

CONTRACTS--ISSUE OF FORMATION--DEFENSE OF LACK OF MENTAL  
CAPACITY--REBUTTAL BY PROOF OF RATIFICATION (INCOMPETENT REGAINS  
MENTAL CAPACITY).

The (*state number*) issue reads:

"Did the defendant regain *his* mental capacity and ratify  
the contract entered into with the plaintiff?"

(You will answer this issue only if you have answered the  
(*state number*) issue<sup>1</sup> "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 the defendant regained *his* mental capacity  
after *he* entered into the contract with the plaintiff. This  
means the defendant must have regained *his* ability to understand  
the nature, scope and effect of the contract, to understand what  
*he* contracted to do or refrain from doing, to know with whom *he*  
contracted, and to understand the purpose for which *he*  
contracted and the scope and consequences of *his* act. A person  
can regain mental capacity but still not act wisely or  
discretely, or drive a good bargain. A person may regain mental  
capacity even while continuing to suffer from mental weakness or  
infirmity.<sup>2</sup>

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<sup>1</sup>See N.C.P.I.--Civil 501.05 (Contracts--Issue of Formation--Defense of  
Lack of Mental Capacity).

<sup>2</sup>*Id.*, n. 3.

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Second, that, after regaining mental capacity, the defendant knew or, under the circumstances, had reason to know of all of the material facts and circumstances involved with the contract.<sup>3</sup> 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.

And Third, that, after regaining mental capacity, the defendant retained the benefit of the plaintiff's performance.<sup>4</sup>

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 regained *his* mental capacity and 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.

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<sup>3</sup>*Puckett v. Dyer*, 203 N.C. 684, 690, 167 S.E. 43, 46 (1932); *Sherrill v. Little*, 193 N.C. 736, 740, 138 S.E. 14, 16 (1927).

<sup>4</sup>*Id.*