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Contracts--Disaffirmance by a Minor

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The insured, when he voluntarily engages in a criminal assault, should be held to have foreseen the inevitable result of such encounters. He exposes himself at the very least to injury, the degree of which is impossible to estimate or foresee, possibly death. The compassion engendered for the plight of beneficiaries or survivors of the deceased insured, whose death was a result of acts of resistance proffered by the assaulted party in his self-defense, should not be permitted to sway juries or courts to irrational conclusions.

Robert J MacDonald

CONTRACTS. DISAFFIRMANCE BY A MINOR.

In a recent case,¹ an Alabama court of appeals held that an automobile was not a necessity for which a minor must pay the reasonable value, and affirmed the lower court's decision permitting the minor to avoid a contract of purchase for an automobile.

The minor was married and had purchased the automobile for use as a conveyance for himself to and from his home and place of employment, a distance of about eight miles. He also owned a truck which he likewise used to drive to and from work, and which was still available for such use. The court commented on this latter fact in reaching its conclusion that the automobile was not a necessity.

In view of the present weight of authority with regard to the necessity of an automobile for a minor, this decision is sound. It has long been accepted that, except for his necessaries, an infant has the right to disaffirm his contracts. The basic statement, one often quoted by the courts, as to what constitutes a necessity was made by Lord Coke: "an infant may bind himself to pay for his necessary meat, drinke, apparell, necessary physicke, and likewise for his good teaching or instruction, whereby he may profit himselfe afterwards."²

The word "necessary" is obviously a relative term.³ What may be necessary in one case is not necessary in the next. Station in life, income, use, alternatives, needs,⁴ etc., all have a bearing in determining just what may be a necessity in a given situation. Williston writes: "Necessaries seem to be limited by the courts as closely as possible, and generally come under the heads of food, or clothing of a reasonable kind, purchased for the use of the infant himself or of his family."⁵

Where the car has been used, as in the principal case, for going to and from work, the courts have held that such an automobile is not a necessity. In *Chambers v. Dunmyer*, the distance travelled was six and a half miles, and the court said:

"To have been considered a necessary, the automobile must have been essential to the bodily or mental needs of the plaintiff and not for business purposes."⁶

This case was approved in *First Discount Corp. v. Hatcher Auto Sales*,⁷ where the minor used the car to go back and forth to work.

In *Perry Auto Co. v. Mainland et al.*⁸ the infant lived one and a half miles from

¹ *Harris v. Raughton*, —Ala.—, 73 So.2d 921 (1954).

² Co. Litt. 172a (1818 ed.).

³ *Freiburghaus v. Herman Body Co.*, —Mo.App.—, 102 S.W.2d 743 (1937).

⁴ *Harris v. Raughton*, —Ala.—, 73 So.2d 921 (1954).

⁵ WILLISTON, *CONTRACTS* (Rev. ed. 1936) § 241.

⁶ 74 Ohio App. 235, 58 N.E.2d 239, 240 (1943).

⁷ —Ohio App.—, 104 N.E.2d 587 (1950).

⁸ 229 Iowa 187, 294 N.W. 281 (1940).

the plant at which he was employed. The court pointed out that when the plaintiff had an automobile, he used it to transport himself to and from his place of employment, but when he did not have a car he walked. The court therefore held the car was not a necessity.

In *Schoenung v. Gallet*⁹ the plaintiff was nineteen years old, emancipated, living with his parents, and had three miles to go to work. The court allowed the plaintiff to disaffirm, pointing out that the minor had his brother's automobile available, and saying that to be a necessity the item under consideration must be such as to supply the personal needs of the infant. In a 1951 case¹⁰ the court again disallowed the defendant's claim that the automobile was a necessity, basing its decision on the fact that the automobile was used for transportation to and from work, a distance of five to six miles, and that other means of transportation could be used.

In a recent case, the minor was, as in the cases discussed above, allowed to disaffirm his contract for the purchase of an automobile. The trial court, in dismissing the minor's complaint for want of equity, assigned no reason for denying relief. On appeal to the Supreme Court of Arkansas, the decree was reversed. The court said the weight of the evidence showed the car not to have been a necessary. However, Chief Justice Smith, dissenting, said:

"My own view is that if employment took him away from home for the week and his use of the car was to spend Saturday night at Sheridan, the transportation was a part of his business arrangement and the car was used for business purposes."¹¹

The plaintiff's physical appearance, the fact that he had twice previously misrepresented his age, coupled with the facts that he was married and "a man of his own," all entered into the reasoning of the dissent: ". . . Here is a case where any court could, as the Chancellor must have found, say that the buyer's use of the car and his conduct in getting it should bind the contract."

Though a dissent, this is a recognition that under certain circumstances the automobile might be a necessity. Courts have admitted that such circumstances could exist.¹² The Indiana Supreme Court indicated that use of the car in gaining a livelihood is such a circumstance.¹³ But, as indicated by the cases discussed, the use of the car as transportation to and from work has not been considered such a circumstance.

What if the automobile is used for more than just transportation to and from work? Here again the courts have been very reluctant to hold the minor to his contract of purchase. In *Barger v. M. & J. Finance Corporation* the court said:

"The evidence in the instant case tends to show that the ownership of an automobile was advantageous to the plaintiff and that he would not have been promoted without an automobile available for his use. Nevertheless it does not appear that an automobile was necessary for him to earn a livelihood. Hence we are of opinion and hold that an automobile is not among those necessities for which a minor may be held liable."¹⁴

This case seems to indicate that the circumstance under which this court would hold an automobile to be a necessity would have to be actual necessity to earn a livelihood.

⁹ 206 Wis. 52, 238 N.W. 852 (1931).

¹⁰ *Reeme v. Motors Securities Co., Inc.* —La.App.—, 51 So.2d 833 (1951).

¹¹ *Barnes v. Rebsamen Motors, Inc.*, 221 Ark. 791, 255 S.W.2d 961, 962 (1953).

¹² *Worman Motor Co. v. Hill*, 54 Ariz. 227, 94 P.2d 865 (1939).

¹³ *McKee v. Hardwood Automobile Co.*, 204 Ind. 233, 183 N.E. 646 (1932).

¹⁴ 221 N.C. 64, 18 S.E.2d 826, 827 (1942).

In *Russell v. Buck et al.*, even though trucking had been the means whereby the infant supported his family, the court refused to say trucks were to be considered necessities, going so far as to say:

"It does not appear that the owning or leasing and the operation of a truck or trucks was the only means of livelihood open to him."¹⁵

Here, too, we have a minor who was married, and presumably on his own. Still the circumstances under which the court would consider the automobile a necessity were more than an actual need in the particular calling entered by the minor. To this court it was a question of whether or not there were any other means of livelihood available at all.

In *Utterstrom v. Kidder*¹⁶ we again have a minor purchasing a truck for more than just transportation to and from work. The minor was a sheet metal worker and had used the truck in his business. When the truck became snowbound, the minor abandoned it, and the defendant repossessed it. The minor then sued to disaffirm and get back what he had paid. The defendant unsuccessfully argued necessity. The court said that necessity, as far as a minor is concerned, is not extended to articles purchased for business purposes.

However, in a suit by the minor to disaffirm a contract by which the minor had purchased a milk route and truck, the Supreme Court of Arkansas, in *Hayne et al. v. Discus*,¹⁷ affirmed the lower court's holding that the properties sold were necessities. The court said it was a question of fact and because no testimony of the trial court was before it, it would not upset the lower court's findings. This result still leaves open the question as to what the decision of the Supreme Court of Arkansas would have been had the testimony of the trial court been before it.

In *Williams et al. v. Buckler*¹⁸ the suit was by a bailor against a bailee, a minor, who allegedly wrongfully converted the bailor's farm machinery, including a farm tractor. The court held that where a minor, at the time he entered into the contract for use of the tractor, was supporting himself and his family by tilling the soil, such tractor was a "necessity," and the minor could be held liable for the breach of his bailment contract. The court said: "An infant must live as well as a man."¹⁹ The court apparently extended the narrow limits placed upon a minor's necessities beyond that of "meat, drinke, apparell, necessary physicke," to the means whereby these necessities are obtained. The court, however, was careful to distinguish between a farm tractor and an automobile, which is said could not ordinarily be termed a necessary. Nevertheless, the latter two cases seem to indicate that some motorized vehicles may be considered necessities.

The law is well settled in practically all jurisdictions that an automobile, as such, is not a necessary. Some courts, however, have indicated that if the automobile were purchased to be used as the only means whereby a minor could earn a livelihood, it might then be considered a necessary, but no cases have been found where such a circumstance exists.

Twenty-five or thirty years ago, the automobile certainly was not as common as it is today. With ever increasing distances to travel to work the automobile has

¹⁵ 116 Vt. 40, 68 A.2d 691, 694 (1949).

¹⁶ 124 Me. 10, 124 A. 725 (1924).

¹⁷ 210 Ark. 1092, 199 S.W.2d 954 (1947).

¹⁸ —Ky.—, 264 S.W.2d 279 (1954).

¹⁹ *Supra* note 18 at 280.