

501.05 CONTRACTS – ISSUE OF FORMATION – DEFENSE OF LACK OF
MENTAL CAPACITY.

The (state number) issue reads:

“Did the defendant lack sufficient mental capacity to enter into the contract with the plaintiff?”

(You will answer this issue only if you have answered the (state number) issue “Yes” in favor of the plaintiff.)¹

On this issue the burden of proof is on the defendant.² This means that the defendant must prove, by the greater weight of the evidence, that the defendant did not possess sufficient mental capacity to enter into the contract with the plaintiff

A party to a contract must have sufficient mental capacity to understand the nature, scope and effect of the act in which he is engaged, to understand what he is contracting to do or refrain from doing, to know with whom he is transacting, and to understand the purpose for which he is contracting and the nature, scope and consequences of his act.³ A party may have sufficient mental capacity although he does not act wisely or discreetly, or drive a good bargain.⁴ A party may also have sufficient mental capacity even if suffering from mental weakness or infirmity.⁵

Finally, as to the (*state number*) issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the defendant lacked sufficient mental capacity to enter into the contract with the plaintiff, then it would be your duty to answer this issue “Yes” in favor of the defendant.

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 plaintiff.

1 See N.C.P.I.–Civil 501.01 (Contracts-Issue of Formation-Common Law); 501.01A (Contracts-Issue of Formation-UCC).

2 Persons are presumed to be competent unless there has been an adjudication of incompetency. *Davis v. Davis*, 223 N.C. 36, 25 S.E.2d 181 (1943). Competent persons have the capacity to manage their affairs and enter into contracts. Thus, the burden of proving lack of mental capacity rests with the person taking that position. *Ridings v. Ridings*, 55 N.C. App. 630, 286 S.E.2d 614, *disc. rev. denied*, 305 N.C. 586, 292 S.E.2d 571 (1982). Where a person has been adjudicated incompetent, he is presumed to lack mental capacity. *Medical College of Va. Med. Div. v. Maynard*, 236 N.C. 506, 73 S.E.2d 315 (1952). This presumption may be rebutted by persons who were not privy to the incompetency proceedings. *Id.* Under such circumstances, the burden of proof on the issue of capacity to contract falls to the proponent of the contract and should be added as a third element to N.C.P.I.–Civil 501.01 (Contracts–Issue of Formation) (see note 1 thereto); N.C.P.I.–Civil 501.01A (Contracts-Issue of Formation-UCC) (see note 1 thereto).

3 *Hendricks v. Hendricks*, 273 N.C. 733, 735, 161 S.E.2d 97, 98 (1968); *Goins v. McCloud*, 231 N.C. 655, 658, 58 S.E.2d 634, 637 (1950); *Carland v. Allison*, 221 N.C. 120, 123, 19 S.E.2d 245, 247 (1942); *Bond v. Branning Mfg. Co.*, 140 N.C. 381, 52 S.E. 929 (1906); *Sprinkle v. Wellborn*, 40 N.C. 163, 181, 52 S.E. 666, 672 (1905).

4 *Davis*, 223 N.C. at 38, 25 S.E.2d at 182 (“A want of adequate mental capacity of itself vitiates the deed, while mere mental weakness or infirmity will not do so, if sufficient intelligence remains to understand the nature, scope, and effect of the act being performed.”).

5 *Caudill v. Smith*, 117 N.C. App. 64, 70, 450 S.E.2d 8, 12 (1994), *disc. rev. denied*, 339 N.C. 610, 452 S.E.2d 247 (1995).