

501.10 CONTRACTS - ISSUE OF FORMATION - DEFENSE OF LACK OF
MENTAL CAPACITY - REBUTTAL BY PROOF OF FAIR DEALING AND LACK OF
NOTICE.

The (*state number*) issue reads:

"Did the plaintiff deal¹ fairly with the defendant without knowledge or notice of the defendant's lack of mental capacity?"

(You will answer this issue only if you have answered the (*state number*)² issue "Yes" in favor of the defendant.)

On this issue the burden of proof is on the plaintiff. This means the plaintiff must prove, by the greater weight of the evidence, four things:³

First, that the plaintiff did not know and, under the circumstances, did not have reason to know of the mental incapacity of the defendant.⁴

A person knows something when *he* has actual knowledge of it. A person has reason to know something when, under the same or similar circumstances, a reasonable person would have known it or would have been put on notice of its existence.

Second, that the plaintiff substantially performed all of the obligations *he* agreed to perform for the benefit of the defendant.⁵

Third, that the plaintiff did not take unfair advantage of the defendant.

And Fourth, that the defendant has not returned, and cannot return, the value of the plaintiff's performance.

Finally, as to the (*state number*) issue on which the plaintiff has

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the burden of proof, if you find by the greater weight of the evidence that the plaintiff dealt fairly with the defendant without knowledge or notice of the

defendant's lack of mental capacity, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. "Deal" is used here rather than "contract" to reflect the fact that, to reach this issue, the jury has already found that the defendant did not have the mental capacity to contract. This instruction articulates an equitable exception to the general rule that contracts with incompetents may be avoided.

2. See N.C.P.I.-Civil 501.05 (Contracts-Issue of Formation-Defense of Lack of Mental Capacity).

3. *Chesson v. Pilot Life Ins. Co.*, 268 N.C. 98, 150 S.E.2d 40 (1966); *Carawan v. Clark*, 219 N.C. 214, 13 S.E.2d 237 (1941); *Wadford v. Gillette*, 193 N.C. 413, 137 S.E. 314 (1927); *Ipock v. Atlantic & North Carolina R.R. Co.*, 158 N.C. 445, 74 S.E. 352 (1912); *Hedgepeth v. Home Savings & Loan Ass'n.*, 87 N.C. App. 610, 611, 361 S.E.2d 888, 889-90 (1987).

4. *Godwin v. Parker*, 152 N.C. 672, 68 S.E. 208 (1910); *Sprinkle v. Wellborn*, 140 N.C. 163, 52 S.E. 666 (1905); *Odom v. Riddick*, 104 N.C. 515, 10 S.E. 609 (1889).

5. This restriction on an incompetent's power of avoidance applies only to non-executory contracts. *Cameron-Barkley Co. v. Thornton Light & Power Co.*, 138 N.C. 365, 50 S.E. 695 (1905); *Matthews v. James*, 88 N.C. App. 32, 362 S.E.2d 594 (1987) *disc. rev. denied*, 322 N.C. 112, 367 S.E.2d 913 (1988). Executory contracts may be avoided in whole or in part. See *Cameron-Barkley Co.*, 138 N.C. 365, 50 S.E. 695 and *Matthews v. James*, 88 N.C. App. 32, 362 S.E.2d 594 (1987), *disc. rev. denied*, 322 N.C. 112, 367 S.E.2d 913 (1988).