

3-1 Consideration: What Is Consideration?

Hot Debate: For a college graduation present, a wealthy aunt promised to give Maureen two round-trip tickets for a cruise for her and a friend. The promised trip was to be along the “Mexican Riviera” from Long Beach, California to Acapulco, Mexico. At the graduation exercises, however, her aunt gave her a kiss instead and said, “The stock market is down. Sorry, darling!” State two reasons why you think Maureen should be able to recover the value of the trip from her aunt. State two reasons why you think the aunt should not have to pay.

Consideration

What’s Your Verdict? Your neighbors are going skiing in the Canadian Rockies near Calgary, Alberta. Their vacation will last 10 days. They unilaterally offer to pay you \$30 on their return if you pick up their mail each day they are gone. You accept by picking up their mail every day. Is there consideration for both parties? Is the contract enforceable?

The main purpose of **consideration** is to distinguish between social promises, such as offering a birthday gift, and more serious transactions where one thing is being exchanged for something else.

A gift is the transfer of ownership without receiving anything in return. A promise to make a gift is generally not enforceable. Only after a donor (the person giving the gift) transfers possession of the gift to the donee (the person receiving the gift) with the intent to transfer ownership, does the transaction irrevocably shift ownership to the donee.

There are 3 requirements of consideration:

- Each party must give an act, forbearance, or promise to the other.
- Each party must trade what they contribute to the transaction (act, forbearance, or promise) for the other party’s contribution.
- What each party trades must have legal value, that is, it must be worth something in the eyes of the law.

Act, Forbearance, or Promise

In What’s Your Verdict? what you contributed was picking up the mail each day. This is an act. It was traded for the neighbor’s promise to pay the \$30. Both this act and promise have value in the eyes of the law. When examining promises, we look for legal value in the underlying act that is promised. Similarly, if someone promises **forbearance** (to not do something), we look beneath the promise and ask if the forbearance has legal value.

Trading

In a typical contract, one party in effect says to another, “If you do this for me (pick up my mail), I shall do that for you (pay you \$30).” A person promising an action or forbearance is the promisor. The person to whom the promise is made is the promisee. In most contracts, trading arises as one party exchanges a promise for the promise of the party on the other side. There has been a bargaining, or trading, of one promise for the other. Consideration must be mutual. This means that each party must give consideration, and each must receive consideration. Consideration can be given by conferring (or promising to confer) a benefit or by incurring (or promising to incur) a detriment. If either of the parties does not give consideration, the other has no duty to perform as promised.

Legal Value

Legal value means there has been a change in a party’s legal position as a result of the contract. In What’s Your Verdict? you performed an act which involved a benefit to your neighbor (picking up mail). There is legal value because this changed (benefited) your neighbor’s legal position. Your neighbors, as promisors, benefited your legal position by promising the \$30. Because both the act (picking up the mail) and the promise (to pay \$30) have legal value and were traded, consideration is present and there is a contract. Legal value (a change in legal position) is most commonly found in this form-in the exchange of two benefits. Legal value can also be found in the exchange of benefit for a detriment. A detriment always arises when you promise forbearance – that is, promise to refrain from doing what you have a right to do. If your uncle said on your eighteenth birthday, “Look, if you refrain from smoking until your twenty-first birthday, I’ll give you \$25,000.” You respond, “Yes, I accept.” What you have promised is not a benefit to your uncle, but rather a detriment to yourself – you have given up a legal right. This is a change in your legal position and is thus valid consideration. Legal value can also arise from the exchange of two detriments. If you say to your neighbor that you will forbear buying a dog if she will forbear building a fence, both parties have changed their legal positions. Therefore, there is consideration.

Adequacy of Consideration

Generally, what the parties give and get as consideration need not be of equal economic value. This idea is sometimes expressed as, “The courts do not inquire into the adequacy of consideration.” The values that different people place on the same property may vary widely. For example, one person might gladly pay \$60,000 for an original and exclusive high-fashion gown by a famous designer. Others would not be interested in owning such a gown for \$60. A person also might place a higher value on a product at one time than at another. For example, when you have been baking for hours on the sunny side of a baseball stadium, you might willingly pay three times the grocery-store price for a cold soft drink.

Economic value is unimportant as long as there is genuine agreement. However, a big difference in economic value of what one gives and receives may be evidence of mutual mistake, duress, undue influence, or fraud. If the consideration received by one of the parties is so grossly inadequate as to shock the conscience of the court, the contract will be declared unconscionable. In such a case, the contract or the unconscionable clause may not be enforceable.

- **Nominal Consideration.** A token amount of consideration, such as one dollar, is called nominal consideration. Courts will typically enforce contracts supported by nominal consideration if circumstances indicate that, in fact, consideration was given.

Think Critically About Evidence

1. After graduation from high school in June, you and three classmates plan to travel around the United States. The plan is to visit the capital cities of all 48 contiguous states, taking numerous pictures along the way. The Sunnyside Camera Shop offers to give you a dozen rolls of 36-exposure color film for the trip free if you agree to let it develop and print all the rolls you use, for a stated price per roll. You agree. Are both you and the Sunnyside Camera Shop legally bound? What is the consideration?
2. A high school band practices for at least one hour most days of the week. Its studio is the garage of the drummer’s home. The music was so loud that it violated a noise ordinance. Several neighbors offered to pay the rent at a local mini-warehouse as a practice room for a year if the group agreed to stop practicing at the drummer’s home. The players agreed. Did the neighbors receive consideration? Did the band receive consideration? Did the band receive a benefit, endure a detriment, both, or neither? Was the contract enforceable? Would it make a difference if the band’s music didn’t violate the noise ordinance?
3. Gil found a nearly new engine in his neighbor’s garage. He was experienced enough to see that it was in good shape. When he asked the neighbor how much she wanted for it, she said \$65. Gil said, “Okay,” even though he knew it was worth nearly \$800. Is this a valid contract?

3-2 Consideration: Problems with Consideration

What’s Your Verdict? Lemsky employed Vork under a three-year contract. The contract called for Vork to manage a motel for Lemsky at \$25,000 a year, as well as receive a free apartment. After six months, Flemming offered Vork \$30,000 a year to manage a larger motel. Upon learning of the offer, Lemsky said to Vork, “I need you to manage my motel ... I’ll meet any offer you get from anyone else.” Vork remains on the job. Must Lemsky pay her the higher salary?

Legal value means there is a change in the legal position of the party as a result of the contract. When a benefit is promised, the promisee has his or her legal rights increased, so this has legal value. Thus if you promise to paint your neighbor’s house for \$3,000, you’ve increased your neighbor’s legal benefits to include painting the house.

Illusory Promises

To be consideration, a promise must be binding. In other words, the promise must create a duty or impose an obligation. If a contract contains a clause which allows you to escape the legal obligation, the promise is said to be an **illusory promise**. For example, you might have a clause stating that you will “paint the house-if you have time.” This does not increase your legal obligation because you may never have time to paint the house.

- **Termination Clauses.** Businesses often want the power to withdraw from a contract if business circumstances change. Therefore they include termination clauses in their contracts. If the clause gives one party the power to terminate the contract for any reason, the promise to perform would be illusory. On the other hand, if termination is allowed only after a change in defined circumstances, or after the passage of a certain length of time, or after 30-days’ notice, the promise is not illusory. There is clearly a change in the party’s legal obligations.

Existing Duty

A person sometimes promises to do something that he or she is already obligated to do by law or by prior contract (an **existing duty**). Such a promise, or act, cannot serve as consideration.

- Existing Public Duty. If on your sixteenth birthday, your aunt promised to pay you \$10,000 if you promised to not purchase alcohol for two years and you said, “Okay,” this would not be a contract. There is no consideration because it is illegal for you to purchase alcohol when you are 16 and 17 years old. While the agreement creates a benefit for you (\$10,000), you don’t incur a detriment because you are not giving up a legal right.
- Existing Private Duty. If a contract creates a duty, this duty cannot be the basis of consideration in a different contract. In *What’s Your Verdict?* Vork was still bound to work for Lemsky for an additional 30 months under the original contract. Therefore Lemsky’s promise to pay more money is unenforceable. To hold Lemsky to the new promise, Vork would have to provide new, additional consideration. Otherwise Vork is obligated to carry out the contract as originally agreed upon. The same rule holds true when a person demands further compensation for carrying out a contract already made.

What’s Your Verdict? Francis, a pedestrian, saw a Car pulled over by the side of the road with a flat tire. He came to the driver’s aid, replacing the flat with the spare tire. Then he accompanied the driver to the nearest gas station where her flat was repaired. She thanked Francis and said she would give him \$20 on her next payday. Later she changed her mind, and Francis sued. Can Francis win the \$20?

Mutual Gifts

The consideration on both sides must be traded one for the other. If they are not traded, then there are probably two gifts being made. In *What’s Your Verdict?* Francis made a gift of changing the tires. Because the driver’s promise was made after Francis changed the tire, the driver made a gift of promising \$20. Neither party sought to exchange one thing for the other. Even if the **mutual gifts** have legal value, they are not consideration unless they arise from a bargained-for exchange.

Past Performance

Recall that consideration is what one person asks of another in return for consideration. The bargaining takes place in the present, for immediate or future performance by both parties. Therefore, an act that has already been performed (**past performance**) cannot serve as consideration. Such an act is called past consideration.

Think Critically About Evidence

1. If a contract contains a clause stating that all the buyer’s obligations could be extinguished by giving 30-days’ notice, would this make the buyer’s obligations under the contract illusory?
2. Georgia’s neighbors approached her right after she received her driver’s license and said they felt that she drove too fast on the roads where their kids often played. They struck a deal with her that if she stayed within the speed limit for the next three months they would pay her \$200. Georgia agreed. Is there a benefit to the neighbors? Is there a benefit to Georgia? Is there a contract?
3. Kamiar owed Rubio \$5,000, which was due in one year. There was no dispute as to the amount. However, Rubio needed money immediately, so Kamiar offered to pay \$4,000 early in full settlement of the debt. If Kamiar pays the \$4,000 early, may Rubio sue to collect the remaining \$1,000 later?
4. Shea owed Barlow \$1,200 that was due and payable. Shea had been temporarily laid off at work, so he asked Barlow to extend the due date for six months. Barlow agreed, but a month later sued Shea to collect the debt. Will she win?

3-3 Consideration: Exceptions

What’s Your Verdict? Silvertone, a wealthy financier, strongly believes that world travel is essential for a balanced education. Accordingly, he told his twin niece and nephew that if they would “top off their college degrees with a trip around the world,” he would pay all their expenses upon their return, up to \$9,500 for each. Using savings and some borrowed money, the twins took off on a 90-day journey. Total reasonable expenses for each exceeded \$9,500 by the time they returned home. Is Silvertone liable to the twins?

Promissory Estoppel

There are important exceptions to the general rule that mutual consideration is necessary for a valid contract or binding promise. When someone intends a gift but consideration is not present, a promise may be enforced under the doctrine of **promissory estoppel**. The following conditions must be met:

- The promisor should reasonably foresee that the promisee will rely on the promise.
- The promisee does, in fact, act in reliance on the promise.
- The promisee would suffer a substantial economic loss if the promise is not enforced.
- Injustice can be avoided only by enforcement of the promise.

Silvertone is legally bound to reimburse each twin with \$9,500. Although he received no consideration for his promise of a gift, he is estopped (or barred) from denying his liability under the doctrine of promissory estoppel. He could see that the twins would rely on his promise, they did in fact spend their money on the trip, and they would suffer an unfair economic loss unless he is required to pay. Injustice can be avoided only if Silvertone pays.

What's Your Verdict? Branyan pledged \$25,000 to the building fund of the community hospital. Relying on this and other pledges, the hospital's board of directors entered into a contract for construction of a new section. Can the Branyans be held to their pledge?

Promises to Charitable Organizations

Individuals and business firms often contribute to charitable organizations, such as churches, schools, and hospitals not operated for profit. The contributions may be outright gifts or promises (pledges) to pay in the future. Because the party who makes the pledge receives nothing in return, one might assume that the pledge is unenforceable. Courts generally enforce such promises provided the charity states a specific use for the money and actually acts in reliance on the pledge. For example, a hospital may have contracted for new facilities, as in *What's Your Verdict?* It would be unjust to deprive the hospital of promised support it reasonably relied on.

Firm Offers

A merchant who makes an offer in a signed writing to buy or sell goods and promises to leave the offer open, is bound for up to three months even when no payment or other consideration has been given for the promise. This is called a firm offer. This is different from an option, which does require consideration in order to be valid.

Think Critically About Evidence

1. Laura wanted to go to graduate school after college and she knew it would be very expensive. Her dad told her that if she would major in math instead of history, he would pay tuition in graduate school for a master's degree. Laura majored in math but her dad refused to pay for her graduate school tuition. Can Laura compel her father to pay?
2. Welt entered into a contract with Carbonaro for the purchase of two dozen ultralight bike frames that he planned to resell from his retail bike shop. The price was \$600 each. The parties wrote out all the terms of their contract and each signed. Later Welt learned that he could acquire similar frames for \$525 each. Welt told Carbonaro that if it wanted to maintain Welt's goodwill it would reduce the price to \$525. Carbonaro agreed. What is the consideration in the original contract? Is "maintaining goodwill" something which has legal value? Is the price of \$525 enforceable? Why or why not?
3. When they were both freshmen in college, Steiner borrowed \$200 from Faber so he could attend a big game in Chicago. Steiner never repaid the debt, and after five years it was barred by the statute of limitations. Then Steiner sent Faber a Christmas card on which he added this note: "I haven't forgotten the \$200 I borrowed from you. Now that I am working, I'll pay you. In addition, I'll take you to a game this year's at my expense." Is Steiner legally obligated to repay the \$200?
4. Lemke's son bought a plasma TV from Dyer on an installment plan. When her son was unable to keep up the payments, Dyer came to repossess the plasma TV. Lemke promised in writing to make the payments if Dyer would allow her son to keep the plasma TV. If Dyer agreed, could Lemke hold him to his promise?
5. Glenn contracted to provide the labor for an addition to Reid's home for \$10,000. When Glenn was partially through, he realized that the job was more time-consuming than anticipated. Therefore he refused to continue until Reid promised to pay an additional \$2,000. Is Glenn legally entitled to the extra \$2,000?
6. Mackey, who had no children, told Lark that if she would attend his alma mater, Aloha College, and graduate, he would pay all expenses she incurred. Relying on loans and some of her own funds, she financed her way through college and earned the degree. Now Mackey says Lark suffered no detriment and he got the benefit. Since there was no consideration, he need not pay as promised. Is Lark right?
7. Kari promised to deed ten acres of land to the Ezlers. In reliance on the promise, they took possession of the land, cleared it, installed an irrigation system over a one-acre section and planted fifty young fruit trees. Then Kari, seeing the improved property, changed her mind. May the Ezlers compel the transfer even though they gave Kari no consideration?
8. Mary received a diamond brooch from the estate of her maternal grandmother. It was appraised at \$7,500. Because it did not fit in with her sports-oriented lifestyle, Mary sold the brooch to a jeweler who told her "The setting is old-fashioned but the diamond is forever the same ... I'll give you \$3,500 cash." Later Mary wondered whether she received legally sufficient consideration. Did she? Can she rescind the transaction if she can prove that she received much less than the brooch was worth?
9. When Bob began college at age 21, his godmother promised to give him \$1,000 at the end of each of the following four years if he remained in school and refrained from smoking tobacco and/or chewing. She also promised a bonus of \$1,000 if and when he received his bachelor of science degree. Are the godmother's promises legally enforceable? What are the ethical implications of her promises?

3-4 Capacity: What Is Capacity?

What's Your Verdict? Susan, age 16, walked into a fur shop out of curiosity and became enthralled with the idea of owning a fur jacket. A persuasive sales lady told her she would be able to use it for the rest of her life and that it was a good investment. Her aunt had recently died and willed her enough for the jacket. A week later, she realized that at this time in her life she didn't have a use for a fur jacket. Can Susan get her money back?

The major requirements for the creation of a contract are satisfied if there is offer and acceptance, genuine agreement, and consideration. Still, certain parties to contracts are assumed by the law to lack the maturity and experience to protect their self-interests. The law grants these parties special contractual rights designed to protect them from being cheated. Parties who have special contractual rights are minors, the intoxicated, and the mentally incapacitated. Minors are under the age of majority, which is 18 in most states. Minors, mentally incapacitated, and intoxicated persons “lack contractual capacity.” Persons who are not minors, not intoxicated, or not mentally impaired possess the capacity to contract. **Contractual capacity** is the ability to understand that a contract is being made and its general meaning.

Capacity Rights

There are two basic protections granted to those who lack capacity. When protected parties purchase things classified as necessities – things needed to maintain life and lifestyle – the protected parties (or special parties) need pay only the fair market value rather than the contracted price. When these parties purchase non-necessaries – things that for them are relative luxuries – they must pay the contracted price, but the protected parties have the option to disaffirm the contract. **Disaffirmance** involves giving back the consideration by both parties. In *What's Your Verdict?* Susan purchased a non-necessary and could disaffirm by returning the jacket and requesting her money back.

If a protected party leased a luxury condominium for one year by paying two months' rent and a security deposit, he or she could disaffirm a week later by giving possession back to the landlord, and recover the payments. Minors may disaffirm contracts for non-necessaries during their minority. They may also disaffirm for a reasonable length of time after achieving their majority. After the age of majority, the power to disaffirm is immediately cut off if the person ratifies the contract. Ratification is acting toward the contract as though one intends to be bound by it.

Minors

In most states, people under the age of 18 are legally **minors**. The law may refer to them as “infants” or persons living during the minor (shorter) part of their lives. They also may be referred to as being in their minority or under the age of majority. In a few states, the age of majority is 19 or 21.

Emancipation is the severing of the child-parent relationship. It ends the duty of the parent to support a child and the duty of the child to obey the parent. States differ greatly in their treatment of emancipated minors. In the state of Ohio, there are only three ways in which a minor can be emancipated:

- Minor reaches age of majority (occurs naturally when the child attains age of majority). Note that in Ohio, if the minor turns 18 while still in high school, the parents are still responsible for supporting that child until graduation.
- Marriage of minor, with permission of the parents (not becoming a parent, however).
- Minor joins armed forces, with permission of the parents.

Mental Incapacity

Mental incapacity is much less precisely defined than minority. The test is whether the party understands the consequences of his or her contractual acts. Thus people with severe mental illness, severe mental retardation, or severe senility lack capacity. If a judge rules that a person is insane, then this person has a complete lack of capacity. All contracts executed by this person are void, whether for necessities or non-necessaries.

Intoxication

Intoxication can arise from using alcohol or drugs. While the courts often articulate the same definition of incapacity as for the mentally impaired – does the person understand the consequence of their contractual acts – many courts are reluctant to allow disaffirmance for intoxication. Courts typically allow disaffirmance only for those who were so intoxicated that they did not know they were contracting. This stricter standard is used because intoxication is a voluntary act.

In This Case: Joe drank a six-pack of beer on a Sunday afternoon while watching a pro football game. Joe often drank this much. After the game, Gordon, a real estate agent, came to Joe's house and presented him with an offer to buy his house. The price was \$202,000. Joe signed the contract even though he felt a little tipsy. Later, someone offered \$230,000. Although Joe had been drinking, he cannot disaffirm the contract based on intoxication. He did not satisfy the court standard for intoxication.

Which Contracts Can Be Disaffirmed?

What's Your Verdict? Against their parents' wishes, Garcia and Wesley – both minors – left home. Together they signed a 12-month lease to rent a nearby furnished apartment from Krohn at the bargain price of \$350 a month. After three months, the teenagers ran out of money and returned to their homes. Krohn could not find new tenants. Could he hold the minors liable for the rent?

The two rights given those who lack capacity are the right to disaffirm contracts for non-necessaries and the right to pay a fair price instead of the contract price for contracts for necessaries. Because these rights are mutually exclusive, it is important to understand the difference between necessaries and non-necessaries. Necessaries are goods and services that are reasonably required to maintain a person's lifestyle. These include basic food, clothing, shelter, and transportation. All other goods and services are for non-necessaries, or relative luxuries.

Necessaries. The standard for necessaries can vary from one person to another. To be **necessaries**, the things contracted for must be suitable to that party's economic and social status. The person must not already possess those goods or services. For example, a minor must not have them supplied by parents or guardians. In What's Your Verdict? if the parents of both Garcia and Wesley provided adequate shelter, the apartment would not be a necessary. Courts usually find such things as food, clothing, shelter, education, medical care, and tools used to earn a living to be necessaries. Some courts hold that an automobile is a necessary when it is essential for the minor to earn a living.

Non-Necessaries. Those things not needed to maintain one's economic or social status, perhaps cosmetics, jewelry, liquor, tobacco, perfume, audio equipment, travel for pleasure, and expensive food for parties are likely to be **non-necessaries**.

Think Critically About Evidence

1. Clare was age 17, a minor in her state, when she bought a week's worth of groceries at a local supermarket. Later she discovered she spent too much money and was going to be over her weekly budget. So she took the groceries back and asked for her money back. If she sues, will she win?
2. Tanya, a minor, was the daughter of a construction worker. When she was 17, she bought an evening gown for \$400 to wear to a school dance. After the dance, Tanya decided she didn't like the dress and returned it asking for the money back. Is she legally entitled to the money?
3. Janice had been drinking all afternoon before she went into a used car lot. There she signed a contract to purchase a two-year-old car for as much as it would cost for the same model new. She sought to disaffirm the contract based on intoxication. At the trial, she testified that she understood she was buying a car, that she understood the price identified in the contract for the car, but that she didn't realize that she could get a newer car for the same price. Is Janice likely to succeed in disaffirming this contract on the basis of intoxication?

3-5 Capacity: Limitations of Capacity Rights

Time of Disaffirmance and Ratification

What's Your Verdict? While still a minor, Beach bought a stereo sound system on credit from McReam's Electronic Cloud for \$300. Beach paid \$100 down and promised to pay \$50 a month on the unpaid balance until the debt was paid. After making four payments, two of which were made after he reached the age of majority, Beach decided to disaffirm the contract and return the equipment. Can Beach do this?

Generally, a person lacking contractual capacity can disaffirm a contract for non-necessaries:

- Any time while still a minor, mentally incapacitated or intoxicated; or
- Within a reasonable time after attaining capacity.

After attaining capacity, a person may ratify the contract made while under an incapacity. **Ratification** is action by the party indicating intent to be bound by the contract. For a minor, ratification must occur after achieving majority. Ratification may consist of either of the following:

- Giving a new promise to perform as agreed; or
- Any act (such as making payments to the seller) that clearly indicates the party's intention to be bound.

In What's Your Verdict? Beach ratified the contract by making payments after reaching majority. This act cut off his power to disaffirm. Once ratification occurs, it may not be withdrawn.

Return of Goods or Services

What's Your Verdict? Lamon, a minor, bought a diamond engagement ring and a necklace for his fiancée, Morgan. He paid for the items in weekly installments of \$10. On the day Lamon achieved majority, he and Morgan broke up. Morgan returned the ring to Lamon but refused to part with the necklace. Can Lamon return the ring to the jeweler and receive a refund for the ring and necklace?

When a minor disaffirms, anything of value that the minor received and still has must be returned. The minor is then entitled to get back everything that was given to the other party.

Loss of Value. In most states, if minors are unable to return exactly what was received under the contract, they can still get back everything they gave. This is true even if a minor returns used or damaged goods. It is also true even if a minor returns nothing because the goods have been lost, consumed, or destroyed.

In *What's Your Verdict?* Morgan was legally entitled to keep the necklace because it was an ordinary gift not connected with the proposed marriage. Lamon could return the ring to the jeweler and demand a refund of the money he had paid for both pieces of jewelry. Lamon is entitled to the money he had paid on the ring. In most states, he is even entitled to what he had paid on the necklace. That is because he returned everything that was still in his possession.

In some states, however, a minor must return everything received in a condition as good as it was when it was received. If this cannot be done, the minor must pay the difference in value, or deduct the difference from the amount to be refunded. In these states, Lamon could be unable to recover the price of the necklace.

Obligations of Party with Capacity. The party lacking capacity can generally disaffirm contracts for non-necessaries, yet the party lacking capacity can enforce them against the party with capacity. On the other hand, generally the party with capacity can neither enforce nor avoid all or any part of a contract for non-necessaries with a party lacking capacity.

What Contracts Cannot Be Disaffirmed?

What's Your Verdict? Upon graduation from high school, Robinson, age 17, began a business doing electrical work. He bought \$375 in tools from Muller. The venture was a disappointing failure. Discouraged after a month, Robinson asked Muller to take back the tools and to return his \$375 payment. Must Muller do so?

Some contracts of minors for non-necessaries cannot be disaffirmed. These exceptions vary considerably from state to state. The most common exceptions follow.

- **Court-Approved Contracts.** In all states, minors cannot void any contracts approved for them by a court. For example, minors who are employed as actors or actresses or as professionals in sports usually have their contracts approved by a court. Once approved, these contracts may not be disaffirmed.
- **Major Commitments.** In all states, contracts to enlist in the armed services and contracts for educational loans cannot be disaffirmed. Similarly, marriage contracts cannot be disaffirmed.
- **Banking Contracts.** In most states, minors are permitted to make deposits in banks and in savings and loan associations. Most states also permit minors to make withdrawals as if they were adults, without any right to disaffirm these transactions.
- **Insurance Contracts.** More than one-half of the states provide that minors who are over a certain age may not disaffirm certain contracts of life insurance.
- **Work-Related Contracts.** In most states, minors who engage in a business or trade cannot disaffirm agreements involving their businesses. Accordingly, in *What's Your Verdict?*, Robinson would not be able to avoid his contract if he lived in a state with such a law.
- **Sale Of Realty.** In some states, a minor who owns real property and sells it or borrows money against it cannot disaffirm until after achieving majority.
- **Apartment Rental.** In a few states, the lease of an apartment cannot be disaffirmed even if the apartment is not a necessary.

Misrepresenting Your Age

What's Your Verdict? Ron, a mature-looking minor, lied about his age when he bought an extensive wardrobe of clothing from Casuals Shop. Ron showed his older brother's driver's license as identification. He also used his brother's name on the installment payment contract. By October, Ron had paid \$325 on the \$785 contract. He then became bored with the wardrobe and returned it to the store and demanded the return of all payments. Must the store return the money?

Minors have been known to misrepresent their ages. In most states, minors who lie about their age may nevertheless disaffirm their contracts. However, in these states, a minor who gives a false age may be held liable for the tort of false representation.

Minors are liable for their torts and delinquent or criminal conduct, although they still have capacity rights. Thus, the other party to the contract may collect from a minor any damages suffered because of the minor's fraud even though the minor may be able to disaffirm the contract.

In *What's Your Verdict?* Ron is within his rights as a minor in disaffirming the contract. But his act was also a tort (fraud). Therefore in most states, the Casuals Shop could probably hold back from the refund an amount of money sufficient to cover the decrease in value of the wardrobe as returned. Or the store could hold back the full amount if nothing was returned. Ron could be held liable in damages for deceiving the seller, and these damages could exceed the price of the goods he lied to get.

Think Critically About Evidence

1. Richard bought car insurance while he was 16. He had a perfect driving record until he reached the age of majority, 21 in his state. The day after his birthday, Richard disaffirmed the insurance contracts and asked for the return of his payments. Is he legally entitled to the money?
2. Linda subscribed to a "Book of the Month" program on her sixteenth birthday. She received monthly books from the publisher until her twenty-first birthday. She continued receiving books for another six months, then attempted to disaffirm. Will she succeed?
3. In Juan's state, the age of majority is 21. Three weeks after his eighteenth birthday, Juan joined the Marine Corps. After two weeks of boot camp, he decided he didn't like the lifestyle. So he told the Marines he was disaffirming his contract to join. Will he succeed?
4. Beverly was 14 when she bought a used motorcycle that wouldn't run. Beverly made repairs and got it going. She rode it illegally for more than six months. Then a leak developed in a gas line and the bike caught fire. It was a total loss. Beverly returned the burned-out motorcycle to the seller and asked for all her money back. Will she succeed?
5. On her sixteenth birthday Jaymie bought a used car from Allen for \$6,000 cash. Jaymie comes from a middle-class family and uses the car to drive to and from school. She could take a bus to school, but it is more fun to drive. She also drives her friends on errands and takes occasional short trips out of town for fun. Six months after buying the car, the crankshaft in the engine broke. The cost of a new engine would have been about \$3,200 so Jaymie decided to disaffirm the contract to purchase the car. Legally, can she?
6. June stopped by a bar on the way home from work and drank three gin and tonics. Then she bought a six-pack of beer at the local grocery store and drank three cans before her husband came home. June and her husband then began drinking whiskey and water and each finished two drinks. A salesperson from Metropolitan Life Insurance came over and sold June a life insurance policy that cost \$900 per year. Is there evidence indicating that June may be able to disaffirm?
7. Larson was 69 years old and trying to sell his home. He had it appraised, and the estimated value was \$300,000. He listed the home with a local real estate broker for \$330,000. When Perry offered him \$305,000 he counter offered at \$320,000. When Perry balked at the price, he lowered his offer to \$315,000 and she accepted. Is there evidence that Larson possesses the mental capacity to contract?