Solution and Answer Guide

Miller, Business Law Today, Comprehensive Edition: Text & Cases 13e, 9780357634783;   
Chapter 13: Capacity and Legality

Table of Contents

[Critical Thinking Questions in Features 1](#_Toc63686348)

[Managerial Strategy 1](#_Toc63686349)

[Critical Thinking Questions in Cases 3](#_Toc63686350)

[Case 13.1 3](#_Toc63686351)

[Case 13.2 3](#_Toc63686352)

[Case 13.3 4](#_Toc63686353)

[Chapter Review 5](#_Toc63686354)

[Practice and Review 5](#_Toc63686355)

[Practice and Review: Debate This 6](#_Toc63686356)

[Issue Spotters 6](#_Toc63686357)

[Business Scenarios and Case Problems 7](#_Toc63686358)

[Critical Thinking and Writing Assignments 13](#_Toc63686359)

# Critical Thinking Questions in Features

Managerial Strategy

1. What would be your strategy regarding liability waivers if you were managing a business that relied on minors engaging in inherently dangerous activities?

Solution

Initially, a manager would need to become well-versed in the applicable state law. The majority of states, through case law or legislative action, will not enforce parental waivers signed on behalf of children. Managers of trampoline parks—or other businesses that place minors at risk such as paintball or laser tag courses or go-kart tracks—in these states need to take precautions such as purchasing sufficient insurance and training employees to diffuse particularly dangerous situations immediately.

Managers should also avoid the situation discussed in this feature, where House of Boom relied on the parent’s signature alone to relieve it of liability for her daughter’s injury. Employees should verbally encourage parents to read and understand the implications of any liability waivers. Employees should also be made available to answer any questions parents might have about liability waivers. Furthermore, parents and the children should be explicitly warned of the risks of the activity in which they are about to engage. Generally speaking, the more information a business explicitly provides concerning a liability waiver, the more likely a court will be to find the waiver is enforceable.

1. Under what circumstances would you, as a business owner, choose to aggressively defend your business against a customer’s liability lawsuit?

Solution

Business owners choose to aggressively defend liability lawsuits when they are certain that the customer was 100 percent negligent and that the lawsuit has nothing to do with the negligence of the business. Also, some large corporations choose to aggressively defend “nuisance” lawsuits in order to deter the filing of such lawsuits in the future, or at least reduce the potential number.

# Critical Thinking Questions in Cases

Case 13.1

1. Could PAK Foods successfully contend that S.L.’s minority does not bar enforcement of the arbitration agreement because medical expenses are necessaries? Discuss.

Solution

No. PAK Foods could not succeed in contending that S.L.'s minority does not bar enforcement of the arbitration agreement because medical expenses are necessaries. Of course, minors may be held liable on a contract to furnish necessaries. And necessaries are generally considered to be items like food, lodging, clothing, medicine, and medical attention, and may include attorney's fees in some circumstances. But the contract at issue in the *PAK Foods* case concerns a minor's employment and the resolution of disputes arising during that employment—the contact is not for the provision of necessaries.

Case 13.2

1. What “legitimate business interests” justify the enforcement of a non-compete provision?

Solution

Legitimate business interests that justify the enforcement of a non-compete provision include, among other things, substantial relationships with specific prospective or existing customers, as well as client good will.

In the *Kennedy* case, for example, The Shave intended the non-compete provision in Kennedy’s employment contract to protect the resources the company had devoted to developing its name recognition and customer base. In the words of the appellate court, “The Shave had a legitimate business interest in protecting itself from the risk that Kennedy might appropriate customers by taking advantage of the contacts developed while she worked at The Shave.”

Similarly, an employer can have a substantial interest in maintaining its workforce. Thus, for example, Kennedy’s attempt to influence employees to leave The Shave to work for the “P.K. Does Hair” salon would contravene this legitimate business interest.

1. What sort of harm, particularly in Kennedy’s situation, would support a court’s refusal to enforce an employment contract’s non-compete provision?

Solution

A court should refuse to enforce an employment contract’s non-compete provision with an injunction if the threatened injury to the party being enjoined outweighs the threatened harm to the party seeking the injunction.

In Kennedy’s situation, for example, she might claim that she would face bankruptcy and financial ruin if the injunction were imposed. This harm is not insignificant, especially in terms of its effect on securing credit for any business or personal purpose. And it is very unlikely that The Shave would go out of business if Kennedy were allowed to continue to compete two miles from her ex-employer’s current location.

Of course, as in this case, the court could consider the relative harms and might decide that on balance the equities weigh in favor of an employer not having competition by a former employee within a restricted area. Here, Kennedy had notice of the non-compete provision, which she violated. Without its enforcement, the court determined, The Shave would lose customers. With “the equities” in mind, the court reformed the provision to be reasonable in its terms, and granted an injunction to enforce it.

Case 13.3

1. At the time Holmes signed the release, Multimedia had not yet become a sponsor of the event. Should this fact have rendered the clause unenforceable? Explain.

Solution

No. At the time that Holmes signed the release, Multimedia had not yet become a sponsor of the event, but that fact did not make the clause unenforceable. As the court stated in its opinion, the release of “any Event sponsors” clearly released all sponsors without exclusion. The release is not ambiguous because it does not specifically indicate that it applies to sponsors who had not signed a sponsorship agreement at the time the release was executed.

In this case, the exculpatory clause was a release of claims for any injury or accident “that may occur during my participation in this Event or while on the premises of this Event.” Thus, the clause specifically governed liability for injuries or accidents arising out of a participant's participation in and presence at the event. The clause released “any Event sponsors.” Multimedia was a sponsor of the event. The release of “any Event sponsors” plainly released all sponsors without exclusion. This plain language cannot reasonably be interpreted to release only those sponsors who had signed a sponsorship agreement before a participant signed the release.

# Chapter Review

Practice and Review

Renee Beaver started racing go-karts competitively in 2020, when she was fourteen. Many of the races required her to sign an exculpatory clause to participate. She or her parents regularly signed such clauses. In 2022, right before her birthday, Renee participated in the annual Elkhart Grand Prix, a series of races in Elkhart, Indiana. During the event in which she drove, a piece of foam padding used as a course barrier was torn from its base and ended up on the track. A portion of the padding struck Beaver in the head, and another portion was thrown into oncoming traffic, causing a multikart collision during which she sustained severe injuries. Beaver filed an action against the race organizers for negligence. The organizers could not locate the exculpatory clause that Beaver had supposedly signed. Race organizers argued that she must have signed one to enter the race, but even if she had not signed one, her actions showed her intent to be bound by its terms. Using the information presented in the chapter, answer the following questions.

1. Did Beaver have the contractual capacity to enter into a contract with an exculpatory clause? Why or why not?

Solution

Beaver did not have the capacity to enter into a contract whether or not it included an exculpatory clause because she was a minor, or, more accurately, she could enter into the contract but she could opt to disaffirm it. Her parents were not minors, however, and could be held to their contracts, including the contract at issue in this problem if it otherwise meets all of the legal requirements.

1. Assuming that Beaver did, in fact, sign the exculpatory clause, did she later disaffirm or ratify the contract? Explain.

Solution

To disaffirm a contract, a minor must express an intent by words or conduct not to be bound. Here, the filing of a suit would certainly indicate an intent not to be bound. If Beaver had reached the age of eighteen a reasonable time before attempting to disaffirm, however, she could be held to have impliedly ratified the contract.

1. Now assume that Beaver had stated that she was eighteen years old at the time she signed the exculpatory clause. How might this affect her ability to disaffirm or ratify the contract?

Solution

Beaver’s misrepresentation of age would not usually affect her right to disaffirm the contract, but in some states, the opposite is true—she would be bound to the clause.

1. Suppose Beaver can prove that she did not actually sign an exculpatory clause and this fact convinces race organizers to pursue a settlement. They offer to pay Beaver one-half of the amount that she is claiming in damages if she now signs a release of all claims. Because Beaver is young and the full effect of her injuries may not yet be clear, what other type of settlement agreement might she prefer? What is the consideration to support any settlement agreement that Beaver enters into with the race organizers?

Solution

The type of settlement agreement that Beaver might prefer to sign is a covenant not to sue because it would not bar the race organizers from further liability if Beaver’s injuries manifest fuller effects later. Under a covenant not sue, Beaver could leave open the amount of damages and require the race organizers to pay a percentage of her medical bills now and in the future, and then sue them if they failed to pay. The consideration that supports a settlement agreement is the parties’ giving up a legal right to contest the amount in dispute.

Practice and Review: Debate This

1. After agreeing to an exculpatory clause or purchasing some item, minors often seek to avoid the contracts. Today’s minors are far from naïve and should not be allowed to avoid their contractual obligations.

Solution

Today, teenagers, and most certainly, those just under the age of majority, are exposed to what is happening in the business world on a constant basis because of the ubiquity of media outlets—at home, at school, and everywhere there is a Wi-Fi connection.  When a minor avoids an otherwise valid contract, the seller of the good or service involved gets stuck “holding the bag” while the minor had free (or at least cheap) use of the good in question.  Few minors enter into contracts without understanding to what they are agreeing.

As much as we wish to impute adult capacities to minors, they are still minors and are not so capable as adults in understanding the contracts into which they may voluntarily enter.  Consequently, the courts are acting in a just manner when they allow minors to avoid contracts made for the purchase of goods or services.  If all minors were held to their contractual obligations as if they were adults, adults would be more likely to take advantage of minors’ inexperience.

Issue Spotters

1. Cedric, a minor, enters into a contract with Diane. How might Cedric effectively ratify this contract?

Solution

A minor may effectively ratify a con­tract after reaching the age of majority either expressly or impliedly. Failing to disaffirm an otherwise enforceable contract within a reasonable time after reaching the age of majority would also effectively ratify it. Nothing a minor does before attaining majority, however, will ratify a contract.

1. Sun Airlines, Inc., prints on its tickets that it is not liable for any injury to a passenger caused by the airline’s negligence. If the cause of an accident is found to be the airline’s negligence, can it use the clause as a defense to liability? Why or why not?

Solution

No. Generally, an exculpatory clause (a clause attempting to absolve parties of negligence or other wrongs) is not en­forced if the party seeking its en­forcement is in­volved in a business that is important to the public as a matter of practical necessity, such as an air­line. Because of the essential nature of such ser­vices, the parties have an ad­vantage in bargaining strength and could insist that anyone contracting for its ser­vices agree not to hold it liable.

Business Scenarios and Case Problems

1. **Contracts by Minors.** Kalen is a seventeen-year-old minor who has just graduated from high school. He is attending a university two hundred miles from home and has contracted to rent an apartment near the university for one year at $500 per month. He is working at a convenience store to earn enough income to be self-supporting. After living in the apartment and paying monthly rent for four months, he becomes involved in a dispute with his landlord. Kalen, still a minor, moves out and returns the key to the landlord. The landlord wants to hold Kalen liable for the balance of the payments due under the lease. Discuss fully Kalen’s liability in this situation. (See *Contractual Capacity*.)

Solution

A contract for shelter for a minor can be classified as a necessary if the con­tract meets three criteria: (a) the item contracted for is absolutely necessary for the minor’s existence, (b) the item contracted for is within the station (in­cluding financial) of life the minor is accustomed to, and (c) the minor is not under the care of a parent or guardian who is required to supply these neces­saries. When these three criteria are met, minors can disaffirm their contrac­tual liability, although they continue to be liable for the reasonable value of any contracted‑for item based on use.

In this case, Kalen made a contract for shel­ter, which appears to be of a type suitable for his station in life. He is self‑supporting, having removed himself from the care of his parents. The lease is a contract for a necessity, and, although Kalen can disaffirm the lease con­tract, he is liable in quasi contract for the reasonable value based on use. Thus, the landlord can keep the four months’ rent paid by Kalen (assuming that $450 per month is a fair market value), but the landlord cannot hold Kalen liable for the balance on the lease.

1. **Intoxication.** After Kira had had several drinks one night, she sold Charlotte a diamond necklace worth thousands of dollars for one hundred dollars. The next day, Kira offered the one hundred dollars to Charlotte and requested the return of her necklace. Charlotte refused to accept the money or return the necklace, claiming that she and Kira had a valid contract of sale. Kira explained that she had been intoxicated at the time the bargain was made and thus the contract was voidable at her option. Was Kira correct? Explain. (See *Contractual Capacity*.)

Solution

Kira is right and will prevail over Charlotte *if* Kira can prove that she was in­deed intoxi­cated at the time she sold the necklace to Charlotte. Most likely, Kira will have little diffi­culty proving this because no reasonable person would sell a valuable necklace for only one hundred dollars. The fact that Kira did so strongly suggests that she was intoxicated at the time and not aware of the significance of her ac­tion. Because contracts made by an intoxi­cated person are voidable at the option of the intoxicated party, Kira has a good chance of recovering the necklace.

1. **Disaffirmance.** J.T., a minor, is a motocross competitor. At Monster Mountain MX Park, he signed a waiver of liability to “hold harmless the park for any loss due to negligence.” Riding around the Monster Mountain track, J.T. rode over a blind jump, became airborne, and crashed into a tractor that he had not seen until he was in the air. To recover for his injuries, J.T. filed a suit against Monster Mountain, alleging negligence for its failure to remove the tractor from the track. Does the liability waiver bar this claim? Explain. [*J.T. v. Monster Mountain, LLC*, 754 F.Supp.2d 1323 (M.D.Ala. 2010)] (See *Contractual Capacity*.)

Solution

No. Contracts entered into by a minor are voidable at the option of the minor. The minor has the choice of disaffirming the contract and setting aside all legal obligations arising from it. For minors to exercise the option to avoid a contract, they need only manifest an intention not to be bound by it. The minor avoids the contract by disaffirming it. Words or conduct may serve to express the intent. The contract may be disaffirmed at any time during minority or for a reasonable time after the minor comes of age. It is important that disaffirmance be timely.

The waiver of liability in this set of facts is a contract between Monster Mountain and a minor—J.T. A contract with a minor is voidable. To disaffirm the contract, the minor only needs to show an intent not to be bound by it. J.T.’s suit against Monster Mountain, seeking to hold the park liable for negligence, is conduct that serves to express that intent. Thus, the waiver does not bar J.T.’s claim.

In the actual case on which this problem is based, the court held that any contract made with J.T., including Monster Mountain’s liability waiver, was voidable.

1. **Business Case Problem with Sample Answer— Minors.** D.V.G. (a minor) was injured in a one-car auto accident in Hoover, Alabama. The vehicle was covered by an insurance policy issued by Nationwide Mutual Insurance Co. Stan Brobston, D.V.G.’s attorney, accepted Nationwide’s offer of $50,000 on D.V.G.’s behalf. Before the settlement could be submitted to an Alabama state court for approval, D.V.G. died from injuries received in a second, unrelated auto accident. Nationwide argued that it was not bound to the settlement because a minor lacks the capacity to contract and cannot enter into a binding settlement without court approval. Should Nationwide be bound to the settlement? Why or why not? [*Nationwide Mutual Insurance Co. v. Wood*, 121 So.3d 982 (Ala. 2013)] (See *Contractual Capacity*.)   
   **—For a sample answer to Problem 13–4, go to Appendix E.**

Solution

No. Minors does not so lack the capacity to contract that they cannot enter into binding settlements without court approval. The general rule is that a minor can enter into any contract an adult can, unless the contract is prohibited by law for minors (for example, the sale of tobacco or alcoholic beverages). A contract entered into by a minor, however, is voidable at the option of that minor. An adult who enters into a contract with a minor cannot avoid contractual duties on the ground that the minor can. Unless the minor exercises the option to disaffirm the contract, the adult party normally is bound by it.

In this problem, it is clear that a contract existed at the time of D.V.G.’s death. As a minor, she did not lack the capacity to enter into a binding settlement of her potential claims. She would not have been liable on the contract, however, if she had chosen to avoid the deal. But she was the only party to the settlement that had this option. At the time that the settlement was agreed to, the contract was binding on Nationwide, notwithstanding that it was voidable at D.V.G.’s option.

In the actual case on which this problem is based, Nationwide asked a federal district court to declare that there was no settlement. The question was certified to the Alabama Supreme Court, which held that Nationwide was bound to the agreement.

1. **Adhesion Contracts.** David Desgro hired Paul Pack to inspect a house that Desgro wanted to buy. Pack had Desgro sign a standard-form contract that included a twelve-month limit for claims based on the agreement. Pack reported that the house had no major problems, but after Desgro bought it, he discovered issues with the plumbing, insulation, heat pump, and floor support. Thirteen months after the inspection, Desgro filed a suit in a Tennessee state court against Pack. Was Desgro’s complaint filed too late, or was the contract’s twelve-month limit unenforceable? Discuss. [*Desgro v. Pack*, 2013 WL 84899 (Tenn. App. 2013)] (See *Legality*.)

Solution

Desgro’s complaint was filed too late—the contract’s twelve-month limit was enforceable. Standard-form contracts often contain fine-print provisions that shift a risk ordinarily borne by one party to the other or otherwise impose limitations on claims and disputes. Many businesses use such contracts. Life insurance policies, residential leases, loan agreements, and employment agency contracts are often standard-form contracts. To avoid enforcement of the contract or of a particular clause, a plaintiff normally must show that the contract or particular term is unconscionable.

In this problem, Pack had Desgro sign a standard-form contract that included a twelve-month limit for claims based on the agreement. But this standard-form contract was not an unconscionable adhesion contract because Desgro did not have to take it or leave it, nor was he forced to agree to its terms to get the house inspected. He might have bargained with Pack over the terms. Or he might have simply contacted another inspection service to do the work. Thus, Desgro was bound to the terms of the contract with Pack, including the twelve-month limit on claims based on the agreement.

In the actual case on which this problem is based, the court issued a judgment in Pack’s favor, and a state intermediate appellate court affirmed, on the basis of the twelve-month limit.

1. **Minors.** Bonney McWilliam’s father deeded a house in Norfolk County, Massachusetts, to Bonney and her daughter, Mechelle. Each owned a one-half interest. Described as “an emotionally troubled teenager,” Mechelle had a history of substance abuse and a fractured relationship with her mother. At age sixteen, in the presence of her mother and her mother’s attorney, Mechelle signed a deed transferring her interest in the house to Bonney. Later, still at odds with her mother, Mechelle learned that she did not have a right to enter the house to retrieve her belongings. Bonney claimed sole ownership. Mechelle filed a lawsuit in a Massachusetts state court against her mother to declare the deed void. Could the transfer of Mechelle’s interest be disaffirmed? Explain. [*McWilliam v. McWilliam*, 46 N.E.3d 598 (Mass.App.Ct. 2016)] (See *Contractual Capacity*.)

Solution

Yes. The deed that Mechelle signed, transferring her interest in the house to her mother Bonney could be declared void. Minors—persons under eighteen—are not legally bound to most contracts that they enter. A contract is voidable at the option of the minor. That is, the minor may disaffirm the contract and set aside all legal obligations arising from it. For minors to exercise the option to disaffirm, they must show an intent not to be bound to it.

In this problem, Bonney’s father deeded a house to Bonney and Mechelle in equal parts. Mechelle was “an emotionally troubled teenager,” with a history of substance abuse and a fractured relationship with Bonney. At age sixteen, Mechelle met with her mother and her mother’s attorney, and signed a deed, transferring her interest in the house to Bonney. Later, still in a state of mutual disaffection with her mother, Mechelle learned that she did not have a right to enter the house to retrieve her belongings. Bonney claimed sole ownership. Mechelle objected. Mechelle’s age at the time of the deed establishes her minority status. Her subsequent suit against her mother to declare the deed void affirmatively indicates disaffirmance.

In the actual case on which this problem is based, the court issued a judgment in Mechelle’s favor. A state intermediate appellate court affirmed, in part on the basis of Mechelle’s youth.

1. **Legality.** Sue Ann Apolinar hired a guide through Arkansas Valley Adventures, LLC, for a rafting excursion on the Arkansas River. At the outfitter’s office, Apolinar signed a release that detailed potential hazards and risks, including “overturning,” “unpredictable currents,” “obstacles” in the water, and “drowning.” The release clearly stated that her signature discharged Arkansas Valley from liability for all claims arising in connection with the trip. On the river, while attempting to maneuver around a rapid, the raft capsized. The current swept Apolinar into a logjam where, despite efforts to save her, she drowned. Her son, Jesus Espinoza, Jr., filed a suit in a federal district court against the rafting company, alleging negligence. What are the arguments for and against enforcing the release that Apolinar signed? Discuss. [*Espinoza v. Arkansas Valley Adventures, LLC*, 809 F.3d 1150 (10th Cir. 2016)] (See *Legality*.)

Solution

An exculpatory clause releases a party from liability for injury or damage. A court may refuse to enforce an exculpatory clause when the parties are seen to possess unequal bargaining power—in a case involving an employment contract, for example. A business that offers non-essential services is not considered to be at a relative advantage in bargaining strength, so anyone contracting for its services is thought to do so voluntarily, making an exculpatory clause potentially enforceable as a part of the deal. This is especially likely if the clause is unambiguous and conspicuous.

In this problem, Apolinar hired a guide through Arkansas Valley Adventures for a rafting trip on the Arkansas River. She signed a document that purported to release Arkansas Valley from liability for claims arising in connection with the trip. On a rapid on the river, the raft capsized. Apolinar was swept by the current into a logjam where she drowned. Her son filed a suit in a federal district court against the rafting company, alleging negligence.

In support of enforcing the release in this set of circumstances, Arkansas Valley was engaged in non-essential services—recreational rafting on the Arkansas River. This indicated that the company had no relative advantage in bargaining over the exculpatory clause. The release set out some of the risks and hazards, and clearly stated a signature discharged the business from liability for all claims arising in connection with the trip.

Against the enforcement of the release, it might be argued that the clause was not sufficiently clear or conspicuous, and that Apolinar had no choice but to agree to it or forego the trip.

In the actual case on which this problem is based, the rafting company filed a motion for summary judgment, arguing that the release Apolinar signed shielded it from liability. The court granted the motion. The U.S. Court of Appeals for the Tenth Circuit affirmed. “Colorado allows private parties to assume some of the risks associated with their recreational pursuits.” And the release “was fairly entered into and clear in its terms.”

1. **Contracts Contrary to Public Policy.** P.M. and C.M. are married (the “Ms”) and live in Iowa. Unable to conceive their own child, they signed a contract with T.B., who, in exchange for $13,000 and medical expenses, agreed to be impregnated with embryos fertilized with P.M.’s sperm and the ova (eggs) of an anonymous donor. T.B. agreed to carry the pregnancy to term, and she and her spouse D.B. (the “Bs”) promised to deliver the baby at birth to the Ms. During the pregnancy, the relations between the parties deteriorated. When the baby was born, T.B. refused to honor the agreement to give up the child. Meanwhile, genetic testing excluded T.B. and D.B. as the biological parents, and established P.M. as the father. Iowa exempts “surrogacy” from a state criminal statute that prohibits selling babies. There is no other state law on point. Is the contract between the Ms and the Bs enforceable? Discuss. [*P.M. v. T.B.*, 907 N.W.2d 522 (Iowa 2018)] (See *Legality*.)

Solution

Yes. The contract between the two couples was enforceable. Some contracts between private parties are not enforceable because of a perceived negative impact on society. These contracts are considered contrary to public policy. One example would a contract to sell a child.

In this problem, P.M. and C.M. were unable to conceive their own child. They signed a contract with T.B., who, in exchange for the payment of her medical expenses and an additional $13,000, agreed to carry embryos fertilized with P.M.’s sperm and the ova of an anonymous donor to term. T.B. and her spouse D.B. promised to deliver the baby at birth to P.M. and C.M. After the baby was born, genetic testing excluded T.B. and D.B. as the biological parents, and established P.M. as the father, but T.B. refused to honor the agreement to give up the child.

The facts note that there is no Iowa state statute or other law under which the contract is prohibited or could be considered against public policy. To the contrary, Iowa exempts surrogacy arrangements from potential criminal liability for selling children. This indicates that the state allows such agreements. Besides, the contract in the *P.M.* case was for gestational services, not for the sale of a child. And arguably, surrogacy contracts are favored by public policy—banning such contracts would deprive infertile couples of perhaps the only way to conceive and gestate their own biological children, and would limit the contractual rights of willing surrogates.

In the actual case on which this problem is based, the Ms filed a suit in an Iowa state court against the Bs to enforce their agreement. The court ruled that the contract was enforceable, and awarded the Ms permanent legal and physical custody of the child. The Iowa Supreme Court affirmed. With respect to public policy, the court concluded, “Gestational surrogacy agreements promote families by enabling infertile couples to raise their own children and help bring new life into this world through willing surrogate mothers.”

1. **A Question of Ethics—The IDDR Approach and Minors.** Sky High Sports Nashville Operations, LLC operated a trampoline park in Nashville, Tennessee. At the park, during a dodgeball tournament, Jacob Blackwell, a minor, suffered a torn tendon and a broken tibia. His mother Crystal filed a suit on his behalf in a Tennessee state court against Sky High, alleging negligence and seeking $500,000 to cover medical and other expenses. Sky High asserted that the claim was barred by a waiver of liability in a contract between the parties, which the defendant asked the court to enforce. The waiver released Sky High from liability for any “negligent acts or omissions.” [ *Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d 624 (Tenn.App. 2017)] ( See *Contractual Capacity*.)
2. Should Sky High offer a defense to the suit? What might Sky High argue as a reason for enforcing the waiver? Use the IDDR approach to answer these questions.

Solution

Sky High might argue that refusing to enforce the waiver in this and similar cases involving minors could lead to the loss of recreational activities and even school-sponsored programs for children. In other words, Sky High might depict itself as a victim if the waiver were struck down.

In this problem, Sky High Sports operated a trampoline park. During a dodgeball tournament at the park, Jacob Blackwell, a minor, was injured. His mother, Crystal, filed a suit on his behalf against Sky High, alleging negligence and seeking to recover medical and other expenses. Sky High asserted that the claim was barred by a contractual waiver that released Sky High from liability for any “negligent acts or omissions.”

Under the IDDR approach, Sky High’s ethical dilemma is how to preserve itself in the interests of its owners, customers, and others who benefit from its existence, including the operators of other recreational businesses. Not to offer a defense in the face of Blackwell’s suit would be to default in this case and could lead to similar losses in other cases, which could end in the termination of Sky High. Of course, the firm might also opt to settle with the plaintiff, but that could likewise be interpreted as a precedent. The waiver would become for most purposes unenforceable.

For all of these reasons, Sky High would most likely choose to defend against the suit. If the defendant argued the position stated at the beginning of this answer, however, it would be likely to fail—there is no evidence that recreational activities have in any way been curtailed by refusals to enforce liability waivers when minors were involved. This result would satisfy the stakeholders only if it effectively portrayed an obstacle to other potential plaintiffs—and that is not likely.

In the actual case on which this problem is based, the courtdenied Sky High’s request to enforce the release. A state intermediate appellate court found no error and affirmed.

1. Would it be unethical to allow Jacob to recover? Apply the IDDR approach to explain.

Solution

Public policy permits minors to disaffirm, and thereby void, their contracts. It is also a well-settled principle that a court should act to protect a minor’s best interests. This includes financial interests. In a case involving a minor’s medical expenses and damages encompassing other losses, the minor’s financial interests are at the center of the dispute.

It would not be unethical to decline to enforce the waiver against Jacob and allow him to recover his medical and other expenses. To the contrary, it would arguably be unethical to enforce it. Standards of ethics almost universally dictate the protection of the rights of those who are unable effectively to protect those rights themselves. This includes minors.

Thus, the court—for whom such principles might be applied to resolve an ethical question about whether to enforce Sky High’s waiver—would be likely to conclude that it should not enforce it. The stakeholders, including similarly situated plaintiffs and defendants, as well as other third parties affected by the court’s decision and the public generally, would benefit from a striking of the waiver in many ways. These could include safer recreational activities, and public confidence in that safety, with a consequent increase in their use.

Critical Thinking and Writing Assignments

1. **Time-Limited Group Assignment.** Assume that you are a group of executives at a large software corporation. The company is considering whether to add covenants not to compete to its employment contracts. You know that there are some issues with the enforceability of these covenants and want to make an informed decision. (See *Legality*.)
2. One group should make a list of interests that are served by enforcing covenants not to compete.

Solution

A covenant not to compete can be part of an employment contract. Such an agreement is legal so long as the specified period of time is not excessive in duration and the geographical restriction is reasonable—no greater than necessary to protect a legitimate business interest. Such interests include the protection of trade secrets (customer lists, marketing plans, and the like) and other intellectual property.

1. A second group should create a list of interests that are served by refusing to enforce covenants not to compete.

Solution

A covenant not to compete that does not protect a legitimate business interest or is greater than necessary to protect that interest will not be enforced, because it unreasonably restrains trade and is contrary to public policy.

1. Third group should discuss whether a court that determines that a covenant not to compete is illegal should reform (and then enforce) the covenant. The group should present arguments for and against reformation.

Solution

A covenant not to compete clause would be unreasonable if there are no limits to its duration and no restrictions on its geographical reach. These flaws would also make the clause unconscionable. Although a court may resort to contract reformation only when necessary to prevent undue burdens or hardships—because reformation implicitly makes the court a party to the contract—it would be reasonable for a court to either strike or reform such a clause.