Chapter 14 – Capacity and Legality

Capacity

Minors – ability to disaffirm prior to or shortly after reach majority

Method of disaffirmance – express/implied

Failure to disaffirm- ratification – express/implied

Consequence for the non-disaffirming party – basis of continued liability of a minor

Historical approach – recission/ minority/modern view – balancing policies of deterring contracting with minors v. preventing unjust enrichment.

Quasi –contract/prevent unjust enrichment where a benefit has been conferred

Exceptions – fraud/necessaries – how do you determine what is a necessary --

Dodson v. Schraeder

Emancipation/parential liability for a minor’s contract – where parents are not a party

Incapacity – a legal determination

After determination – void

Prior to determination – voidable

Lucid interval – valid

Intoxication – hard – if proved – voidable

Failure to timely disaffirm

Legality

Contrary to statute/licensing statutes

Contrary to public policy – anticompetitive provisions/exceptions for employees/sale of on-going business

Unconscionability – substatantive and procedural aspects

e.g. Exculpatory clauses

Exceptions (where court may still fashion a remedy)

Justifiable ignorance

Member of protected class

Withdrawal from an illegal agreement

Illegal through Frau Duress and Undue influence

Severable contract.