

# Unenforceable Contracts

by Sophia



## WHAT'S COVERED

In this lesson, you will learn about the factors that can render contracts unenforceable. Specifically, this lesson will cover:

## 1. Defenses to Contract Enforcement

Breach of contract refers to the failure of either party to honor the contract, and the result is typically a loss to the non-breaching party. Therefore, parties have the right to bring a court action to enforce the contract or to request damages for breach of contract.

Later, we will be looking at how courts enforce contracts with equitable remedies, such as specific performance or injunctions, as well as how courts (more typically) compensate the non-breaching party with monetary awards.

For now, we will look at defenses to contract enforcement. Sometimes, a contract will be unenforceable due to some type of insufficiency in the parties' agreement itself.

In all of the situations that follow, a court may declare a contract either **void** or voidable. A void contract is considered to be *void ab initio*, a Latin term that means there never was a valid contract. A voidable contract is one that the aggrieved party may choose to void.



### TERM TO KNOW

#### **Void**

Also referred to as *void ab initio*, the status of a contract that is not valid from the beginning, as in illegal contracts.

#### **1a. Illegality**

In general, illegal contracts are unenforceable.

The courts must grapple with two types of illegalities:

1. Statutory violations (e.g., the practice of law by a non-lawyer is forbidden by statute)
2. Violations of public policy not expressly declared unlawful by statute, but so declared by the courts.

#### **1b. Capacity**

A contract is a meeting of minds. If someone lacks mental **capacity** to understand what she is assenting to - or that she is assenting to anything - it is unreasonable to hold her to the consequences of her act.

The general rule is that persons younger than eighteen can avoid their contracts. Although eighteen-year-olds may assent to binding contracts, not all creditors and landlords believe it, and they may require parents to cosign. For those under twenty-one, there are also legal impediments to holding certain kinds of jobs, signing certain kinds of contracts, and drinking alcohol. There is as yet no uniform set of rules.

The exact day on which the disability of minority vanishes also varies. The old common law rule put it on the day before the twenty-first birthday. Many states have changed this rule so that majority commences on the day of the eighteenth birthday.

A minor's contract is voidable, not void. A child wishing to avoid the contract need do nothing positive to disaffirm; the defense of minority to a lawsuit is sufficient. Although the adult cannot enforce the contract, the child can (which is why it is said to be voidable, not void).

When the minor becomes an adult, she has two choices:

- Ratify the contract
- Disaffirm the contract

She may ratify explicitly; no further consideration is necessary. She may also do so by implication— for instance, by continuing to make payments or retaining goods for an unreasonable period of time. In some states, a court may ratify the contract before the child becomes an adult.

➞ **EXAMPLE** In California, a state statute permits a movie producer to seek court approval of a contract with a child actor in order to prevent the child from disaffirming it upon reaching majority and suing for additional wages. As quid pro quo, the court can order the producer to pay a percentage of the wages into a trust fund that the child's parents or guardians cannot invade. If the child has not disaffirmed the contract while still a minor, she may do so within a reasonable time after reaching majority.

In most cases where a minor voids a contract, the only obligation is to return the goods (if she still has them) or repay the consideration (unless it has been dissipated). However, in two situations, a minor might incur greater liability: contracts for necessities and misrepresentation of age.

Contracts made by an insane or intoxicated person are also said to have been made by a person lacking capacity. In general, such contracts are voidable by the person when capacity is regained (or by the person's legal representative if capacity is not regained).



#### TERM TO KNOW

##### **Capacity**

The requirement that individuals who enter into contracts have the legal competence to do so by age and mental status.

### **1c. Contracts for Necessities**

At common law, a "necessity" was defined as an essential need of a human being: food, medicine, clothing, and shelter.

In recent years, however, the courts have expanded the concept, so that, in many states, today necessities include property and services that will enable the minor to earn a living and to provide for those dependent on

her.

If the contract is executory, the minor can simply disaffirm. If the contract has been executed, however, the minor must face more onerous consequences.

Although she will not be required to perform under the contract, she will be liable under a theory of “quasi-contract” for the reasonable value of the necessities.

## 1d. Duress, Fraud, and Undue Influence

**Duress** (or coercion) refers to the exertion of undue pressure to enter into a contract. Such a contract is unenforceable. It is important to note, however, that a court will not set aside a contract for duress unless the pressure involves actual force or the threat of force.

➞ **EXAMPLE** It is not considered duress if a seller enters into a contract for the sale of goods at bargain basement prices merely due to financial pressure to make money.

The defense of **fraud** or misrepresentation is always a defense to enforcement of a contract. Fraud refers to any type of trickery or misstating of material facts.

➞ **EXAMPLE** A seller induces a person to sign a contract for the sale of real estate the seller does not actually own.

➞ **EXAMPLE** A used car is sold with a rolled-back odometer that materially misrepresents the car’s mileage.

**Undue influence** is mental pressure by a stronger party over a weaker party.

➞ **EXAMPLE** A caregiver of an elderly, infirm party who takes advantage of his superior position in the relationship would be exerting undue influence by exerting control over the weaker party to make that party sign a contract that overcompensates him for his services.

Note, however, that many relationships, such as landlord and tenant and employer and employee, include a perceived power imbalance but do not automatically fall into the category of undue influence. In order for a contract to be set aside for undue influence, there must be obvious control and exploitation.



### TERMS TO KNOW

#### **Duress**

Also referred to as coercion; in contract law, when a party’s assent to a contract is obtained by force or undue pressure. It is a defense to a contract.

#### **Fraud**

The use of trickery or misrepresentation of facts to induce someone to assent to a contract. It is a defense to a contract.

#### **Undue Influence**

The use of mental pressure to obtain a person’s assent to a contract, typically in a relationship that can be exploited due to the weakness of one party and constituting a defense to a contract.

## 1e. Misrepresentation of Age

Finally, in most states, a minor may misrepresent her age and disaffirm in accordance. That the adult reasonably believed the minor was also an adult is of no consequence in a contract suit.

But some states have enacted statutes that make the minor liable in certain situations.

➔ **EXAMPLE** A Michigan statute prohibits a minor from disaffirming if she has signed a “separate instrument containing only the statement of age, date of signing and the signature.”

And some states “estop” the minor from claiming to be a minor if she falsely represented herself as an adult in making the contract. Estoppel is a refusal by the courts on equitable grounds to listen to an otherwise valid defense; unless the minor can return the consideration, the contract will be enforced.



## SUMMARY

In this lesson, you learned that contracts can be rendered unenforceable if there are certain insufficiencies in the parties’ agreement. These **defenses to contract enforcement** may lead a court to declare a contract void. You also learned that contracts are unenforceable if they involve **illegal activity**, or if one party lacks the **capacity** to form an agreement, either by age or mental status.

A minor may choose to avoid a contract that he or she entered into or to enforce it, unless that **contract is for necessities**. **Duress** involving force or the threat of force, **fraud**, and **undue influence** are other factors that can void a contract. Some states, but not all, will enforce a contract if a minor party **misrepresents his or her age**.

Best of luck in your learning!

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### Void

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