

Family Law

Legal capacity and active capacity in
family law

Legal capacity

is one's capacity **to have** civil rights and obligations *[art.13 CC]*

Legal capacity

- All citizens have equal **LC** *[art.13(1) CC]*
- **LC** begins from one's birth and ends with one's death. *[art.13(2) CC]*
- Content of **LC**: to own any property, inherit, choose place of residence, to have intellectual property etc. *[art.14 CC]*

Active capacity

citizen's capacity by his own actions to obtain and to exercise his civil rights, **to create** for himself civil obligations and to fulfill them *[art.17 CC]*

Active capacity

- Full **AC** begins with attaining one's majority, 18 years. *[art.17(1) CC]*
- Marriage at 16 years old or emancipation – full **AC** at 16. *[art.17(2) CC]*

Marriage at the age of 16 – 18

- Consent of parents (adopters, tutors)
- Permission of the state organ on guardianship and tutorship, granted when there are...
- Significant reasons (pregnancy, military service, long trips etc.)

Emancipation (age 16 – 18)

- Minor works with labor contract/has his/her own business
- Minor is economically independent from his parents/adopters/tutors
- Permission of the state organ on guardianship and tutorship

Results

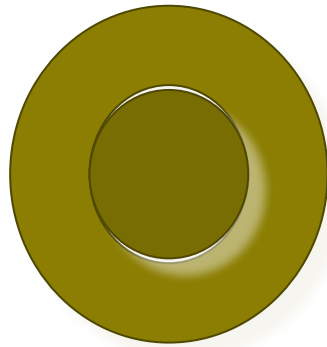
Marriage under 18:

- With the permission of the OGT minor receives full marriage capacity
- In the moment a marriage certificate is signed, minor receives full active capacity

Emancipation:

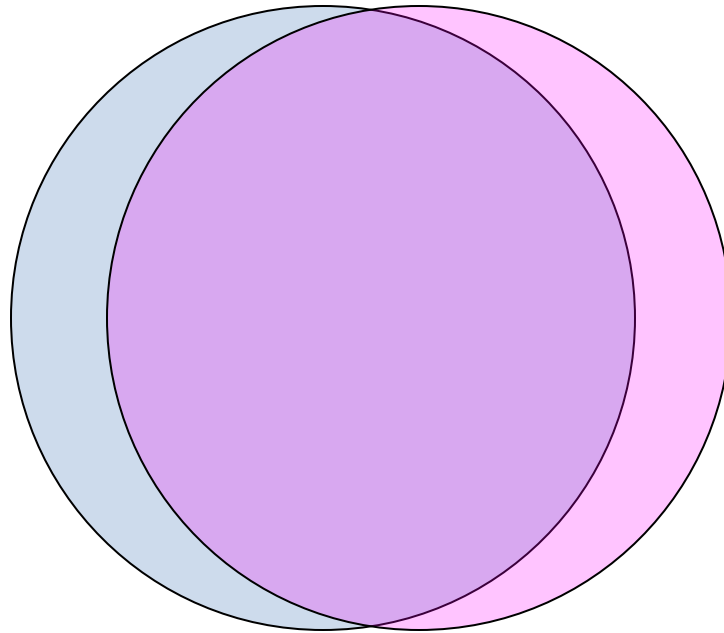
- As soon as OGT issues a decision on emancipation minor receives full active capacity
- Minor receives marriage capacity at the age of 18

Active capacity vs marriage capacity of minors from 16 - 18



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Active capacity vs marriage capacity – general view



Active capacity of minors...

... of 14 – 18 years old *[art.22 CC]*

- All bargains – with the consent of parents, adopters or tutors
- Dispose own income and objects of their intellectual property, make day-to-day bargains

Active capacity of minors...

...under 14 *[art. 23 CC]*

- For them all the bargains are made by parents, adopters and guardians
- Simple day-to-day bargains correspondent to their age

Limitation of active capacity

Why:

alcoholic or drug addiction which puts
one's family in difficult financial situation
[art.27 CC]

Ceasing of active capacity

Why:

mental decrease due to which a person does not realize own actions *[art. 26 CC]*

Marriage capacity

- A capacity to enter into marriage.
- Starts with 18
- Ends with one's death

Limitation/ceasing of marriage capacity

- Age (non below 18 (16))
- Close relatives
- Mental illness which had resulted in ceasing of active capacity

*habilis ad nuptias,
habilis ad pacta nuptialia*

Marriage capacity is not to be confused with

- Family legal capacity
- Family active capacity

To be continued...