**Business Law**

**Ch. 9 Capacity to Contract**

I. Requirements of a Legally Binding Contract

A. 6 Elements of a Contract

1. Offer

2. Acceptance

3. Genuine Agreement

4. Capacity - Legal ability to enter into a contract.

5. Consideration

6. Legality

B. Parties to a Contract must have the Capacity to enter into

that Contract.

1. A minor may disaffirm a contract.

2. Other classes of persons also may avoid a contract.

a. intoxicated

b. mentally impaired

c. aliens

II. Contracts of Minors

A. Age of Majority - Adult (legal age)

1. 1972 - voting age was lowered from 21 to 18,

therefore, most states also lowered age of majority.

2. 2 Age-related milestones

a. Age of Majority Right to Vote 18

b. Age to Purchase Alcohol 21

c. Age to purchase nicotine products = 21

B. Minor - Has not yet reached the age of adulthood.

III. Voidable Contracts

A. Contracts by Minors

1. Disaffirm

a. The procedure by which minors may **avoid** or

**not be bound** by their contracts.

b. To show by statement or by some act an intent

**not** to live up to the contract.

2. Contracts by minors are "**voidable**" by the minor.

a. Privilege to protect the minor.

b. Why? Because of immaturity or inexperience.

1) they may be taken advantage of

2) or they may make a poor decision

3. The Law does not give minors the right to take

advantage of others.

a. A famous judge said "

Infancy is a shield,

not a sword

b. infancy = minority

4. Example 1 - pg. 119

5. *Legal Issue 1 - When and in what way can a minor*

*disaffirm a contract?*

a. The law gives young people a 2nd chance when

they use poor judgment.

b. Even true when items are damaged or destroyed.

1) In some states an amount can be deducted

for damaged or soiled items returned by the

minor.

2) Young people also have a "reasonable time"

after reaching majority age (adulthood) to

disaffirm their contracts.

B. Returning the Merchandise

1. Merchandise must be returned when the contract is

disaffirmed.

2. Requirement can be met without the return but

also by a tender (offer to return it).

3. In most states, if the minor does not have the item,

they can still disaffirm the contract and still get back

the full amount paid for the item.

C. Misrepresenting Age

1. If the minor claims to be over the age of majority,

they have committed FRAUD.

2. Fraud is a wrongful act and minors are responsible

for their wrongful acts.

3. In *some* states, when a minor lies about their age,

they can be sued for Fraud.

a. **All** 5 Elements of Fraud would need to be

proven.

1) False Representation of Fact

2) Representation Known to be False

3) False Representation Intended to be Relied

Upon

4) False Representation Actually Relied Upon

5) **Resulting** **Loss**

b. Lying about their age would have had to have

caused an actual (financial) loss.

c. An actual loss would be difficult to prove.

4. *Other* states follow an older Law:

a. Minors cannot be sued for fraud.

b. Theory Followed: "It would cut a tunnel under

the shield of infancy."

5. *Legal Issue 2 - It is a criminal offense for a minor to*

*lie about his/her age to buy age-restricted products*

*(alcohol & tobacco products).*

1) Arrest, probation, and/or a fine up to $100 can be

the punishment for misrepresenting one's age to

buy an age-restricted product.

2) Included is the giving of any written evidence of

age that is false, fraudulent or not the person's

own.

3) One Way to Verify Age - Figure 9-2 pg. 120

6. Example 2 - pg. 120

D. Disaffirming the Whole Contract

1. They must disaffirm all parts of a contract or none.

2. A minor cannot affirm favorable parts of a contract

and disaffirm the unfavorable parts.

3. Example 3 - pg. 120

E. Disaffirming Contracts Made with Other Minors

1. When 2 minors enter into a contract together, both

have the right to disaffirm the contract.

2. This increases the risks of entering into a contract.

3. Sample Letter to Disaffirm a Contract - Figure 9-3

pg. 121.

4. Example 4 - pg. 121

IV. Ratification of Minor's Contracts

A. Ratification - Approval of an act that previously had not

been binding.

1. After reaching age of majority, a person can ratify

(approve) contracts made during minority.

2. Ratification ends privileges the minor had.

3. Ratification can only be done upon reaching majority

age and may be accomplished 3 ways:

a. orally

b. in writing

c. by one's actions – paying after turning 18

4. Example 5 - pg. 122

5. All have the effect of ratifying the contract:

a. using the items purchased after reaching majority

age

b. selling the item

c. making the installment payment

d. keeping the items for a reasonable time after

reaching majority age

6. "**Reasonable time**" has no exact definition.

V. Contracts for Necessaries

A. Necessaries (necessities)

1. Examples

a. food

b. clothing

c. shelter

d. medical care

2. Under Common Law one's "Station in Life"

determines if an item is necessary (Example: Paying

$150 for a pair of custom-made shoes).

3. If a minor pays more than "fair value", he/she is

entitled to the difference between "fair value" and the

price that they actually paid.

4. Example 6 - pgs 122 - 123

VI. Special Statutory Rules

A. States change Statutes that control the capacity of minors

to enter into Contracts.

1. Many states give minors the capacity to enter into

contracts for a car or life **insurance**.

2. Some give limited capacity to minors who are

engaged in business in their own names to make

contracts essential to the running of that business.

3. Other states treat married minors as adults.

4. Some states consider renting an apartment as a

necessary, regardless if they actually need it or not.

B. The protection of minors also limits their rights from a

practical point of view.

1. The law **warns** adults against contracting with

minors, except for necessaries.

2. Minors may be required to have their parents make

major purchases for them or to guarantee their

contracts.

VII. Other Contractual Capacity Rules

A. Mentally Impaired Persons

1. If a mentally impaired individual is declared insane

or incompetent by a court they are also given the right to disaffirm a contract.

2. They are considered unable to make sound

judgments.

3. Before a guardian is appointed their contracts are

voidable.

4. They are responsible for the "fair value" of

necessaries.

5. If a guardian is appointed to look after their affairs

their contracts are absolutely void (have no legal

force or effect).

Pg. 125 - 126- LOL Book Questions

B. Intoxicated Persons

1. Persons who are intoxicated at the time they enter

into a contract are **sometimes** able to disaffirm those

contracts.

2. Intoxication may be from drugs or alcohol.

3. In order to be able to disaffirm for this reason the

person must have been so intoxicated at the time of

the contracting that he or she did not understand the:

a. purpose

b. nature

c. effect of the transaction

4. Decided by a judge or jury.

5. Also responsible for the "fair value" of necessaries.

C. Other Capacity Limitations

1. Convicts

2. Aliens - People who are living in this country but

owe their allegiance to another country.

3. In the time of war - those foreign born persons who

are designated as enemy aliens are denied certain

legal capacities.

4. When an international crisis calls for severe

measures.

a. Government may freeze all or most of the assets

belonging to a foreign nation on deposit in this

country's financial institutions.

b. This drastic action limits the abilities of those

owning the frozen assets to make contracts.

1) This happened in 1990 to the assets of Iraq

after the invasion of Kuwait.

2) On January 17, 1991, after the war began,

those Iraqi nationals who remained in this

country became enemy aliens.

3) The capacity to contract of these enemy

aliens was severely limited.

Book Questions, pg. 125-126

-Language of the Law

-Questions for Review

Ch. 9 Review Worksheet

Test Wednesday