

CONTRACTS--ISSUE OF FORMATION--DEFENSE OF INFANCY--REBUTTAL BY
PROOF OF RATIFICATION BY GUARDIAN, PERSONAL REPRESENTATIVE OR
AGENT.

The *(state number)* issue reads:

"Did [a] [an] [guardian] [personal representative] [agent]
[*name other representative*] of the defendant ratify the contract
entered into between the plaintiff and the defendant?"

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

First, that *(name guardian, etc.)* was a [guardian]
[personal representative] [agent] [*name other representative*] of
the defendant with authority to act on the defendant's behalf.

Second, that *(name guardian, etc.)* knew or, under the
circumstances, had reason to know all the material facts and
circumstances involved with the contract. 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.

¹See N.C.P.I.--Civil 501.65 (Contracts--Issue of Formation--Defense of
Infancy).

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And Third, that (*name guardian, etc.*), on behalf of the defendant, ratified the contract entered into with the plaintiff. A person ratifies a contract in [the following way] [one or more of the following ways]:

[Express Ratification. (First), by expressly promising on behalf of the defendant to go forward with the contract.² The promise may be made orally or in writing,³ but it must be more than a mere acknowledgment that a contract was entered into.⁴ To be sufficient as an express promise, it must be unconditional, voluntary and made with full knowledge that the defendant was not legally obligated to perform the original obligation.⁵]

[Implied Ratification. ([First] [Second]), by engaging in conduct which leaves no doubt that the [guardian] [personal representative] [agent] [*name other representative*] decided on behalf of the defendant to go forward with the contract.⁶ If the

²*Ward v. Anderson*, 111 N.C. 115, 15 S.E. 933 (1892) and *Doe ex dem. Hoyle v. Stowe*, 19 N.C. 320 (1837).

³*Id.*

⁴*Hoyle; Alexander v. Hutcheson*, 9 N.C. 535 (1823), *appeal after remand*, 12 N.C. 13 (1826).

⁵*C.F. Bresee & Sons v. Stanly*, 119 N.C. 278, 25 S.E. 870 (1896); *Turner v. Gaither*, 83 N.C. 357 (1880).

⁶*Ward*.

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conduct is equivocal or uncertain in meaning, it is not sufficient to constitute a ratification of the contract.^{7]}

[Failure to Disavow Within a Reasonable Time. ([Second] [Third]), by failing to disavow the contract within a reasonable time after the defendant [attained the age of eighteen] [became emancipated by [judicial decree] [marriage] [membership in the armed forces of the United States] [*state other statutory basis for capacity to contract*]⁸].⁹ A [guardian] [personal representative] [agent] [*name other representative*] has a

⁷*Id.* 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).

⁸In 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.

⁹*Bobby Floars Toyota, Inc.*, 48 N.C. App. 580, 583-84, 269 S.E.2d 320, 322 (1980).

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reasonable time to disavow the contract made by the minor on whose behalf he is acting. To disavow a contract, the [guardian] [personal representative] [agent] [*name other representative*] must communicate by words or by conduct that the defendant no longer wants the [benefits] [burdens] of the contract.¹⁰ 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].¹¹ [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.¹² You may consider

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

¹⁰The 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*.

¹¹*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).

¹²*Bobby Floars Toyota, Inc.*, 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).

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[the rate of depreciation of the property]¹³

[the perishability of the property]

[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]¹⁴

[the opportunities available to the [defendant] [guardian]
[personal representative] [agent] [*name other representative*] to
disavow the contract after [attaining the age of eighteen]
[becoming emancipated]

[conduct by the defendant after [attaining the age of
eighteen] [becoming emancipated] consistent with performing the
contract]¹⁵

[*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

¹³*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).

¹⁴*Id.*, 48 N.C. App. at 584, 269 S.E.2d at 322-23 (continued possession and operation of an automobile).

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weight of the evidence that [a] [an] [guardian] [personal representative] [agent] [*name other representative*] of the defendant ratified the contract entered into 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.

¹⁵*Id.*, 48 N.C. App. at 584, 269 S.E.2d at 323 (continuing to make payments on an installment contract).