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.