

505.20 CONTRACTS - ISSUE OF REMEDY - MINOR'S CLAIM FOR
RESTITUTION WHERE CONTRACT IS DISAVOWED.

The (*state number*) issue reads:

"Is the plaintiff entitled to recover the [money paid] [value of the property delivered] to the defendant by the plaintiff under the contract between them?"¹

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:

First, that the plaintiff was under the age of eighteen at the time *he* entered into the contract with the defendant.

(All of the evidence tends to show that the defendant entered into the contract with the plaintiff on (*state date*) and that the plaintiff [attained] [will attain] eighteen years of age on (*state date*).)

(It does not matter that the defendant did not know *he* was contracting with a minor.)²

(It does not matter that the plaintiff misrepresented *his* age to the defendant.)³

Second, that while *he* was under the age of eighteen and as a result of the contract, the plaintiff [paid money] [delivered property] to the defendant.

Third, that the plaintiff disavowed the contract [while *he* was a minor] [within a reasonable time after attaining the age of eighteen]. To disavow a contract, a person must communicate by words or by conduct

that *he* no longer wants the [benefits] [burdens] of the contract.⁴

Neither inaction nor silence is sufficient as a disavowal. [Where the subject matter of the contract is real estate, the disavowal must occur within three years of attaining the age of eighteen⁵ (and not before).⁶]

[Where the subject matter of the contract is [personal property] [services], the disavowal may occur at any time up to the date the former minor attains the age of eighteen and for a reasonable period of time thereafter. What constitutes a reasonable time depends on the facts and circumstances of each case.⁷ You may consider

[the type of [property] [services] contracted for]

[the rate of depreciation of the property]⁸

[the perishability of the property]

[the amount of benefit conferred upon the former minor after *he* attains the age of eighteen]

[the former minor's retention of the benefit(s) of the contract after attaining the age of eighteen]⁹

[the opportunities available to the former minor to disavow the contract after attaining the age of eighteen]

[conduct by the former minor after attaining the age of eighteen that is consistent with performing the contract]¹⁰

[state other factors as are supported by the evidence].]

And Fourth, that the plaintiff has [restored] [offered to restore]¹¹ to the defendant so much of the [money] [property] furnished to *him* by the

defendant under the contract] as the plaintiff still has in *his* possession.¹² (However, the plaintiff has no responsibility to restore to the defendant any [money] [property] *he* no longer has in *his* possession, even if the plaintiff lost or destroyed it through carelessness, intemperance or stupidity.)¹³ (Likewise, the plaintiff has no responsibility for any [damage inflicted on] [depreciation to] any property delivered by the defendant to the plaintiff pursuant to the contract.)¹⁴ (The plaintiff need not account for or give the defendant credit for the value of the plaintiff's use of [money] [property] furnished by the defendant while in the possession of the plaintiff.)¹⁵

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 the plaintiff is entitled to recover the [money paid] [value of the property delivered] to the defendant by the plaintiff under the contract between them, 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. *NOTE WELL* that under certain circumstances a defendant may defeat or mitigate a minor's claim. These include proof of the minor's emancipation (N.C.P.I.-501.67), ratification by the minor (N.C.P.I.-501.70), ratification by the minor's guardian, agent or representative (N.C.P.I.-501.75) or proof of necessities (N.C.P.I.-501.80). If any of these instructions is given to the jury, the court should make sure that the party references are consistent. In the instructions referenced above (N.C.P.I. Civil-501.67, 501.70, 501.75 and 501.80), the minor is the defendant and the provider is the plaintiff. In the instant instruction (N.C.P.I.-Civil 505.20), the minor is the plaintiff and the provider is the defendant.

2. *Gastonia Personnel Corp. v. Rogers*, 276 N.C. 279, 284, 172 S.E.2d 19, 23 (1970) (quoting *McCormick v. Crotts*, 198 N.C. 664, 668-69, 153 S.E. 152, 155 (1930)).

3. *Greensboro Morris Plan Co. v. Palmer*, 185 N.C. 109, 116 S.E. 261 (1923); *Carolina Interstate Bldg. & Loan Ass'n v. Black*, 119 N.C. 323, 327, 25 S.E. 975, 976 (1896); *Gillis v. Whitley's Discount Auto Sales, Inc.*, 70 N.C. App. 270, 278, 319 S.E.2d 661, 666 (1984).

N.C.P.I.-Civil. 505.20
CONTRACTS - ISSUE OF REMEDY - MINOR'S CLAIM FOR RESTITUTION
WHERE CONTRACT IS DISAVOWED.
GENERAL CIVIL VOLUME
MAY 2003

4. The disavowal can be communicated expressly by notice as in *Fisher v. Taylor Motor Co.*, 249 N.C. 617, 107 S.E.2d 94 (1959), by the filing of a lawsuit seeking rescission as in *Skinner v. Maxwell*, 66 N.C. 45(1872), or by implication from conduct as in *Pippen v. Mutual Benefit Life Ins. Co.*, 130 N.C. 23, 40 S.E. 822 (1902) and *Hoyle v. Stowe*, 19 N.C. 320 (1837).

5. *Hogan v. Utter*, 175 N.C. 332, 95 S.E. 565 (1918); *Baggett v. Jackson*, 160 N.C. 26, 76 S.E. 86 (1912) and *Weeks v. Wilkins*, 134 N.C. 516, 47 S.E. 24 (1904).

6. In cases involving contracts other than real estate, the contract can be voided before the minor comes of age with the help of a guardian or other competent personal representative or by the minor himself after he comes of age. *McCormick; Collins v. Norfleet-Baggs, Inc.*, 197 N.C. 659, 150 S.E. 177 (1929) and *Gillis*. If the subject matter of the contract involves real estate, however, neither the minor nor his guardian or other personal representative may exercise the power of disaffirmance until the age of majority is attained. *McCormick v. Leggett*, 53 N.C. 425 (1862).

7. *Bobby Floars Toyota, Inc. v. Smith*, 48 N.C. App. 580, 582, 269 S.E.2d 320, 321 (1980); *Nationwide Mutual Ins. Co. v. Chantos*, 25 N.C. App. 482, 490, 214 S.E.2d 438, 444, cert. denied, 287 N.C. 465, 215 S.E.2d 624 (1975).

8. *Bobby Floars Toyota, Inc.*, 48 N.C. App. at 583, 269 S.E.2d at 322 (10 months is an unreasonable time because an automobile constantly depreciates).

9. *Id.* at 584, 269 S.E.2d at 322-23 (continued possession and operation of an automobile).

10. *Id.* at 584, 269 S.E.2d at 323 (continuing to make payments on an installment contract).

11. The relevant cases provide that while the disavowing party must actually "restore" to the defendant any of the money or original property received from the defendant and still on hand, he must only "account" to the defendant for the value of other property acquired with the money or property originally obtained from the defendant. *Id.*; *Hight v. Harris*, 188 N.C. 328, 330, 124 S.E. 623, 624 (1924). The obligation to "account" may also extend to insurance proceeds received by the minor in the event the property is destroyed. See *Greensboro Morris Plan Co. v. Palmer*, 185 N.C. 109, 116 S.E. 261 (1923). Thus, the "restoration" obligation is treated as an element to be proved as a precondition of recovery while the "accounting" obligation is treated as an item of credit in calculating net damages. Compare N.C.P.I.-Civil 505.25 (Contracts-Issue of Minor's Claim for Restitution Where Contract is Disavowed-Measure of Recovery).

12. *Collins*, 197 N.C. at 660, 150 S.E. at 177.

13. *Fisher v. Taylor Motor Co.*, 249 N.C. at 620, 107 S.E.2d at 97.

14. *Id.*; *Hight v. Harris*, 188 N.C. at 330, 124 S.E. at 624. This may also extend to insurance proceeds received by the minor in the event the property is destroyed. *Greensboro Morris Plan Co.*

N.C.P.I.-Civil. 505.20

CONTRACTS - ISSUE OF REMEDY - MINOR'S CLAIM FOR RESTITUTION
WHERE CONTRACT IS DISAVOWED.

GENERAL CIVIL VOLUME

MAY 2003

15. *Id.*, 185 N.C. at 118, 116 S.E. at 265.