

对外经济贸易大学硕士学位研究生入学考试初试模拟试题一

模拟考试科目：859 法学专业英语

(请注意：此试卷适用于报考国际法专业的考生)

来源：爱考机构

一、阅读下面的三则案例，并用中文回答每个案例后面的问题（每题 40 分，共 120 分）：

（一）案例一：

Supreme Court of Wisconsin.

SCHOENUNG

v.

GALLET.

Nov. 10, 1931.

Action by Leo Schoenung, by his guardian ad litem, against Helen Gallet, as administratrix of the estate of Robert H. Hippe, deceased. Judgment for defendant, and plaintiff appeals. Reversed and remanded, with directions.

Plaintiff, while a minor, commenced this action on March 13, 1930, to recover possession of an automobile and his promissory note for \$250, which he had delivered to defendant in exchange for another automobile, which plaintiff had returned to defendant. Plaintiff appealed from a judgment entered March 6, 1931, dismissing his complaint.

On April 15, 1929, plaintiff, a minor, nineteen years of age, purchased from defendant an automobile for \$300, for which he gave his judgment note for \$250 and an automobile, which defendant accepted in trade at a valuation of \$50. At that time plaintiff was an emancipated minor living with his parents on a farm, which was three miles from the city where he was employed at \$75 per month in an implement business. His brother was a part owner of that business, and plaintiff usually drove with him to and from work. He had been working for several years, and had been permitted to keep his earnings, which he had used to provide his necessities and to pay for two cheaper automobiles. Up to June 6, 1929, he had driven the automobile, which he had purchased on April 15, 1929, from six hundred to one thousand miles on pleasure trips, and had used it occasionally in going to or from his work. On several occasions he had left it at defendant's garage for adjustments and repairs for which no charges were made. On June 6, 1929, he restored the automobile to defendant by leaving it at defendant's garage, and he demanded the return of his note and his former automobile. Defendant refused to accept the returned automobile and the certificate of title thereto, and also refused to return plaintiff's note and his former automobile, which defendant had sold and which had been wrecked. Later, on June 6, defendant removed the automobile, which plaintiff had returned, from defendant's garage to the public street in front of plaintiff's place of employment. A traffic officer ordered plaintiff to remove it from the street, and plaintiff then took it to his father's farm, where it has remained. Since then plaintiff offered it to defendant several times, but defendant refused to accept it. The terms of the purchase were fair

and reasonable, and there was nothing wrong with the automobile when plaintiff returned it on June 6. There is no evidence as to its value at that time.

The court concluded that the automobile was necessary to plaintiff to carry on his business and employment; that he was an emancipated minor and liable on his contract; and that he was not entitled to rescission and to recover his note and former automobile.

That plaintiff was an emancipated minor was immaterial as a matter of law in this action. Emancipation does not remove or affect a minor's incapacity to subject himself*853 to contractual liability for things which are not necessities. 14 R. C. L. 219, § 6; 31 C. J. 1008, § 37; *Tyler v. Gallop's Estate* (*Tyler v. Fleming*), 68 Mich. 185, 35 N. W. 902, 13 Am. St. Rep. 336; *Person v. Chase*, 37 Vt. 647, 88 Am. Dec. 630; *Wickham v. Torley*, 136 Ga. 594, 71 S. E. 881, 36 L. R. A. (N. S.) 57; *Mast v. Strahan* (Tex. Civ. App. 1920) 225 S. W. 990; 113 Am. St. Rep. 121, notes. Consequently, plaintiff lacked capacity to contract for the purchase of this automobile, unless it was a necessary for him under the particular facts and circumstances of this case. In 31 C. J. 1077, § 175, it is said: "The term 'necessaries,' as used in the law relating to the liability of infants therefor, is a relative term, somewhat flexible, except when applied to such things as are obviously requisite for the maintenance of existence, and depends on the social position and situation in life of the infant, as well as upon his own fortune and that of his parents. The particular infant must have an actual need for the articles furnished; not for mere ornament or pleasure. The articles must be useful and suitable, but they are not necessities merely because useful or beneficial. Concerning the general character of the things furnished, to be necessities the articles must supply the infant's personal needs, either those of his body, or those of his mind. However, the term 'necessaries' is not confined to merely such things as are required for a bare subsistence. There is no positive rule by means of which it may be determined what are or what are not necessities, for what may be considered necessary for one infant may not be necessities for another infant whose state is different as to rank, social position, fortune, health, or other circumstances, the question being one to be determined from the particular facts and circumstances of each case." To the same effect see, also, 14 R. C. L. 257, § 34.

In *Covault v. Nevitt*, 157 Wis. 113, 146 N. W. 1115, 1117, 51 L. R. A. (N. S.) 1092, Ann. Cas. 1916A, 959, the question arose as to whether a minor who owned real estate could contract for the employment of a janitor. This court said: "It is clear that in the instant case the alleged contract could only be sustained, if at all, upon the ground that it was a contract for necessities; and it is equally clear that such a contract is not a contract for necessities. 22 Cyc. 584, 585; *Hollingsworth on Contracts*, p. 31; 16 Am. & Eng. Ency. of Law (2d Ed.) 276. The general rule respecting necessities is that they must be such as to supply the personal needs of the infant. *Tupper v. Cadwell*, 12 Metc. (Mass.) 559, 562, 46 Am. Dec. 704. Manifestly the contract in this case is not a contract for necessities under which a liability could be enforced nor for the benefit of the infant."

In *Wallace v. Newdale Furniture Co.*, 188 Wis. 205, 205 N. W. 819, 820, a minor sought to recover money which she had paid as part of the purchase price for furniture, which she used for keeping roomers, and then returned during her minority to the defendant. This court said: "It has

not been contended by counsel for the appellant that the articles purchased by the plaintiff were necessities, and that she could not rescind for that reason, nor would the argument be sound if made. The fact that a minor engages in business does not remove the incapacity to make general contracts, and, in the absence of statutes, purchases made in trade cannot be regarded as necessities.”

Although conditions and circumstances may exist because of which an automobile may be considered a necessary for a minor, it has thus far been held that a motor vehicle is not a necessary and that his contract for the purchase thereof is voidable.

In the case at bar an automobile was not necessary for the personal use or support of plaintiff. The mere fact that his place of employment was three miles from the home of his parents, with whom he resided, did not necessitate his ownership of an automobile. That is particularly true in this case, because his brother's automobile was available for plaintiff to travel to and from his place of employment. Likewise, inasmuch as he lacked capacity to contract for an automobile for use in a business of his own, he was also thus incapacitated to contract for an automobile which he might occasionally have use for in performing his work for his employer.

It follows that when plaintiff, during his minority, restored that automobile and the certificate of title to the defendant, he was entitled to the return of his note and his former automobile, or the value thereof.

Judgment reversed, and cause remanded, with directions to enter judgment for the recovery by plaintiff of the sum of \$50, with interest from June 6, 1929, and the surrender for cancellation of plaintiff's note for \$250, dated April 15, 1929.

请用中文回答下列问题（共 40 分）：

1. 审理本案的法官对于原告已脱离其父母监护这一事实是怎么看的？
2. 在本案中，法官为什么要决定汽车对原告来说是否是生活必需品？原告用该汽车作为上下班的交通工具这一事实对于决定本案合同可否撤销具有什么样的重要意义？
3. 对于汽车是不是生活必需品，法律是否规定了一般性的规则？

（二）案例二：

Court of Appeals of Iowa.

Leighton PHILLIPS, Sr., Plaintiff-Appellant,

v.

NATIONAL TRAPPERS ASSOCIATION, an Iowa Nonprofit Corporation, and Tom Krause,
Defendants-Appellees.

No. 86-720.

April 22, 1987.

SACKETT, Judge.

Defendant National Trappers Association (NTA) is a nonprofit corporation incorporated in

1969 by NTA founder and then president Gerald Walkup under Iowa Code chapter 504A. Article VIII of NTA's Articles of Incorporation provides a method for amending NTA's articles of incorporation and bylaws. Article VIII states:

The Articles of Incorporation and/or the By-Laws may be amended at any national convention by a majority vote of the members present provided that the proposed amendment or amendments shall have been submitted in writing to the members of the Board of Directors by mailing said proposed amendment or amendments to the members of the Board of Directors at least sixty days prior to the date of the National Convention; and that the Board of Directors mail such proposed amendment or amendments to the membership at least thirty days prior to the date of said National Convention.

Pursuant to Article VIII, several bylaws amendments were approved by the NTA general membership at its 1978 annual convention. Article IV, section 2 of the amended bylaws provides:***611 BUSINESS BETWEEN CONVENTIONS**

(a) An amendment to the By-Laws which must be enacted between conventions may be put into full force and effect in the following manner. It shall first be submitted to the full Board of Directors for approval by mail. Following approval by the Board it shall then be submitted to the membership by form letter or by printing in "Voice of the Trapper." Members shall then vote on the matter by mail.

In 1982 and 1984, two amendments to the NTA bylaws were approved by the procedure set out in Article IV, Section 2. Those amendments limited the number of terms a person could serve as president and eliminated the editorship of Voice of the Trapper from the president's duties and powers. As a result of those amendments, NTA President Donald Hoyt became ineligible to continue serving in that position and stepped down.

Plaintiff Leighton Phillips filed an action for declaratory judgment, asking the trial court to declare the 1982 and 1984 bylaws amendments null and void because they were not adopted pursuant to Article VIII of NTA's Articles of Incorporation. Plaintiff argued that Article VIII of NTA's Articles of Incorporation sets forth *the only* method by which NTA's articles and bylaws can be amended. Plaintiff contended that even though Article IV, Section 2 was adopted pursuant