

**A TREATISE ON BUSINESS LAW:  
DESIGNED FOR USE IN ALL SCHOOLS IN  
WHICH THE COMMERCIAL BRANCHES  
ARE TAUGHT AND AS A BOOK OF  
REFERENCE FOR BUSINESS MEN**

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A Treatise on Business Law: Designed for Use in All Schools in Which the Commercial Branches Are Taught and as a Book of Reference for Business Men by Myron T. Bly

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**MYRON T. BLY**

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BUSINESS MEN.

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BY  
MYRON T. BLY,  
OF THE ROCHESTER BAR.

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ROCHESTER, N. Y.  
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Compliments of the Author  
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## CONTRACTS.

**When You Make a Contract.**—When you buy or when you sell, when you make any kind of a bargain or agreement, it is a contract. In short, whenever for a sufficient consideration, you agree to do or not to do a particular thing, you make a contract. You may say that you have made a purchase, or have accepted a position, or call it what you may, you have simply made a contract. The only question is the particular kind. In the first case, it is a contract of sale. In the last case, it is a contract of hiring of service.

**Division of Contracts.**—Contracts are divided into :

1. Contracts by specialty, always written.
2. Parol contracts, 

{	1. Written, always express.				
}	2. Oral, either, <table style="display: inline-table; vertical-align: middle;"><tr><td style="font-size: 1.5em; vertical-align: middle;">{</td><td style="vertical-align: middle;">1. Express, or</td></tr><tr><td style="font-size: 1.5em; vertical-align: middle;">}</td><td style="vertical-align: middle;">2. Implied.</td></tr></table>	{	1. Express, or	}	2. Implied.
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}	2. Implied.				

### HOW YOU MAY MAKE A CONTRACT.

**By Word of Mouth.**—The vast majority of contracts are made by means of spoken words and are called *oral contracts*.

**By Writing.**—When the terms of agreement are put in writing or printed or otherwise expressed on paper and signed, it is a *written contract*.

**By Specialty.**—If seals are affixed after the signature on a written contract, as in a deed or mortgage, it becomes a *contract by specialty*. In our day the seal adds very little weight to a contract. In the days of old, when men could not read or write, and they put their names to a contract by impressing their seal in melted wax, it had some practical use. Nevertheless, the statutes of most States require seals on certain classes of instruments, like deeds and mortgages, and whenever required they must be affixed. In some States a scroll made with a pen will answer.

## KINDS OF CONTRACTS.

**Oral and Parol Contracts.**—Observe the difference between *oral* contracts and *parol* contracts. Well educated people sometimes confound them, owing to the similarity in the derivation of the two terms. A parol contract is any agreement not sealed. It may be written or oral.

**Express and Implied Contracts.**—Observe the terms *express* and *implied*, as applied to contracts. If all the terms and conditions of the contract are fully spoken or written it will be express. If something is left unsaid, which ought to be said in order to make a complete contract, the law will imply what is unsaid and the contract will be an implied contract. If you say to the grocer: "Send me a pound of full cream cheese at twenty-five cents per pound and I will pay for it on delivery," you make an express contract. If you say: "Send me a pound of cheese" there is to be implied that you will pay for it, at the market price when it is delivered, and that the cheese shall be merchantable cheese.

**Executed and Executory Contracts.**—Observe the difference between *executed* and *executory* contracts. If you pay for the cheese and take it away with you, that is a finished transaction. It is an executed contract. If it is to be sent to your house, it is an unfinished contract, or an executory contract. It still depends upon the cheese being actually delivered. Something remains to be done, and that makes it an executory contract.

## THE FOUR ELEMENTS OF A CONTRACT.

**Meaning of Elements.**—This means simply, that there are four things, or conditions, which must exist in order to form a valid contract. These necessary conditions are:

1. Parties.
2. Their consent.
3. A lawful consideration.
4. The subject matter.

## PARTIES.

**Their Age.**—The parties to a contract must be of full age. The law had to fix upon some arbitrary age, before which a



person must be considered an infant or minor, and after which an adult, and the age of twenty-one was selected. Some States, however, have enacted statutes whereby females, resident there, cease to be infants at eighteen. Infants or minors, therefore, belong to the class of incompetent persons.

**Incompetent Persons**, are persons having no legal capacity to make a contract. The reasons for such incapacity and their divisions are :

- |                                     |   |   |
|-------------------------------------|---|---|
| 1. By reason of legal disability,   | { | 1. Infants.<br>2. Married women.<br>3. Alien enemies. |
| 2. By reason of natural disability, | { | 1. Idiots.<br>2. Lunatics,<br>3. Drunken persons.     |

#### CONTRACTS BY INFANTS, MARRIED WOMEN AND ALIEN ENEMIES.

**An Infant's Contracts for Necessaries.**—An infant is said to be incompetent to make a contract. Contracts for necessities are an exception. (1) An infant may buy such articles of food and clothing as are proper and necessary for the station in life in which he has been brought up and to which he belongs. He may contract for such, (2) board, (3) medical attendance, and (4) schooling as are suitable and proper, and all such contracts will be binding, to the extent of the fair market value of what is furnished. All this is providing his parents or guardian unjustly fail to support him. But if he run away from home without cause, he is unable to make a binding contract. The tradesman who takes advantage of a minor and charges him an exorbitant price, cannot lawfully collect his bill, even though the minor agrees to pay it; nor can the tradesman keep more than the reasonable value, if the minor has paid it. The articles purchased must be suitable to the minor's station in life. It doesn't stand to reason that the son of a day laborer could buy a five hundred dollar watch and bind his father to pay for it, notwithstanding his father had turned him adrift in the world.

**An Infant Disaffirms or Ratifies** his contracts on coming of age. The law doesn't say he shall not make any contracts except those for necessaries. It says that if he does they are voidable at his election. Within a reasonable time after coming of age he must repudiate them. If it is in his power he must restore to the other party whatever he has received from him. If he fails to do this he takes the chance of ratifying the contract by his silence; and he always ratifies it, (1), by expressly recognizing it; (2) by partly performing it; and (3) by retaining the benefit or proceeds of it.

"**Pleading the Baby Act**" is the rather inelegant expression used by lawyers, when a man who is sued for failing to keep an agreement, defends the suit on the ground that he was under age when he made it. It is not considered manly or honest. The adult person dealing with a minor is bound by the agreement, and cannot back out on the ground that the other is a minor. The minor cannot waive his rights of infancy by any possible form of agreement.

**An Infant's Wrong Doings** are just as punishable as the wrong doings of an adult. For instance, if the infant induce an adult to make a bargain with him by fraudulently representing to him that he is of age, even though the bargain might not be good in law, he is not only bound by it, but is punishable for making it. If he commits an assault and battery he is liable in a civil action for damages, and is liable to be punished for the crime.

**Contracts of Married Women.**—The common law of England, as brought over and established by our forefather colonists, forbade a married woman to make a contract. An unmarried woman of full age could be a party to a contract, and so could a widow. A married woman's interests were considered to be so thoroughly joined to those of her husband as to give her no power to make a contract. It was the disability of *coverture*. The woman's legal personality was united and merged in that of her husband.

The Legislatures of most States have since enacted statutes doing away with this disability of the wife, to a greater or less extent. In nearly all the States a married woman can now

transact and carry on whatever business she chooses in connection with her estate and her affairs.

**Alien Enemies.**—Under the same class as infants and married women are alien enemies. Citizens of nations which are at war with each other are not allowed to carry on business intercourse. The policy of this is to keep the citizens of each nation attached to their own country, and to keep their interests adverse to the interests of the citizens of the other nations.

#### CONTRACTS BY IDIOTS, LUNATICS AND DRUNKEN PERSONS.

**Natural Disability** is said to be the cause why these persons cannot make a valid contract. They cannot understand the effect of the agreement and consequently ought not to be bound by it. Observe the difference between the contract of an idiot and the contract of a lunatic. In the eye of the law the idiot is wholly deficient in understanding. He is not supposed to have a glimmer of reason. It is not always so with a lunatic. It is sometimes a pretty nice question, as to when a person is a lunatic and incapable of transacting business and when he has sufficient reason to understand the nature and effect of an agreement, although his mind may not be as clear as an ordinary mind. This is the distinction: An idiot is devoid of understanding from birth; a lunatic is born with understanding, but has afterward lost it. There is a way, therefore, of legally fixing the time when the lunatic has become such, while such a way is not necessary in the case of an idiot. The idiot is incompetent from birth. A lunatic is not incompetent until adjudged so by due process of law. His contracts and obligations bind him until then. They are valid until his insanity has been judicially established, and thenceforth he can make no valid bargain.

Therefore, contracts made before a person has been adjudged insane are not absolutely void, but are voidable. They remain in full force and effect until they have been disaffirmed by the lunatic or his guardian.

**Necessaries.**—The same remarks apply to the contracts of an idiot or a lunatic, for necessaries, as in case of an infant.