

CONTRACTS--ISSUE OF FORMATION--DEFENSE OF INFANCY--REBUTTAL BY  
PROOF OF NECESSITIES.

The (state number) issue reads:

"Did the plaintiff provide the [defendant] [defendant's dependents] with necessities [at a reasonable price] [for a reasonable fee]?"<sup>1</sup>

(You will answer this issue only if you have answered the (state number)<sup>2</sup> issue "Yes" in favor of the defendant.)

On this issue the burden of proof is on the plaintiff.<sup>3</sup>  
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] [defendant's dependents]<sup>4</sup> [was] [were] necessary for [his] [their] essential health, well being or maintenance. Necessities ordinarily include such

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<sup>1</sup>This equitable exception to the defense of infancy is firmly rooted in common law.

<sup>2</sup>See N.C.P.I.--Civil 501.65 (Contracts--Issue of Formation--Defense of Infancy).

<sup>3</sup>*Gillis v. Whitley's Discount Auto Sales, Inc.*, 70 N.C. App. 270, 278, 319 S.E.2d 661, 666 (1984).

<sup>4</sup>"Dependents" means a minor's wife and children. *Gastonia Personnel Corp. v. Rogers*, 276 N.C. 279, 287, 172 S.E. 19, 24 (1970); *Freeman v. Bridger*, 49 N.C. 1, 2 (1856) (*dictum*).

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matters as health care, food, clothing, shelter and education.<sup>5</sup>  
Whether (a) [good(s)] [service(s)] [*identify other benefit(s)*]  
[is a necessity] [are necessities] depends on the facts and  
circumstances of each case,<sup>6</sup> but the [good(s)] [service(s)]  
[*identify other benefit(s)*] must be indispensable to a person by  
reason of his circumstances, condition or habits.<sup>7</sup>

(A [good] [service] would not be a necessity if the minor

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<sup>5</sup>*Gastonia Personnel Corp.*, 276 N.C. at 282, 172 S.E.2d at 21. In 1970, this case extended the necessities doctrine "to include such articles of property and such services as are reasonably necessary to enable the infant to earn the money required to provide the necessities of life for himself and those who are legally dependent upon him." *Id.* at 287, 172 S.E.2d at 24. While this decision benefiting "older minors" (the minor in this case was 19 and married with children) has not been overruled or modified, its continuing vitality has been questioned because the age of majority was lowered from 21 to 18 in 1971. For that reason, "earning a living" is omitted from the litany of matters comprising "necessities."

<sup>6</sup>*Lane v. Aetna Casualty & Surety Co.*, 48 N.C. App. 634, 638, 269, S.E.2d 711, 714 (1980), *disc. review denied*, 302 N.C. 219, 276 S.E.2d 916 (1981).

<sup>7</sup>The goods or services must be "suitable to the state, station and degree in life of the person to whom it was furnished." *Jordan v. Coffield*, 70 N.C. 110, 114 (1874). Necessities not only include such articles as are absolutely necessary to support life, but "also such articles as are suitable to the state, station, and degree in life of the person to whom they are furnished." *Id.*

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lives with his parent or guardian.)<sup>8</sup>

(A [good] [service] would not be a necessity if the minor's parent or guardian has contracted with the provider and the provider relies on the credit of the parent or guardian in furnishing the [good] [service].)<sup>9</sup>

And Second, the compensation sought by the plaintiff under the contract does not exceed the reasonable value of the [good(s)] [service(s)] [*identify other benefit(s)*] provided to

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<sup>8</sup>*Cole v. Wagner*, 197 N.C. 692, 696, 150 S.E. 339, 340 (1929); *Smith v. Young*, 19 N.C. 26, 27 (1836). However, **note well** that there is an exception to this disqualification. Even if the minor is living with a parent or guardian, the good or service can be a necessity if the parent or guardian is unwilling or unable to provide the minor with such good or service as the parent or guardian considers necessary. *Id.*

<sup>9</sup>*North Carolina Baptist Hospitals, Inc. v. Franklin*, 103 N.C. App. 446, 449-450, 405 S.E.2d 814, 816-817, *disc. rev. denied*, 330 N.C. 197, 412 S.E.2d 58 (1991).

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the defendant.<sup>10</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 plaintiff provided the [defendant] [defendant's dependents] with necessities [at a reasonable price] [for a reasonable fee], 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>10</sup>*Smith* suggests that a plaintiff's recovery depends on proof that the good or service provided to the minor was, in fact, a necessity and was provided at a reasonable price. 19 N.C. at 27. See also *Bitting v. Goss*, 203 N.C. 424, 166 S.E. 302 (1932). This is consistent with the basic equitable precept that to receive equity one must do equity. *Gastonia Personnel Corp.*, on the other hand, seems to hold that the issue of necessity is separate from the issue of what the plaintiff is entitled to recover (the "reasonable value"). 276 N.C. at 287, 172 S.E.2d at 25. The focus of *Gastonia Personnel Corp.* was whether the classes of legally recognized "necessities" should be enlarged to include employment services. The Supreme Court did not directly consider whether the reasonableness of the price was a precondition to liability or only a measure of recovery. This instruction follows *Smith* and tracts the reasonableness of the price as a precondition to liability.