Walker leased a small lot to Keith for ten years at one hundred dollars a month, with a right for Keith to extend the lease for another ten-year term under the same terms except as to rent. The renewal option provided:

“Rental will be fixed in such amount as shall actually be agreed upon by the lessors and the lessee with the monthly rental fixed on the comparative basis of rental values as of the date of the renewal with rental values at this time reflected by the comparative business conditions of the two periods.”

Keith sought to exercise the renewal right and, when the parties were unable to agree on the rent, brought suit against Walker. Who prevails? Why?

**Answer:** Option Contract. Decision for Walker. The renewal option provision did not constitute an option contract or any agreement giving Keith a unilateral right to accept the new contract for a second 10-year period of time. The renewal option was merely an agreement to attempt to negotiate in good faith a new lease agreement for the second 10-year period. If Walker acted reasonably and attempted to negotiate an extension of the lease in good faith, yet despite that effort the parties were unable to agree on the new rent, Walker has no liability.

The Brewers contracted to purchase Dower House from McAfee. Then, several weeks before the May 7 settlement date for the purchase of the house, the two parties began to negotiate for the sale of certain items of furniture in the house. On April 30, McAfee sent the Brewers a letter containing a list of the furnishings to be purchased at specified prices; a payment schedule, including a request for a $3,000 payment, due on acceptance; and a clause reading: “If the above is satisfactory, please sign and return one copy with the first payment.”

On June 3, the Brewers sent a letter to McAfee stating that enclosed was a $3,000 check; that the original contract had been misplaced and could another be furnished; that they planned to move into Dower House on June 12; and that they wished the red desk to be included in the contract. McAfee then sent a letter dated June 8 to the Brewers, listing the items of furniture purchased.

The Brewers moved into Dower House in the middle of June. Soon after they moved in, they tried to contact McAfee at his office to tell him that there had been a misunderstanding relating to the purchase of the listed items. They then refused to pay him any more money, and he brought this action to recover the balance outstanding. Decision?

**Answer:** Misrepresentation Rule. Here, McAfee did not indicate in his April 30 letter to the Brewers that a particular manner of acceptance was required. Therefore, the Brewer’s letter of June 3, together with the enclosed $3,000 check, the amount due upon acceptance of the contract, manifested their assent to the items listed in the April 30 letter from McAfee. The June 3 letter was both definite and reasonable, and the reference to the red writing desk was not expressed in language making acceptance conditional upon inclusion of the desk. This item, then, was merely a proposal for an addition to the contract as McAfee requested, they did send a letter of their own. This was reasonable under the circumstances since they had misplaced the contract and, therefore, the letter constituted an effective acceptance of McAfee’s offer. McAfee v. Brewer, 214 Va. 579, 203 S.E.2d 129 (1974).

On July 31, Lee Calan Imports advertised a used Volvo station wagon for sale in the Chicago Sun-Times. As part of the information for the advertisement, Lee Calan Imports instructed the newspaper to print the price of the car as $1,793. However, due to a mistake made by the newspaper, without any fault on the part of Lee Calan Imports, the printed ad listed the price of the car as $1,095. After reading the ad and then examining the car, O’Brien told a Lee Calan Imports salesmen that he wanted to purchase the car for the advertised price of $1,095. Calan Imports refuses to sell the car to O’Brien for $1,095. Is there a contract? If so, for what price?


Problems - Chapter 11

Anita and Barry were negotiating, and Anita’s attorney prepared a long and carefully drawn contract, which was given to Barry for examination. Five days later and prior to its execution, Barry’s eyes became so infected that it was impossible for him to read. Ten days thereafter and during the continuance of the illness, Anita called upon Barry and urged him to sign the contract, telling him that time was running out. Barry signed the contract despite the fact he was unable to read it. In a subsequent action by Anita, Barry claimed that the contract was not binding upon him because it was impossible for him to read and he did not know what it contained prior to his signing it. Decision?

**Answer:** Fraud. Decision in favor of Anita and against Barry. Barry’s defense that the contract was not binding upon him because he had not and could not have read it prior to signing it is not valid. Here, there was no misrepresentation of the contents of the contract Barry was requested to sign. There is nothing approaching fraud upon the part of Anita. Upon the facts stated, Barry’s inability to read the contract because of impaired vision does not afford him a defense where his signature to the contract was voluntary, and was not induced by fraud or misrepresentation. Moreover, Barry could not prove a defense based upon duress since Anita did not physically compel nor force Barry by threats to manifest assent to the proposal. Barry could easily have had someone read the contract to him, or have it reviewed by his attorney.
2 (a) Johnson tells Davis that he paid $150,000 for his farm in 1984, and that he believes it is worth twice that at the present time. Relying upon these statements, Davis buys the farm from Johnson for $225,000. Johnson did pay $150,000 for the farm in 1984, but its value has increased only slightly, and it is presently not worth $300,000. On discovering this, Davis offers to recover the farm to Johnson and sue for the return of his $225,000. Result?

(b) Modify the facts in (a) by assuming that Johnson had paid $100,000 for the property in 1984. What result?

Answer: Fraud: Materiality.

(a) Decision for Johnson; Davis is not entitled to the return of his $225,000 as long as Johnson actually believed his farm was worth approximately $300,000. Johnson’s statement with respect to the present value of the farm was merely the expression of an opinion and not the statement of a material fact upon which Davis had a right to rely. There is no indication of an appraisal or other expert opinion upon which Johnson’s opinion is based.

(b) Decision for Davis. Johnson’s statement to Davis that he paid $150,000 for the farm was an untrue statement of a material fact, upon which Davis had a right to and did rely.

3 On September 1, Adams in Portland, Oregon, wrote a letter to Brown in New York City, offering to sell to Brown one thousand tons of chromeite at $48.00 per ton, to be shipped by S.S. Malabar sailing from Portland, Oregon, to New York City via the Panama Canal. Upon receiving the letter on September 5, Brown immediately mailed to Adams a letter stating that she accepted the offer. There were two ships by the name of S.S. Malabar sailing from Portland to New York City via the Panama Canal, one sailing in October and the other sailing in December. At the time of mailing her letter of acceptance Brown knew of both sailings and further knew that Adams knew only of the December sailing. Is there a contract? If so, to which S.S. Malabar does it relate?

Answer: Mistake. There is a contract, and it relates to the S.S. Malabar sailing in December. In the classic Peerless case (Raffles v. Wichelhaus, 2 Hurlstone and Coltman Reports 906) there were two ships sailing from Bombay both named "Peerless." The defendant knew only of the "Peerless" sailing in October and the plaintiff knew only of the "Peerless" sailing in December. There was no meeting of the minds and hence, no contract. Here, since Brown knew of both sailings and further knew that Adams did not know of the October sailing, she, Brown, will not be heard to say that she intended the chromeite to be shipped on the S.S. Malabar sailing in October. Adams and Brown manifested their mutual intent to a sale of chromeite to be shipped on the S.S. Malabar sailing in December. Restatement, Second, Sect. 20.

4 Adler owes Panessi, a police captain, $500. Adler threatens that unless Panessi discharges him from the debt, Adler will disclose the fact that Panessi has on several occasions become highly intoxicated and has been seen in the company of certain disreputable persons. Panessi, induced by fear that such a disclosure would cast him in a false light and in any event lead to social disgrace, gives Adler a release but subsequently sues to set it aside and recover on his claim. Decision?

Answer: Duress. Decision for Panessi and against Adler. The restatement, second, Contracts, Section 175, defines duress as a manifestation "induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim." Moreover, a "threat is improper if the resulting exchange is not on fair terms, and (a) the threatened act would harm the recipient and would not significantly benefit the party making the threat." Restatement, Second, Section 176(2). The facts presented in the problem state a clear-cut case of duress by the use of improper threats.

5 Harris owned a farm that was worth about $600 per acre. By false representations of fact, Harris induced Pringle to buy the farm at $1,500 per acre. Shortly after taking possession of the farm, Pringle discovered oil under the land. Harris, on learning this, sues to have the sale set aside on the ground that it was voidable because of fraud. Decision?

Answer: Fraud in the Inducement. Decision in favor of Pringle. Because Pringle was fraudulently induced to buy the farm, Pringle had the right to disaffirm the transaction. All of the elements are present, including justifiable reliance on the statements made by Harris. The contract was voidable by Pringle only, not by Harris. Presumably Pringle will be content with the bargain even though induced by fraud to make the purchase. The right of avoidance rests entirely with Pringle and he may, if he so desires, abide by the contract. It should be noted, however, that Pringle would not prevail in a suit brought in tort since Pringle did not suffer an injury.

6 On February 2, Phillips induced Miller to purchase from her fifty shares of stock in the XYZ Corporation for $10,000, representing that the actual book value of each share was $200. A certificate for fifty shares was delivered to Miller. On February 16, Miller discovered that the book value on February 2 was only $50 per share. Thereafter, Miller sues Phillips. Decision?

Answer: Fraud in the Inducement. Decision in favor of Miller and against Phillips. The statement that the actual book value of the shares of stock in XYZ Corporation was $200 per share was a statement of material fact made to induce Miller to purchase the stock and which did, in fact, succeed in persuading Miller to buy the shares. The transaction meets the requirements of fraud in the inducement: (1) The representation related to a material fact; (2) It was knowingly false; (3) It was made with the intention that it be acted upon by the person to whom made; (4) It was justifiably relied upon; and (5) The false representation was the proximate cause of the injury or damage.
Doris mistakenly accused Peter's son, Steven, of negligently burning down her barn. Peter believed that his son was guilty of the wrong and that he, Peter, was personally liable for the damage, since Steven was only fifteen years old. Upon demand made by Doris, Peter paid Doris $2,500 for the damage to her barn. After making this payment, Peter learned that his son had not caused the burning of Doris's barn and was in no way responsible for its burning. Peter then sued Doris to recover the $2,500 he had paid her. Decision?

Answer: Mistake. Judgment for Peter for $2,500 against Doris. The payment was made under a mutual mistake of material fact. Both Peter and Doris mistakenly believed that Doris's barn had been negligently burned by Peter's son, Steven, while as a matter of fact Steven did not cause the burning of Doris's barn and was in no way responsible for its burning. A payment made under a mutual mistake of fact is recoverable under the doctrine of quasi-contract.

Jones, a farmer, found an odd-looking stone in his fields. He went to Smith, the town jeweler, and asked him what he thought it was. Smith said he did not know but thought it might be a ruby. Jones asked Smith what he would pay for it, and Smith said two hundred dollars, whereupon Jones sold it to Smith for $200. The stone turned out to be an uncut diamond worth $3,000. Jones brought an action against Smith to recover the stone. On trial, it was proved that Smith actually did not know the stone was a diamond when he bought it, but he thought it might be a ruby. Decision?

Answer: Mistake: Nature of Subject Matter. Decision in favor of Smith and against Jones. Mutual ignorance upon the part of Jones and Smith of the value of the subject matter did not prevent the formation of a valid contract. They both understood that the two hundred dollars was to be exchanged for the stone. There was no mistake as to the subject matter of the agreement. There was no fraud or misrepresentation.

Decedent Judith Johnson, a bedridden, lonely woman of eighty-six years, owned outright Greenacre, her ancestral estate. Ficky, her physician and friend, visited her weekly and was held in the highest regard by Johnson. Johnson was extremely fearful of suffering and depended upon Ficky to ease her anxiety and pain. Several months before her death, she deeded Greenacre to Ficky for $3,000. The fair market value of Greenacre at this time was $125,000. Johnson was survived by two children and six grandchildren. Johnson's children challenged the validity of the deed. Decision?

Answer: Undue Influence. Decision for Decedent's children. Restatement, 2nd, Contracts, Section 177(1) defines undue influence as the "unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that the person will not act in a manner inconsistent with his welfare." A contract induced by undue influence is voidable.

Dorothy and John Huffschneider listed their house and lot for sale with C. B. Property. The asking price was $165,000, and the owners told C. B. that the size of the property was 6.8 acres. Dean Olson, a salesman for C. B., advertised the property in local newspapers as consisting of six acres. James and Jean Holcomb signed a contract to purchase the property through Olson after first inspecting the property with Olson and being assured by Olson that the property was at least 6.6 acres. The Holcombs never asked for or received a copy of the survey. In actuality, the lot was only 4.6 acres. The Holcombs now seek to rescind the contract. Decision?

Answer: Fraud in the Inducement. Decision for James and Jean Holcomb. When Olson falsely represented that the property was at least 6.6 acres a fraud was committed. As the sales agent Olson had an obligation to disclose all material information to the purchasers as well as to respond truthfully to all inquiries. The agent had access to the survey and could have easily verified the actual acreage. His conduct can be characterized at a minimum as "recklessly indifferent" if not outright as an intended deception, so long as Dorothy and John Huffschneider did not provide C.B. Property with a fraudulent survey of the property.

In February, Gardner, a schoolteacher with no experience in running a tavern, entered into a contract to purchase for $40,000 the Punjab Tavern from Melling. The contract was contingent upon Gardner's obtaining a five-year lease for the tavern's premises and a liquor license from the State. Prior to the formation of the contract, Melling had made no representations to Gardner concerning the gross income of the tavern. Approximately three months after the contract was signed, Gardner and Melling met with an inspector from the Oregon Liquor Control Commission (OLCC) to discuss transfer of the liquor license. Melling reported to the agent, in Gardner's presence, that the tavern's gross income figures for February, March, and April were $5,710, $4,918, and $5,009, respectively. The OLCC granted the required license, the transaction was closed, and Gardner took possession on June 10. After discovering that the tavern's income was very low and that the tavern had very few female patrons, Gardner contacted Melling's bookkeeping service and learned that the actual gross income for those three months had been approximately $1,400 to $2,000. Gardner then sued for rescission of the contract. Decision?

Answer: Fraudulent Misrepresentation/Justifiable Reliance. Judgment for Melling. To sustain a case of fraudulent misrepresentation, the injured party must prove that he actually relied upon the false representation, causing him to enter into the bargain. Melling's only representations concerning the Tavern's gross income were made months after the contract was formed. Since these misrepresentations came after the binding agreement of February, they could not have been relied upon by Gardner in making the agreement. Therefore, rescission of the contract is not permitted. Gardner v. Melling, 280 Or. 665, 572 P.2d 1012 (1977).
Christine Boyd was designated as the beneficiary of a life insurance policy issued by Aetna Life Insurance Company on the life of Christine's husband, Jimmie Boyd. The policy insured against Jimmie's permanent total disability and also provided for a death benefit to be paid on Jimmie’s death.

Several years after the policy was issued, Jimmie and Christine separated. Jimmie began to travel extensively, and Christine therefore was unable to keep track of his whereabouts or his state of health. Jimmie, however, continued to pay the premiums on the policy until Christine tried to cash in the policy to alleviate her financial distress. A loan had previously been made on the policy, however, leaving its cash surrender value, and thus the amount that Christine received, at only $4.19. Shortly thereafter, Christine learned that Jimmie had been permanently and totally disabled before the surrender of the policy. Aetna also was unaware of Jimmie's condition, and Christine requested that the surrendered policy be reinstated and that the disability payments he had made. Jimmie died soon thereafter, and Christine then requested that Aetna pay the death benefit. Decision?

Answer: Mutual Mistake of Fact. Decision for Mrs. Boyd. As a matter of equity, the surrender agreement had to be rescinded. Had Mrs. Boyd known the true facts at the time she surrendered the policy, she certainly would not have done so. Since her mistaken belief that her husband was not disabled was a material mistake of fact, her rescission was not effective. In the opinion of the court, "The supposed elements of doubt as to the health of Mr. Boyd never entered into the contemplation of either party, nor did it form any part of the consideration for the cancellation and surrender of the policy. Since the policy was in full force and effect at the time of total permanent disability," the defendant insurance company is liable. *Boyd v. Aetna Life Insurance Co.*, 310 Ill. App. 547, 35 N.E. 2d 99 (1941).

Iverson owned Iverson Motor Company, an enterprise engaged in the repair as well as the sale of Oldsmobile, Rambler, and International Harvester Scout automobiles. Forty percent of the business's sales volume and net earnings came from the Oldsmobile franchise.

Whipp contracted to buy Iverson Motors, which Iverson said included the Oldsmobile franchise. After the sale, however, General Motors refused to transfer the franchise to Whipp. Whipp then returned the property to Iverson and brought this action seeking rescission of the contract. Decision?

Answer: Nonfraudulent Misrepresentation. Judgment for Whipp. Historically, an action for fraud required that the injured party show that the misrepresentation upon which it detrimentally relied was made with the speaker's knowledge of its falsity or with reckless disregard for the truth or falsity of the statement. Today, however, a cause of action may be based on an innocent misrepresentation. Here, Iverson represented that the Oldsmobile franchise was transferable, when, in fact it was not. That misrepresentation, even though innocently made, makes the entire agreement voidable. *Whipp v. Iverson*, 34 Wis.2d 166, 168 N.W. 2d 201 (1969).

William Schmalz entered into an employment contract with Hardy Salt Company. The contract granted Schmalz six months' severance pay for involuntary termination but none for voluntary separation or termination for cause. Schmalz was asked to resign from his employment. He was informed that if he did not resign, he would be fired for alleged misconduct. When Schmalz turned in his letter of resignation, he signed a release prohibiting him from suing his former employer as a consequence of his employment. Schmalz consulted an attorney before signing the release and upon signing it received $4,583.00 (one month's salary) in consideration. Schmalz now sues his former employer for the severance pay, claiming that he signed the release under duress. Decision?

Answer: Duress. Judgment against Schmalz. A person with business experience who understands the nature of what he is signing and who has sought the advice of counsel may not claim duress. The claim of duress is reserved for those who truly have been deprived of their free will. In this case, Schmalz signed the release with the full knowledge of its implications, accepted the salary payment, and did not repudiate until much later. These factors constitute a ratification of the release. *Schmalz v. Hardy Salt Company*, 739 S.W. 2d 765 (Mo. App. 1987).
Johnson and Wilson were the principal shareholders in XYZ Corporation, located in the city of Jonesville, Wisconsin. This corporation was engaged in the business of manufacturing paper novelties, which were sold over a wide area in the Midwest. The corporation was also in the business of binding books. Johnson purchased Wilson's shares of the XYZ Corporation and, in consideration thereof, Wilson agreed that for a period of two years he would not (a) manufacture or sell in Wisconsin any paper novelties of any kind that would compete with those sold by the XYZ Corporation or (b) engage in the bookbinding business in the city of Jonesville. Discuss the validity and effect, if any, of this agreement.

Answer: Common Law Restraint of Trade.

(a) The agreement to refrain from doing business in the State of Wisconsin was no more than necessary to prevent competition upon the part of Wilson. The restraints as to both time and territory are reasonable. See Restatement, Second, Sections 186 and 188. The view has been taken, however, in some cases that agreements to refrain from doing business in an entire state, even though no more than necessary to prevent competition, are invalid and unenforceable for the reason that it is against the policy of the state that the people of the whole state should be deprived of the industry and skill of a person in an employment useful to the public, or that such person should be compelled either to engage in another business or move from the state and cease to be a citizen thereof.

(b) Even if contracts in general restraint of trade are deemed void, as being contrary to public policy, contracts in partial restraint of trade are valid if the restraint imposed is reasonable both as to time and as to limits of the area in which such restraint is imposed. Agreements not to engage in a particular business within a city for a period of two years have generally been held to be valid and enforceable. The second portion of Wilson's agreement would be binding upon him.

Wilkins, a resident of and licensed by the State of Texas as a certified public accountant, rendered service in his professional capacity in Louisiana to Coverton Cosmetics Company. He was not registered as a certified public accountant in Louisiana. His service under his contract with the cosmetics company was not the only occasion on which he had practiced his profession in that State. The company denied liability and refused to pay him, relying upon a Louisiana statute declaring it unlawful for any person to perform or offer to perform services as a CPA for compensation until he has been registered by the designated agency of the State and holds an unrevoked registration card. Provision is made for issuance of a certificate as a CPA without examination to any applicant who holds a valid unrevoked certificate as a CPA under the laws of any other State. The statute provides further that rendition of services of the character performed by Wilkins, without registration, is a misdemeanor punishable by a fine or imprisonment in the county jail, or both. Wilkins brought an action against Coverton seeking to recover a fee in the amount of $1,500 as the reasonable value of his services. Decision?

Answer: Licensing Statute. Decision in favor of Coverton Cosmetics Company. The statute is a regulatory measure designed to protect the public by permitting only persons with the necessary qualifications to practice accounting. The statute declares that it shall be unlawful for a person to perform services as a CPA for compensation without a license, and prescribes a penalty for its violation. Contracts for the rendition of services as a CPA by an unlicensed person are void and incapable of enforcement. Where the statute does not contain an express provision rendering void a contract entered into by one not qualified under its provisions but, as in the problem, imposes a penalty for its violation, it is generally held that the penalty implies the prohibition. Restatement, Second, Contracts, Section 181.

Michael is interested in promoting the passage of a bill in the State legislature. He agrees with Christy, an attorney, to pay Christy for her services in drawing the required bill, procuring its introduction in the legislature, and making an argument for its passage before the legislative committee to which it will be referred. Christy renders these services. Subsequently, upon Michael's refusal to pay her, Christy sues Michael for damages for breach of contract. Decision?

Answer: Corrupting Public Officials. Decision in favor of Christy. There is nothing in the agreement which offends public policy. It is perfectly legitimate for a citizen to seek to have a bill introduced in the legislature and to promote its passage. Here, Christy merely agreed to engage what she considered services more competent for procuring the legislation desired. The services were legal in nature and Christy is entitled to remuneration from Michael.

Anthony promises to pay McCarthy $10,000 if McCarthy reveals to the public that Washington is a Communist. Washington is not a Communist and never has been. McCarthy successfully persuades the media to report that Washington is a Communist and now seeks to recover the $10,000 from Anthony, who refuses to pay. McCarthy initiates a lawsuit against Anthony. What result?

Answer: Violation of Public Policy: T ortious Conduct. Decision for Anthony. The promise is unenforceable on grounds of public policy. A promise to commit, or induce commission of, a tort is unenforceable. Restatement, Second, Contracts, Section 192. In this case the tort is defamation.
The Dear Corporation was engaged in the business of making and selling harvesting machines. It sold everything pertaining to its business to the ABC Company, agreeing “not again to go into the manufacture of harvesting machines anywhere in the United States.” The seller, which had national and international goodwill in its business, now begins the manufacture of machines contrary to its agreement. Should the court enjoin it?

Answer: Common Law Restraint of Trade. The question is whether the restraint is reasonable and therefore binding upon Dear Corporation. Since Dear Corp. sells harvesting machines throughout the country, the nationwide restraint arguably amounted merely to reasonable protection to the purchaser of the business, the ABC Company. The purchaser of a business may protect the good will by exacting a restrictive covenant that is reasonable with respect to the area within which it operates. The controlling fact that determines the reasonableness of the area is the territorial extent of the business of the purchased company. Restatement, Second, Contracts, Section 188. A more serious problem to the validity of the restraint is the fact that the covenant is not limited as to its duration, but lasts into perpetuity. Thus, the covenant is of dubious validity. An argument that can be raised in favor of its validity is the fact that it prohibits the manufacture but not the sale of machines in the United States.

Adrian rents a bicycle from Barbara. The bicycle rental contract Adrian signed provides that Barbara is not liable for any injury to the renter caused by any defect in the bicycle or the negligence of Barbara. Injured when she is involved in an accident due to Barbara’s improper maintenance of the bicycle, Adrian sues Barbara for her damages. Decision?

Answer: Exculpatory Clauses. Decision for Adrian. Most courts would hold that this exculpatory clause is void against public policy.

Merrill Lynch employed Post and Maney as account executives beginning on April 20, 1959, and May 15, 1961, respectively. Both men elected to be paid a salary and to participate in the firm’s pension and profit-sharing plans rather than take a straight commission. Merrill Lynch terminated the employment of both Post and Maney on August 30, 1974. On Sept. 4, 1974, both began working for Bache & Company, a competitor of Merrill Lynch. Merrill Lynch then informed them that all of their rights in the company-funded pension plan had been forfeited pursuant to a provision of the plan that permitted forfeiture in the event an employee directly or indirectly competed with the firm. Decision?

Answer: Restrictive Covenants/Employment Relationship. Judgment for Post and Maney. Employment contracts prohibiting competition create a tension between the freedom of individuals to contract and the reluctance to see one barter away his freedom. Nevertheless, the state will enforce limited restraints on an employee’s employment mobility where a mutuality of obligation is freely bargained for by the parties. An essential aspect of that relationship, however, is the employer’s continued willingness to employ the party while he does not compete. Where the employer terminates the employment relationship without cause, his action necessarily destroys the mutuality of obligation on which the covenant rests as well as the employer’s ability to impose a forfeiture. Thus the forfeiture of the pension benefits is unreasonable as a matter of law, and Post and Maney are entitled to the benefits due. *Post v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 48 N.Y.2d 84, 397 N.B.2d 358, 421 N.Y.S.2d 847 (1979).

Carolyn Murphy, a welfare recipient with four minor children, responded to an advertisement that offered the opportunity to purchase televisions without a deposit or credit history. She entered into a rent-to-own contract for a twenty-five-inch console color television set that required seventy-eight weekly payments of $16 (a total of $1,248, which was two and one-half times the retail value of the set). Under the contract, the renter could terminate the agreement by returning the television and forfeiting any payments already made. After Murphy had paid $436 on the television, she read a newspaper article criticizing the lease plan. She stopped payment and sued the television company. The television company has attempted to take possession of the set. Decision?

Answer: Usury/Unconscionability. Judgment for Murphy. The contract was unconscionable because the television company failed to inform Murphy of the true purchase price and required her to pay two and one half times the retail sales price. Murphy was lured into a contract in which she had unequal bargaining power by the company’s deceptive advertising. Moreover, it is usurious to charge a consumer with unequal bargaining power an excessive price; two and one half times the retail value of an item is excessive. *Murphy v. McNamara*, 36 Conn. Sup. 183, 416 A. 2d 170 (1979).
Michael, a minor, operates a one-man automobile repair shop. Anderson, having heard of Michael's good work on other cars, takes her car to Michael's shop for a thorough engine overhaul. Michael, while overhauling Anderson's engine, carelessly fits an unsuitable piston ring on one of the pistons, with the result that Anderson's engine is seriously damaged. Michael offers to return the sum which Anderson paid him for his work, but refuses to make good the damage. Anderson sues Michael in tort for the damage to her engine. Decision?

**Answer:** Liability for Tort Connected with Contract. Decision for Michael. It is clear that the negligence by Michael in carelessly fitting an unsuitable piston ring on one of the pistons, thereby seriously damaging the engine in Anderson's car, grew out of a voidable contract; it would not have occurred had there been no contract, and it is inextricably bound to and interwoven into the contract. To allow recovery for the tort would indirectly enforce the contract, which the court would not permit.

(a) On March 20, Andy Small became seventeen years old, but he appeared to be at least twenty-one. On April 1, he moved into a rooming house in Chicago where he orally agreed to pay $300 a month for room and board, payable at the end of each month.

(b) On April 4, he went to Honest Hal's Careteria and signed a contract to buy a used car on credit with a small down payment. He made no representation as to his age, but Honest Hal represented the car to be in A-1 condition, which it turned out not to be.

(c) On April 7, Andy sold and conveyed to Adam Smith a parcel of real estate which he owned. On April 30, he refused to pay his landlord for his room and board for the month of April; he returned the car to Honest Hal and demanded a refund of his down payment; and he demanded that Adam Smith reconvey the land although the purchase price, which Andy received in cash, had been spent in riotous living. Decisions as to each claim?

**Answer:** Liability for Necessaries. (a) Even where a minor is liable for necessaries he is not liable at the contract rate but only for the reasonable value. Here, Andy is liable for the reasonable value of the room and board for April.

(b) Andy did not misrepresent his age. He may disaffirm the contract and, upon returning the car to Honest Hal, since he still has it, he will be entitled to a refund of his down payment, and will not be liable for the balance of the purchase price. Hal may be charged with fraudulent inducement if he had knowledge of the car's poor condition.

(c) Disaffirmance. Where a minor sells real property he may not disaffirm the transaction until his majority. Upon reaching majority and within a reasonable time thereafter he may disaffirm the sale. A minor need only return the consideration received, under the majority rule, if he still has it in his possession at the time of disaffirmance.

George Jones on October 1, being then a minor, entered into a contract with Johnson Motor Company, a dealer in automobiles, to buy a car for $10,850. He paid $1,100 down and, under the agreement, was to make monthly payments thereafter of $325 each. After making the first payment on November 1, he failed to make any more payments. Although Jones was seventeen years old at the time he made the contract, he represented to the company that he was twenty-one years old because he was afraid that if the company knew his real age, it would not sell the car to him. His appearance was that of a man of twenty-one years of age. On December 15, the company repossessed the car under the terms provided in the contract. At that time, the car had been damaged and was in need of repairs. On December 20, George Jones became of age and at once disaffirmed the contract and demanded the return of the $1,425 he had paid on it. On refusal of the company to do so, George Jones brought an action to recover the $1,425, and the company set up a counterclaim for $1,300 for expenses it incurred in repairing the car. Decision?

**Answer:** Liability for Misrepresentation of Age. George Jones may disaffirm the contract even though he deliberately misrepresented his age. Most courts would hold that Jones is not estopped from asserting his minority in order to sue Johnson Motor Company. At the same time, many courts would not grant Jones the relief sought unless he offered to return the car and also to account to the company for depreciation and the value of the use of the car where he has falsified his age. Here, the car has already been repossessed by Johnson Motor Company.
Rebecca entered into a written contract to sell certain real estate to Mary, a minor, for $80,000, payable $4,000 on the execution of the contract and $800 on the first day of each month thereafter until paid. Mary paid the $4,000 down payment and eight monthly installments before attaining her majority. Thereafter, Mary made two additional monthly payments and caused the contract to be recorded in the county where the real estate was located. Mary was then advised by her attorney that the contract was voidable. After being so advised, Mary immediately tendered the contract to Rebecca, together with a deed reconveying all of Mary’s interest in the property to Rebecca. Also, Mary demanded that Rebecca return the money she had paid under the contract. Rebecca refused the tender and declined to repay any portion of the money paid to her by Mary. Mary then brought an action to cancel the contract and recover the amount paid to Rebecca. Decision?

Answer: Ratification. Decision in favor of Rebecca. A minor may disaffirm a contract for the sale of real property made by him during minority within a reasonable time after attaining his majority and he may, by acts recognizing the contract after becoming of age, ratify it. Since Mary had made two payments and caused the contract to be recorded, after she became of age, she arguably ratified the contract and will not be permitted to say that she performed these acts of ratification in ignorance of her right to disaffirm. She was not induced by fraud or misrepresentation to enter into the contract. The two payments after attaining her majority evidenced Mary’s intention to comply with the contract and constituted a ratification of it, unless the fact that she did not then know the law authorized her to disaffirm thereafter. Mary is presumed to know the law, and cannot be heard to say that she was ignorant of her legal right in that respect.

Ira, who in 1989 had been found innocent of a criminal offense because of insanity, was released from a hospital for the criminally insane during the summer of 1990 and since that time has been a reputable and well-respected citizen and businessman. On February 1, 1991, Ira and Shirley entered into a contract in which Ira would sell his farm to Shirley for $100,000. Ira now seeks to void the contract. Shirley insists that Ira is fully competent and has no right to avoid the contract. Who will prevail? Why?

Answer: Mental Illness or Defect. Shirley should prevail. As Ira was not under guardianship, he would have to establish that he was unable to comprehend the subject of the contract, its nature and probable consequences in order to avoid the contract. The facts of this problem do not establish such a situation.

Daniel, while under the influence of alcohol, agreed to sell his 1990 automobile to Belinda for $8,000. The next morning, when Belinda went to Daniel’s house with the $8,000 in cash, Daniel stated that he did not remember the transaction but that “a deal is a deal.” One week after completing the sale, Daniel decides that he wishes to avoid the contract. What result?

Answer: Intoxicated Person. Judgment for Belinda. Even if Daniel at the time of entering into the agreement had been unable to comprehend the nature and effect of the transaction because of intoxication, Daniel affirmed the contract the next morning and is thereby precluded from avoiding the contract.