**Incapacity Defenses**

Welcome to this podcast on Incapacity Defenses brought to you by CALI. I am Professor Jennifer S. Martin. There are three sets of defenses that might be used to avoid enforcement of a contract which is otherwise valid: (i) capacity related defenses; (ii) assent related defenses; and (iii) public policy related defenses. The topic of this podcast is the basic concepts related to incapacity defenses to enforcement of a contract, which includes infancy, mental illness, and intoxication. The incapacity defenses seek to protect vulnerable people in society (children, those suffering from mental illness or intoxication) from exploitation by others in the contracting process. The other types of defenses and their elements are covered in other podcasts.

It is worth noting that factual situations will sometimes allow a contracting party to claim multiple defenses to contract enforcement simply because the defenses have some overlap in some situations. For instance, a minor might have entered into a contract because of a misrepresentation. In such cases, the minor can claim both the defenses of infancy and misrepresentation.

Some of the capacity defenses result in a contract being void and others voidable by the party protected by the defense (meaning the minor, the person with mental illness or the person intoxicated). In cases where the contract is void, neither party can enforce the contract or claim a remedy on the contract. In cases where the contract is voidable, the party lacking capacity has the power to affirm or disaffirm the contract, meaning they can elect to carry on with the contract or not to continue it. In the event that the party does seek to avoid the contract, the party will request that a court rescind the contract. Rescission will allow a party to avoid the contract by essentially unmaking it. In most cases, a court will place the parties in the position they would have been in if the contract had never existed, allowing the court to choose the remedy of restitution to effectuate this result.

Let’s turn to the defense of infancy. This defense seeks to protect all minors, meaning children up to the age of majority, typically the age of 18. The defense of infancy makes a contract formed by a minor voidable at the option of the minor, meaning they can enter into contracts, but have the opportunity to disaffirm the obligation. After reaching the age of 18, the minor can affirm the contract. The minor can use the defense of infancy to disaffirm the contract at any time prior to becoming 18 or within a reasonable time thereafter. Because disaffirming an obligation is accomplished by rescission, the minor must return to the other party whatever is left of what was received from that party. However, the minor is not responsible for any loss, damage or destruction in most cases. Furthermore, the minor is not responsible for the price of goods and services received.

This defense applies broadly to all minors, regardless of any perceived maturity of the minor in order to prevent exploitation of children, including teenagers. The defense of infancy has limited application to necessaries, such as food and shelter, for which a minor contracts. The minor can avoid contracts for necessaries, but is liable for the reasonable value of the necessaries in restitution. States often have wide differences as to the scope of the infancy doctrine, so it is important to look at local decisions.

Let’s look at some examples of the incapacity defense arising from infancy.

Example #1. Percy, age 16, bought a used car from Olympus Motors with a $1500 down payment on a $7000 price, the remainder to be paid in monthly installments. Percy is a minor and, at his election, can avoid the contract prior to becoming 18 years old or a reasonable time thereafter. If Olympus Motors brought suit on the remainder of payments, Percy could request rescission of the contract, which would permit him to avoid all liability on the loan (but he must return the car, or what’s left of it). Percy would also be able to recover the $1500 down payment and any payments made.

Example #2. Darla is 16 years old when her parents leave her alone for a week while they travel. Her parents left Darla money for groceries, but Darla loses her wallet and becomes hungry. Darla drives to the local grocery store and explains her predicament. Manager sells Darla $150 of groceries, which Darla promises to pay for in 10 days. When Darla does not pay for the groceries, the local grocery store brings suit. Here, Darla is an infant because she is under the age of 18. In this case, however, the groceries are necessaries. Darla can avoid the contract, but may be liable in restitution for the reasonable value of the groceries.

Example #3. Jordan is a gifted student who enters college at the age of 15. Jordan rented books and purchased supplies from a business near the campus, with the owner having no idea that Jordan was younger than his typical customers. Jordan failed to return the books because his backpack was stolen and does not pay for them. Here, Jordan is an infant because he is under the age of 18. It does not matter that he is very intelligent, might look older than he is or that he is studying at a nearby college with older students. Jordan may assert the defense of infancy even though he cannot make restitution by returning the books.

Let’s turn to the defense of mental illness. This defense seeks to protect people suffering from mental illness from exploitation by others. While infancy has a bright line standard with the age of 18, there is no similar standard for mental competency, except where there is a guardianship order of a court. Contracts entered into with someone adjudicated incompetent by a court are simply void and the person has no contractual capacity.

Other persons suffering from mental illness, which could include transitory conditions, may still be able to use the defense but will have to prove that they entered into a transaction by reason of mental illness or defect and either (i) was unable to understand in a reasonable manner the nature and consequences of the transaction; or (ii) was unable to act in a reasonable manner in relation to the transaction and the other party had reason to know of the condition. Where the contract was made on fair terms and the other party was without knowledge of the mental illness or defect, the defense of incapacity is terminated to the extent the contract had been performed in whole or part or other circumstances indicating that avoidance would be unjust.

Let’s look at some examples of lack of capacity due to mental illness.

Example #4. Billy has been adjudicated mentally incompetent and is under a guardianship order by the court. Billy enters into a contract with Jeweler for the purchase of a $25,000 watch. This contract is void and unenforceable.

Example #5. Grace had a nervous breakdown and has been on leave from work with Employer for treatment of mental illness. Grace has been released from the hospital, but is unable to work. Grace goes to Employer and signs an agreement for retirement benefits that will leave her husband with no survivor benefits upon her death. Grace may be able to assert the defense of mental illness to disaffirm the contract. Because Grace understood the transaction, she would have to prove the second alternative concerning ability to act in a reasonable manner. Here, Grace would need to prove that she was unable to act in a reasonable manner in relation to the election of retirement benefits because of her mental illness and that the employer had reason to know of the condition because she had been on leave from work for mental illness treatment.

Let’s turn to the defense of intoxication. This defense is similar to the defense of mental illness and seeks to protect people whose incapacity often arises from voluntary behavior, such as drinking or drugs, or caused by a condition akin to mental illness, such as alcoholism and drug addiction. Contracts entered into with someone who is intoxicated are voidable if the other person has reason to know of the intoxication and (i) the intoxicated person is unable to understand in a reasonable manner the nature and consequences of the transaction or (ii) the intoxicated person is unable to act in a reasonable manner in relation to the transaction.

Let’s look at some examples of lack of capacity due to intoxication.

Example #6. Esther, who is obviously severely intoxicated, slurring her words and stumbling about, purchased a used car from Olympus Motors for $7500. Esther should be able to avoid the contract because Olympus Motors would have reason to know of the intoxication and it would seem that either Esther was unable to understand the manner and nature of the transaction or she was unable to act in a reasonable manner in relation to the transaction. Esther would request rescission of the contract.

Example #7. Ingrid is an alcoholic. Ingrid was severely intoxicated, but able to function and walk and speak perfectly well and showed no signs of inebriation. Ingrid entered into a contract with Justin to purchase a life-size cardboard cutout of Elvis. Ingrid sobered up later that day and found the receipt for the purchase, but remembered nothing of the transaction. Ingrid contacted Justin wanting to cancel the order due to her intoxication. Justin can enforce the contract because he did not reasonably know of her intoxication. This would be true even if she did not remember the transaction.

Just a note about necessaries. As with infancy, a person lacking capacity due to mental illness can avoid contracts for necessaries, again food, clothing and shelter, but will be liable for the reasonable value in restitution.

At this point, you should be able to identify the three defenses related to incapacity: (i) infancy; (ii) mental illness; and (iii) intoxication. You should also be able to describe how and when these defenses can be used to enable a party to rescind a contract otherwise validly entered into.

I hope you’ve enjoyed this podcast on Incapacity Defenses.

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