

501.67 CONTRACTS - ISSUE OF FORMATION - DEFENSE OF INFANCY -
REBUTTAL BY PROOF OF EMANCIPATION.

The (*state number*) issue reads:

"Was the defendant emancipated at the time *he* entered into the contract with the plaintiff?"

(You will answer this issue only if you have answered the (*state number*)¹ 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, that the defendant was emancipated at the time the defendant entered into the contract with the plaintiff.

[A person over the age of sixteen may be emancipated by judicial decree.² (All of the evidence tends to show that the defendant was emancipated by a judicial decree on (*state date*).)]

[A married person is emancipated.³ (All of the evidence tends to show that the defendant was married on (*state date*).)]

[A member of the armed forces of the United States is emancipated.⁴ (All of the evidence tends to show that the defendant became a member of the armed forces of the United States on (*state date*).)]

[*State other circumstances where a person under eighteen is deemed at law to have contractual capacity.*]⁵

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that

N.C.P.I.-Civil. 501.67
CONTRACTS - ISSUE OF FORMATION - DEFENSE OF INFANCY-REBUTTAL BY
PROOF OF EMANCIPATION.
GENERAL CIVIL VOLUME
MAY 2003

the defendant was emancipated at the time the defendant entered into the contract with the plaintiff, 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. See N.C.P.I.-Civil 501.65 (Contracts-Issue of Formation-Defense of Infancy).

2. A minor who is at least sixteen years of age may petition for a decree of emancipation. N.C. Gen. Stat. § 7B-3500 *et seq.* If the petition is granted, the minor "has the same right to make contracts and conveyances, to sue and be sued, and to transact business as if petitioner were an adult." N.C. Gen. Stat. § 7B-3507(1).

3. Married juveniles are deemed emancipated. N.C. Gen. Stat. § 7B-3509. Emancipation continues even after divorce or death of the other spouse. In such circumstances, this instruction should be modified accordingly.

4. By definition, members of the armed forces of the United States are excluded from the definition of "juvenile." N.C. Gen. Stat. § 7B-101(14). Emancipation continues even if the person leaves military. In such circumstances, this instruction should be modified accordingly.

5. In selected circumstances, the General Assembly has prescribed different ages for contractual capacity. Certain banking organizations may deal with minors in opening and maintaining accounts and safe-deposit boxes (N.C. Gen. Stat. § 53-43.5, § 54B-132 and § 54C-170), fifteen year olds may enter into and deal in insurance and annuity contracts (N.C. Gen. Stat. § 58-58-100), seventeen year olds may contract for unsecured loans to attend post-secondary schools (N.C. Gen. Stat. § 116-174.1), married minors may sign certain obligations relating to jointly held property if his or her spouse co-signs and is eighteen or older (N.C. Gen. Stat. § 39-13.2(a)(2)), and married minors may by written instrument release, waive or renounce any interest in the property of his or her spouse (N.C. Gen. Stat. § 39-13.2(a)(1)). If any of these specialized circumstances applies, this instruction will need to be modified accordingly.