

**Contracts I**  
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**Sample Exam Question #8 - Model Answers**

**On February 15, 2002, Wallace Williams and Bruce Roberts entered into a written contract whereby Wallace, a professional entertainer, agreed to perform at Bruce's resort hotel in the Berkshires for the week of July 1-7, 2002 and Bruce agreed to pay Wallace \$25,000 for performing. In early May, Wallace had a hit single that, virtually overnight, made him a star who could command at least \$75,000 for a one-week engagement. On June 1st, Wallace telephoned Bruce demanding \$75,000 for his July 1st-7th performances. Bruce told Wallace that "a deal is a deal," and would not agree to pay Wallace more than the previously-agreed \$25,000.**

**A. If Wallace's eighteenth birthday was June 1, 2002, would he have been entitled to refuse to perform the contract? Please explain.**

A "voidable" contract is one that a party may avoid for one of several reasons. *See* R2 § 7. One reason for avoiding a contract is that the party seeking to avoid it was a minor when he entered into the contract. Minors are permitted to enter into any contract an adult can, provided that the contract is not one the law prohibits for minors (*e.g.*, an agreement to purchase cigarettes or alcohol). Subject to certain limitations (three of which are discussed in the next three paragraphs), a minor has the right before or shortly after achieving the age of majority to avoid a contract he entered into as a minor. *See* R2 § 14.

In order for a minor to avoid a contract, he need only manifest his intention not to be bound by it. The minor may manifest his intent to avoid (or "disaffirm") the contract by words or actions. Generally speaking, a minor may disaffirm a contract at any time during his minority or for a reasonable time after he reaches the age of majority. A minor who fails to timely disaffirm will have constructively affirmed the contract. A minor may also reaffirm or ratify a contract he would otherwise be able to avoid. Because disaffirmance may be implicit, as well as explicit, Wallace's insistence on a new agreement, within a week of turning age 18, could be seen as an implicit disaffirmance of the earlier contract.

A minor who enters into a contract to purchase food, shelter, clothing, medical attention, or other goods or services necessary to maintain his well-being may, technically speaking, avoid the contract, but he will generally be liable for the reasonable value of those goods and services. *See* R2 § 12 cmt. f. Wallace's contract with Bruce was not for food, shelter, clothing, medical attention, or other goods or services necessary to maintain his well-being.

A minor who affirmatively misrepresents his age when he enters into a contract may not be able to avoid the contract, depending on the law of the state whose law governs the contract.

There are no facts in this Question suggesting that Wallace affirmatively misrepresented his age to Bruce.

Because he lacked the capacity to be bound by the February 15th contract at the time, and because the February 15th contract was not for food, clothing, shelter, medical attention, or other goods or services necessary to maintain his well-being, Wallace was entitled, at his discretion, to disaffirm it before or shortly after reaching the age of majority. As long as Wallace did not affirmatively deceive Bruce about his age when they signed the February 15th agreement, Wallace should not be bound by it.

**B. Suppose that, while Bruce initially refused to renegotiate, when Wallace said he would not perform unless Bruce agreed to pay him more money, Bruce relented. After a lengthy face-to-face discussion the morning of June 8th, Bruce dictated a new contract to his secretary, in the exact words of the first contract and running for the same period, with Wallace's compensation changed from \$25,000 to \$50,000. As they signed the new contract they tore up the old one. Thereafter, Wallace kept the engagement, but Bruce refused to pay more than the \$25,000 he had originally promised. Wallace sued. Could Bruce successfully defend Wallace's suit by arguing that, because he had already spent considerable time, money, and resources – particularly after Wallace's single became a hit – advertising Wallace's upcoming appearance, he should not be held to the June 8th contract? Please explain.**

Bruce has three possible defenses – duress, undue influence, and unconscionability – none of which should ultimately prove successful.

A promisor may avoid a contract, on the ground of duress, if his assent was induced by an *improper threat* that left him with *no reasonable alternative* but to assent. *See, e.g., Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co.*, 584 P.2d 15 (Alaska 1978). Certain threats are improper *per se*: (1) a threat of crime or tort, including a threat that would itself be a crime or tort; (2) a threat of criminal prosecution; (3) a threat to bring a civil suit in bad faith; or (4) a threat that breaches the duty of good faith and fair dealing owed to the promisor. R2 § 176(1). Other threats are improper when coupled with an exchange on unfair terms, R2 § 176(2), but none of those apply here because Wallace was only seeking to modify the contract to better reflect his current market value. The compensation he sought was not an exchange on unfair terms. Nor would Wallace's threat not to perform unless Bruce agreed to pay him more money fall within any of the categories identified by R2 § 176(1). The only possibility is "a threat that breaches the duty of good faith and fair dealing owed to the victim," but these facts do not fit that claim because Wallace was not demanding more money "without legitimate commercial reason." R2 § 176 cmt. e. Wallace's star was on the rise. He was no more guilty of breaching the duty of good faith and fair dealing than an athlete who demands more money or a trade despite having a contract in place.

Undue influence involves taking unfair advantage of another's weakness of mind or taking an oppressive and unfair advantage of another's necessity or distress. *See, e.g., Odorizzi v. Bloomfield School District*, 54 Cal. Rptr. 533 (Cal. Dist. Ct. App. 1966). Like duress, undue influence involves coercing a promisor into acting against his free will. Unlike duress, undue

influence requires no threat, nor does it require that the party exercising the influence left the promisor with no other reasonable alternative than that sought. *See* R2 § 177. There is no evidence that Wallace attempted to exercise any undue influence over Bruce or that Bruce was susceptible to undue influence.

Unconscionability can arise where disparate bargaining power between the parties to an agreement (1) deprives the party asserting unconscionability of any meaningful choice as to the terms of the agreement (procedural unconscionability) or (2) results in one or more terms that are so one-sided, under the circumstances existing at the time of the making of the contract, as to be oppressive or manifestly unfair (substantive unconscionability). R2 § 208. Some courts seem willing to find a term unconscionable when only the substantive prong of the test has been satisfied. *See, e.g., Donovan v. RRL Corp.*, 27 P.3d 702 (Cal. 2001). Most courts, however, will require a showing of both procedural and substantive unconscionability. *See, e.g., Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965). The facts of this Question do not suggest that Bruce lacked bargaining power. Indeed, even having consented to forming a new contract, Bruce still signed Wallace for considerably less than his going value. Nor are the terms of the deal so unfair as to deprive Bruce of the benefit of his bargain.

**C. Suppose that, when Wallace met with Bruce on June 8th, Wallace was accompanied by a couple of older men, who he introduced to Bruce as his “advisors.” When Bruce rejected Wallace’s initial demand for more money, the elder of the two men motioned for Bruce to come closer. When he did, the younger of the two men casually unbuttoned his suit jacket and slid one side back to reveal a pistol. Threatened by the gesture, Bruce’s negotiating strategy changed, and he and Wallace soon came to an accommodation and signed the new contract. Under these facts, would Bruce have grounds (assuming he had the nerve) to refuse to pay Wallace more than the original \$25,000? Please explain.**

Now Bruce should be able to shield himself from liability by claiming duress. As explained in the previous answer, R2 § 175 allows Bruce to avoid a contract if his assent was induced by, *inter alia*, a threat of crime or tort, including a threat that would itself be a crime or tort. R2 § 176(1)(a). Brandishing a gun is both a crime and a tort and a threat of a greater crime or tort. The fact that the threat was made by someone other than Wallace does not prevent Bruce from avoiding the contract unless, *inter alia*, Wallace had no reason to know of the threat. Wallace was in the room at the time. So, even if he did not know that the threat would be made, he did know that the threat was made. As such, he should not be able to profit from it by holding Bruce to the contract that Bruce consented to only after the threat.

**D. Returning to facts of subpart “B,” suppose that Bruce drank heavily the day he and Wallace negotiated and signed the agreement increasing Wallace’s compensation to \$50,000. Can Bruce defend Wallace’s suit by arguing that he was too intoxicated to form the requisite intent to be bound by the new contract? Please explain.**

If Bruce was so drunk as to be legally incapable of forming a contract, then he may be excused from performing the June 8th contract. “Mere mental weakness” is not enough to excuse Bruce on the ground of incapacity. On the other hand, if Bruce was unable, when he

entered into the June 8th agreement, to understand in a reasonable manner the nature and consequences of the transaction, or to act in a reasonable manner in relation to the transaction, and Wallace had reason to know of Bruce's condition, then Bruce may avoid the contract *even if his intoxication was purely voluntary*. R2 § 16.

A person lacking contractual capacity when he formed a contract may, upon (re)gaining the necessary capacity to do so, impliedly ratify the contract he made while lacking capacity by acting in a manner that is clearly inconsistent with disaffirmance or avoidance. Because Wallace would have been bound to perform from July 1st-7th under either the first contract or the second one, the fact that Bruce allowed him to perform was not necessarily a ratification of the second contract.

The facts suggest that Bruce, while perhaps under the influence of alcohol, was not so drunk as to be incapacitated. First, he negotiated Wallace down from his initial demand of \$75,000 to \$50,000. Second, he dictated the terms of the new contract to his secretary. Third, he signed the new contract, and had the presence of mind to have Wallace sign, too (in the event that the latter might try to bail out despite the increased compensation). Fourth, he tore up the original contract, suggesting that he understood that the new deal replaced the old deal. *Compare, e.g., Lucy v. Zehmer*, 84 S.E.2d 516 (Va. 1954).

Even if the court were to find Bruce was incapacitated, R2 § 15(2) precludes Bruce from avoiding the contract "to the extent that the contract has been so performed in whole or in part or the circumstances have so changed that avoidance would be unjust. In such a case a court may grant relief as justice requires." Wallace, believing that he had a contract to perform at Bruce's hotel for \$50,000, did so, only to learn after the fact that Bruce did not intend to pay him more than \$25,000. Wallace has fully performed. Bruce has only paid \$25,000 of the \$50,000 he promised to pay. If the court finds that Bruce was incapacitated, it should exercise its equitable powers to decide what award – between \$0 and \$25,000 – would constitute "justice" for Wallace.

**E. Suppose that, within days of his hit single's release, Wallace signed a multi-album contract with Vestal Records. Wallace spent the whole week following his eighteenth birthday in Vestal's studios, recording and mixing songs. At the end of the week, Wallace called Vestal's president, Chick Hanson. Wallace told Hanson that he appreciated all that Vestal had done for him, but he had received a better offer from another label. When Hanson sputtered, "But we have a contract," Wallace replied, "I was underage when I signed it. Sorry, Chick." Could Wallace disaffirm his contract with Vestal because he signed it when he was a minor? Please explain.**

Bob Dylan entered into a recording contract with Columbia Records when he was twenty years old. At the time, the age of majority in New York (whose law governed the contract) was twenty-one. When Dylan sought to disaffirm the contract shortly after turning twenty-one, Columbia was able to thwart him because he had used Columbia's studio six or seven times after his 21st birthday. Thus, like Dylan, Wallace should be barred from disaffirming his contract with Vestal because he used Vestal's studio and equipment after reaching the age of majority.