**BLAW 201 Topics**

**Professor Kreider**

**Objectives**

Recognize when a party lacks capacity

Understand the concepts of ratification, necessities, and restitution for incompetents

Explain the effects of misrepresentation of age for minors and adjudication for mental incapacity

Compare unilateral and mutual mistakes of fact

List the elements of fraud

Know when nondisclosure applies

Describe undue influence

Identify the three types of duress

**Chapter 13: Capacity**

Status or Factual Incapacity

Contract voidable by incompetent or guardian

Voidable during incapacity or within a reasonable time after gaining capacity

Disaffirm by words or conduct

Ratification

Words or conduct of the former incompetent indicating the intent to be bound

Includes lapse of reasonable time without disaffirming after gaining capacity

Effective only when done after gaining capacity

Contract becomes binding, no longer voidable

Necessaries

Things needed to sustain life or related to health and education

Incompetent can disaffirm but is liable under quasi contract for the reasonable value

Parents and spouses can also be liable for the cost of necessities

Third person liability

Incompetents as agents

Cosigners

Minors

Restitution

-returns whatever remains of original consideration in whatever condition (or substitute)

-other party returns **all** money or property received from minor

Misrepresentation of Age

-minor can still disaffirm

-minor liable for the financial loss of deceived party

-deceived party may disaffirm only when all elements of fraud are satisfied

Contracts minors cannot disaffirm

Mental Incapacity

Restitution

-if contract is fair **and** other party has no reason to know of the mental incapacity, incompetent can disaffirm only by making **full** restitution

-if contract is unfair **or** other party knew of incapacity, mental incompetent may disaffirm without full restitution (use minor’s restitution rule)

Lucid Intervals

Adjudication of mental incompetence

Guardian appointed

After adjudication: any new contracts by mental incompetent are void

Intoxication and Drug Use

-Voidable only when so under the influence that party does not know contract was made

-Restitution: use mental incapacity rule

**Chapter 13: Genuine Assent**

Unilateral Mistake

Valid contract

Exception: Voidable by mistaken party if other party knew or should have known of the mistake

Return to status quo ante or correct mistake

Mutual Mistake

Both parties mistaken about the same material fact

Voidable by either party

Return to status quo ante or correct mistake

Mistake of opinion or judgment: not voidable

- Some statements by experts can be considered as statements of fact

Fraud

Elements

-false statement of material fact or active concealment of facts

-made with knowledge or reckless disregard to the truth

-intent that listener rely

-listener does reasonably rely

-listener is financially harmed

Sales talk and statements of opinion about value or future events are not regarded as fraud

-Some statements by experts can be considered as statements of fact

Voidable by listener (deceived party) within a reasonable time of determining the truth

Deceived party rescinds contract and/or sues for money damages

Nondisclosure

No duty to speak or disclose information when not asked

Exception: Duty to disclose if other party cannot reasonably discover the truth on his/her own

**or** if a confidential relationship exists

-under the exception, the nondisclosure is treated as fraud

Undue Influence

Unfair persuasion

Confidential relationship allows dominant party to be unfairly benefited by the contract

Voidable by dominated party

Duress

Illegal threats

-Physical harm

-Threat of criminal prosecution

-Economic duress: no other reasonable options available

Voidable by threatened party