



Miles and Dowler, *A Guide to Business Law 21st edition*

Study Aid – Chapter summaries

Chapter summary – ch 12 – capacity (to make a contract)

1. Capacity is the legal ability or power to make a contract and to also understand its rights and obligation.
2. Some parties may not be legally able to contract because of their financial position or situation in life, eg
 - bankrupts (limited legal rights to contract);
 - corporations (almost unlimited rights to contract depending on constitution of company);
 - enemy aliens (limited legal rights to contract); and
 - prisoners (situational problems: amongst others).
3. Some parties may have limited or no mental ability to understand what a contract is due to their age and so may need some legal protection when making contracts.
4. Situations where young age may affect capacity to contract include: children (where age affects their ability to comprehend contractual rights/duties) such as minors (under 18 years).
5. In New South Wales, the common law about minors has been replaced by the *Minors (Property and Contracts) Act 1970* (NSW) (the Act) which reduced the age of contractual capacity from 21 to 18 years and described “children” as “minors”.
6. A “minor” is any person under the age of 18 years of age.
7. Civil acts include transactions and contracts.
8. Section 18 of the Act states that a minor too young to understand the nature or effect of a contract is not bound by it.
9. Section 19 of the Act provides that a minor is presumed bound by any contract that is for their benefit and the minor understands what they are doing at the time.
10. Under s 20 of the Act, there are various types of contracts made by minors that are presumed binding, eg investments in government securities.
11. A minor may repudiate a contract that is not beneficial before reaching 19 years



of age by giving written notice to the other party. The courts can also repudiate a contract on behalf of a minor (if not for their benefit).

12. A contract may become binding on a minor if they fail to repudiate it before 19 years of age or they or a court affirms the contract after it was made. The *Minors Contracts (Miscellaneous Provisions) Act 1979 (SA)* states that a contract with a minor shall be treated as if made with an adult when it has been approved by the courts.
13. Lack of mental capacity can be caused by alcohol, old age, drugs, accidents, mental illness etc (reasons other than a young age).
14. Normally, contracts are presumed binding and the party alleging lack of mental capacity must prove two things:
 - (a) they were so affected that they did not understand what they were doing;
and
 - (b) the other party to the contract knew or should have been aware of their condition.
15. The right to challenge a contract on grounds of mental illness will not be available where:
 - the party affirmed/accepted the contract later;
 - the party acted with undue delay; or
 - it would be impossible to terminate the contract, eg another party's rights may be adversely affected.