CHAPTER 10: LAW OF CAPACITY

WHAT IS CAPACITY?

♦ Offer, acceptance, mutual assent, and consideration satisfy the major requirements for the creation of a contract.

♦ According to the law, certain parties lack maturity and experience to protect their interest in a contract.

♦ The law grants the certain parties rights designed to protect them from being cheated.

♦ **minors**→ under the age of majority; which is 18 in most states.

♦ **contractual capacity**→ is the ability to understand that a contract is being made and its general meaning.

♦ **Example**: minors, mentally incapacitated, and intoxicated people

A. **CAPACITY RIGHTS**

♦ Necessaries and non-necessaries are two basic protections granted to those who lack capacity.

♦ **necessaries**→ goods and services that are needed to maintain a person’s lifestyle.

♦ Minors, mentally incapacitated, and intoxicated people need only pay the fair market value rather than the contracted price.

♦ **non-necessaries**→ things that are relative luxuries; things that are not necessary to maintain one’s economic or social status.

♦ Minors, mentally incapacitated, and intoxicated people have to pay the contracted price, but they have the option to disaffirm the contract.
disaffirmance→giving back the consideration by both parties.

Minors can disaffirm contracts for non-necessaries while they are still minors.

Minors can also disaffirm for a reasonable length of time after they reach majority.

After the age of majority, the power to disaffirm is immediately cut off if the person ratifies the contract.

ratification→acting toward the contract as though one intends to be bound by it.

B. MINORS

minors/minority/under the age of majority→in most states, when you under the age of 18.

In a few states, minority is the age of 19 or 21.

Minority ends the day before the birthday of the age of majority.

C. EMANCIPATION

It is the severing or cutting of ties of the child-parent relationship.

It ends the duty of the parent to support a child.

It ends the duty of the child to obey the parent.

A minor becomes naturally emancipated when they reach age of majority.

A minor can do early emancipation.

Early emancipation can happen formally or informally.

formal emancipation→when a court rules the minor emancipated.

informal emancipation→arises from the conduct of the minor and the parent.
Examples of informal emancipation:
⇒ the parent and minor agree that the parent will stop support
⇒ the minor marries
⇒ the minor moves out of the family home
⇒ the minor becomes a member of the armed forces.
⇒ the minor gives birth
⇒ the minor gets a full-time job

Some states give emancipated minors full contractual capacity and other states don’t.

D. MENTAL INCAPACITY

⇒ The test is whether the party understands the consequences of his or her contractual acts.

⇒ People who have severe mental illness, severe mental retardation, or severe senility lack capacity.

⇒ When a judge rules that a person is insane, then that person has a complete lack of capacity.

⇒ All contracts executed by an insane person are void.

E. INTOXICATION

⇒ Can arise from using alcohol, from using drugs, or inhaling products.

⇒ Intoxication is a voluntary act.

⇒ Many courts are reluctant to allow disaffirmance for intoxication when it may injure another.

⇒ The court allows disaffirmance if the intoxicated person did not know they were contracting.
WHICH CONTRACTS CAN BE DISAFFIRMED?

♦ People who lack capacity have the right to disaffirm contracts for non-necessaries.

♦ They also have the right to pay a fair price instead of the contract price for contracts for necessaries.

A. **NECESSARIES**

♦ Goods and services that are needed to maintain a person’s lifestyle.

♦ They must be appropriate to that person’s economic and social status.

♦ **Examples:** basic food, clothing, shelter, and transportation

♦ The person must not already have those goods and services.

♦ For example, the necessaries are already supplied to them by their parents.

♦ Courts find food, clothing, shelter, education, medical care, and tools used to earn a living to be necessaries.

B. **NON-NECESSARIES**

♦ Things that are relative luxuries; things that are not necessary to maintain one’s economic or social status.

♦ **Examples:** cosmetics, jewelry, liquor, tobacco, perfume, audio equipment, travel for pleasure, expensive food for parties

CAPACITY IN ORGANIZATIONS

♦ **scope of authority**→ the range of acts an organization has authorized an employee to do.

♦ The employee acting within the “scope of authority” has the capacity to bind the organization to a contract.
Capacity to contract can be created when the employer tells an employee that they are authorized to bind the organization.

Capacity can also be created when the organization leads others to believe that a person has certain authority.

People acting outside the scope of their authority are generally personally responsible or liable when the organization isn’t.

**TIME OF DISAFFIRMANCE AND RATIFICATION**

A person lacking contractual capacity can disaffirm a contract for non-necessaries anytime while still under the incapacity, or within a reasonable time after attaining capacity.

After attaining capacity, the person may ratify the contract that was made while incapacitated.

**Ratification** ➔ an action by the party indicating intent to be bound by the contract.

**Example**: for a minor, ratification must take place after reaching majority

Ratification may consist of either of the following:

- giving a new promise to perform as agreed, OR
- any act [such as making payments to the seller] that clearly indicates the party’s intention to be bound

Once ratification occurs, it may not be withdrawn.

**RETURN OF GOODS OR SERVICES**

When a minor disaffirms, anything of value that the minor still has must be returned.

Then the minor is entitled to get back everything that was given.

**A. LOSS OF VALUE**
In most states, if minors are unable to return exactly what was received under the contract they can still get back everything they gave.

**Examples:** if a minor returns used or damaged goods, returns nothing because the goods have been lost, consumed, or destroyed.

In some states, a minor must return everything received in a condition as good as it was when it was received.

If this can’t be done, the minor must pay the difference from the amount to be refunded.

**B. OBLIGATIONS OF PARTY WITH CAPACITY**

- The party lacking capacity can disaffirm contracts for non-necessaries.
- The party lacking capacity can enforce contracts against the other party who has capacity.
- The party with capacity can’t enforce nor avoid all or any part of a contract for non-necessaries with a party lacking capacity.

**WHAT CONTRACTS CANNOT BE DISAFFIRMED?**

- Some contracts of minors for non-necessaries cannot be disaffirmed.
- These exceptions vary from state to state.
- Here are the most common exceptions:

  **A. COURT-APPROVED CONTRACTS**

  - Minors cannot void any contracts approved for them by a court.
  - **Example:** minors who are employed as actors or actresses or as sports professionals usually have their contracts approved by a court.
  - Once approved, these contracts may not be disaffirmed.
B. MAJOR COMMITMENTS

♦ Contracts to enlist in the armed services, contracts for educational loans and marriage contracts cannot be disaffirmed.

C. BANKING CONTRACTS

♦ In most states, minors are allowed to make deposits in banks and in savings and loan associations.
♦ In most states, minors are allowed to make withdrawals as if they were an adult, without any right to disaffirm these transactions.

D. INSURANCE CONTRACTS

♦ More than half the states say that minors over a certain age cannot disaffirm certain life insurance contracts.

E. WORK-RELATED CONTRACTS

♦ In most states, minors who engage in a business or trade cannot disaffirm agreements involving their business.

F. SALE OF REALTY

♦ In some states, a minor who owns real property and sells it or borrows money against it cannot disaffirm until after reaching majority.

G. APARTMENT RENTAL

♦ In a few states, the lease of an apartment cannot be disaffirmed even if the apartment is not a necessary.

MISREPRESENTING YOUR AGE

♦ In most states, minors who falsely state their age may disaffirm their contracts.
♦ But, a minor in these states who give a false age may be held liable for the tort of false representation.
Minors are liable for their torts and delinquent or criminal conduct, although they still have capacity rights.

A minor may be able to disaffirm a contract but will still have to pay any damages due to fraud.