

CONTRACTS--ISSUE OF FORMATION--DEFENSE OF INFANCY--REBUTTAL BY
PROOF OF RATIFICATION AFTER MINOR COMES OF AGE.

The (state number) issue reads:

"Did the defendant, after [attaining the age of eighteen]
[becoming emancipated by [judicial decree] [marriage]
[membership in the armed forces of the United States] [state
other statutory basis for capacity to contract]¹] ratify² the
contract entered into with the plaintiff?"

(You will answer this issue only if you have answered the
(state number)³ 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 defendant has [attained the age of
eighteen] [been emancipated by [judicial decree] [marriage]

¹In 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.G.S. §§53-43.5, 54B-132 and 54C-170), fifteen year olds may enter into and deal in insurance and annuity contracts (N.C.G.S. §58-58-100), seventeen year olds may contract for unsecured loans to attend post-secondary schools (N.C.G.S. §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.G.S. §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.G.S. §39-13.2(a)(1)). If any of these specialized circumstances applies, this instruction will need to be modified accordingly.

²A former minor's ratification of a contract made during infancy extinguishes the infancy defense. *Bobby Floars Toyota, Inc. v. Smith*, 48 N.C. App. 580, 583-84, 269 S.E.2d 320, 322 (1980).

³See N.C.P.I.--Civil 501.65 (Contracts--Issue of Formation--Defense of Infancy).

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[membership in the armed forces of the United States] [*state
other statutory basis for capacity to contract*]].

(All of the evidence tends to show that on (*state date*) the
defendant

[attained eighteen years of age]

[was emancipated by a judicial decree]

[was emancipated by marriage]

[was emancipated by becoming a member of the armed forces
of the United States]

[was emancipated by (*state other fact-specific event
constituting a statutory basis for contractual capacity*)].)

And Second, that the defendant thereafter ratified *his*
contract with the plaintiff in [the following way] [one or more
of the following ways]:

[Express Ratification. (First), the defendant expressly
promised the plaintiff that he would go forward with the
contract.⁴ The promise may be made orally or in writing,⁵ but it
must be more than a mere acknowledgment that a contract was

⁴*Ward v. Anderson*, 111 N.C. 115, 15 S.E. 933 (1892) and *Doe ex dem.
Hoyle v. Stowe*, 19 N.C. 320 (1837).

⁵*Id.*

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entered into.⁶ To be sufficient as an express promise, it must be unconditional, voluntary and made with the defendant's full knowledge that he was not legally obligated to perform the original obligation.^{7]}

[Implied Ratification. ([First] [Second]), the defendant engaged in conduct which leaves no doubt that he decided to go forward with the contract.⁸ If the conduct is equivocal or uncertain in meaning, it is not sufficient to constitute a ratification of the contract.^{9]}

[Failure to Disavow Within a Reasonable Time. ([Second] [Third]), the defendant failed to disavow the contract within a reasonable time after [attaining the age of eighteen] [becoming emancipated].¹⁰ A person who becomes [eighteen] [emancipated] has a reasonable time to disavow the contract he made as a

⁶*Hoyle; Alexander v. Hutcheson*, 9 N.C. 535 (1823), appeal after remand, 12 N.C. 13 (1826).

⁷*C.F. Bresee & Sons v. Stanly*, 119 N.C. 278, 25 S.E. 870 (1896); *Turner v. Gaither*, 83 N.C. 357 (1880).

⁸*Ward*.

⁹*Ward*. Whether the conduct is sufficient to support an inference of ratification is a question of fact for the jury. *Chandler v. Jones*, 172 N.C. 569, 90 S.E. 580 (1916). The conduct of the former minor was held sufficient to constitute ratification in the following cases: *Watson v. Watson*, 204 N.C. 5, 167 S.E. 389 (1933); *Williams v. Williams*, 196 N.C. 674, 146 S.E. 707 (1929); *Wright v. Hepler*, 194 N.C. 542, 140 S.E. 90 (1927); *Faircloth v. Johnson*, 189 N.C. 429, 127 S.E. 346 (1925); *Caffey v. McMichael*, 64 N.C. 507 (1870) and *Doe ex dem. McCormic v. Leggett*, 53 N.C. 425 (1862).

¹⁰*Bobby Floars Toyota, Inc.*, 48 N.C. App. at 583-84, 269 S.E.2d at 322.

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minor. To disavow the contract, the defendant must have communicated by words or by conduct that he no longer wanted the [benefits] [burdens] of the contract.¹¹ 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 after the defendant [attains the age of eighteen] [becomes emancipated].¹²] [Where the subject matter of the contract is [personal property] [services], what constitutes a reasonable time depends on the facts and circumstances of each case.¹³ You may consider

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

[the rate of depreciation of the property]¹⁴

[the perishability of the property]

¹¹The 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*.

¹²*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).

¹³*Id.*, 48 N.C. App. at 582, 269 S.E.2d at 321; *Nationwide Mutual Ins. Co. v. Chantos*, 25 N.C. App. 482, 490, 214 S.E.2d 438, 444, *disc. rev. denied*, 287 N.C. 465, 215 S.E.2d 624 (1975).

¹⁴*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).

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[the amount of benefit conferred upon the defendant after
[attaining the age of eighteen] [becoming emancipated]

[the defendant's retention of the benefit(s) of the
contract after [attaining the age of eighteen] [becoming
emancipated]¹⁵

[the opportunities available to the defendant to disavow
the contract after [attaining the age of eighteen] [becoming
emancipated]

[conduct by the defendant after [attaining the age of
eighteen] [becoming emancipated] that is consistent with
performing the contract]¹⁶

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

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 defendant, after [attaining the
age of eighteen] [becoming emancipated by [judicial decree]
[marriage] [membership in the armed forces of the United States]
[state other statutory basis for capacity to contract]],
ratified the contract entered into with the plaintiff, then it

¹⁵*Bobby Floars Toyota, Inc.*, 48 N.C. App. at 584, 269 S.E.2d at 322-23
(continued possession and operation of an automobile).

¹⁶*Id.*, 48 N.C. App. at 584, 269 S.E.2d at 323 (continuing to make
payments on an installment contract).

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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.