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# Capacity

## Statute

### Minors (Property & Contracts) Act 1970 (NSW)

- **Section 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."
  - **Section 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."
  - Section 20: With dispositions of property, **s 20** provides that the consideration given or received by the minor must not be manifestly excessive or manifestly inadequate. (**basically the minor cannot be ripped off in the purchase or sale of property**)
  - **23**: An investment by a minor is presumptively binding 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:
  - **27(2)**: The Local Court may, on application by a minor, by order approve a contract proposed to be made by a minor or a disposition of property proposed to be made by or to a minor.
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## General Law

- Minors were presumed not to have capacity unless the contracts were for the Minor's beneficial contract of service or for necessities, as these contracts were clearly for the benefit of minors.

## Necessaries

### Scarborough v Sturzaker (1905) 1 TasLR 117 - Necessaries contracts are enforceable against a minor

- A contract for a bicycle was a necessary because the minor used it to travel to work.
- Sturzaker repudiated the contract and refused to pay the outstanding amount.
- The Tasmanian Court held that the bike was a necessary.
- Therefore, the contract was enforceable and Sturzaker had to pay the money owing.

### Bojczuk v Gregorcewicz [1961] SASR 128 – Contract not for necessities

- Lent money to a minor so she could emigrate to Australia from Poland.
- Gregorcewicz failed to pay some of the loan and was subsequently sued
- Court found that emigrating to Australia was not essential because she had a reasonable life in Poland and consequently the contract was not for necessities and was not binding against her

- Necessaries are defined as essential to the maintenance of the minor such as articles necessary to sustain the minor's life such as food clothing and shelter
  - Was the subject of the contract necessary for the minor's living requirements?

### Beneficial contracts of service

#### De Francesco v Barnum (1890) 45 ChD 430 – not beneficial, restraint term denied

##### Facts

- Minor signed up as dance trainee for seven years, training to be a performer, no obligation on the promoter to provide the minor work yet she was precluded from working for anyone else.
- The promoter could release her at any time, but the minor had no similar rights.
- However, the court held there was **no contract** as it was not beneficial to the minor and hence was not a contract the minor had the capacity to enter

##### Principle

- Employment or service contract which held an inbuilt benefit such as tuition, training, internship
- A job is not a beneficial contract of service, it must include training or education etc. for it to be enforceable against the minor. **Unless the contract held unconscionable or exploiting terms**
- 

#### Hamilton v Lethbridge (1912) 14 CLR 236 – Restraint term upheld

- One term of the contract restrained the minor from opening their own practice within 50km of the practice once the minor was trained.
- The solicitor was able to enforce this restraint clause because the overall benefit was for the minor despite the restraint clause

### Mentally unsound and intoxicated:

- Concerned with situations where a person's mental state, at the time the contract was formed, may have impeded their capacity to give genuine consent
  - E.G. psychotic states, depression, under influence of drugs/alcohol
- Generally, they can be set aside due to lack of capacity but 2 threshold requirements need to be met:
  - 1. Party wanting to set aside contract must prove they were suffering from mental disability/ intoxication
  - 2. Must prove other party knew or should reasonable have known of mental unsoundness

#### Hart v O'Connor [1985] AC 1000 – other party did not reasonably know

- Farmer sold his property for very low price and then died.
- Beneficiaries argued he didn't have the adequate contractual capacity
- They proved he was mentally incapacitated to fully understand what he was doing.
- However, they could not prove that the other party could have reasonably known and the contract was deemed valid.

### Matthews v Baxter (1873) LR8Exch 132 – Cannot ratify agreement and then preclude agreement

- Party can be precluded from voiding a contract on the grounds of intoxication or state of mind if they later ratify the agreement
- At auction one party bought the property when he was drunk and later, in a better mental state, actioned to ratify the agreement and was later precluded from rescinding from the contract because he had later ratified it

# Requirement of Writing

## General Rules

- No general requirement for contracts to be written, however, some contracts are required by statute to be formal
- **Prima facie Noncompliance w/ s51 means the contract for sale of land is not enforceable. However, there are two exceptions to the rule**
- Contracts required to be evidenced in writing may be discharged verbally
- If a contract must be evidenced in writing, any variation of that contract must be in writing

## Contracts for Sale of Land

### Section 54A Conveyancing Act 1919 (NSW)

- (1) A contract for the sale of land is not enforceable unless it is in writing or some memorandum or note and signed by the party to be charged or an authorised party
- **Memorandum or note:** fully written contract or a letter, email receipt, electronic communication if there is a clear/logical relation between documents
- Must include:
  - Material terms: identity of parties, Consideration identified (price/method of price determination), description of land (address)

### Pirie v Saunders (1961) 104 CLR 149

- Internal acknowledgement of the contract: even if the written document contains all the essential terms, apart from identifying the parties, property and price, the written memorandum or note must also contain words indicative of the parties' intention to contract.

### Welsh v Gatchell [2009] 1 NZLR 241

1. Pre-contract: Negotiating price and agreement
2. Contract (exchange): Both parties sign contracts
  - Party buying has equitable interest
  - Enforceable if section 54A is satisfied
  - Often, 10% deposit paid
- 3. Post-contract: take action (about 4-6 weeks)
- 4. Completion (settlement): representatives, banks, change of registered proprietor
- ⇒ Contract is discharged by performance

## Exceptions MISSING

## Fraud

### Wakeham v Mackenzie [1968] 2 ALLER 783 – non-compliance with statute would amount to fraud

- Man promised a woman he would leave her his house if she moved in with him and took care of him. He also agreed to put that into writing, when she raised it he assured he had put it into writing, however he had not and the property was left to someone else
- The executor of his estate argued she cannot win as statute requires the transfer of land must be in writing
- Court held this was inequitable fraud

### McBride v Sandland (1918) 25 CLR 69 – Part Performance

- A contract unenforceable because of the Statute of Frauds could become enforceable by virtue of the acts which the plaintiff did afterwards. The doctrine is justified by two
- reasons, the first was a form of estoppel, as Lord Reid said in *Steadman v Steadman* [1976]
- The second reason was that the acts done by the plaintiff could in themselves prove the existence of the contract in a way which could be an acceptable substitute for the note or memorandum required by the statute
- The third matter to be established for the doctrine to apply is that the acts done must be unequivocal and in their own nature be referable to a contract of the general nature of the alleged oral agreement *McBride v Sandland* at 78

### Doctrine of Part Performance

#### Section 54A Conveyancing Act 1919 (NSW):

- Parties may be able to prove the non-written contract if you can prove that the contract was partly performed in reliance of the oral contract (assumed as good as or better than writing)
- Part performance: if one party permits the other party to reasonably act on their promise in an oral agreement, the court will stop the party from arguing there is no contract as the party did not stop the acting party
- Acts must be authorised by the oral contract
- Acts must be unequivocally referable to the type of contract you allege exists.
  - Painting the kitchen refers to purchasing house, tenants don't paint the kitchen
- Must be acts of the asserting party

#### *Khoury v Khouri* [2006] NSWCA 184

- Unless authoritatively directed to do otherwise, the court of appeal should apply the doctrine of part performance as it has received it, according to the terms in which it has been recognised in decisions of the high court of Australia
- Bryson JA on an oral agreement relating to land said "in the present case there are no acts of ownership such as taking possession, paying rates or paying for the upkeep or improvement of the property, or receipt of rent or profits, or any other act at all. Act of part performance have been almost universally related to possession and use or tenure of land itself, such as where a purchaser is put into possession by the vendor, or allowed to take possession by the vendor or where the purchaser carries out improvements. They have not necessarily been acts which the contract requires to be done.

#### *Regent v Millett* (1976) 133 CLR 679n- part performance

- Bought a property and got a mortgage, then agreed with daughter and husband that if they give him the money he gave to the bank and take over bank payments the daughter and son in law can live there and the property will be transferred to them.
- He didn't transfer property, children sought order for performance without written contract. The court ruled in favour of the children as they had acted in accordance with the authorised actions by the father (part performance)