

Heeding the Call of Those Harmed by Contractual Incapacity

Author : Eboni Nelson

Date : October 8, 2020

Sean M. Scott, [Contractual Incapacity and the Americans with Disabilities Act](#), 124 *Dick. L. Rev.* 253 (2020).

Inherent in contractual defenses such as infancy and mental incapacity is the goal of protection. In the case of infancy, contract law seeks to protect underage minors from themselves and from opportunistic adults who may attempt to take advantage of their lack of experience and judgment when entering into contracts. Similar protection goals underlie the contractual defense of mental incapacity whereby individuals with a mental disability or illness may avoid a contract due to their inability to understand the transaction or act reasonably with regards to it. The defense is intended to benefit those with mental disabilities. However, as currently conceived, it may actually do more harm than good. Utilizing the Americans with Disabilities Act (“ADA”) and the Disability Rights Movement (“DRM”) as her guides, Dean Sean Scott explores this important issue in her recent thought-provoking article, *Contractual Incapacity and the Americans with Disabilities Act*.

Dean Scott begins her article with a discussion of *Renchard v. Prince William Marine Sales, Inc.*¹ wherein a buyer of a yacht sought to avoid the purchase agreement and other contracts with the seller due to his alleged physical and mental disabilities. Although the buyer unsuccessfully attempted to amend his complaint to allege discrimination under the ADA, Dean Scott hypothesizes that sellers may impose heightened scrutiny and screening and avoid making contracts with certain individuals based on their fear of contract rescission or avoidance due to courts’ current application of the mental incapacity doctrine. In light of this possibility and the conflicting language and principles associated with contractual incapacity as compared to the ADA and the DRM, she argues “that the mental incapacity doctrine should yield to the DRM and the ADA” (P. 257) and that the doctrine “should be limited to people with mental disabilities who were subject to a plenary guardianship when they entered into the contract at issue.” (P. 255.)

In developing her thesis, Dean Scott engages in a thorough and interesting discussion of the historical evolution of the mental incapacity doctrine as well as the various standards for measuring incapacity. She explains how the doctrine has been influenced by the competing interests of protecting freedom of contract, certainty, and expectancy on one hand and the interests of individuals with a mental disability on the other. After a discussion of discrimination claims under Title III of the ADA, Dean Scott skillfully and convincingly makes the case that current conceptions of mental incapacity as a contractual defense fail to adequately protect either interest and, thus, should be amended to afford greater protection for both.

Central to Dean Scott’s argument is her contention that “[t]he mental incapacity doctrine supports the misperception that simply having a mental disability justifies restrictions on one’s rights and liberties, including the ability to enter into a binding contract.” (P. 269.) She argues that such misperceptions are rooted in, and reinforce, stereotypes and gender norms that are harmful to the Disability Rights Movement and invite “the very kind of judgment the ADA and disability rights advocates are trying to eliminate.” (P. 279.) She is also concerned that incapacity claims can lead to “disability drift” (P. 274) whereby a physical disability such as deafness is used to evidence a mental disability. According to Dean Scott, parties’ and courts’ reliance on such evidence to establish incapacity is predicated on demeaning myths and stereotypes that impede the DRM’s efforts to eliminate the stigma, discrimination, and other negative consequences that individuals with disabilities often experience.

According to the article, the mental incapacity doctrine runs counter to the values of the ADA and DRM because it calls for lay people rather than medical experts to make judgements and determinations about whether someone has a mental disability, which they are not qualified to do. Without a previous adjudication of incompetence in some other

proceeding, Dean Scott fears that jurists and jurors will base such determinations on inaccurate assumptions, incorrect information, and misconceptions about mental illness and disability. This current contractual defense landscape harms the DRM and hinders its progress, which is why Dean Scott proposes restricting the availability of the mental incapacity defense only to “those who have been adjudicated incompetent and were subject to a plenary guardianship at the time they entered into the contract.” (P. 268.)

At first glance, Dean Scott’s proposal may seem to thwart rather than advance the goal of protecting individuals with mental disabilities. People with mental illnesses or disabilities at the time of contracting who do not meet her restrictive criteria would be unable to rely on the incapacity defense to avoid harmful or unfair contracts. Dean Scott acknowledges this and other potential consequences that could result from imposing a bright line rule such as limiting judicial discretion and pricing individuals out of protection due to the costs associated with establishing and managing a guardianship. However, she thoughtfully addresses these concerns and includes discussion of other contract defenses such as undue influence and unconscionability that may offer protections for individuals with mental disabilities who enter into unjust or abusive contracts. In so doing, she strengthens her argument for reforming the mental incapacity doctrine, particularly as it relates to the goal of encouraging contract formation by promoting certainty in contract enforcement.

Dean Scott suggests that current conceptions of the incapacity defense serve as a disincentive for parties to contract with persons with mental disabilities. She argues that “[a]ctual knowledge that the potential customer was not subject to a guardianship would remove incapacity as a disincentive to engage in the transaction, which would be a desirable result.” (P. 306.) Increasing parties’ certainty in enforcement would encourage them to enter into more contracts with individuals with disabilities, which would advance the ADA’s and the DRM’s important goal of more fully integrating people with mental illnesses and disabilities into society.

As Dean Scott recognizes, the ability and freedom to contract is vital for such societal integration. Entering into contracts allows individuals to obtain the goods and services they need to survive and thrive in society. It also instills in them and demonstrates to others their dignity, independence, respect, and recognition. Now, more than ever, it is imperative that our laws and practices reflect and encourage such values for everyone, especially for those who are members of marginalized communities. If they fail to do so and, thus, perpetuate harms, such laws and practices should be amended to help mitigate those harms. I greatly appreciate Dean Scott’s recognition of the need for such reforms in the context of contractual incapacity, and I applaud her for penning this excellent article advocating on behalf of individuals with mental disabilities and urging the law to “hear their demands, consider their perspectives, honor their values, and construct a rule accordingly.” (P. 318.) Hopefully, we all will heed their call.

1. 87 F.Supp.3d 271 (D.D.C. 2015).

Cite as: Eboni Nelson, *Heeding the Call of Those Harmed by Contractual Incapacity*, JOTWELL (October 8, 2020) (reviewing Sean M. Scott, *Contractual Incapacity and the Americans with Disabilities Act*, 124 **Dick. L. Rev.** 253 (2020)), <https://contracts.jotwell.com/heeding-the-call-of-those-harmed-by-contractual-incapacity/>.