

1 **13-837. Incapacity.**

2 [If _____ (*obligor*) due to [mental infirmity] [physical infirmity]
3 [intoxication] was incapable of understanding what ~~[[he] [she]]~~ _____ (*obligor*)
4 was doing when ~~[[he] [she]]~~ _____ (*obligor*) entered into the contract, then
5 _____ (*obligor*) is excused from the obligation to perform the contract.]

6 [_____ (*obligor*) was a minor when ~~[[he] [she]]~~ _____
7 (*obligor*) entered into the contract. Therefore, if _____ (*obligor*) demonstrated
8 [within a reasonable time after reaching majority] that ~~[[he] [she]]~~ _____ (*obligor*)
9 does not intend to be bound by the contract, then ~~[[he] [she]]~~ _____ (*obligor*) is
10 excused from the obligation to perform the contract.]

11 USE NOTES

12 The bracketed paragraphs are to be used as alternatives depending on whether the claim of
13 incapacity arises from minority or some physical, mental or other infirmity. The first bracketed
14 paragraph addresses incapacity arising from infirmity. The list of disabling causes is not intended
15 to be exhaustive. Other categories may be used if supported by the law and the facts. The bracketed
16 language in the second alternative paragraph is to be used only if the evidence creates a fact issue
17 as to the timeliness of the minor's claimed disaffirmance. If the fact of the contract obligor's
18 minority at the time the contract was entered into is at issue, the instruction will have to be rewritten
19 appropriately. *See* UJI 13-839 NMRA regarding undue influence.

20 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-2025-
21 00126, effective for all cases pending or filed on or after December 31, 2025.]

22 **Committee commentary.** — There is a presumption of competency which must be overcome
23 with evidence that a person was incompetent at the time the contract was made. [~~*Estate*~~]In the

1 Matter of Est. of Head, 1980-NMCA-096, ¶ 16, 94 N.M. 656, 615 P.2d 271 [~~Ct. App. 1980~~].
2 Proof of lack of capacity is not precluded by the parole evidence rule. *Demers v. Gerety*, 1973-
3 NMCA-134, ¶ 22, 85 N.M. 641, 515 P.2d 645 [~~Ct. App. 1973~~]. Incapacity does not arise just
4 because the contract obligor was inexperienced or ignorant about the subject matter of the contract.
5 Rather, this defense arises only when the contract obligor, because of some infirmity or specific
6 cause, was incapable of appreciating the very fact that he or she was entering into a contract.
7 What constitutes a [“]reasonable time[”] for purposes of disaffirmation after reaching majority
8 will vary depending on the circumstances. *See Terrace Co. v. Calhoun*, 347 N.E.2d 315, 319 (Ill.
9 1976). Where suit is brought on the contract, however, the contract obligor, if [~~he or she~~] contract
10 obligor has reached majority, must make an election to disaffirm or otherwise lose the defense.
11 Incapacity should not be confused with undue influence, which is addressed in UJI 13-839.
12 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]