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CIVIL CODE - CIV

DIVISION 1. PERSONS [38 - 86] (*Heading of Division 1 amended by Stats. 1988, Ch. 160, Sec. 12.*)

PART 1. PERSONS WITH UNSOUND MIND [38 - 41] (*Part 1 added by Stats. 1992, Ch. 163, Sec. 3.*)

[38.](#) A person entirely without understanding has no power to make a contract of any kind, but the person is liable for the reasonable value of things furnished to the person necessary for the support of the person or the person's family.

(*Added by Stats. 1992, Ch. 163, Sec. 3. Effective January 1, 1993. Operative January 1, 1994, by Sec. 161 of Ch. 163.*)

[39.](#) (a) A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before the incapacity of the person has been judicially determined, is subject to rescission, as provided in Chapter 2 (commencing with Section 1688) of Title 5 of Part 2 of Division 3.

(b) A rebuttable presumption affecting the burden of proof that a person is of unsound mind shall exist for purposes of this section if the person is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

(*Amended by Stats. 1995, Ch. 842, Sec. 1. Effective January 1, 1996.*)

[40.](#) (a) Subject to Section 1871 of the Probate Code, and subject to Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, after his or her incapacity has been judicially determined a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right, until his or her restoration to capacity.

(b) Subject to Sections 1873 to 1876, inclusive, of the Probate Code, the establishment of a conservatorship under Division 4 (commencing with Section 1400) of the Probate Code is a judicial determination of the incapacity of the conservatee for the purposes of this section.

(*Added by Stats. 1992, Ch. 163, Sec. 3. Effective January 1, 1993. Operative January 1, 1994, by Sec. 161 of Ch. 163.*)

[41.](#) A person of unsound mind, of whatever degree, is civilly liable for a wrong done by the person, but is not liable in exemplary damages unless at the time of the act the person was capable of knowing that the act was wrongful.

(*Added by Stats. 1992, Ch. 163, Sec. 3. Effective January 1, 1993. Operative January 1, 1994, by Sec. 161 of Ch. 163.*)