

CONTRACTS--ISSUE OF FORMATION--DEFENSE OF LACK OF MENTAL
CAPACITY--REBUTTAL BY PROOF OF NECESSITIES.

The (*state number*) issue reads:

"Did the plaintiff provide the defendant with necessities at a reasonable price?"¹

(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 that the plaintiff must prove, by the greater weight of the evidence, two things:

First, that the [*good(s)*] [*service(s)*] [*identify other benefit(s)*] provided to the defendant [*was*] [*were*] necessary for his essential health, well being or maintenance. Necessities ordinarily include such things as health care, food, clothing, shelter and education. Whether (a) [*good(s)*] [*service(s)*] [*identify other benefit(s)*] [*is a necessity*] [*are necessities*] depends on the facts and circumstances of each case, but the [*good(s)*] [*service(s)*] [*identify other benefit(s)*] must be indispensable to a person by reason of his circumstances, condition or habits.³

¹This equitable exception to the defense of lack of mental capacity is based on *quantum meruit*. *Richardson v. Strong*, 35 N.C. 106 (1851).

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

³*Id.*

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And Second, the compensation to the plaintiff under the contract must be substantially equal to the reasonable value of the [good(s)] [service(s)] [*identify other benefit(s)*] provided to the defendant.

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 provided the defendant with necessities at a reasonable price, 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.