

Capacity to Consent to Marriage

The capacity to consent to a marriage is a hybrid question of law and fact. For the legal part of the analysis, federal constitutional law must be considered in addition to state law pertaining to statutory prerequisites to a valid marriage, including the capacity to consent to marriage.

Federal Constitution

The freedom to marry is a fundamental right protected by the constitution. (*Griswold v. Connecticut* (1965) 381 U.S. 479) All adults, regardless of gender, have a right to marry. The right is protected by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (*Obergefell v. Hodges* (2015) 135 S. Cr. 2584) The Fourteenth Amendment protects “personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs.” (*Obergefell*, at p. 2597) Thus, it is clear that when it comes to marriage, what is protected by the constitution is freedom of choice. If an individual lacks capacity to consent to a marriage contract – and marriage is a contract – then the protections of the Fourteenth Amendment would not apply because there would be no freedom of choice.

MARRIAGE: CAPACITY AND CONSENT

Family Code Section 300

Definition of Marriage – Consent Required

“Marriage is a personal relation arising out of a civil contract between two persons, to which the consent of the parties capable of making that contract is necessary.”

Welfare and Institutions Code Section 4502

Lanterman Act Statement of Rights

“Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.” Assuming they have the capacity to consent to marriage, adults with developmental disabilities have a constitutional right to marry.

Probate Code Section 1900 - 1901

Capacity of Conservatee to Marry

Section 1900. “The appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry or to enter into a registered domestic partnership.”

Section 1901. “The court may by order determine whether the conservatee has the capacity to enter into a valid marriage”

Comment: The validity of a marriage depends on whether an adult can supply the necessary consent to the marriage contract. That would depend on two factors: (1) whether the individual has the capacity to consent under the criteria specified in Probate Code Section 810 through 812; and (2) if the individual has such capacity, whether there was actual consent or whether any assent to the marriage was the result of fraud, duress, or *undue influence*. The ability of an individual to resist undue influence may be a factor that is considered in an evaluation of the individual's capacity to consent to marriage.

Probate Code Section 810 - 813

Legal Mental Capacity

Section 810. “(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for the their acts or decisions.”

Section 810. “(b) A person who has a mental or physical disorder may still be capable of contracting, . . . marrying . . . and performing other actions.”

Section 810. “(c) A judicial determination that a person . . . suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.”

Section 811. “(a) A determination that a person . . . lacks the capacity to make a decision or do a certain act , including, but not limited to, the incapacity to contract [or] . . . to marry . . . shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following: (A) Level of arousal or consciousness. (B) Orientation to time, place, person, and situation. (c) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following: (A) Short- and long-term memory, including immediate recall. (B) Ability to understand or communicate with others, either verbally or otherwise. (c) Recognition of familiar objects and familiar persons. (D) Ability to understand and appreciate quantities. (E) Ability to reason using abstract concepts. (F) Ability to plan, organize, and carry out actions in one's own rational self-interest. (G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following: (A) Severely disorganized thinking. (B) Hallucinations. (c) Delusions. (D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions.”

Section 812. “Except where otherwise provided by law, including, but not limited to, Section 813 [medical decisions] and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following: (a) The rights, duties, and responsibilities created by, or affected by the decision. (b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision. (c) The significant risks, benefits, and reasonable alternatives involved in the decision.”

Welfare and Institutions Code Section 15610.70

Undue Influence

(a) “Undue influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim’s vulnerability. (2) The influencer’s apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification. (3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following: (A) Controlling necessities of life, medication, the victim’s interactions with others, access to information, or sleep. (B) Use of affection, intimidation, or coercion. (C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes. (4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim’s prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

Court of Appeal

“Simply stated, the required level of understanding depends entirely on the complexity of the decision being made. There is a large body of case authority reflecting an extremely low level of mental capacity needed before making the decision to marry or execute a will. Marriage arises out of a civil contract, but courts recognize this is a special kind of contract that does not require the same level of mental capacity of the parties as other kinds of contracts. (In re Marriage of Greenway) (2013) 217 Cal.App.4th 628, 641

Journal of the American Academy of Psychiatry and the Law (2017)

“Evaluation of the Capacity to Marry”

“There are four basic elements to assessing capacity, and it is important to keep in mind that capacity is decision specific and can be fluid. . . . The first criterion is that a patient must be able to express a clear and consistent choice. . . . Second, the patient must be able to understand the risks and benefits of the decision, as well as the alternatives. . . . The third prong of a capacity assessment is to be able to apply those risks, benefits, and information regarding the decision to the evaluatee . . . [T]his means he would be able to understand how those elements apply in his particular case. . . . Finally, the patient must be able to manipulate the relevant information rationally, meaning that there is not, for example, a mental illness such as dementia, psychosis, or severe depression that is hindering rational thought. . . . An individual must meet all four criteria to be deemed to have capacity to make the decision. It is valuable to keep in mind that the capacity threshold changes depending on the implications of the decision. . . . With the decision to marry, this capacity threshold also applies, and the higher risk situations are those with more financial or family implications.”

“We can see several guidelines emerge as we apply these principles to the capacity to marry. First, an individual entering into a marriage must do so voluntarily. There cannot be undue influence or coercion. Second, the individual must have the capacity to do so, as defined above by the four criteria. Finally, the individual must know with whom he is entering into this contract. . . .”

Comment: According to this scholarly article, in order to have capacity to marry, “An individual must express a consistent choice, understand the implications of the decision, and be able to reason rationally about the decision.” Even though some cases have discussed there being a low level of capacity in order to consent to marriage, the fact is that marriage is a contract that carries with it a wide range of financial implications and obligations. Therefore, the issue of capacity to consent to marriage should be done extremely thoroughly and carefully.