of contracts other than necessities, the general rule is that a mentally disordered person is bound by his contract unless he can show that owing to his mental condition he did not understand what he was doing, and further that the other party was aware of his incapacity. But if these two conditions are satisfied the contract is voidable at his own option.

This rule was laid down in *Imperial Loan Company v. Stone* (1892), where it was said:

“When a person enters into a contract and afterwards alleges that he was so insane at the time that he did not know what he was doing, and proves the allegation, the contract is as binding on him in every respect, whether it is executory or executed, as if he had been sane when he made it, unless he can prove further that the person with whom he contracted knew him to be so insane as not to be capable of understanding what he was about”.

##### **6.4.1 Ratification**

It would appear that a mentally disordered person may be bound where the contract is voidable if he ratifies it subsequently after recovery or during a lucid interval. Note that the understanding and competence required to uphold the validity of a transaction depends on the nature of the transaction, because there is no fixed standard which is applicable to all transactions, but what is required in each particular matter or business transaction is whether or not the party in question should have an understanding of the general nature of what he was doing.

It follows therefore that if the party was sane when the contract was made or entered into, evidence of previous or subsequent mental disorder is not material. But in a doubtful case such evidence might create a suspicion that he was mentally disordered at the time of making the contract. Note that the mere existence of a delusion in the mind of a person making a contract is not conclusive that he was unable to understand it, even though the delusion is connected with the subject matter of the contract.

### **6.4.2 Liability for Necessaries**

By section 3 of the Sale of Goods Act 1979 it is provided that where necessities are sold and delivered to a person who by reason of mental incapacity is incompetent to contract, he must pay a reasonable price for them, and further that necessities in this section mean goods suitable to the conditions in life of such person, and to his actual requirements at the time of the sale and delivery. Note that the necessities must have been supplied with the intention of claiming payment.

Note also that a deed executed by a mentally disordered person is valid if at the time of execution he is capable of understanding its effect. But despite the fact that it is good in law, they are subject like all other contracts to be set aside on equitable grounds if the party dealing with the mentally disordered person took advantage of his weakness of mind, even though that weakness did not amount to insanity.

Example:

In Kaduna a rich man in expensive clothes was driven in an expensive car to a popular shop where expensive clothing materials are sold. He came with two assistants who accompanied him to the shop. He was given a seat by the owner while his assistants selected several bales of expensive materials. All the while the Alhaji sat silently watching them. When they finished, the owner calculated the total cost. The assistants then brought out some money, but said that they needed to go back home to bring the balance. They then suggested that the Alhaji stays behind while they go for the balance. The owner agreed, and even helped them load the bales of materials into the car. The assistants then drove away. After waiting for over an hour, the owner decided to offer the Alhaji a drink. That was when he observed that the Alhaji was behaving strangely, pouring the drink all over his expensive dress. When he alerted neighbours, they recognised the Alhaji as a famous madman who parades the streets. The owner could not force the Alhaji to pay for the materials, even though he had sold the materials to him. Technically, the Alhaji is bound by the contract, but obviously he is not capable paying for the goods.

### **6.5 Contractual Capacity of Drunken Persons**

It is held that a person in a state of complete intoxication has “no agreeing mind”. It was at one time thought that the test of incapacity by reason of drunkenness was the same as that for mentally disordered persons, that is whether the person alleged to be incapable was so drunk as not to understand what he was doing, and whether the other party knew of his condition. A contract made in such circumstances was said to be voidable at the drunken person’s option, and could accordingly be ratified by him when sober. But other authorities suggest that equity has a wider jurisdiction to set aside an unfair transaction entered into by a person affected by drink.

### **6.6 Contractual Capacity of Married Women**

At common law a married woman could not as a general rule enter into any contract on her own account either with her husband or with a third party. But successive

statutes have progressively removed this incapacity so that a married woman is now subject to the requirements and obligations of the ordinary law of contract.

According to Section 6 of the **Kaduna State Married Women Edict No.6 of 1990**, a married woman shall:

- be capable of acquiring, holding and disposing of any property.
- be capable of rendering herself and being rendered liable in respect of any tort, contract, debt or obligation.
- be capable of suing and being sued, either in tort or in contract, or otherwise; and
- be subject to the law relating to the enforcement of judgments and orders, in all respects.

### **6.7 Contractual Capacity of Corporations**

In law corporations are regarded as legal persons and therefore capable of entering into contract and can sue or be sued in their corporate name. However, their capacity is limited by the memorandum of association. Anything which is not contained in the memorandum of association can not be done by the company.

Note that anything, which is not contained in the memorandum and articles of association, is *ultra vires* (null and void) the company. In other words neither the company nor the other party to the contract can sue. For example if a company is incorporated for the purpose of road construction and it engages in hospital supply, such a contract is null and void for the company has not got the capacity to enter into such a contract. Moreover, if the company had entered into a construction contract, the contract would not have been null and void. In other words, the only limitation for a company is defined by its objects clauses. But nowadays, the objects clauses are drafted in such a way that a company can virtually do anything. Only companies limited by shares (PLC or Ltd), can enter into contract, not companies limited by guarantee.