

## **Limitations on Contractual Capacity**

### ***Introduction***

In South Africa, importance is placed on an individual's ability to act in appreciation of the consequences of their actions. It is because of this general outlook that there are different legal limitations placed on a person's ability to contract, which will be discussed below. It is important to understand these limitations as contracting with someone who does not have capacity to act can invalidate your contract.

### ***Age***

The first limitation relates to age. A person under 7 years of age does not have any capacity to act as they cannot appreciate the possible consequences of their actions. It is for this reason that the law does not allow such persons to enter into contracts on their own behalf. Such persons would still be able to benefit from any rights in law, but a Parent or Guardian would need to act on their behalf. A person between the ages of 7 and 18 years of age is referred to as a Minor. Although there is still a limitation placed on their capacity to act and thus enter into contracts, such actions can still be 'authorised' or ratified by a Parent or Guardian after the fact. By way of example, if a 16-year-old purchases a scooter from a dealership, they would need their Parents' consent to validate the purchase agreement. In this age bracket we can now see that the law allows persons the ability to contract but only with the required consent, showing an appreciation for a person with a reasonably developed state of mind.

Generally speaking a person who is over 18 years of age is allowed to fully enter into contractual agreements on their own behalf. As per the Children's Act, No. 38 of 2005, as amended, the age of majority is at 18, keeping South Africa in line with international standards practiced and accepted by the United Nations.

### ***Insolvency***

Being declared Insolvent would mean that your estate, comprising of all its assets and liabilities, would have a Trustee appointed to facilitate the process of being sequestered. Simply put, a Trustee would make all executive decisions relating to your estate in order to satisfy outstanding claims from Creditors. An Insolvent person would therefore not be able to enter into any contracts with the

intention of selling off assets since such a sale would be to the detriment of the Creditors. Decisions of this nature would fall within the area of authority that the Trustee has.

### ***Prodigals***

A Prodigal would be declared by a Court as a person who is incapable of managing their own affairs. The situation would normally involve a person recklessly spending large amounts of money or otherwise negatively affecting their own or family's interests. Once so declared by the Court, a Prodigal's legal capacity can be compared to that of a minor (person under the age of 7 years). The difference here would be that any contract entered into can be later ratified by the Curator of the estate, who has authority to make decisions in the same way that a Trustee has in the case of an Insolvent person.

### ***Marriage***

The matrimonial property systems one is married under has an effect on contractual capacity. Capacity differs if one is married in community of property as opposed to being married out of community of property. If the Spouses are married in community of property, it would entail that any contractual obligations created by one Spouse would attach to the other Spouse. Therefore, the signatures of both Spouses would be required when contracting with Spouses married in community of property. A non-contracting Spouse is able to ratify a previously entered agreement by the contracting Spouse, but it would only be necessary for contracts entered into during the subsistence of the marriage.

However, Spouses married out of community of property have no contractual limitations placed on them since they are seen in the eyes of the law as being married persons but with two separate estates.

### ***Conclusion***

It is important to understand the different limitations discussed above as they can impact contractual relationships. It is therefore always recommended that you approach legal professionals to assist you with your contractual needs, regardless of age, financial status or marital status.

Contact SchoemanLaw Inc today for expert advice for all your contractual needs.