have a lower age for capacity (such as bank accounts, marriage, and insurance contracts).

LIABILITY ON CONTRACTS

A minor's contract is not entirely void and of no legal effect; rather, as we have said, it is voidable at the minor's option. The exercise of this power of avoidance, called a **disaffirmance**, releases the minor from any liability on the contract. On the other hand, after the minor comes of age, he may choose to adopt or ratify the contract, in which case he surrenders his power of avoidance and becomes bound by his **ratification**.

Disaffirmance As we stated earlier, a minor has the power to avoid liability. The minor or, in some jurisdictions, her guardian, may exercise the power to disaffirm a contract through words or conduct showing an intention not to abide by it.

A minor may disaffirm a contract at any time before reaching the age of majority. Moreover, a minor generally may disaffirm a contract within a reasonable time after coming of age as long as she has not already ratified the contract. A notable exception is that a minor cannot disaffirm a sale of land until after reaching her majority.

In most states, determining a reasonable time depends on circumstances such as the nature of the transaction, whether either party has caused the delay, and the extent to which either party has been injured by the delay. Some states, however, statutorily prescribe a time period, generally one year, in which the minor may disaffirm the contract.

Disaffirmance may be either *express* or *implied*. No particular form of language is essential, so long as it shows an intention not to be bound. This intention also may be manifested by acts or by conduct. For example, a minor agrees to sell property to Andy and then sells the property to Betty. The sale to Betty constitutes a disaffirmance of the contract with Andy.

A troublesome yet important problem in this area pertains to the minor's duty upon disaffirmance. The courts do not agree on this question. The majority hold that the minor must return any property received from the other party to the contract, provided she is in possession of it at the time of disaffirmance. Nothing more is required. If the minor disaffirms the purchase of an automobile and the vehicle has been wrecked, she need only return the wrecked vehicle. Other states require at least the payment of a reasonable amount for the use of the property or of the amount by which the property depreciated while in the hands of the minor. (See *Berg v. Traylor* below.) A few states, however, either by statute or court ruling, recognize a duty on the part of the minor to make *restitution*; that is, to return an equivalent of what has been received so that the seller will be in approximately the same position he would have occupied had the sale not occurred.

Finally, can a minor disaffirm and recover property that he has sold to a buyer who in turn has sold it to a good-faith purchaser for value? Traditionally, the minor could avoid the contract and recover the property, even though the third person gave value for it and had no notice of the minority. Thus, in the case of the sale of real estate, a minor could take back a deed of conveyance even against a third-party good-faith purchaser of the land who did not know of the minority. The Uniform Commercial Code, however, has changed this principle in connection with sales of goods by providing that a person with voidable title (e.g., the person buying goods from a minor) has power to transfer valid title to a good-faith purchaser for value. For example, a minor sells his car to an individual who resells it to a used-car dealer, a good-faith purchaser for value. The used-car dealer would acquire legal title even though he bought the car from a seller who had only voidable title.

Practical Advice

In all significant contracts entered into with a minor, have an adult cosign or guarantee the written agreement.

BERG V. TRAYLOR

COURT OF APPEAL, SECOND DISTRICT, DIVISION 2, CALIFORNIA, 2007
148 CAL.APP.4TH 809, 56 CAL.RPTR.3D 140

http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=va&vol=1011390&invol=1

FACTS Sharyn Berg (Berg), plaintiff, brought this action against Meshiel Cooper Traylor (Meshiel) and her minor son Craig Lamar Traylor (Craig) for unpaid commissions under a contract between Berg, Meshiel, and Craig for Berg to serve as the personal manager of Craig. On January 18, 1999, Berg entered into a two-page "Artist's

Manager's Agreement" (agreement) with Meshiel and Craig, who was then ten years old. Meshiel signed the agreement and wrote Craig's name on the signature page where he was designated "Artist." Craig did not sign the agreement. The agreement provided that Berg was to act as Craig's exclusive personal manager in exchange for a commission of 15 percent of all monies paid to him as an artist during the three-year term of the agreement. The agreement expressly provided that any action Craig "may take in the future pertaining to disaffirmance of this agreement, whether successful or not," would not affect Meshiel's liability for any commissions due Berg. The agreement also provided that any disputes concerning payment or interpretation of the agreement would be determined by arbitration in accordance with the rules of Judicial Arbitration and Mediation Services, Inc. (JAMS).

In June 2001, Craig obtained a role on the Fox Television Network show "Malcolm in the Middle" (show). On September 11, 2001, four months prior to the expiration of the agreement, Meshiel sent a certified letter to Berg stating that while she and Craig appreciated her advice and guidance, they no longer needed her management services and could no longer afford to pay Berg her 15 percent commission because they owed a "huge amount" of taxes. On September 28, 2001, Berg responded, informing appellants that they were in breach of the agreement.

The arbitration hearing was held in February 2005. The arbitrator awarded Berg commissions and interest of $154,714.15, repayment of personal loans and interest of $5,094, and attorney fees and costs of $13,762. He also awarded Berg $405,000 "for future earnings projected on a minimum of six years for national syndication earnings." The defendants then filed a petition with the state trial court to vacate the arbitration award. Following a hearing, the trial court trial court entered a judgment in favor of Berg against Meshiel and Craig consistent with the arbitrator's award.

DECISION The decision against Craig is reversed but the judgment against Meshiel is affirmed.

OPINION Todd, J. Simply stated, one who provides a minor with goods and services does so at her own risk. [Citation.] The agreement here expressly contemplated this risk, requiring that Meshiel remain obligated for commissions due under the agreement regardless of whether Craig disaffirmed the agreement. Thus, we have no difficulty in reaching the conclusion that Craig is permitted to and did disaffirm the agreement and any obligations stemming therefrom, while Meshiel remains liable under the agreement and resulting judgment. Where our difficulty lies is in understanding how counsel, the arbitrator, and the trial court repeatedly and systematically ignored Craig's interests in this matter. From the time Meshiel signed the agreement, her interests were not aligned with Craig's. That no one—counsel, the arbitrator, or the trial court—recognized this conflict and sought appointment of a guardian *ad litem* for Craig is nothing short of stunning. It is the court's responsibility to protect the rights of a minor who is a litigant in court. [Citation.]

* * *

"As a general proposition, parental consent is required for the provision of services to minors for the simple reason that minors may disaffirm their own contracts to acquire such services." [Citation.] According to Family Code section 6700, "a minor may make a contract in the same manner as an adult, subject to the power of disaffirmance" * * *. In turn, Family Code section 6710 states: "Except as otherwise provided by statute, a contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards or, in case of the minor's death within that period, by the minor's heirs or personal representative." Sound policy considerations support this provision:

> The law shields minors from their lack of judgment and experience and under certain conditions vests in them the right to disaffirm their contracts. Although in many instances such disaffirmance may be a hardship upon those who deal with an infant, the right to avoid his contracts is conferred by law upon a minor 'for his protection against his own improvidence and the designs of others.' It is the policy of the law to protect a minor against himself and his indiscretions and immaturity as well as against the machinations of other people and to discourage adults from contracting with an infant. Any loss occasioned by the disaffirmance of a minor's contract might have been avoided by declining to enter into the contract. [Citation.]

Berg offers two reasons why the plain language of Family Code section 6710 is inapplicable, neither of which we find persuasive. First, she argues that a minor may not disaffirm an agreement signed by a parent. * * * [This is not in accord with the law as stated in numerous cases.]

Second, Berg argues that Craig cannot disaffirm the agreement because it was for his and his family's necessities. Family Code section 6712 provides that a valid contract cannot be disaffirmed by a minor if all of the following requirements are met: the contract is to pay the reasonable value of things necessary for the support of the minor or the minor's family, the things have actually been furnished to the minor or the minor's family, and the contract is entered into by the minor when not under the care of a parent or guardian able to provide for the minor or the minor's family. These requirements are not met here. The agreement was not a contract to pay for the necessities of life for Craig or his family. While such necessities have been held to include payment for lodging [citation] and even payment of attorneys' fees [citation], we cannot conclude that a contract to secure personal management services for the purpose of advancing Craig's acting career constitutes payment for the type of necessity contemplated by Family Code section 6712. Nor is there any evidence that Meshiel was unable to provide for the family in 1999 at the time of the agreement. As such, Family Code section 6712 does not bar the minor's disaffirmance of the contract.

No specific language is required to communicate an intent to disaffirm. "A contract (or conveyance) of a minor may be avoided by any act or declaration disclosing an unequivocal intent to repudiate its binding force and effect." [Citation.] Express notice to the other party is unnecessary. [Citation.] We find that the "Notice of Disaffirmance of Arbitration Award by Minor" filed on August 8, 2005 was sufficient to constitute a disaffirmance of the agreement by Craig. ***

We find that Craig was entitled to and did disaffirm the agreement which, among other things, required him to arbitrate his disputes with Berg. On this basis alone, therefore, the judgment confirming the arbitration award must be reversed.

***

Appellants do not generally distinguish their arguments between mother and son, apparently assuming that if Craig disaffirms the agreement and judgment, Meshiel would be permitted to escape liability as well. But a disaffirmance of an agreement by a minor does not operate to terminate the contractual obligations of the parent who signed the agreement. [Citation.] The agreement Meshiel signed provided that Craig's disaffirmance would not serve to void or avoid Meshiel's obligations under the agreement and that Meshiel remained liable for commissions due Berg regardless of Craig's disaffirmance. Accordingly, we find no basis for Meshiel to avoid her independent obligations under the agreement.

INTERPRETATION A minor may disaffirm his contracts during minority and for a reasonable time thereafter; nevertheless, the minor's right to disaffirm does not extend to an adult party to the agreement.

CRITICAL THINKING QUESTION Under what circumstances should minors be able to disaffirm their contracts and receive their full consideration? Explain.

ification A minor has the option of ratifying a con- after reaching the age of majority. Ratification makes contract binding *ab initio* (from the beginning). That e result is the same as if the contract had been valid binding from its inception. Ratification, once effected, is final and cannot be withdrawn; furthermore, it must be in total, validating the entire contract. The minor can ratify the contract only as a whole, both as to burdens and benefits. He cannot, for example, ratify so as to retain the consideration received and escape payment or other

Business Law in Action

Using his own money, fifteen-year-old Zach bought $160 worth of video games and DVDs at a local elec- ics warehouse. His parents were furious about the chase, but initially they did nothing. Several months Zach's father learned about the so-called infancy rine and insisted that Zach return the games and ies. Zach took the items back to the store and asked refund. But the clerk refused, pointing to the store's urn Policy," which permitted returns on opened like those Zach had bought only within thirty days rchase and only for the same title when necessary ... to the manager and

the minor misrepresented his or her age when entering into the transaction with the adult. However, this rule of incapacity does not excuse minors from paying the reasonable value of any necessaries for which they may have contracted. There is little question here that the purchases Zach made do not qualify as necessaries, things that supply his basic needs. Therefore, Zach is entitled to disaffirm his contract and receive a refund, although some states perhaps would subject the refund to a deduction of some amount representing depreciation of the items or the use or benefit he received.

Nonetheless, retailers need not fear or refuse transac