

Capacity

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One of the five elements required for an agreement to be a legally binding contract is that the parties are capable of entering into a contract.

1. a natural person normally may enter into a contract once he or she has reached the *age of majority*, while
2. a judicial person (a corporation, for example) may enter into contracts depending upon the laws related to incorporation in the jurisdiction of incorporation.

The age of majority differs throughout Canada, being

1. 18 years old for Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Prince Edward Island, and
2. 19 years old for British Columbia, Newfoundland and Labrador, Nova Scotia, New Brunswick, Yukon, Northwest Territories and Nunavut.



A contract with a minor (one who has not yet reached the age of majority) is not enforceable unless the contract concerns the providing of the necessities of life for the minor (food, clothing, shelter, etc.). The minor may, however, be able to enforce the contract, even if the other party is unaware that the individual is a minor. Once the minor reaches the age of majority, he or she must *ratify* any contracts in which they are a party.

Mental incompetence may make an individual incapable of entering into a contract; however, if an individual presents him or herself as one who is competent, any contracts he or she enters into may be enforceable. In *Hart v O'Connor*, Lord Brightman wrote:

“... the validity of a contract entered into by a lunatic who is ostensibly sane is to be judged by the same standards as a contract by a person of sound mind, and is not voidable by the lunatic or his representatives by reason of ‘unfairness’ unless such unfairness amounts to equitable fraud which would have enabled the complaining party to avoid the contract even if he had been sane.”

Individuals who are heavily intoxicated do not have the capacity to enter into a contract, for in the words of Lord Ellenborough, they have “no agreeing mind.” One who entered into a contract while

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intoxicated may, never-the-less, ratify such a contract once they have sobered up. However, mild intoxication due to the consumption of more reasonable amounts of alcohol will never-the-less be found to be competent.

Question: While it is legal to serve reasonable quantities of alcohol to numb the sensibilities of another party with whom you are entering into a contract, is this necessarily ethical?

When a company is incorporated, its objects (objectives in performing business) must be stated in the constitutive documents of incorporation (the company's constitution). Any business endeavour that is not provided for under these objects are considered *ultra vires*, and thus beyond the power of the corporation. Any contract that is *ultra vires* is unenforceable.

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References

Donald L. Marston, B.Sc., P.Eng., LL.B., *Law for Professional Engineers: Canadian and Global Insights*, 4th Ed., McGraw-Hill Ryerson, Toronto, 2008.