



Weekly Information Sheet 05

Contractual Capacity

Definition of Contract:

"An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law."

Definitions of Competency and Capacity:

Competence: *"A basic or minimal ability to do something"*

Capacity: *"The power to create or enter into a legal relation under the same circumstances in which a normal person would have such power to do so."*

Contractual Capacity: *"The ability to understand that a contract is being made, and to comprehend its general meaning, to the extent that genuine assent may be given to its terms."*

Reasoning for Capacity:

Without **Contractual Capacity** there can be no genuine assent to a contract, as the ability of the parties to understand the terms, conditions, duties and responsibilities of the agreement to which they are entering, is called into question due to age, mental illness, brain injury, or intoxication from medication, illegal drugs or alcohol.

Classes of Capacity:

Status Incapacity: *Minors (persons under 18 - the legal age of majority) do not have the legal capacity to contract. If they have been emancipated from their parents, however, they are presumed to have capacity. Contracts with minors are therefore often found to be voidable at the option of the minor.*

Factual Incapacity: *Mental incompetence due to mental illness, brain injury, or intoxication from medication, illegal drugs or alcohol.*

Minors:

Defined: *A Person under 18 years of age.*

Ability to Contract: *Minors do not have the legal capacity to contract, but as with anyone who has capacity questions, they may enter into a contract, so long as the other party understands that they are contracting with a party of insufficient capacity. Such contract will be VOIDABLE by the minor*

Issues Concerning Voidable Contracts:

Restitution after Disaffirmance: *Minors must make restitution to the extent possible.*

Contracts for Necessaries: *A minor can disaffirm a contract for necessities but must pay the reasonable value for such.*

Liability of Parent or Guardian: *Parent can be held liable for contracts for necessities and medical expenses when a third person supplies the parents or guardian of a minor with goods.*

Minors Cannot Avoid Contracts:

- For Educational/Student Loan;
- For Medical Care;
- Made while running a business;
- Approved by a court;
- Made in performance of a legal duty; and
- Relating to bank accounts, insurance policies, or corporate stock.

Contractual Capacity - Continued

Mentally Incompetent Persons:

Defined: A person is determined to be incompetent when they have been found to be unable to manage their own affairs.

Ability to Contract: Mentally Incompetent people do not have the legal capacity to contract, just as minors. Such contract will be VOIDABLE by the mentally incompetent person or their legal representative. If their mental disability is removed they can ratify or disaffirm the contract.

Intoxicated Persons:

Defined: A person is intoxicated when they experience a diminished ability to act with full mental and physical capabilities, because of alcohol or drug consumption.

Effect of Intoxication: The capacity of a party to contract, and the validity of the contract, are not affected by the party's being impaired by alcohol or drugs at the time of making the contract, so long as the party knew that a contract was being made.

If the degree of intoxication, however, is such that a person does not know that a contract is being made, the contract is VOIDABLE by that person.

After becoming sober, the individual may avoid or rescind the contract, but an unreasonable delay in taking steps to set aside a known contract, entered into while intoxicated, may bar such person from asserting this right.

Mistake:

Definition:

“An error, misconception, misunderstanding, or erroneous belief with respect to the terms, conditions, duties and/or responsibilities contained in a contract.”

Why Mistakes Matter: Because of the requirement of genuine assent, the validity of a contract may be affected by the fact that one or both of the parties made a mistake. In some cases, the mistake may be caused by the misconduct of one of the parties. In others, the mistake is the result of a non purposeful error.

Not Every Misunderstanding is a Mistake: It is important to understand that not every erroneous idea, is a “mistake” in a contractual context.

For purposes of rescinding contracts, a “mistake” refers only to a mistaken belief about an existing fact, NOT an erroneous belief about what will happen in the future.

Nor is a “mistake” a misunderstanding as to the “meaning” of the contract.

For a misunderstanding in the meaning of is not an error as to some external fact, but rather an error as to the meaning of a manifestation of assent, which is ultimately resolved by the process of interpretation.

Three Types of Mistake:

- Unilateral Mistake;
- Mutual Mistake; and
- Mistake due to transcriptions or printing.

Unilateral Mistake: Is a mistake made by only one of the parties. A party making the mistake may avoid the contract, only if the other contracting party knew, or should have known, of the mistake. This is because the mistake in such case was avoidable for the victim of the mistake. (2)

Mistake Continued:

Three Types of Mistake Continued:

Mutual Mistake: Is a mistake made by both of the contracting parties. It is a mistake as to a fact, that does affect the contract, and such mistake is shared by both parties, so that it is often held that no contract was formed at all, or that the contract should be subject to either rescission (i.e., cancellation) or reformation (i.e., re-writing by the court).

When Can a Contract Be Rescinded or Reformed for Mutual Mistake: When both parties are mistaken about a basic, material fact of the contract, the adversely affected party may generally avoid the contract.

Three Requirements: Three requirements are generally must be satisfied before the adversely affected party may avoid the contract on account of mutual mistake:

- The mistake must concern a basic assumption on which the contract was made;
- The mistake must have a material effect on the “agreed exchange of performances”; and
- The adversely-affected party (the one seeking avoidance) must not bear the risk of the mistake.

Transcription or Printing Mistake: Is a mistake that is made in the typing or printing of a written contract. This can happen when the parties make an oral agreement, and in the process of committing it to writing, or when printing it from a manuscript (a hand written document), a phrase, term, or segment is inadvertently left out of, or inadvertently altered in, the final, signed document.

When Can a Contract Be Rescinded or Reformed for Transcription or Printing Errors: When an error takes place as a result of a faulty transcription or printing, the aggrieved party may petition the court to rescind or reform the contract to reflect the actual agreement of the parties. The burden of proof in such case, however, is heightened to clear and convincing evidence that such a transcription or printing mistake was made.

Back to the Actual Intent of the Parties: A mistake in transcription is completely different in nature from a mistake of fact. When the mistake is in printing or transcription, the desired relief is to have the writing changed to reflect what was actually agreed.

Deception or Pressure:

Definition:

When there is a **Deception** or **Pressure** in the contract, there can be no genuine assent, as the ability of the parties to truly understand the terms, conditions, duties and responsibilities of the agreement to which they are entering, is not what they believed it to be, or they were forced against their will to enter into it (so as to remove the essential element of assent).

Types of Deception or Pressure:

Intentional Misrepresentation: The act of intentionally or purposefully making a false or misleading assertion about something with the intent to deceive.

Fraud: An intentional misrepresentation of a material fact, made for the purpose of inducing another to act to their detriment.

Negligent Misrepresentation: A careless or inadvertent false statement made in circumstances where care should have been undertaken.

Non Disclosure: The failure or refusal to reveal something that either might be or is required to be revealed.

Undue Influence: The improper use of power or trust in a way that deprives a person of free will and substitutes another’s objective.

Duress: A threat made to compel or induce a person to do something against their will or judgment. This can be physical duress or economic duress (type of threat).

Unconscionability: Where one party to a contract of exerts such extreme unfairness in a contract (when viewed through an objective standard), so that the other party lacks a meaningful choice. In such case, the contract’s terms are deemed so shockingly unfair as to unreasonably favor the other party, and thereby “shock the conscious of the court”.