



A Jurisprudential and Legal Examination of the Legal Capacity of Discerning Minors and the Feeble-Minded in Concluding Gratuitous

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Introduction

The Civil Code, in Clause 2 of Article 190 and Article 210, emphasizes the necessity of legal capacity for contracting parties and prohibits those lacking capacity from entering into transactions. Among those deemed legally incapacitated are discerning minors and the feeble-minded, who are barred from managing their financial affairs due to their inability to distinguish between benefit and harm. Nonetheless, Articles 1212 and 1214 of the Civil Code grant them legal capacity in certain instances, allowing them to independently conclude specific legal acts. This study seeks to answer key questions: In which contracts do discerning minors and the feeble-minded possess legal capacity? Are they only entitled to accept gratuitous transfers in their favor, or can they validly accept all types of gratuitous contracts? If a gratuitous transfer in their favor includes a consideration or obligation, are they still competent to accept it? Furthermore, can they independently initiate gratuitous contracts involving their own property, such as wills, agency, or charitable gifts? If so, can they include conditions for consideration in their favor within these contracts?

Research Background

Most legal texts and articles focus solely on the incapacity of wards or the consequences of their incapacity in contracts, particularly the invalidity or non-effectiveness of contracts independently concluded by discerning minors. Few have addressed the types of contracts in which discerning minors and the feeble-minded may possess capacity, and where mentioned, such discussions have been brief.

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Methodology:

Adopting a novel approach, this descriptive-analytical study investigates the legal capacity of discerning minors and the feeble-minded in gratuitous contracts from the perspectives of Imami jurisprudence and Iranian law.

Findings:

Some jurists, based on Qur'anic verses and narrations from the Ahl al-Bayt (peace be upon them), regard all financial acts of minors and the feeble-minded as void. Others argue that while transactions like sale and purchase by these individuals are invalid until they reach legal maturity, non-commercial acts that do not constitute financial dispositions and that increase their wealth—such as acquisition of unowned property (*ḥiyāzah*) or the revival of dead land (*iḥyā' al-mawāt*)—are permissible. Iranian law follows this jurisprudential approach, disallowing them from independently concluding contracts, yet recognizing, under Articles 1212 and 1214 of the Civil Code, their competence to accept gratuitous acquisitions, on the basis that such acts cause no harm. Regarding non-proprietary gratuitous contracts (e.g., loan for use, private endowments, and rights of usufruct), scholars differ. Some invalidate all contracts concluded by such individuals, while others permit exceptions—such as the acceptance of a loan for use by a feeble-minded person. In law, some jurists extend the logic of Articles 1212 and 1214 to such cases, while others argue these individuals cannot act independently in such contracts due to their potential liability as custodians. Furthermore, if a gratuitous transaction includes a reciprocal obligation or condition, it exceeds their capacity, requiring the involvement of a guardian. As to whether they may themselves initiate gratuitous contracts, many jurists permit discerning minors to make wills, endowments, or gifts for charitable purposes. However, Article 835 of the Civil Code, diverging from the majority view, requires that the testator must have full legal capacity, implying that a will by a discerning minor or the feeble-minded is void. Some legal scholars dispute this, noting that since a will takes effect posthumously and does not affect the minor's estate during life, it should be considered valid. Nonetheless, the legislator in Articles 796 and 57 of the Civil Code affirms that full legal capacity is required for endowers and donors. This restriction extends to guardians as well, who cannot gratuitously dispose of a ward's property unless it serves the ward's best

interests—such as in rare cases where endowment is the only way to reclaim or protect property from usurpation.

Keywords:

Legal capacity; gratuitous acquisition; feeble-minded; discerning minor; gratuitous contract

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