

# Contract Law for Paralegals: Chapter 7

## Chapter 7

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**Contract Enforceability:  
Protecting Members of a Class**

Chapter 7 discusses three protected classes-the minor (infant), the mentally incapacitated, and the person who is incapacitated due to alcohol or other drugs. They are grouped together because all minors are treated the same, all mentally incapacitated are treated the same, and all persons who are incapacitated due to alcohol or other drugs are treated the same. Whether a minor, a mentally incapacitated person, or a person incapacitated due to alcohol or other drugs will be protected is not determined on a case by case basis. If the court recognizes the class as a protected class and if a contracting party is within the protected class, the protected party will be treated as any other contracting party within that class. The question will not be whether the contract is fair or whether the other party has overreached. The only questions are whether there is a protected class and whether this

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party has overreached. The only questions are whether there is a protected class and whether this contracting party is a member of the protected class.

The Road Map for Contract Enforceability: Protecting a Class is Exhibit 7-1 (238).

## Minor (Infancy)

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### Minor (Infancy)

MINORITY (INFANCY) (238)

The introductory paragraph comments on the evolution of these contracts from being considered “void” to “unenforceable.” We have selected the term “unenforceable” rather than “voidable” because the latter implies that if one party exercises the power to avoid the contract, the contract no longer exists. The term “unenforceable” implies that if one party exercises the power to disaffirm the contract, the contract will still exist but the court will not compel either party to perform under the terms of the contract.

Unless both parties fall within a protected class, only one party has the power to disaffirm. If that power is not exercised, the contract is enforceable by both contracting parties.



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We use the term minority rather than infancy. Both terms are found in the cases.

#### **Minority as a Defense to a Breach of Contract Action (Minority as a Shield) (239)**

The first paragraph states the general rules of the minority defense. Care must be taken to distinguish between the minor's power to disaffirm and his or her willful misrepresentation as to age. The latter is an independent tort action for misrepresentation.

Example 7-1 (239) illustrates the minority defense to a potential breach of contract action.

PARALEGAL EXERCISE 7.1 (239) involves the next phase of the rule-disaffirmance need not take place during the time the party with the power to disaffirm was a minor. The party with the power to disaffirm may disaffirm within a reasonable time after reaching majority. The question then becomes whether the party who had the power to disaffirm acted to disaffirm within a reasonable time after reaching majority. There is no hard and fast rule to determine what is a reasonable time.

The conclusion is deduced from the factual situation. What are the factors that should be considered when establishing a reasonable time? The three fact patterns in Paralegal Exercise 7.1 give students an opportunity to think about the relevant factors. A final factor, distance, is then added to the three fact patterns. This raises the question of whether ease of disaffirmance should be a factor.

The fact patterns do not have a right or wrong answer. They are offered to stimulate discussion. Students could be asked to take a moment to write down whether Belinda should be able to disaffirm each and why. The factors should become apparent from the "why" answers.

### **Could Restitution be a Cause of Action When a Minor Desaffirms the Contract? (240)**

The introductory paragraph discusses the minority defense ending the minor's duty to perform and sets the stage for restoring the minor to the place he or she was prior to contracting. The minor must return what he or she has acquired from the contract and, in turn, will receive what he or she has given.

In PARALEGAL EXERCISE 7.2 (241), Lucy purchased the encyclopedia while a minor and seeks to disaffirm while still a minor. Under the general rule, Lucy has an absolute right to disaffirm the contract (she was a minor at the time of contract formation), return the encyclopedia (she must return what she still has, regardless of its condition), and get her money back. Although the time for determining minority status does not play a role in this problem, the critical time is at contract formation and not at the time of disaffirmance.

Two distinct events occur in Paralegal Exercise 7.2. First, the minor is exercising her power to disaffirm the contract which in turn precludes the performance of the contract. Second, the minor is demanding the return of her money which is a restitution action and not an action for breach of contract.

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It should be noted that in Paralegal Exercise 7.2 Lucy has not been sued for breach of contract and, therefore, is not raising her minority as a defense to a breach of contract action. Instead, Lucy seeks to disaffirm the contract to end her duty to perform under the contract as well as pursuing a restitution action to recover the benefit she conferred upon the Publisher (i.e., the price paid). The contracts/restitution analysis, however, relates the two visually. If for some reason Lucy had not contracted with the Publisher but had paid money, she would not seek to disaffirm the contract although she would pursue a restitution action for return of her money.

Necessaries are discussed in the next subsection and will not be broached here because technically a minor may disaffirm a contract for necessaries, although the minor may be liable for the necessaries in a restitution action. (Some courts, however, will conclude that a minor may not disaffirm a contract for necessaries.) Students often raise the necessaries issue here. They should be dissuaded because the doctrines can become intertwined.

PARALEGAL EXERCISE 7.3 (241) illustrates that the right to disaffirm under the minority defense is available only to a minor. Sly, not being the minor in the transaction, cannot disaffirm the contract.

Jennifer, however, could disaffirm the contract even though the value of the pendant decreased. The right to disaffirm is absolute so the reason for disaffirmance is irrelevant. All that is important is that Jennifer was a member of the protected class at the time of contract formation.

In PARALEGAL EXERCISE 7.4 (242), Jeremy, a minor, has an absolute right to disaffirm the contract, recover his payment, and recover his trade-in. The fact that he has destroyed the Ford is irrelevant. All he must do to disaffirm is return what he has. In this case he must return what is left of the Ford.

When Friendly sold Jeremy's trade-in to Alice in good faith, for value, and without Alice having knowledge of a defense against the sale, Alice became a BFP (bona fide purchaser). Because the trade-in was personal property rather than real property, Jeremy cannot reclaim it from Alice, a BFP. (See the distinction between reclaiming personal property and real property in the paragraph preceding Paralegal Exercise 7.4.)

### **A Minor's Liability for Necessaries (242)**

The introductory paragraph presents the technical definition of necessaries. Not only must the minor have an actual need for the article, a third party must have the duty to provide the article and either cannot or will not provide it.

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In Webster Street Partnership, Ltd. v. Sheridan (243) two minors leased an apartment. After not paying the rent, they were asked to vacate and did so. The landlord brought an action against the former tenants claiming:

Rent due November .....	\$250.00
Rent due December.....	250.00
December utility allowance .....	20.00
Garage rental .....	40.00
Clean up and repair	
Broken window, degrease kitchen stove, shampoo carpet, etc. ....	46.79
Advertising .....	24.15
Re-rental fee .....	150.00
.....	<b>\$780.94</b>
Less security deposit.....	-150.00
.....	<b>\$630.94</b>

The landlord’s action appears to be for breach of contract, rather than restitution, since most of the items listed were not benefits conferred on the tenants but were the landlord’s expectation damages (including incidental damages).

The minors disaffirmed the contract and the landlord claimed that the apartment was a necessary. To be a necessary, the minor must have an actual need for the item furnished and must supply the minor’s personal needs, either those of his body or those of his mind. The term necessities is not confined to such things as are required for a bare subsistence. What might be a necessary to one person might not be a necessary to another. Therefore the factors of rank, social position, fortune, health, and other circumstances must be considered. Also, the minor must be in actual need of the item and it must not be available from a parent or guardian who is able and willing to supply it. The Nebraska Supreme Court found that the minors could live with their parents if they so desired and therefore the apartment was not a necessary. The Nebraska Supreme Court held that the minors were entitled to return of the rent they had paid as well as their security deposit.

The final paragraphs of this subsection discuss the technical point that a minor may disaffirm a contract for necessities but may be liable for them in a restitution action. The distinction is that the remedy in a breach of contract action may be different from the remedy in a restitution action. In a breach of contract action, the minor may be liable for the contract price (expectation remedy). In the restitution action, damages are limited to the reasonable value of the benefit to the minor (restitution remedy). In some cases, the reasonable value to the minor (restitution remedy) may be less than the contract price (expectation remedy).



We assume that the attorneys' services were necessities in PARALEGAL EXERCISE 7.5 (245) if a third party had the duty to provide these services and either could not or would not provide the services. If the services were not necessities, Donald has the power to disaffirm the contract. Ambrose & Pete would recover nothing. If the services were necessities, Donald has the power to disaffirm the contract but would be subject to a restitution action for the reasonable value of the services (\$700).

Some courts may find that Donald does not have the power to revoke and therefore owes the contract price (\$1,000).

### **Is a Minor Liable for Depreciation Prior to Disaffirmance (246)**

PARALEGAL EXERCISE 7.6 (246) investigates the difference between whether the minor should be restored to the position she was in before contracting and, if so, how much she should receive upon disaffirmance.

1. In the first subproblem, Friendly has sued Mary Alice for breach of contract. Mary Alice uses minority as a defensive weapon to disaffirm the contract. If Mary Alice brings a restitution action to recover the benefits she conferred upon Friendly, she will be taking the offense. Should Mary Alice receive all payments made for the year that she drove the Pinto? She should receive the benefit she conferred upon the seller which could be argued is all the payments. Should Mary Alice receive the finance charges as well as the principal? Some courts, however, would charge Mary Alice for the use and depreciation of the Pinto. This would be in the form of an offset.
2. In the second subproblem, Mary Alice has sued Friendly in a restitution action seeking the return of the money she paid. Mary Alice should receive the amount of cash she paid Friendly. Should she also receive the interest the money could have earned during the year? What was the benefit she conferred on Friendly? We have no set answer for either of these. Some courts, however, would charge Mary Alice for the use and depreciation of the Pinto. This would be in the form of an offset.

### **Statutory Variations (247)**

Students tend to rely on cases to the extent that they forget that research should start with a statutory search. If a statute has been enacted, it governs the transaction. Case law may be useful in understanding how courts might interpret the statute.

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# Mental Incapacity

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## Mental Incapacity

### MENTAL INCAPACITY (248)

The introductory material for mental incapacity begins with a discussion of the traditional “cognitive” test—whether the mind was so affected as to render the contracting party wholly and absolutely unable to comprehend and understand the nature of the transaction.

Following the discussion of the cognitive test is the more modern Restatement (Second) of Contracts § 15 that begins with the cognitive test (Section 15(1)(a)) and includes, as an alternative, a volitional test (Section 15(a)(b)). Subsection (2) of the Restatement (Second) of Contracts § 15, however, limits the power to disaffirm under subsection (1) “where the contract is made on fair terms and the other party is without knowledge of the mental illness or defect.”

PARALEGAL EXERCISE 7.7 (249) is an application of the mental incapacity tests. Under the cognitive test, the party must be able to understand the nature of the transaction.

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PARALEGAL EXERCISE 7.7 (249) is an application of the mental incapacity tests. Under the cognitive test, the party must be able to understand the nature of the transaction. Under these facts, it could be contended that Simmons’s mental condition did not prevent her from understanding the nature of the transaction

(the modification of the contract). Therefore, under the cognitive test, Simmons's executor could not disaffirm the contract.

The Restatement's test is two-fold: either the party suffering from mental illness or defect is unable to understand the nature and consequences of the transaction or is unable to act in a reasonable manner in relation to the transaction. Under the second part of the rule, it could be argued that because the Retirement System knew of her condition and the state of her husband's finances in the event she died, modification of her retirement benefits to leave her husband penniless indicated that due to her mental illness or condition she was unable to act in a reasonable manner in relation to the transaction. This part of the rule has a second requirement. The other party must have reason to know of the mental illness or defect. Because the retirement system had records of Simmons's disability (she was already on medical leave), the system had reason to know of her condition and the rule applies. Simmons's executor could disaffirm the contract.

If Mrs. Simmons's psychiatric records were confidential and the Retirement System had no idea of the extent of her mental problems, would your answer to Paralegal Exercise 7.7 change?

Paralegal Exercise 7.7 was based on *Ortelere v. Teachers' Retirement Board*, 25 N.Y.2d 196, 202 N.Y.S.2d 362, 250 N.E.2d 460 (1969).

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# Incapacity Due to Alcohol/Drugs

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## Incapacity Due to Alcohol/Drugs

### INCAPACITY DUE TO ALCOHOL OR OTHER DRUGS (249)

A person who suffers from compulsive alcoholism or drug addiction may have diminished capacity to contract. If this condition constitutes mental illness, mental incapacity grounds could be used for disaffirmance of the contract. Restatement (Second) of Contracts § 15 (1979) should be consulted.

A person who does not suffer from compulsive alcoholism or drug addiction but who has voluntarily diminished his or her capacity to contract through the use of alcohol or other drugs may not be considered to have a mental illness. Restatement (Second) of Contracts § 16 (1979) provides a party who is intoxicated with grounds to disaffirm. It could be argued that a similar condition caused by the use of other drugs should be treated similarly. Under Restatement (Second) of Contracts § 16, the power to disaffirm can only be claimed if the other contracting party had reason to know of the intoxication and that, by reason of the intoxication, the party seeking to disaffirm was unable “to understand in a reasonable manner

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PARALEGAL EXERCISE 7.8 (250) takes the students back to *Lucy v. Zehmer*, a case involving the sale of the Ferguson Farm. Mr. Zehmer claimed that he was intoxicated when he promised to sell the farm to Lucy. The court rejected Zehmer's attempt to disaffirm the contract. Had the Restatement (Second) of Contracts § 16 been in existence at the time, Zehmer, by reason of his intoxication, must have been unable to understand in a reasonable manner the nature and consequences of the transaction" or "to act in a reasonable manner in relation to the transaction." Based on the facts of the case, although Zehmer had had a number of drinks, it would seem that he would not qualify under either alternative requirement. Second, Lucy must have had reason to know that Zehmer was intoxicated.

A WESTLAW search did not provide us with a good case on incapacity due to alcohol or other drugs.

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#### TRUE/FALSE QUESTIONS

1. T
2. T
3. F
4. T
5. F
6. T
7. F
8. T
9. T
10. T
11. F
12. F
13. T
14. T
15. F
16. T
17. T

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#### TRUE/FALSE QUESTIONS

1. T
  2. T
  3. F
  4. T
  5. F
  6. T
  7. F
  8. T
  9. T
  10. T
  11. F
  12. F
  13. T
  14. T
  15. F
-

16. T
17. T
18. T
19. F
20. T
21. F
22. F

#### FILL-IN-THE-BLANK QUESTIONS

1. Minors
2. Restitution action
3. Mental incapacity
4. Cognitive test
5. Volitional test

#### MULTIPLE-CHOICE QUESTIONS

1. a, b, & e
2. a & b

#### SHORT-ANSWER QUESTIONS

1. Albert purchased the car while a minor (he was 17 at the time) and therefore could disaffirm the contract prior to reaching majority (18) or within a reasonable time thereafter. A reasonable time would be determined by such factors as prejudice suffered by Friendly Motors by a delay in disaffirmance, the nature of the subject matter, and the ability of Albert to disaffirm. Although the facts do not give extenuating circumstances, two months from reaching majority does not appear to be unreasonable because the subject matter is not perishable and its depreciation would be gradual since it was a used vehicle when purchased.

Assuming that Albert was not beyond a reasonable time after reaching majority, he may exercise his power to disaffirm by returning to Friendly Motors what he currently has, that is, the wrecked automobile, certificate of title, and keys. Albert could then bring a restitution action to recover his down payment and any installments paid.

2. As a defensive weapon, the minor could disaffirm the contract, discontinue performance, and wait for the other contracting party to file a breach of contract action. As an offensive weapon, the minor could disaffirm the contract, discontinue performance, and bring a restitution action to recover the benefit he or she conferred on the other party.

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## Chapter Quiz

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