



**RESEARCH PAPER**

**Law on Mental Competency to Contract: An Analysis**

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**ABSTRACT**

The objective of this study is to analyze the law on mental competency to contract in Pakistan. The mental competency of the parties making a contract is essential for a valid contract. In Pakistan, the Contract Act of 1872 is the exclusive statute which deals with the contracts. The legal doctrinal analysis method was adopted to analyze the law on mental competency to contract in Pakistan. The mental competency to contract is determined based on the mental capacities of the parties to contract when making the contract. A contract with a mentally disabled person is void. The medical opinion in the form of a mental health evaluation is sine qua non to determine the mental competency of the parties to the contract. Sections 11 and 12 of the Contract Act of 1872 must be amended in the light of modern development in the fields of mental health and behavioral science.

**KEYWORDS** Civil, Competency, Contract, Law, Mental

**Introduction**

The competency of the parties to the contract is essential to a valid contract. One of the necessary elements of qualifying an agreement into a valid contract is the competency of the parties to the contract (Section 10, Contract Act, 1872). Every person is competent to contract who is major, of sound mind, and is not barred by law to make a contract (Section 11, Contract Act, 1872). Mental incapacity is a lack of capacity of a person to make decisions about his or her matters because of his or her abnormal mental condition(s) (Section 2(1), Mental Health Act, 2005). A contract with a mentally incompetent person is void. Moreover, the doctrine of contractual incapacity allows people with mental incapacities to avoid their contractual responsibility (Scott, 2019). However, a permanent or temporary abnormality is irrelevant in the context of the capacity to contract (Section 2(2), Mental Health Act, 2005). The competency to contract is assessed based on the mental capacity of a person at the time of making the contract (*Fehily v. Atkinson*, 2016).

Entering a contract with a party who is mentally incompetent is considered a contract made by using undue influence by the other party (Section 16(b), Contract Act, 1872). However, a person is assumed to possess the mental competency to contract unless otherwise proved (Section 1(2), Mental Capacity Act, 2005). As far as mental incompetency is concerned, in contract law, in most jurisdictions, mental competency to contract is considered in two ways, i.e., cognitive incapacity, which is the incapacity to understand the nature of the transaction or its consequences, and volitional incapacity, which is the incapacity to control one's action(s) related to the transaction even if a person is mentally able to appreciate the consequences of such a transaction (*Brown v. United Mo. Bank*, 1996; *Blatt v. Manhattan Med. Grp.*, 1987).

**Literature Review**

Mental competency is essential for a person to be competent for making a contract. The mental capacity of a person is not only relevant for entering into a contract but also for the performance of the contract (Brucken et al., 1959). A person who is not competent to contract cannot make a valid contract. However, the court can appoint another person as guardian to make a contract on behalf of the person who is incompetent to contract for the

protection of the interests of the incompetent person. Due regard must be given to the balance between the autonomy of the person and protecting him or her from vulnerabilities due to his or her abnormal mental condition (Cocanour, 2017).

A contract by a person who lacks mental capacity is not a valid contract (*Keolapati v. Amar Krishna Narain Singh*, 1939). A contract is voidable at the option of the person who claims not to possess the requisite mental competency at the time of making the contract if such a person proves that at the time of making the contract he or she was devoid of mental competency so much so that he or she could not understand what he or she was doing, and the other party was aware of his or her mental incompetency (*Imperial Loan Co Ltd v. Stone*, 1892). As far as the knowledge about the incompetency of a party to the contract is concerned, the law supposes the other party to know if it is obvious on the face of it that the contracting party is mentally incompetent to contract (*Josife v. Summertrot Holdings Ltd.*, 2014). Moreover, a contract must be avoided where a party to the contract has only constructive knowledge of the mental incompetency of the other party (*Dunhill v. Burgin*, 2014). A contract entered by the parties where one party knew that the other party lacks mental capacity to contract is voidable (*Hart v. O'Connor*, 1985).

For making a contract, there are several things a person with a compromised mental condition cannot be able to do. The agreement, the intent, and the performance of the contract cannot be said to be made by a person who lacks mental competency. Thus, such a person whose mental capacity is substantially disturbed cannot be held liable for his or her action(s) (Ajmal et al., 2022). However, the mere presence or absence of permanent mental disorder(s) does not alone stand as a criterion for the incompetency to contract; rather, the mental capacity of a person at the time of making the transaction is relevant in determining the mental competency of a person to contract (*Sparrow v. Demonico*, 2012).

For a person to be mentally competent to make a contract, he or she must have the mental ability to recognize the key issues, take advice, and weigh the information to reach a decision. It is irrelevant whether a person understood the transaction or not; rather, his or her ability to understand the transaction is relevant in determining his or her mental competency to contract. Moreover, the ability of a person to appreciate whether expert advice is required and his ability to find, instruct, and understand an expert and to make decisions based on advice is also relevant in determining his or her mental competency to contract (*Fehily v. Atkinson*, 2016).

## **Material and Methods**

The doctrinal legal research method was used to study the law on mental competence to contract in Pakistan.

## **Results and Discussion**

### **Competency to Contract**

The general rule about the capacity to contract is that every person is competent at making a contract subject to the fulfillment of certain criteria. In law in Pakistan, every person possesses the capacity to contract, subject to the fulfillment of the conditions of majority of age, soundness of mind, and not barred by law from making contracts (Section 11, Contract Act, 1872). A contract made by a person of unsound mind is void ab initio (*Muhammad Bashir v. Walayat Begum*, 1967).

### **Sound Mind for the Purpose of Making a Contract**

The law in Pakistan considers the mental competency of a person to make a contract based on his or her capacity at the time of making a contract. It is irrelevant in determining

the mental competency of a person to contract whether such a person is suffering from a mental disorder(s) permanently or temporarily, or even if a person is suffering from a mental disorder at all. Consequently, a person of unsound mind can be competent to make a contract if, at the time of making the contract, he or she was of sound mind, and a person of sound mind can be incompetent to make a contract if, at the time of making a contract, he or she was of unsound mind (Section 12, Contract Act, 1872). The law in Pakistan considers the mental condition(s) of a person at the time of making a contract in determining his or her competency to make contracts, so much so that a person in lunatic asylum is competent to contract during the interval he or she is sane, and a sane person when he or she is not fully in his or her senses due to his or her mental condition or intoxication is not considered competent to contract (Section 12(a), 12(b), Contract Act, 1872).

To consider a person as incompetent to contract, his or her mental incompetency must be of such a nature that makes such a person unable to comprehend. The test of unsound mind in the context of contract law is that a person is unable to understand the matter and is unable to make a rational judgment about how a particular agreement will affect his or her interest (*Rohini Kumar v. Bhagban Chandra*, 1963). A mere weakness of mind or temporary forgetfulness is not unsoundness of mind (*Sarba v. Manmohan*, 1933). To declare someone a person of unsound mind, in the context of mental incompetency to contract, his or her feeble-mindedness and low intelligence must be to an extent that such a person is not able to understand and/or manage his or her affairs (*Sultan v. Nazar Sultan*, 1993). A contract with a person having a mental disorder(s) can have different legal prepositions other than incompetency to contract. As in *Hamida Begum v. Murad Begum and others* (1975), the court held that mental weakness due to age put the party in a weaker position and the other party in a dominant position so much so that the contract is supposed to be made under undue influence. Furthermore, the presumption of fraud arises if a party to a contract is mentally incompetent to contract (*Ram v. Bansidhar*, 1947).

### **Burden of Proof**

A person who claims unsoundness of mind must prove that at the time of making a contract he or she was unable to understand the contract (*Mohd Yakub v. Abdul Kuddus*, 1923; *Subramania Sastri v. Lakshminarasamma*, 1958). The onus of proof is on the person who claims mental incapacity to contract (*Sakinabai and Others v. Kurnool Muhammad Bashir*, 1967). The court must decide the mental competency of a person to contract in totality by evaluating the evidence, looking at the statements and the conduct of the party, and relying on other relevant material (*Mohanlal v. Vinayak*, 1941). However, the one who claims mental incompetency to contract will have to prove it with sufficient evidence. It is necessary for the court to question such a person who is claiming unsoundness of mind and get him or her evaluated by the relevant professionals (*Sultan v. Nazar Sultan*, 1993). When a person is of sound mind but claims that at the time of a contract he or she was of unsound mind, the onus of proof lies on the person who is challenging the validity of the contract based on mental incompetency. Likewise, when a person is of unsound mind but claims that at the time of a contract, he or she was of sound mind, the onus of proof lies on the person who is affirming it (*Sakinabai & Others v. Kurnool Muhammad Bashir*, 1967).

### **Evaluation of Competency to Contract**

The mental health evaluation of a person claiming incompetency to contract must assess his or her mental condition at the time of making a contract. The mental conditions of a person before and after, other than at the time of occurrence, are irrelevant (Ajmal & Rasool, 2024b).

If a person is found to have an unsound mind by a medical board after one month of making a contract, it does not mean he or she was of unsound mind at the time of making the contract (*Suleman v. Kala*, 1994). The mental health examination report is the conclusive

evidence of the unsoundness of mind of a person regarding his or her mental incompetency to contract (*Sultan v. Nazar Sultan*, 1993). The assessment of the incompetency of a person to contract is a complicated task, for which medical examination by mental health professionals is mandatory. The court must determine the question of the competency of a person to make a contract relying on the medical evaluation and considering other relevant material in a holistic fashion (Tiwari & Pandey, 2014). The competency assessment must be thorough and comprehensive (Ajmal et al., 2023). The board, comprised of both psychologists and psychiatrists, must prepare a detailed report with a description of the procedure and the mechanism adopted for the competency assessment (Ajmal & Rasool, 2024a). Moreover, a mental health report must be prepared following the guidelines given by the superior courts in Pakistan to make it admissible in court (Ajmal & Rasool, 2023b).

### **Recommendations**

Sections 11 and 12 of the Contract Act of 1872 must be amended in light of the developments in the fields of mental health and behavioral sciences to make the existing law comprehensive and better able to deal with the very objective of this law. Terms such as sound mind and unsound mind are misnomers and do not explain the mental capacity to contract. Moreover, such terms are no longer used in the modern literature of mental health and behavioral sciences. These terms must be substituted with terms such as mental disorder and mental health.

The relevant statutory provisions need to be further amended as it states that a person who is in the lunatic asylum is competent to make a contract during the intervals he or she is of sound mind, and a sane person is incompetent to make a contract when he or she is in a phase of unsoundness of mind. The existing law does not reflect an updated and modern understanding of the human mind and behavior. There are several known permanent and temporary mental conditions and mental disorders which can affect the decision-making of a person even when he or she is apparently fine. Moreover, there are many mental health issues which can affect the decision-making of a person and consequently his or her capacity to contract but having these mental conditions and disorders does not necessarily mean that such a person must be in a mental asylum. The relevant statutory provisions of the Contract Act were enacted in 1872 and are outdated; thus, it needs to be amended to comprehend and better deal with the subject of the competency to make contracts.

The law in Pakistan is heavily focused on the cognitive incapacity of a person when determining the mental incompetency to contract while completely ignoring the volitional incapacity. The volitional incapacity of a person can cause legal insanity like cognitive incapacity (Ajmal & Rasool, 2023a). Sections 11 and 12 of the Contract Act of 1872 must be amended to include the volitional capacity of a person in the context of determining his or her mental competency to make contracts.

Training of the relevant stakeholders, i.e., psychologists, psychiatrists, judges, and lawyers, is recommended. Mental health professionals must be trained in evaluating the relevant capacities of a person at the time of making a contract. Standardized psychological batteries and indigenous psychometric measures need to be developed to assess the relevant mental capacities of a person at the time of making a contract to determine his or her mental competency to contract. Moreover, the courses on mental health and behavioral science must be a part of the training of the judges and lawyers.

### **Conclusion**

The competency of the parties to the contract is essential to a valid contract. A contract with a person of unsound mind is void. Having a permanent mental disorder or temporary mental condition is irrelevant in determining the mental competency of a person

to contract. The mental competency of a person to make a contract is determined based on his or her mental capacity at the time of making a contract. Every adult person is assumed to be mentally competent to make a contract unless otherwise proved. The burden of proof of mental incompetency is on the party who claims it. Medical opinion is sine qua non in determining the mental competency of a person to contract. Sections 11 and 12 of the Contract Act of 1872 are outdated and must be amended considering the development in the fields of mental health and behavioral sciences. Moreover, the training of psychiatrists, psychologists, judges, and lawyers in Pakistan is recommended to better be able to deal with issues related to the mental competency to contract.

## References

- Ajmal, A., & Rasool, F. (2023). Insanity defense in blasphemy offences in Pakistan. *Global Social Sciences Review*, 8(1), 447-453. [https://doi.org/10.31703/gssr.2023\(VIII-I\).41](https://doi.org/10.31703/gssr.2023(VIII-I).41)
- Ajmal, A., & Rasool, F. (2023). Legal analysis of competency to stand trial in Pakistan. *Journal of Development and Social Sciences*, 4(3), 795-801. [https://doi.org/10.47205/jdss.2023\(4-III\)73](https://doi.org/10.47205/jdss.2023(4-III)73)
- Ajmal, A., & Rasool, F. (2024). Analysis of doctrine of insanity defense in English criminal law. *Research Journal for Societal Issues*, 6(1), 109-116. <https://doi.org/10.56976/rjsi.v6i1.181>
- Ajmal, A., & Rasool, F. (2024). Analysis of the law of insanity defense in the United Arab Emirates. *Annals of Human and Social Sciences*, 5(2), 405-412. DOI:10.35484/ahss.2024(5-II-S)38
- Ajmal, A., Nasim, B., & Rasool, F. (2022). Psychologists as expert witnesses in criminal matters in courts in Pakistan. *Global Sociological Review*, 7(4), 46-51. [https://doi.org/10.31703/gsr.2022\(VII-IV\).06](https://doi.org/10.31703/gsr.2022(VII-IV).06)
- Ajmal, A., Rasool, F., & Niazi, F. U. (2023). Insanity defense in US law: A critical analysis. *Journal of Development and Social Sciences*, 4(4), 269-275. [https://doi.org/10.47205/jdss.2023\(4-IV\)24](https://doi.org/10.47205/jdss.2023(4-IV)24)
- Blatt v. Manhattan Med. Grp., P.C.*, 519 N.Y.S.2d 973, 976 (1987).
- Brown v. United Mo. Bank, N.A.*, 78 F.3d 382, 386 (1996).
- Brucken, R. M., Genger, D. L., Rice, D. T., Shaevsky, M., Slye, W. R., & Volpe, R. P. (1959). Mental illness and the law of contracts. *Michigan Law Review*, 57(7), 1020.
- Cocanour, C. S. (2017). Informed consent—It's more than a signature on a piece of paper. *American Journal of Surgery*, 214(6), 993-997. <https://doi.org/10.1016/j.amjsurg.2017.09.015>
- Dunhill v. Burgin*, UKSC 18 (2014).
- Fehily v. Atkinson*, EWHC 3069 (Ch) (2016).
- Hamida Begum v. Murad Begum and others*, PLD 624 (SC) (1975).
- Hart v. O'Connor*, 2 All ER 880 (1985).
- Imperial Loan Co Ltd v. Stone*, 1 QB 599, (1892).
- Josife v. Summertrot Holdings Ltd.*, EWHC 996 (2014).
- Keolapati v. Amar Krishna Narain Singh*, AIR, PC 249 (1939).
- Mohanlal v. Vinayak*, AIR, Nag 251 (1941).
- Mohd Yakub v. Abdul Kuddus*, AIR, Pat 187 (1923).
- Muhammad Bashir v. Walayat Begum*, PLD, Lah. 391 (1967).
- Ram v. Bansidhar*, AIR, Oudh 89, (1947).

- Rohini Kumar Deb Nath v. Bhagaban Chandra Deb Nath and others*, PLD, Dacca 253 (1963).
- Suleman v. Kala*, MLD 747 (1994).
- Sakinabai and Others v. Kurnool Muhammad Bashir*, PLD, Kar. 158 (1967).
- Sarba v. Manmohan*, AIR, Cal. 488 (1933).
- Scott, M. S. (2019). Contractual incapacity and the Americans with Disabilities Act. *Dickinson Law Review*, 124(2), 253-318.
- Section 1(2), Mental Capacity Act, (2005).
- Section 10, the Contract Act, (1872).
- Section 11, the Contract Act, (1872).
- Section 12(a), the Contract Act, (1872).
- Section 12(b), the Contract Act, (1872).
- Section 12, the Contract Act, (1872).
- Section 2(1), Mental Health Act, (2005).
- Section 2(2), Mental Health Act, (2005).
- Sparrow v. Demonico*, 960 N.E.2d 296, 330–31 (2012).
- Subramania Sastri v. Lakshminarasamma*, AIR, AP 22 (1958).
- Sultan v. Nazar Sultan*, PLD Lahore 232 (1993).
- Tiwari, S., & Pandey, N. (2014). Need for mental capacity act and its assessment in India. *Journal of Geriatric Mental Health*, 1(2), 79. <https://doi.org/10.4103/2348-9995.152426>