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Enforceability of Business Contracts of Minors Eighteen Years and Over

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ENFORCEABILITY OF BUSINESS CONTRACTS OF MINORS EIGHTEEN YEARS AND OVER.—Contracts of infants who have attained the age of eighteen years, made after April 13, 1941, may not be disaffirmed on the ground of infancy if undertaken in connection with a business in which the infant was engaged and if reasonable and provident when made, the burden to show that it was a reasonable and provident business contract being on the person seeking to defeat disaffirmance.[1] The enactment in its entirety results from recommendations of the Law Revision Commission.[2]

The stimulus to revision was the frequent one of judicial criticism, in this case made in 1934 by Judge Crane in *Sternlieb* v. *Normandie National Securities Corporation*,[3] wherein it was noted that improvidence is not a fault of minors only, and that many young people who have the appearance of adults are forced by the circumstances of our economy to engage in business at the peril of business men who deal with them. Judge Crane pointed out that some states have solved the problem by legislation.[4]

Various proposals were thereupon made in the New York Legislature,[5] and thereafter the Law Revision Commission made a recommendation to the Legislature of 1938[6] which included the provision now enacted and two others later dropped by the Commission and never enacted. These two proposals would have extended the withdrawal of the power of disaffirmance to reasonable and provident contracts made by the infant for the purposes of his education and to contracts procured by the infant's written misrepresentation that he was of full age. The legislation was finally recommended by the Commission to the 1941 Legislature in the form in which it was enacted.[7]

The law as it existed in New York before the enactment gave the infant protection almost to an extreme.[8] All his contracts were voidable up to a reasonable time after he attained his majority [9] of twenty-

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[1] N. Y. DEBTOR AND CREDITOR LAW § 260.

[2] N. Y. LAW REVISION COMMISSION, Leg. Doc. (1941) No. 65(B) pp. 1–8; N. Y. LAW REVISION COMMISSION, Leg. Doc. (1938) No. 65(I) pp. 1–67.

[3] 263 N. Y. 245, 250, 188 N. E. 726, 728 (1934); N. Y. LAW REVISION COMMISSION, Leg. Doc. (1938) No. 65(I) pp. 11 and 47.

[4] The case mentions the Iowa Code and includes within that group Kansas, Utah and Washington. As a condition to disaffirmance a minor over eighteen must restore the consideration or its equivalent in the states of California, Idaho, Montana, North Dakota and South Dakota under the enacted law of those states. N. Y. LAW REVISION COMMISSION, Leg. Doc. (1938) No. 65(I) pp. 38–44.

[5] N. Y. LAW REVISION COMMISSION, Leg. Doc. (1938) No. 65(I) pp. 47–50 and *cf.* p. 7.

[6] *Id.* at p. 7.

[7] N. Y. LAW REVISION COMMISSION, Leg. Doc. (1941) No. 65(B) p. 6.

[8] Sternlieb v. Normandie Nat. Securities Corp., 263 N. Y. 245, 188 N. E. 726 (1934); see (1940) 15 ST. JOHN'S L. REV. 98.

[9] Sternlieb v. Normandie Nat. Securities Corp., 263 N. Y. 245, 188 N. E. 726 (1934); Healy v. Kellog, 145 N. Y. Supp. 943 (1914); International

one years.[10] Even his contracts for necessaries were not binding upon him,[11] although the statement has been frequently made that they were.[12] However, he is obligated *quasi*-restitutionally to the extent of the reasonable value of necessaries actually supplied to him,[13] and

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Text Book Co. v. Connelly, 206 N. Y. 188, 99 N. E. 772 (1912); Continental Nat. Bank v. Strauss, 137 N. Y. 148, 32 N. E. 1066 (1893); Henry v. Root, 33 N. Y. 326 (1865). The common law in other large commercial states was in accord: Mansfield v. Gordon, 144 Mass. 168, 10 N. E. 773 (1887); Holmes v. Rice, 45 Mich. 142, 7 N. E. 772 (1881); Union Central Life Ins. Co. v. Hilliard, 63 Ohio St. 478, 59 N. E. 230 (1900).

[10] N. Y. DOM. REL. LAW § 2.

[11] Ennis v. Beers, 84 Conn. 610, 80 Atl. 772 (1911); Shaw v. Coffin, 58 Me. 254 (1870); Earle v. Reed, 10 Metc. 387 (Mass. 1845); O'Donniley v. Kinley, 220 Mo. App. 284, 286 S. W. 140 (1926); *In re* Soltykoff, 1 Q. B. D. 413 (1881); (1924) 37 HARV. L. REV. 1133; (1929) 43 HARV. L. REV. 498; 1 AMES, CASES ON BILLS AND NOTES 463, n.1; WHITNEY, CONTRACTS 10, n.21; WILLISTON, CONTRACTS § 240; WILLISTON, SALES § 21. In *Shaw* v. *Coffin, supra,* and *Earle* v. *Reed, supra,* infant defendants were held not liable in assumpsit upon a note given by them for necessaries. In the *Soltykoff* case, *supra,* the infant was held not liable according to the customs of merchants upon an acceptance of a bill of exchange drawn upon him for necessaries sold to him. Thus the infant is not held, even for the price of necessaries, on his promise.

[12] WILLISTON, CONTRACTS § 240; WILLISTON, SALES § 21. Mr. Williston notes that misconception has led to some treatment of the infant's obligation with respect to necessaries as "arising from the promise of the infant." For such treatment, see *Earle* v. *Reed,* 10 Metc. 387 (Mass. 1845), wherein, while holding that assumpsit for the full amount of a note given by an infant for necessaries did not lie, the infant was held obligated *in assumpsit* in the same action, as if on the note, for the reasonable value of the necessaries; O'Donniley v. Kinley, 220 Mo. App. 284, 286 S. W. 140 (1926); (1940) 15 ST. JOHN'S L. REV. 98.

[13] N. Y. PERS. PROP. LAW § 83 (UNIFORM SALES ACT § 2); Ennis v. Beers, 84 Conn. 610, 80 Atl. 772 (1911); Trainer v. Trumbull, 141 Mass. 527, 6 N. E. 761 (1886); O'Donniley v. Kinley, 220 Mo. App. 284, 286 S. W. 140 (1926); (1924) 37 HARV. L. REV. 1133; (1929) 43 HARV. L. REV. 498; 1 AMES, CASES ON BILLS AND NOTES 463, n.1; EDGAR AND EDGAR, BILLS AND NOTES 59 and n.45; WHITNEY, CONTRACTS 10, n.22; WILLISTON, CONTRACTS § 240; WILLISTON, SALES § 21. Even in such cases as *Earle* v. *Reed,* 10 Metc. 387 (Mass. 1845), though assumpsit for the reasonable value is held to lie, the restitutional measure of damages indicates that the assumpsit is general and not special, and hence that the obligation is quasi-contractual, and not truly contractual or "on the promise." In *Shaw* v. *Coffin,* 58 Me. 254 (1870), the infant defendant had given a note for a sum of money to evidence his debt to a person from whom the infant had stolen a chattel. In denying liability in assumpsit (obviously special assumpit) upon the note, the court held the infant liable in assumpit "for money had and received" for the value of the chattel stolen, which is general or *indebitatus assumpsit,* that is, quasi-contract for restitution. The promise of the note was thus rejected, and, with it, liability in true contract. Citing WILLISTON, CONTRACTS § 233, WILLISTON, NEGOTIABLE INSTRUMENTS STUDY COURSE § 158, DANIEL, NEGOTIABLE INSTRUMENTS §§ 252-254 and the *Soltykoff* case, *supra,* Messrs. Edgar and Edgar, in their BILLS AND NOTES, 59, say, "Negotiable instruments made by infants are at least voidable, and even though an infant is liable for the reasonable value of necessaries, such obligation still remains in quasi-contract, there is no liability in pure contract, and so there is no liability on any negotiable instrument given for the same * * *." In *O'Donniley* v. *Kinley, supra,* the court thought the point so important that it quoted from 14 R. C. L. 255 as follows: "It is,

the fact that he is bound at all seems to be the explanation underlying the common error that he is bound upon the promise.[14]

Great though the protection given to infants has been, it has undergone some limitation where a continuing account consisting of a series of transactions has been involved. For example, upon an infant's rescission of his relationship with a firm of stock brokers, all of the acts of the brokers having been authorized by the infant, he has been held not entitled to recover the value of securities turned over to them as fixed at the time of the transfer, but only the possession of such securities as remain with the brokers and the proceeds of securities sold at the infant's order.[15]

Though, upon the exercise of his power of disaffirmance, the infant is under a restitutional obligation to the adult, the infant will not be denied rescission if he has squandered the consideration he received from the adult.[16] Thus we see the extreme to which protection has gone.

However, upon disaffirmance by an infant of a contract of purchase of consumer goods, the adult has been held entitled to an offset for the depreciation in value caused by use,[17] and, in another case, to an offset for damages sustained to the goods while in the infant's possession.[18]

Though the power of disaffirmance may be exercised before the infant reaches his majority, affirmance cannot be accomplished until he has attained it.[19]

As is implicit in Judge Crane's criticism [20] of the former state of the law, our society and its economy have outgrown much of what made necessary the law as it existed to "protect infants or minors from their own improvidence and folly, and to save them from the depredations and frauds practiced upon them by the designing and unprincipled * * *." [21] Minors possessed of capacity, as an actual fact and in all eyes except those of the law, have been enabled to use their power of disaffirmance as a device by which they escaped even

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however, inaccurate, strictly speaking, to say that the infant's contract if for necessaries, is valid and binding upon him. The more accurate statement is, that he is liable to pay the reasonable value of such necessaries as he has purchased and received; or, as it is sometimes expressed, he is liable on the implied contract, but not on the express contract which he made."

[14] O'Donniley v. Kinley, 220 Mo. App. 284, 286 S. W. 140 (1926). See also WILLISTON, CONTRACTS § 240; WILLISTON, SALES § 21.

[15] Joseph v. Schatzkin, 259 N. Y. 241, 181 N. E. 464 (1932).

[16] Green v. Green, 69 N. Y. 241, 181 N. E. 553 (1877).

[17] Rice v. Butler, 160 N. Y. 578, 55 N. E. 275 (1899).

[18] Wheeler & Watson Mfg. Co. v. Jacobs, 2 Misc. 236, 21 N. Y. Supp. 1006 (1893).

[19] WHITNEY, CONTRACTS 12, wherein it is noted that a ratification accomplished while the disability exists cannot have any greater validity than the original obligation.

[20] Sternlieb v. Normandie Nat. Securities Corp., 263 N. Y. 245, 188 N. E. 726 (1934).

[21] Henry v. Root, 33 N. Y. 526, 536 (1865).

the ordinary risks of trade while yet they engaged in it.[22] With the risk wholly upon the other and adult contracting party, not only is our notion of what is just offended, but also our economy suffers. Infants who must engage in trade to support themselves should be permitted to do so. But the state, which owes fair safeguards to all its citizens and not to infants alone, and necessarily must interest itself in the general economy of our society besides, has the power, and has wisely exercised it in this enactment, to dictate terms upon which infants may engage in business without extraordinary peril to adults who are also engaged in business.

Perhaps the most noteworthy fact in the history of this legislation was the elimination of the provisions with respect to contracts relating to education and those induced by misrepresentations concerning age. Whatever of value those provisions would have in our economy seems understandably to fall short of sufficient weight to produce favorable legislative action upon them. The greater importance of the provision finally enacted is apparent, and it is obvious that a social problem of serious degree is not found to exist in the situations which the rejected provisions would have remedied. Few indeed are written misrepresentations of age, however many verbal inducements of that sort infants may make in a given period of time.[23] Few, too, are contracts made and broken by infants with respect to their education, and fewer still those from whose breach flows serious harm. Many if not most "pay" secondary schools, more collegiate centers, and all universities, are charitable corporations, whose interests transcend profit and loss.

Since it is true that in the fulfillment of their respective functions, the Law Revision Commission proposes and the legislature disposes, the final form of the enactment is what might have been expected.

The enacted law of New York had, prior to the adoption of the statute under discussion, dealt with various disabilities based on nonage. An infant's cancellation of a policy of insurance upon his life, taken out by him when he was not less than fourteen and one-half years of age, for the benefit of his father, mother, brother, sister, husband, wife, child, children or grandparent, does not entitle him to recover back all premiums paid with interest, but only the cash surrender value and other stipulated benefits, and he may give a valid

[22] C. N. Bank v. Strauss, 137 N. Y. 148, 32 N. E. 1066 (1893); Sparman v. Keim, 83 N. Y. 245 (1880); Whittemore v. Elliott, 7 Hun 518 (N. Y. 1876); Yates v. Lyon, 61 N. Y. 344 (1874); Slocum v. Hooker, 13 Barb. 536 (N. Y. 1852). But *cf.* Mutual Milk & Cream v. Prigge, 112 App. Div. 652, 98 N. Y. Supp. 458 (1st Dep't 1936), in which the infant, having left the plaintiff's employ, was enjoined from soliciting business from plaintiff's customers in violation of his employment contract; Vichnes v. Transcontinental & Western Air, Inc., 173 Misc. 631, 18 N. Y. S. (2d) 603 (1940).

[23] The latter, of course, could not safely be reached, it is feared, for the fact of the infant's deception would too strongly tempt many an adult to perjure himself in what he would justify in his mind as a sort of self-defense.

discharge therefor.[24] The age of complete valid consent to marriage is fixed at eighteen, annulment (upon the ground of non-age) of a marriage earlier contracted being a matter of judicial discretion.[25] Transfers by infants of negotiable instruments are effective to pass the "ownership" thereof.[26] Innocent purchasers of goods [27] and innocent transferees of stock certificates for value [28] from sellers whose "title" is voidable because of the infancy of a former "owner" are not subject to the infant's power of disaffirmance.

In reacting deliberately and sensitively to the felt needs of the society it serves, the legislative process has hardly more than begun its work when an enactment reaches the statute books. It is the courts who, in construing its meaning, will say how it operates to remedy the condition whose correction was designed, and the construction which they will place upon it will probably be that which will accomplish the desired amelioration without too much regard for the mere dictionary meanings of words.[29]

Though the enactment under consideration is in derogation of the common law, we may expect that the judicial attitude toward it will not be too strict, since the pressure for liberal construction is very great. For one thing, there is the fact that the criticisms leveled at the pre-existing law have been joined in by the judges themselves, which is exemplified by the opinion of Judge Crane [30] to which previous reference has been made. For another, there is our society's consciousness of the truth which lies in those criticisms. We are all aware that our economy has compelled minors in large numbers to engage in business. We know, too, that the retention until now of the infant's power to disaffirm in all cases has enabled these infants to escape even the ordinary hazards of trade by adding these risks to the normal perils of the adult tradesman. Since our society feels it to be true that transactions for profit are the basis of our economy, and knows that these transactions in their turn are engaged in for the reason that they involve correlative risks and opposed hopes of profit, legal precepts which permit those risks to be entirely unilateral could not survive in our economy. The construction of the enactment under discussion, then, can be expected to proceed toward the result that the risks of trade between infants and adults be normally and healthfully bilateral. Such is the case for reasonably liberal construction.

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[24] N. Y. INSURANCE LAW § 145; Hamm v. Prudential Ins. Co., 137 App. Div. 504, 122 N. Y. Supp. 35 (1910).

[25] N. Y. DOMESTIC RELATIONS LAW § 7, subd. 1.

[26] N. Y. NEGOTIABLE INSTRUMENTS LAW § 41.

[27] N. Y. PERS. PROP. LAW § 105 (UNIFORM SALE OF GOODS ACT § 2); Casey v. Kastel, 237 N. Y. 305, 142 N. E. 671 (1924).

[28] N. Y. PERS. PROP. LAW § 169.

[29] CURTIS, STATUTES AND STATUTORY CONSTRUCTION (1916) §§ 51–66, 73–75, 91–97; 1 MCKINNEY, CONSOLIDATED LAWS OF NEW YORK 39.

[30] In Sternlieb v. Normandie Nat. Securities Corp., 263 N. Y. 245, 250, 188 N. E. 726, 728 (1934).

The problems which the statute will present may be expected to revolve around the meaning of three groups of words. Specifically they will be what is meant by (1) "a business in which the infant was engaged", (2) a contract "made in connection with" such a business and (3) "reasonable and provident".

(1) The difficulties presented by the first of these may not be many, for the ordinary meaning of business as a pursuit engaged in for profit and consisting of more than a few sporadic transactions will undoubtedly become the general test. However, there may be a problem, presented by the feeling of need for liberal construction, as to whether or not a single contract, which would clearly be a business contract if it did not stand alone, may constitute doing business. This raises a point with respect to the possibility that there may be an attempt to bring within the section the first contract made by an infant with the intention of engaging in business. If, for example, it be held that evidence of being engaged in business is the making of various business contracts, some contracts which cannot be enforced under the enactment will have to be made, and perhaps breached without relief, before the infant can be held liable on later ones.

(2) The question of what contracts are made "in connection with such a business" will probably give the courts trouble. For example, if a partnership in which an infant was a member is sued upon a contract it has made, is the partnership a contract "made in connection with the business in which the infant was engaged"? If the answer is in the affirmative, how will problems of the adult plaintiff's right to discovery and inspection, including examination before trial, be solved so as to enable the adult to meet his burden on the question of whether or not the partnership "contract" was reasonable and provident when made? Again, if the business is buying and selling, are only contracts of purchase and sale within the statute or will its operation include contracts of the infant by which he employs his help, rents his space and hires a truck with driver? The probability of liberal construction suggests that the broader solution will be adopted.

(3) With respect to the meaning of "reasonable and provident", whatever clash of ideas is to be expected will probably involve matters of degree rather than of substance. Settlement, crystallization, are less likely to be had than compromise through the application of the ordinary test for a jury question: When reasonable men can draw conflicting inferences about whether or not the contract is reasonable and provident, the jury will do the deciding.

A minor problem, which will undoubtedly be among the first to be settled, may be found to exist in the meaning of the phrase "burden of proof" in subdivision 2 of the enactment. Will the phrase be held to mean what it says, that is, to refer to the ultimate substantive burden of proof? Or does it relate merely to coming forward with

the evidence? [31] This will not be so important in the ordinary case in which the adult will be the plaintiff, for both burdens as to all matters including this will then be upon the adult on general principles. It will, however, be important in such a case as one in which the infant is suing upon a rescission, for example, to regain what consideration he gave up under the contract. There the infant's position as a plaintiff places upon him both the burden of producing evidence and the burden of proof as to other matters than those relating to the question of whether the contract is "reasonable and provident". Obviously, the burden of producing evidence that the contract was "reasonable and provident" will be upon the adult defendant.[32] But can it also be held that, upon this question, he has the ultimate burden of proof? [33]

Ours is the largest and most important business state. It is surprising that it was not [34] one of the pioneers in the direction of protecting the business community against the unrestrained exercise by infants of their legal power to disaffirm their contracts.

The historian of the future may find it noteworthy that the same session which enacted the statute under discussion, by making it possible validly to grant land adversely held against the grantor,[35] put a practical end to the modern importance of seisin, and completed legal recognition of the fact that in our economy land is a commodity.[36]

L. DEL VECCHIO.

DECEDENT ESTATE LAW § 20 — LIABILITIES OF SPECIFIC LEGATEES OF ENCUMBERED PERSONAL PROPERTY.—At common law one who was given a specific legacy burdened with a debt, was entitled to have the debt paid out of the general assets of the estate, to the exoneration of the property specifically bequeathed, unless the

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[31] See Hood v. Webster, 271 N. Y. 57, 59, 2 N. E. (2d) 43, 44 (1936).

[32] *Ibid.*

[33] See Hood v. Webster, 271 N. Y. 57, 59, 2 N. E. (2d) 43, 44 (1936). The adult having introduced even slight evidence, will the burden pass to the infant, on the ground that the matter is particularly within his own knowledge? Perine v. Elmira, C. & W. Ry., 184 App. Div. 814, 172 N. Y. Supp. 396 (3d Dep't 1918).

[34] The following states have dealt with some phase of the infants' contracts by statute: (1) The Iowa group: Iowa, Kansas, Utah and Washington; (2) The Field Code group: California, Idaho, Montana, North Dakota, Oklahoma and South Dakota; (3) Requirement of a writing: Arkansas, Kentucky, Maine, Mississippi, Missouri, New Jersey, South Carolina and Virginia; (4) Removal of disabilities of infancy: Alabama, Florida, Kansas, Louisiana, Oklahoma, Tennessee and Texas; (5) Miscellaneous: Georgia, Louisiana and Virginia.

[35] N. Y. REAL PROP. LAW § 260, amended by L. 1941, c. 317.

[36] Guest, *et al.* v. Reynolds, 68 Ill. 478, 18 Am. Rep. 570 (1873); Booth v. Rome, W. & O. T. R. R., 140 N. Y. 267, 35 N. E. 592 (1893); Myers v. Gemmel, 10 Barb. 537 (N. Y. 1851); Parker v. Foote, 19 Wend. 309 (N. Y. 1838); Mahan v. Brown, 13 Wend. 261 (N. Y. 1835); 3 KENT'S COMM. 537.