

CAPACITY

Minors: Common law → Benevolent approach: capacity at 21

Exceptions

Contracts for necessities	<ol style="list-style-type: none"> 1. Was the contract capable of being necessary? (q of law) 2. Was it necessary for the minor in question? (q of law) <p><u>Scarborough v Sturzaker (1905) 1 Tas LR 117</u></p> <ul style="list-style-type: none"> - Purchase of bike - enforceable since it was for the minor's benefit - Answers yes to both questions <p><u>Bojczuk v Gregorcowicz [1961] SASR 128</u></p> <ul style="list-style-type: none"> - Migration of girl who could not repay loan - Not enforceable as migration was not a necessity since she had a reasonable life in Poland.
Contracts of service	<p><u>De Francesco v Barnum (1890) 45 Ch D 430</u></p> <ul style="list-style-type: none"> - Wasn't allowed to work for anyone else, wasn't paid, and the master could terminate at any time. When she went to work for someone else she was sued. - Not enforceable → minor had no capacity. <p><u>Hamilton v Lethbridge (1912) 14 CLR 236</u></p> <ul style="list-style-type: none"> - Solicitor opened a firm 50 miles from where they were trained - Capacity was sufficient as overall benefit was favourable to them.

Statute → **Minors (Property & Contracts) Act 1970** : capacity at 18

S 17	If provisions are not met, the civil act is "not binding" and it is voidable by the minor .
S 18	This Part does not make presumptively binding on a minor a civil act in which the minor participates, or appears to participate, while lacking, by reason of youth , the understanding necessary for his or her participation in the civil act."
S 19	"Where a minor participates in a civil act and his or her participation is for his or her benefit at the time of his or her participation , the civil act is presumptively binding on the minor."
S 20	Acquisition of real or personal property: If the sale of the property by a minor is for a price that is not " manifestly inadequate " it is presumptively binding . If the purchase of property by a minor is for a price that is not " manifestly excessive " it is presumptively binding .
S 23	Investments in government securities are presumptively binding .

	An investment by a minor in: (a) any public funds or government stock or government securities of any State of Australia or of the Commonwealth, or (b) any debentures or securities guaranteed by the Government or by the Treasurer: is presumptively binding on the minor.
S 27	Approval of contract or disposition Seen to be of benefit for the minor - is binding.

Mentally unsound or intoxicated

- Mental state impedes capacity to give **genuine consent**, and to understand what they are doing in a truly informed and aware sense.
- Set aside on the grounds of a lack of capacity.

Threshold requirements to be met

1. Must prove they entered into the contract while suffering from a mental disability or intoxication.	<u>Hart v O'Connor [1985] AC 1000</u> An old farmer sold his property for a very low price, the contract was not set aside as they were unaware of lacking mental capacity. Difference between ability to reason and depriving only of a business sense .
2. The other party knew or should have reasonably known of the disability.	A party may be precluded from voiding a contract for lack of capacity if they have subsequently ratified (approve of the contract and affirm it) the contract: <u>Matthews v Baxter (1873) LR 8 Exch 132.</u> - Baxter was drunk and bought a property at an auction, oral contract formed through a bid, changed mind and sought to void on the basis of intoxication. Court held he lost the right, although drunk he ratified when sober.

REQUIREMENT OF WRITING

Statute requires the contract to be in writing: → Contracts for sale of land

Conveyancing Act 1919 (NSW) s 54A

Must be **evidenced in writing**.

Unenforceable unless there is a note or memorandum: a standard form contract, or another document, letter, email, etc. It could include any combination of **documents or series of letters that make up a correspondence**, so long as **there is a clear and logical connection** between the documents.

Writing has to contain:

Parties, Property, Price

Also a **signature**: Courts are flexible and liberal to what this means. Can be

- "I accept"
- Signature, initial, family name or some appellation.
- Has to identify the party to be charged and **evidences their intention to be bound**

Welsh v Gatchell [2009] 1 NZLR 241.: Should indicate that the person is agreeing to what the document says. Comments on how courts can approach signature's with some flexibility. Signature of an agent may be sufficient, as long as they have authority.

Equity may enforce the contract if s 54A is not satisfied: Enforcement of an oral contract:

<p>1. Where non-compliance with these statutory requirements would amount to fraud.</p>	<p><u>Wakeham v Mackenzie [1968] 2 All ER 783.</u>- Promise to leave the house and reduce this proposal to writing, he assured he did. He hadn't and didn't follow through. Court held there was equitable fraud on his behalf, fraud because of his promise and failure to complete such a promise, and the executor ordered to transfer the property to her.</p>
<p>2. Doctrine of part performance is satisfied</p>	<ol style="list-style-type: none"> 1. Acts must be those of the party asserting the doctrine (or authorised agent) <u>McBride v Sandland (1918) 25 CLR 69; Waltons Stores v Maher (1988) 164 CLR 387.</u> 2. Acts must be authorised by the oral contract, although not necessarily required by it. <u>Regent v Millett (1976) 133 CLR 679</u> bought a property, borrowed and used half of his own, obliged to make repayments. Agreed with his daughter and her husband to take over the loan and live in the property, promised to transfer property once payed off. When loan repayed, failed to transfer. Sued on reliance of the doctrine of part-performance, they pursued acts in reliance of Regent's promise (formed orally). <u>Khoury v Khouri (2006) 66 NSWLR 241.</u> 3. Acts must be unequivocally referable to a contract of the general nature of the alleged oral agreement. Must be consistent with what would be done in the type of contract alleged. <p>PROBLEM: Aus courts have rejected the payment of money as sufficient to satisfy the doctrine. BUT payment in conjunction with other post-contractual acts may be sufficient. <u>Francis v Francis [1952] VLR 321</u> the purchaser was trying to establish an oral contract and have it enforced, no taking of possession or improvements to the property but there was payment of deposit + purchaser took steps to arrange mortgage, loan, certificate of title as security. This was enough to satisfy equity.</p>

TERMS

Express Terms	<p>→ Give effect to the actual intention of parties.</p> <p>Representation may become a term: <u><i>Ellul & Ellul v Oakes</i> (1972) 3 SASR 377.</u></p> <ol style="list-style-type: none"> 1. Importance (objective test) 2. The timing of the statement – how much time between the making and formation of the contract. 3. Any special skill or knowledge of the maker of the statement. Was the maker in a better position to ascertain the truth of the statement. 4. Omission or inclusion of the statement in any subsequent written document. <p>Is there objective evidence of intention for the statement to be binding <u><i>Oscar Chess Ltd v Williams</i> [1957] 1 All ER 325;</u> Williams wanted a new car, traded one in for another. Told the dealer it was a 1948 model, he understood it to have always been that because it was previously owned by his mum and paperwork described the same. On that basis, the dealer gave 290 pounds, then the dealer checked and discovered the car was really a 1939 model (trading value was less), and the dealer sued for breach of contract.</p> <p>Court held that Williams' statement remained a representation, it was wrong so a misrepresentation, but it was innocent and not fraudulent. (3) he had no special skill or knowledge of the car.</p> <p><u><i>Dick Bentley Productions v Harold Smith Motors</i> [1965] 2 All ER 65.</u> Similar situation; purchase of car between two companies. Dick Bentley bought a 2nd hand car from HSM; HSM salesperson stated the car had done 20,000 miles since the new engine and gearbox. This was false, Bentley sued for damages for breach of contract.</p> <p>Court held the statement provided by the dealer had become a term because on its face it was a representation (description of car characteristics). Lord Denning; "if a representation is made in order to induce a party into a contract and it does induce; this leads to an inference that it was intended as a term. Unless the maker of the statement rebuts by showing he was innocent of any fault."</p> <p>Aus Courts take a more restricted view <u><i>J J Savage & Sons Pty Ltd v Blakney</i> (1970) 119 CLR 435</u> Did not constitute a collateral contract, was merely an opinion.</p> <p>Incorporation by: Signature <u><i>L'Estrange v Graucob</i> [1934] 2 KB 394.</u></p>
----------------------	--