

Capacity to Contract

It's Saturday morning, the day after Jake bought his "new" car.

Juleanne: *I don't think this is going to work.*

Tony: *Trust me. When I was just a kid like Jake, the same thing happened to me.*

Jake: *Just a kid! Who are you calling a kid?*

Juleanne: *(Ignoring Jake.) But you were only 14.*

Tony: *So, he's 16. That's just as good. He's still a kid. (Turning to Jake.) Have you got the paper, kid?*

Jake: *Don't call me "kid."*

Tony: *Look, for today, because you're still 16, you're just a kid.*

Jake: *Minor is the proper term. I took that business law course, too, you know.*

Juleanne: *Then how come you didn't figure out that you could get out of your contract with Mr. Johnson by writing a letter telling him that you're . . . ah . . . What was that word you used, Tony?*

Tony: *Disaffirming.*

Juleanne: *That's it, "disaffirming."*

Jake: *I would have, but I was too busy helping Dad.*

Tony: *What's the matter with your father?*

Juleanne: *Nothing. But that contract he had with the Literary League turned out to be bogus.*

Tony: *What do you mean? He got that shipment of parchment, didn't he?*

Juleanne: *Oh sure, he got the paper all right. But now it turns out there is no Literary League.*

Tony: *You're kidding.*

Juleanne: *I only wish I were. Do you remember Mr. Simpson?*

Tony: *Sure. He ran this Literary League.*

Juleanne: *So-called Literary League, you mean. As it turns out, Mr. Simpson was committed last month. The Literary League was a figment of his imagination.*

Jake: *Hey, guys, I hate to break up this interesting conversation, but here comes Mr. Johnson.*

Mr. Johnson: *Good morning. Say Jake, how's your car running?*

Jake: *It's not.*

Mr. Johnson: *It's not running?*

Jake: *No. It's not my car. (Jake hands him the letter.)*

Mr. Johnson: *What's this?*

Jake: *It's a letter telling you that I'm disaffirming my contract with you. You can have your car, and I want my money back.*

Mr. Johnson: *You can't do that. You signed a contract.*

Juleanne: *That doesn't matter. He's a minor and the law protects him against people like you.*

Mr. Johnson: *(Shaking his fist and walking off angrily.) You haven't heard the last of me!*

Juleanne: *Look, here comes Eddie.*

Jake: *He got into trouble last night. He filled out a card that said he was 21 when he tried to buy a six pack of beer. He's just 16.*

Tony: *They'll fine him a lot for that little trick.*

Jake: *That's for sure. I'm glad I sold him my CD player last week. He'll probably try to borrow some money now, so watch out. (Eddie walks up and hands Jake a sheet of paper.)*

Jake: *What's this?*

Eddie: *It's a letter disaffirming my contract with you. You can have your old CD player. I want my money back.*

New Terms

capacity, p. 118

majority, p. 118

minor, p. 118

minority, p. 118

disaffirm, p. 119

infancy, p. 119

ratify, p. 121

necessaries, p. 122

guardian, p. 124

alien, p. 124



The Spirit of the Law

As we have seen in the last two chapters, a legally binding contract requires six elements. The first two, offer and acceptance, combine to make the third element, genuine agreement. As long as that genuine agreement is not damaged in any way, then a contract exists provided that the other three elements, capacity, consideration, and legality, also are present. In this chapter we will explore the element of **capacity**, or the legal ability to enter a contract. In the following two chapters we will look at consideration and legality.

Legal Issues:

1. When and in what way can a minor disaffirm a contract?
2. Is it a criminal offense for a minor to lie about his or her age to buy age-restricted products?
3. Can a minor disaffirm a contract made with another minor?
4. Can an individual who has a mental infirmity void a contract?

Contracts of Minors

A person who has not yet reached the age of legal adulthood, usually referred to as the age of **majority**, is considered a **minor**. Sometimes we say that a young person who has not reached the age of majority is still in his or her **minority**. For hundreds of years, the age of majority was fixed at 21. However, since 1972, when the voting age in the United States was lowered to 18 years, most states have lowered the age of majority to 18. For many years the age of majority and the age at which young people were legally allowed to purchase alcoholic beverages were the same. Now, however, many states have two age-related milestones that young people must pass before having all the privileges usually associated with adulthood. The age of majority remains 18 years, while the age at which young people may purchase alcohol is 21 years in many states.

People reach a particular age at the beginning of the day before their birthday. This is because the day on which a person is born is counted as the first day of his or her life. The law does not consider fractions of a day. Thus, on a person's eighteenth birthday, that person is 18 years and 1 day old. Take a look at Figure 9-1 below to see how this works.

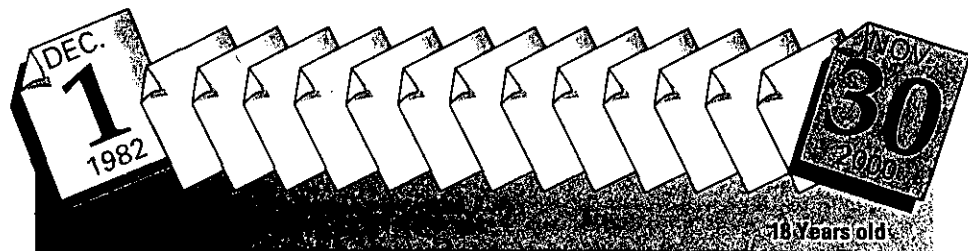


Figure 9-1 Teenagers become 18 years old at the beginning of the day *before* their eighteenth birthday, because the law does not count fractions of a day in calculating age. On what day will you become 18?



◀ Many stores have adopted specific policies concerning refunds for the return of sold merchandise. Must minors abide by such policies?

Voidable Contracts

Contracts by minors are voidable by the minor. This means that minors may disaffirm or avoid (not be bound by) their contracts if they so choose. This privilege is supposed to protect minors who, because of immaturity and inexperience, might be taken advantage of or make a poor decision. The law does not intend, however, to give the minor the right to take advantage of other people. That is what a famous judge meant when he said, "Infancy is a shield, not a sword." Here, *infancy* is another word meaning minority. Nevertheless, to protect the minor fully, the right to disaffirm is an absolute right. To disaffirm a contract means to show by statement or by some act an intent not to live up to the contract.

Example 1. In the opening vignette of this chapter, Jake, who is 16, attempts to disaffirm his contract with Mr. Johnson for the purchase of Mr. Johnson's car. Jake is a minor; therefore, Mr. Johnson will have to comply with the young man's request.

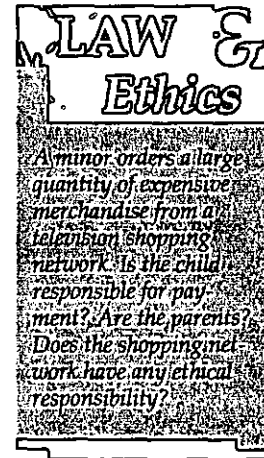
In answer to Legal Issue 1, the law gives young people a second chance when they use poor judgment. Until they have reached the age of majority, they may avoid their contracts. This is true even if the item is damaged or destroyed. In a few states, however, an amount can be deducted for damaged or soiled items returned by the minor. Young people also have a reasonable time after reaching majority to disaffirm their contracts.

Returning the Merchandise

If a minor still has the merchandise he or she received upon entering a contract, that merchandise must be returned when the contract is disaffirmed. This requirement can be complied with not only by an actual return, but also by a *tender*, or offer to return it. In most states, if the minor does not have the item, he or she may still disaffirm the contract and still get back the full amount paid for the item.

Misrepresenting Age

If a minor claims to be over the age of majority, then he or she has committed fraud. Fraud is a wrongful act, and minors are responsible for their wrongful acts. Thus, in some states, when a minor lies about his or her



FYI

The majority of laws that pertain to minors are state laws called statutes. Minors are referred to as infants in many of these laws. The basis for laws that concern minors comes from English common law.

age and then disaffirms the contract, the other party may sue the minor for fraud. As we saw in Chapter 8, such a suit would be successful only if all five elements of fraud could be proven. This includes the element of actual loss. In such a suit, the plaintiff would have to show that the minor's lie about his or her age actually caused some financial loss. Simply suing the minor because the adult is angry at being duped would serve no legitimate purpose.

Some states follow the older law that does not allow minors to be sued for fraud when they disaffirm their contracts, even when they lie about their ages. This is done on the theory that it would "cut a tunnel under the shield of infancy" if minors could be sued for fraud when they disaffirm their contracts. However, in answer to Legal Issue 2, it is a criminal offense in most states to lie about one's age to buy an age-restricted product. For instance, the New York Alcoholic Beverage Control Law provides for arrest, probation, and a fine of up to \$100 for misrepresenting one's age to buy an age-restricted product such as alcohol. This includes the giving of any written evidence of age that is false, fraudulent, or not the person's own. Figure 9-2 below shows how one state verifies that a person is old enough to buy alcohol.

Example 2. In the opening vignette, Jake's friend, Eddie, filled out a card that said that he was 21 in order to purchase beer. In reality, Eddie, like Jake, was only 16 at the time. This "trick" has exposed Eddie to criminal charges.

Disaffirming the Whole Contract

A minor may not affirm parts of a contract that are favorable and disaffirm the unfavorable parts. He or she must disaffirm all or none. A minor may, however, disaffirm one (or both) of two separate contracts.



_____, 19____

I, _____, hereby represent to _____, a permittee of the Connecticut Department of Liquor Control, that I am over the age of 21 years, having been born on _____, 19____, at _____. This statement is made to induce said permittee to sell or otherwise furnish alcoholic beverages to the undersigned. I UNDERSTAND THAT TITLE 30 OF THE GENERAL STATUTES PROHIBITS THE SALE OF ALCOHOLIC LIQUOR TO ANY PERSON WHO IS NOT TWENTY-ONE YEARS OF AGE.

I understand that I am subject to a fine of one hundred dollars for the first offense and not more than two hundred fifty dollars for each subsequent offense for willfully misrepresenting my age for the purposes set forth in this statement.

_____ (Name)

_____ (Address)

Figure 9-2 In Connecticut, people whose ages are in question fill out a form like this before they are allowed to purchase alcohol. Is there a similar procedure in your state?

Example 3. Jose Orio, who was 17 years old, contracted to purchase a boat and an outboard motor for \$650. Later, Orio decided that he would like to keep the outboard motor but not the boat. Orio cannot keep the motor and disaffirm that part of the contract involving the boat. If he had entered two contracts—one to buy the boat for \$550 and another to buy the motor for \$100—he could disaffirm one and affirm the other.

Disaffirming Contracts Made With Other Minors


When two minors enter into a contract with each other, both of them have the right to disaffirm the contract. This means that both enter the contract with the risk that the other may attempt to get out of that contract. When only one of the parties to a contract is a minor, that person is the only one who can avoid the contract. Figure 9-3 below shows a sample letter disaffirming a contract. If the minor chooses to enforce the contract, he or she may do so. Usually, such contracts are carried out by both parties, and it makes little difference that the contracts are voidable.

Example 4. In the opening vignette, Eddie has attempted to disaffirm his contract with Jake for the purchase of Jake's CD player. In answer to Legal Issue 3, because Eddie is a minor he has the right to do this. The fact that Jake is also a minor makes no difference.

Ratification of Minors' Contracts

After reaching the age of majority, a person can ratify, or approve, contracts made during minority. Ratification ends the privileges that a

17810 Windward Road
Chicago, IL 31485
September 9, 19--



Mr. Fred Johnson
660 Lexington Avenue
Chicago, IL 31480

Dear Mr. Johnson:

Please take notice that I, Jake Novak, of 17810 Windward Road, Chicago, Illinois, hereby disaffirm the contract entered into between you and me on September 8, 19--, at your house at 660 Lexington Avenue, Chicago, Illinois, for the purchase of a Ford Mustang, serial number LTR 4565293433 xa.

On the date of the contract, I was 16 years of age and a minor under the laws of this state. Demand is hereby made of you for a return of all money paid to you by me under the contract, which was \$500.

I will return the Ford Mustang to you at your home at 10:00 a.m. on September 10. I am sorry to tell you that the transmission is no longer operating properly.

Cordially yours,
Jake Novak
Jake Novak

← Seller's name and address

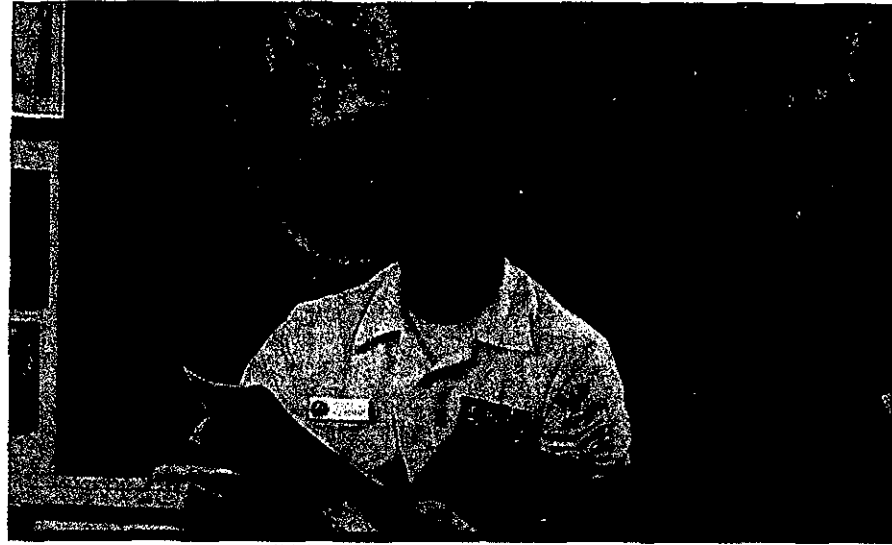
← Minor's name and address

← Date and place of contracting

← Time and place to return consideration

Figure 9-3 Does damage to the consideration prevent a minor from disaffirming a contract?

► A minor may ratify a contract only upon reaching majority. Ratification may be oral, written, or by actions. What actions might have the effect of ratifying the contract?



person had while still a legal "child." Ratification can only be done upon reaching majority, and may be accomplished orally, in writing, or by one's actions. Using the items purchased after reaching majority, selling the items, making an installment payment, or keeping the items for a reasonable time after reaching majority all have the effect of ratifying the contract.

Example 5. Colleen Gregory, who was 17 years old, bought a car. She made a down payment and promised to pay the balance in installments over the next two years. After she reached 18, she continued to make her installment payments. Gregory's act of making payments after reaching her majority was a ratification. She could no longer return the car and demand the return of her money. Even if she had made no payments, she would be bound if she had kept the car for a reasonable time after reaching her majority.

"Reasonable time" has no exact definition. It varies from circumstance to circumstance and is determined by the judge or the jury acting on the judge's instructions. A reasonable time for a person to return a perishable item such as a birthday cake, for example, would be less than a reasonable time for returning a nonperishable item, such as an automobile or a CD player.

Contracts for Necessaries

A minor is held responsible for the fair value of necessaries. Necessaries, sometimes called *necessities*, include food, clothing, shelter, and medical care. Under common law, one's "station in life" has a bearing on whether an item is a necessary. A \$150 pair of custom-made shoes may be a necessary for someone who has a foot injury. In contrast, a \$150 pair of designer shoes could be considered a luxury for someone else. If a minor pays more than the fair value, he or she is entitled to the difference between the fair value and the price actually paid.

Example 6. In the opening vignette, Eddie might have spent the money differently. Suppose that, instead of the CD player, he had bought a coat, a sweater, a cap, and a pair of boots. If these were

YOU And The LAW

What are your state's laws regarding minors' rights to enter into contracts? How would you find out this information?

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things he actually needed, Eddie would be bound to keep them and pay the fair value for them. You will notice, however, that Eddie must actually need the clothing. In addition, it must be shown that he was not being adequately provided for by his parents or guardian. If he already had plenty of winter clothing or if his parents were willing and able to support him, then the items would not be considered necessities, and he could disaffirm the contract in the regular way.

Special Statutory Rules

Many states have made changes in their statutes that control the capacity of minors to enter into contracts. For example, many states give minors the capacity to enter into contracts for car insurance and life insurance. Some states give limited capacity to minors who are engaged in business in their own name to make contracts essential to the running of that business. Others treat married minors as adults. Still others consider the renting of an apartment as a necessary, regardless of whether the minor actually needs it. These are but a few of the many differences in state statutes regarding minors. Minors should consult the statutes of their own state to determine any special contractual capacities they may be allowed.

The protection afforded to minors also limits their rights from a practical point of view. In effect, the law warns adults against contracting with minors, except for necessities. Consequently, minors may be required to have their parents make major purchases for them or to guarantee their contracts.

Reducing Legal Risks

Minors—Before you reach the age of majority, renew the contracts you have entered and decide which of them you want to disaffirm. Follow your state's procedure for the disaffirmance. Be sure not to do anything after reaching the age of majority that would ratify the contract if the obligation is extensive; get legal counsel!

Working in the Law

Paralegal

Paralegals, or legal assistants, work in law firms, corporations, government agencies, or community legal services. Many of them specialize in one area of law such as labor law, corporate law, real estate law, or trial procedures.

A paralegal has many duties. One of the most important is background work. To help prepare a case, the paralegal investigates facts, completes research, and analyzes the results. The paralegal then prepares a written report for the attorney that includes all relevant information. The attorney uses this report to decide how to handle the case. If the attorney decides to pursue the case, the paralegal may help prepare legal arguments, obtain affidavits, and draft pleadings.

Another important duty for a paralegal is drafting documents such as loan contracts and employment contracts. The paralegal often handles the contract from start to finish; after reviewing it and making any necessary

adjustments, the attorney presents the contract to the client.

Special training is usually required for this position. Many types of schools and colleges, including community colleges, junior colleges, business schools, and technical colleges, offer paralegal training programs. Some of the courses that students take deal with legal research techniques, litigation, family law, criminal law, and contracts. They might also complete internships, which give them practical experience in the field; they handle routine assignments at first, taking on more responsibility as they gain experience.

Paralegals must be able to communicate effectively, both orally and in writing. They deal with people, so they must be courteous, understanding, and ethical. They must have good research and investigative skills. Computer skills are very important.

1. What training does a paralegal need?
2. What are some of a paralegal's duties?

Other Contractual Capacity Rules

As you have seen, parties to a contract must have the capacity to enter into that contract. Under certain conditions, a minor may disaffirm a contract into which he or she has entered. Other classes of persons also may avoid contracts into which they have entered.

Mentally Impaired Persons

The right given to minors to disaffirm contracts is also given to the mentally impaired for the same reason. They are considered unable to make sound judgments. Before a guardian is appointed, a mentally impaired person's contracts are voidable. Like a minor, he or she is responsible for the fair value of necessities. If a mentally impaired person has been declared insane or incompetent by a court action and a guardian has been appointed to look after his or her affairs, the mentally impaired person's contracts are absolutely void. Unfortunately for Mr. Novak in the opening vignette, this is the case with the contract that he made with Mr. Simpson. Mr. Simpson was under the care of a court-appointed guardian at the time he made the Literary League contract with Mr. Novak. In answer to Legal Issue 4, the contract is absolutely void.

Intoxicated Persons

Persons who are intoxicated at the time they enter a contract are sometimes able to disaffirm those contracts. Their contracts are treated in much the same way as contracts of minors and the mentally impaired. Intoxication may be from alcohol or drugs. To disaffirm a contract for this reason, the person must have been so intoxicated at the time of the contracting that he or she did not understand the purpose, the nature, or the effect of the transaction. The judge or the jury must decide that question. Intoxicated persons, like minors and the mentally impaired, are responsible for the fair value of necessities.

Other Capacity Limitations

Other classes of persons lack capacity to enter into certain types of contracts. In a few states, convicts have certain limitations placed on their powers to contract. **Aliens**—people who are living in this country but who owe their allegiance to another country—may also have limitations placed on their capacity to contract. In time of war, those foreign-born persons who are designated as enemy aliens are denied certain legal capacities, and even in peacetime some states prevent aliens from entering into certain types of contracts.

When an international crisis calls for severe measures, the government may freeze all or most of the assets belonging to a foreign nation on deposit in this country's financial institutions. In effect, this drastic action limits the ability of those owning the frozen assets to make contracts. This is what happened to the assets of Iraq after the invasion of Kuwait in 1990. After the war with Iraq began on January 17, 1991, those Iraqi nationals who remained in this country became enemy aliens. As a result, their capacity to contract was severely limited.

Reducing Legal Risks

Adults—Verify that the other party to a contract meets the requirements for capacity. If the other party is a minor and the contract is for something other than the fair value of necessities, insist that a parent or guardian sign the agreement. Verify the statutes for your state regarding contracts with minors. If there is a question, seek legal counsel.

9 Review



Summary

Carefully read the summary below before completing the chapter review.

1. The age of majority is 18 years in most states. However, the age at which people may purchase alcohol is 21 years in most states.
2. Minors have the right to disaffirm their contracts if they so choose. This is to protect them from being taken advantage of or making a poor decision.
3. If a minor still has merchandise received upon entering a contract, that merchandise must be returned when the contract is disaffirmed.
4. A minor who claims to be over the age of majority has committed fraud. In some states, a minor who lies about his or her age can be sued.
5. Lying about one's age to buy an age-restricted product such as alcohol is a criminal offense in most states.
6. A minor may not affirm some parts of a contract and disaffirm other parts.
7. A person may ratify contracts made during minority only after reaching the age of majority. Ratification may be accomplished orally, in writing, or by one's actions.
8. Minors are responsible for the fair value of necessaries. Necessaries include food, clothing, shelter, and medical care.
9. The right to disaffirm a contract is also given to mentally impaired people and to people who are intoxicated at the time they enter a contract.
10. Certain limitations are placed on convicts' powers to contract. Limitations may also be placed on aliens' capacity to contract.



Language of the Law

Choose the term from the list that best completes each sentence below. Then write the complete sentence on a separate sheet of paper.

ratify	capacity	disaffirm	infancy
minority	necessaries	minor	majority
guardian	alien		

1. Julie is no longer a(n) _____; her 18th birthday is tomorrow.
2. Alex must return the merchandise to the store if he decides to _____ his contract.
3. Peter must honor his contract for purchasing the antibiotics even though he is a minor; the antibiotics are _____.
4. Joan is the _____ of her mentally impaired sister.
5. Certain circumstances may limit a person's _____ to contract.

Chapter 9 Review

6. Brent thinks he is being called a baby; he does not understand that _____ is another word for minority.
7. JoAnne may _____, or approve, the contract for her used car by continuing to make payments after she turns 18.
8. Patrick may register to vote when he reaches the age of _____.
9. The Czechoslovakian tennis professional is living in New York temporarily; he is a(n) _____.
10. Laurie is allowed to disaffirm her contract with the car dealer; she is still in her _____.



Questions for Review

Answer the following questions. Refer to the chapter for additional reinforcement.

1. What is the definition of a minor?
2. When does a person reach a particular age?
3. Why does the law make contracts with minors voidable?
4. What are the risks of contracting with minors?
5. May a minor affirm and disaffirm parts of the same contract? Explain.
6. May a minor avoid a contract with another minor? Explain.
7. Are laws concerning minors who misrepresent their age and then disaffirm a contract the same in every state?
8. When might a minor be required to honor a contract?
9. When and how may a minor ratify a contract?
10. What persons other than minors have the right to disaffirm contracts?



Applying Critical Thinking Skills

Apply your understanding of the chapter concepts by answering the questions below.

1. Explain the meaning of the saying, "Infancy is a shield, not a sword."
2. Do you think an intoxicated person should be allowed to avoid a contract?
3. Why are contracts with mentally impaired persons and contracts with persons who have been declared legally insane treated differently?
4. What are the possible legal effects of contracting with aliens or convicts?
5. How have states changed their statutes controlling contracts of minors? Why are these changes necessary?



Applying Human Relations Skills

You enter into a contract with your neighbor, agreeing to do yard work every Saturday morning. You then learn that you have made the school's soccer team and that the games are on Saturday mornings. You know that you can legally avoid the