



California Bar Examination

Performance Test and Selected Answers

October 2020



The State Bar
of California

COMMITTEE OF BAR EXAMINERS
OFFICE OF ADMISSIONS

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**PERFORMANCE TEST AND SELECTED
ANSWERS OCTOBER 2020
CALIFORNIA BAR EXAMINATION**

This publication contains the performance test from the October 2020 California Bar Examination and two selected answers.

The answers were assigned high grades and were written by applicants who passed the examination after one read. The answers were produced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. They are reproduced here with the consent of the authors.

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October 2020

**California
Bar
Examination**

**Performance Test
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IN RE POTENTIAL WRIGHT LITIGATION

Instructions

FILE

Memorandum to Applicant from Margery Turner

Memorandum to File re Potential Wright Litigation

Letter re Unauthorized Charges.....

IN RE POTENTIAL WRIGHT LITIGATION

PERFORMANCE TEST INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The Library contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page citations.
6. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
7. This performance test is designed to be completed in 90 minutes. Although there are no parameters on how to apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response.
8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

MEMORANDUM

To: Applicant
From: Margery Turner
Date: October 6, 2020
Re: Potential Wright Litigation

Janice Wright, a long-time client, has retained us on a matter concerning unauthorized credit card charges run up by her son, Ryan, for online purchases connected to an online video gaming website called GamerTrax. At Ryan's request, Janice gave him permission to open an account using her credit card. She told him he could charge no more than \$20; he ended up charging \$9,000. After receiving her credit card bill, she sent a letter to GamerTrax asking for a reversal of the \$8,980 charge, but GamerTrax declined. She would like our help in determining whether she can avoid paying some or all of the charges.

I have already determined that Ryan was able to, and did in fact, enter into a contract with GamerTrax. So that I may discuss this matter with Janice, please prepare a memorandum that answers the following questions:

1. Is Ryan able to disaffirm the contract?
2. If so, did Janice's letter disaffirm the contract for Ryan?
3. Is Janice liable for the \$8,980 charge?

Do not include a statement of facts in your memorandum, but do use the facts in its body.

MEMORANDUM

To: File
From: Margery Turner
Date: September 29, 2020
Re: Potential Wright Litigation

I met with long-time client Janice Wright yesterday to discuss a matter involving online video game activity by her 12-year-old son, Ryan.

The GamerTrax website allows users to play a wide array of online video games for free. Ryan, an avid online video gamer, has regularly done so.

The GamerTrax website also allows users to buy certain “options” to enhance their online video gaming experience. These options include “extra weapons,” which can increase the user’s chance of winning a game, and “extra lives,” which can extend the duration of a game. To enable users to buy such options, the GamerTrax website maintains a payment system called GamerTrax Treasure.

Two months ago, at Ryan’s request, Janice gave Ryan permission to open a GamerTrax Treasure account using her credit card. Janice gave Ryan the credit card number, expiration date, and security code, and told him that he could spend no more than \$20.

Ryan opened a GamerTrax Treasure account. In doing so, he clicked, “I have read, understand, and agree to the Terms of Service,” which included the following:

1. "I agree to provide a valid credit or debit card to obtain any option(s) for any online video game(s)."
2. "I agree that I am authorized to use the valid credit or debit card provided, either as the holder of the card if it is in my name or as an agent of the holder of the card if it is in the name of another. I further agree that I am authorized to use the valid credit or debit card provided in any and all amounts, up to and including the limit established by the issuer."
3. "I agree that all transactions I may enter into to obtain any option(s) for any online video game(s) are final and irreversible."
4. "I am under the age of eighteen (18), have reviewed the foregoing Terms of Service with my parent(s) or guardian(s), and have his/her/their permission to agree as stated above. To verify, you may contact my parent(s)/guardian(s) at jwright@columbiavalley.com."

GamerTrax contacted Janice and she verified that she had given Ryan permission.

After opening the GamerTrax Treasure account, Ryan started playing an online video game called Galactic Odyssey, and obtained a few options. Janice's credit card was charged \$20. Ryan continued playing Galactic Odyssey for weeks, and obtained numerous additional options. He did not believe that he was spending any money to obtain these additional options. He was wrong: Janice's credit card was charged an additional \$8,980.

When Janice received her credit card bill, she sent a letter to GamerTrax asking for a reversal of the \$8,980 charge. GamerTrax declined.

Janice has not yet paid her credit card bill, pending consultation with us.

**Ms. Janice Wright
234 Elm Street
Lincoln, Columbia**

September 21, 2020

GamerTrax, Inc.
GamerTrax Campus
Moline Park, Columbia

Re: Unauthorized Charges

Dear Sir or Madam:

I am writing to request that you reverse the amount of \$8,980 for unauthorized charges to my credit card. I authorized my son, Ryan Wright, to use my credit card to charge no more than \$20 for options for online video games. I did not learn until I received my credit card bill that he had used it to charge an additional \$8,980 for such options.

Thank you for your prompt attention to this matter.

Very truly yours,

Janice Wright



October 2020

**California
Bar
Examination**

**Performance Test
LIBRARY**

IN RE POTENTIAL WRIGHT LITIGATION

LIBRARY

Select Provisions of the Columbia Civil Code

Select Provisions of the Columbia Family Code

Miller v. Miller

Columbia Court of Appeal (1963).....

Brady v. Thomas

Columbia Court of Appeal (2004).....

Laredo v. Purcell Fruit Co.

Columbia Supreme Court (1950)

SELECT PROVISIONS OF THE COLUMBIA CIVIL CODE

Section 3800. Agency Defined.

Agency is the fiduciary relationship that arises when one person (a “principal”) manifests assent to another person (an “agent”) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.

Section 3801. Actual Authority.

An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal’s manifestations to the agent, that the principal wishes the agent so to act.

Section 3802. Apparent Authority.

Apparent authority is the power held by an agent or other actor to affect a principal’s legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal’s manifestations.

Section 3803. Creation of Actual Authority.

Actual authority is created by a principal’s manifestation to an agent that, as reasonably understood by the agent, expresses the principal’s assent that the agent take action on the principal’s behalf.

Section 3804. Creation of Apparent Authority.

Apparent authority is created by a person's manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation.

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Section 3810. Binding Effect.

Any act of an agent within the scope of his or her actual or apparent authority binds the principal.

SELECT PROVISIONS OF THE COLUMBIA FAMILY CODE

Section 6701. Minor's Power to Contract.

A minor may make a contract in the same manner as an adult, subject to the power of disaffirmance under Section 6702.

Section 6702. Minor's Power to Disaffirm.

Except as provided in Section 6703, a contract of a minor may be disaffirmed by the minor or by the minor's parent or guardian before majority or within a reasonable time afterwards.

Section 6703. Exception to Minor's Power to Disaffirm.

A contract, otherwise valid, entered into during minority, may not be disaffirmed on that ground if: (a) the contract is to pay the reasonable value of things necessary for the support of the minor or the minor's family; (b) these things have been actually furnished to the minor or to the minor's family; and (c) the contract is entered into by the minor when not under the care of a parent or guardian able to provide for the minor or the minor's family.

Miller v. Miller
Columbia Court of Appeal (1963)

By his complaint, Bryce Miller sought judgment against his mother Josephine Miller for \$26,000, representing payments issued to him when he was under 18 years of age under a contract of employment as an actor. Bryce now appeals from a judgment in favor of Josephine.

Bryce was born March 11, 1940. In 1953, Bryce entered into a contract with Couch Studios, Inc., to portray a role in a television series. At the same time, Bryce entered into a contract with Josephine, under which she relinquished any right to any money paid to him pursuant to his contract with Couch. Pursuant to this contract, Couch issued to Bryce 30 checks in the aggregate amount of \$35,000. Of these, Bryce endorsed and deposited four checks in the aggregate amount of \$9,000 into his own account. At Bryce's direction, Couch delivered the remaining 26 checks in the aggregate amount of \$26,000 to Josephine. Josephine endorsed Bryce's name on these checks and deposited them into her own account. Bryce authorized Josephine to use the money "to take care of both of us."

By this action, Bryce seeks to recover the \$26,000 received by Josephine. There can be no doubt that Josephine held this money for Bryce. By her contract with him, she had relinquished any right to any of it. He was entitled to recover all of it—unless Columbia Family Code section 6703 stood in the way. Under that provision, a minor under the care of a parent who is unable to provide for him may contract to pay the reasonable value of things necessary for his support and that of his family and may not disaffirm such a contract. This being true, it must follow that the minor can authorize the use of money held for him for those purposes, and cannot recover the money thus paid out.

In entering judgment for Josephine, the trial court found that she expended the \$26,000 she had received for herself and for Bryce. That finding, however, was

insufficient to support the judgment. The court did not find that Josephine expended the money for herself and for Bryce *for things necessary for their support*. Nor could the court have so found. The evidence showed that, at all relevant times, Josephine had an independent and substantial source of income. It also showed that she expended the \$26,000 she had received, as she herself admitted, for the “good things of life,” not necessities.

The judgment is reversed.

Brady v. Thomas
Columbia Court of Appeal (2004)

Martha Thomas and her minor son Craig Thomas appeal the judgment in favor of Craig's former personal manager, Sharyn Brady, for unpaid commissions under a contract. Because Craig had a right as a minor to disaffirm the contract, we reverse.

In 1999, Brady entered into an "Artist's Manager's Contract" with Martha and Craig, who was then 10 years old. Martha signed the contract and wrote Craig's name on the signature page where he was designated "Artist." Craig did not sign the contract. Pursuant to the contract, Brady was to act as Craig's exclusive personal manager in exchange for a commission of 15 percent of all consideration paid to Craig as an artist during the three-year term of the contract.

In 2001, Craig obtained a recurring acting role on the Acme Television Network show *The Go-Kart Kid*. Some weeks later, Martha sent a certified letter to Brady stating that Craig no longer needed her management services, could no longer afford to pay her a 15 percent commission because they owed a "huge amount" of taxes, and were thereby "terminating" the contract. Within days, Brady responded, informing Craig that he was in breach.

In 2002, Brady filed suit against Craig for breach of contract. After a bench trial, the court found that Brady had proven her case by a preponderance of the evidence, and awarded her commissions of \$154,700. In doing so, it rejected Craig's defense that the contract was invalid because Craig was a minor at the time he entered into it. Craig appealed from the ensuing judgment.

As a general proposition, parental consent is required for the provision of services to minors for the simple reason that minors may disaffirm their own contracts to acquire such services. According to Columbia Family Code section 6701, "[a] minor may make a contract in the same manner as an adult, subject to the power of

disaffirmance” provided by Columbia Family Code section 6702. In turn, Columbia Family Code section 6702 states that, generally, “a contract of a minor may be disaffirmed by the minor or by the minor’s parent or guardian before majority or within a reasonable time afterwards.” The law shields minors from their lack of judgment and experience and under certain conditions vests in them the right to disaffirm their contracts. Although in many instances such disaffirmance may work a hardship upon those who deal with a minor, the right to avoid contracts is conferred by law upon a minor for his protection against his own improvidence and the designs of others. It is the policy of the law to protect a minor against himself and his indiscretions and immaturity as well as against the machinations of other people and to discourage adults from contracting with a minor. Any loss occasioned by the disaffirmance of a minor’s contract might have been avoided by declining to enter into the contract in the first place. Simply stated, one who provides a minor with services does so at his or her own risk.

No specific language is required to communicate an intent to disaffirm a minor’s contract. A minor’s contract may be avoided by any act or word disclosing an unequivocal intent to repudiate its binding force and effect. We find that Martha’s certified letter was sufficient to constitute a disaffirmance of the contract by Craig because it stated that Martha and Craig were “terminating” the contract.

Therefore, we conclude that Craig had the right to, and did, disaffirm the contract. Accordingly, the judgment is reversed.

Laredo v. Purcell Fruit Co.
Columbia Supreme Court (1950)

Linda Laredo brought an action for breach of contract against Purcell Fruit Co. In her complaint, Laredo alleged that she had entered into a contract with Purcell, represented by its agent Henry Hand, to sell a crop of oranges for \$30,000. In its answer, Purcell denied that it had entered into any such contract of sale, alleging that it had authorized Hand only to enter into a contract of consignment under which it agreed to pack, ship, market, and sell the crop and pay her the net proceeds, which amounted to \$10,000. After trial, a jury found in favor of Laredo and awarded her \$30,000. Purcell appealed from the ensuing judgment.

Purcell's theory, at trial and on appeal, is that Hand did not have actual authority to make any contract of sale with Laredo. Under Columbia law, actual authority exists "when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." Columbia Civil Code section 3801. Purcell claims that the evidence introduced at trial shows that, at the time of his dealings with Laredo, Hand did not, and could not, reasonably believe that it wished him to enter into any contract of sale.

In contrast, Laredo's theory, at trial and on appeal, is that, at the very least, Hand had the apparent authority to make the contract of sale with her. Under Columbia law, apparent authority exists "when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." Columbia Civil Code section 3802. Laredo claims that whatever the evidence introduced at trial might show about Hand's actual authority to enter into the contract of sale with her, it shows his apparent authority to do so.

Laredo's theory prevailed below. It prevails here as well. The evidence introduced at trial establishes the following facts: Over many years, Purcell has entered into contracts of sale as well as contracts of consignment for oranges in Columbia; Hand was Purcell's sole agent in Laredo's area; Hand drove a truck provided to him by Purcell, on which was printed in large, bold letters, "Henry Hand, Agent for Purcell Fruit Co."; Hand had in his possession form contracts of sale printed by Purcell and bearing Purcell's name; Purcell had always performed every contract of sale Hand had entered into, and had never disavowed any; all of these facts were well known to Laredo and to the other orange growers in the area; in addition, Don Gordon, the owner of Purcell, visited Laredo and the other orange growers in the area at the beginning of the season to tell them that Hand would be calling on them. Perhaps Purcell had not granted Hand actual authority to enter into a contract of sale with Laredo on Purcell's behalf. Or perhaps it had revoked such authority before the fact. But that matters not. Hand had apparent authority to enter into a contract of sale with Laredo on Purcell's behalf. Laredo reasonably believed that Hand had authority to act on Purcell's behalf and that belief was traceable to Purcell's own words and conduct. In light of Hand's apparent authority, there was unquestionably a contract of sale between Laredo and Purcell.

The judgment is affirmed.

PT: SELECTED ANSWER 1

To: Margery Turner:

From: Applicant

Date: October 6, 2020

Re: Wright v. GamerTrax: Potential Litigation

This memorandum analyzes whether our client, Janice Wright (“Janice”), may disaffirm a contract entered into between her son, Ryan Wright (“Ryan”), and the company GamerTrax Inc. (“GamerTrax”); whether her September 21, 2020 letter to GamerTrax did disaffirm the contract; and whether Janice is liable for the \$8,980 charge from GamerTrax that she did not authorize.

I. RYAN’S ABILITY TO DISAFFIRM THE CONTRACT

Ryan may disaffirm the contract because he entered it as a minor and it is not a contract for necessities.

A. Ryan May Disaffirm the Contract because He is a Minor

The Columbia Family Code provides that while a minor may contract “in the same manner as an adult,” Col. Fam. Code Sec. 6701, “a contract of a minor may be disaffirmed by the minor or by the minor’s parent or guardian before

majority or within a reasonable time afterwards.” *Id.* Sec. 6702. In 2004, the Columbia Court of Appeals elaborated on the policy underlying Section 6702: “The law shields minors from their lack of judgment and experience and under certain conditions vest in them the right to disaffirm their contracts...It is the policy of the law to protect a minor against himself and his indiscretions and immaturity as well as the machinations of other people and to discourage adults from contracting with a minor.” *Brady v. Thomas* (Col. Ct. App. 2004).

Ryan is 12 years old. (Sept. 29, 2020 Mem. From M. Turner (the “Sept 29 Memo”).) Ryan informed GamerTrax that he was under the age of 18 by affirming that he had read, understood and agreed to the GamerTrax Terms of Service, which included the following. “I am under the age of eighteen (18), have reviewed the foregoing Terms of Service with my parents(s) or guardian(s), and have his/her/their permission to agree as stated above.” (*Id.*)

Because Ryan is 12 years old, he may disaffirm the contract under Col Fam. Code Sec. 6702.

Ryan May Disaffirm the Contract Because It was Not a Contract for Necessities and He is under the Care of a Parent Who Is Able to Provide For Him.

While the Columbia Family Code includes one exception to a minor's right to disaffirm a contract, it does not apply here.

Columbia Family Code Section 6703 provides that a contract entered into by a minor may not be disaffirmed if “(a) the contract is to pay the reasonable value of things necessary for the support of the minor or the minor's family; (b) these things have been actually furnished to the minor or to the minor's family; and (c) the contract is entered into by the minor when not under the care of a parent or guardian able to provide for the minor or the minor's family.” The Columbia Court of Appeals has confirmed that Section 6703 does not prevent a minor from disaffirming contracts for the “good things of life.” See *Miller v. Miller* (Col. Ct. App. 1963). To the contrary, that provision merely prevents a minor from disaffirming contracts “to pay the reasonable value of things necessary for his support and that of his family.” *Id.* Moreover, Section 6703 does not prevent a minor from disaffirming a contract where the minor's parent or guardian has an “independent and substantial source of income.” *Id.*

The limited exception found in Section 6703 does not apply for two reasons. First and foremost, GamerTrax has no serious argument that the contract into which Ryan entered was a contract for necessities. The contract was for the purchase of “options to enhance [Ryan's] online video gaming experience,” such as “extra weapons” and “extra lives.” (Sept. 29 Memo.) Because Section 6703 only applies to “things necessary for the support of the minor or the minor's family,”

that provision does not apply. See Sec. 6703; *Miller*. Second, Section 6703 prevents a minor from disaffirming a contract for necessities only where the minor is not “under the care of a parent or guardian able to provide for the minor or the minor’s family. See Sec. 6703; *Miller*. Here, there is no indication that Ryan’s parents are unable to provide for him. To the contrary, Janice appears able to provide for her son, even giving him access to a credit card to pay \$20 for “extras” in an online video game. (Sept. 29 Memo.)

Because Ryan is a minor, the contract he entered was not one for necessities, and he is under the care of Janice, who is able to provide for him. He may disaffirm the contract.

II. WHETHER JANICE’S LETTER DISAFFIRMED THE CONTRACT

A court may find that Janice’s letter did disaffirm the contract, but Janice should consider sending an additional letter to GamerTrax to ensure that her intent to disaffirm the contract is clear.

As explained above, the Columbia Family Code provides that “a contract of a minor may be disaffirmed **by the minor or by the minor’s parent or guardian** before majority or within a reasonable time afterwards.” Col. Fam. Code Sec. 6702 (emphasis added). Moreover, “[n]o specific language is required to communicate an intent to disaffirm a minor’s contract. A minor’s contract may be

avoided by any act or word disclosing an unequivocal intent to repudiate its binding force and effect.” *Brady*. In *Brady*, it was sufficient that the minor’s mother wrote the contractual counterparty a certified letter stating that the minor and his mother “were ‘terminating’ the contract.” *Id.*

As an initial matter, it is irrelevant that the letter disaffirming the contract came from Janice, rather than Ryan. As Col. Family Code Sec. 6702 makes clear, the contract may be disaffirmed “by the minor or by the minor’s parent or guardian before majority[.]” Janice is Ryan’s parent and she wrote the letter while Ryan was 12 years old-clearly a minor. Therefore, the letter falls within the confines of Section 6702.

It is a closer call whether the letter, “disclos[es] an unequivocal intent to repudiate [the contract’s] binding force and effect.” See *Brady*. Janice’s Sept. 21, 2020 letter to GamerTrax (the “Sept. 21 Letter”) request[ed] that [GamerTrax] reverse the amount of \$8,980 for unauthorized charges to Janice’s credit card. Unlike in *Brady*, she did not use specific language referring to the termination of the contract. *Cf. Brady*. Moreover, Janice did not state that she would unequivocally refuse to pay the charges; she merely “request[ed]” that GamerTrax reverse them. These factors indicate that the Sept. 21 Letter was not an effective disaffirmation of the contract between Ryan and GamerTrax. That said, Janice’s letter does state that she did not authorize Ryan to charge more than \$20, and includes no language suggesting an intent to perform under the contract.

Ultimately, whether the court would find the Sept. 21 Letter sufficient to disaffirm the question is a close call. Given the policy under the law “to protect a minor against himself and his indiscretions and immaturity as well as the machinations of other people and to discourage adults from contracting with a minor,” *Brady*, a court may determine the Sept. 21 Letter is sufficient. That said, Janice may want to consider sending an additional letter stating unequivocally that she disaffirms the contract on Ryan’s behalf.

III. JANICE’S LIABILITY FOR THE \$8,980 CHARGE

If Janice is not able to disaffirm the contract (which, as discussed *supra*, is unlikely), GamerTrax will likely argue that Janice is liable for the \$8,980 charge because (1) Ryan had actual authority to enter into the contract; or (2) Ryan had apparent authority to enter into the contract. If the court finds that Ryan had either actual or apparent authority, Janice would be liable under the contract. Col. Civ Code Section 3810 (“Any act of an agent within the scope of his or her actual or apparent authority binds the principal.”) A court is likely to hold that Ryan did not have actual authority to enter into the contract; however, he may have had apparent authority to do so.

Ryan Did Not Have Actual Authority

Although Ryan had actual authority to spend \$20 on GamerTrax, he did not have actual authority to spend an additional \$8,980. “An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal’s manifestations to the agent, that the principal wishes the agent so to act.” Col. Civ. Code Section 3801. Because actual authority depends on the principal’s manifestations to the agent, “[a]ctual authority is created by a principal’s manifestation to an agent that, as reasonably understood by the agent, expresses the principal’s assent that the agent take action on the principal’s behalf.” Col. Civ. Code Section 3803.

In July 2020, Janice gave Ryan permission to open a GamerTrax Treasure account with her credit card (Sept. 29 Memo.) She gave him the credit card number, expiration date and security code. (*Id.*) This constituted a manifestation by Janice (the purported principal) to Ryan (the purported agent) of her assent that Ryan open an account. See Col. Civ. Code Sections 3801; 3803. Therefore, Ryan had actual authority to open the GamerTrax account. *Id.*

That having been said, at the same time, Janice “told [Ryan] that he could spend no more than \$20.” (Sept. 29 Memo.) This statement was a clear limitation on Ryan’s actual authority to spend funds from the credit card on his GamerTrax

Treasure account. An agent could not have “reasonably understood” the instruction not to spend more than \$20 as “assent” that the agent spend \$9,000. Accordingly, Ryan did not have actual authority to spend the \$9,000. See Col. Civ Code Sections 3801, 3803. Therefore, Janice is not liable on the grounds that Ryan had actual authority to spend the \$9,000. Col. Civ. Code Section 3810.

A. Ryan May Have Had Apparent Authority

That being said, a court may find that Ryan had apparent authority to spend the \$9,000. “Apparent authority is the power held by an agent or other actor to affect a principal’s legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal’s manifestations.” Col. Civ. Code Section 3802. Unlike actual authority, apparent authority is created “when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation” that the agent has authority to act. *Id.* Section 3804. The Columbia Supreme Court has upheld a principal’s liability on the grounds of apparent authority where (among other factors) the principal informed the third party would be visiting her, and the agent used forms with the principal’s name and drove a truck referring to him as the principal’s agent. *Laredo v. Purcell Fruit Co.* (Col. Sup. Ct. 1950).

Here, several factors could lead a court to hold that Ryan had apparent authority to enter into the contract with GamerTrax, which would render Janice liable. First, by clicking that he had read, understood and agreed to the Terms of Service, Ryan agreed that he was “authorized to use the valid credit or debit card provided, either as the holder of the card if it is in my name or as an agent of the holder of the card if it is in the name of another.” (Sept. 29 Memo.) Although Ryan did not have actual authority to spend more than \$20, he verified to GamerTrax that he was “authorized to use the valid credit or debit card provided in any and all amounts[s]”. (*Id.*) Similar to the agent in *Laredo* who used form contracts bearing the principal’s name, Ryan used a credit card bearing Janice’s name and stated to GamerTrax that he was “authorized to use” that credit card “in any and all amounts.” See *Laredo*. This could lead a third party such as GamerTrax to “reasonably believe” that Ryan had authority to use Janice’s credit card as his agent. See Col. Civ. Code Section 3802.

That said, it is an open question whether GamerTrax’s belief is “reasonable. Unlike in *Laredo*, where the agent’s work furthered the business of the principal (the sale of oranges), at issue here are the actions of a 12-year-old boy playing video games. A court may well question whether GamerTrax could reasonably believe that a preteen boy was acting on his mother’s behalf or as his agent when he racked up \$9,000 in charges playing an online video game.

However, GamerTrax's belief is traceable to a manifestation on Janice's part, the other requirement of Civil Code Sections 3802, 3804. After Ryan agreed to the GamerTrax Terms of Service, GamerTrax contacted Janice to confirm that Ryan had permission to use her credit card, and she "verified that she had given Ryan permission." (Sept. 29 Memo.) It does not appear that Janice limited her permission to \$20 or otherwise referenced her spending limit. (*Id.*)

Because Ryan agreed to the Terms of Service indicating that he had authority to use Janice's credit card as an agent, and because Janice verified to GamerTrax that she had given Ryan permission to use her credit card without expressly limiting that permission to the \$20 cap she set with Ryan, a court may find that Ryan had apparent authority to spend the \$9,000 with GamerTrax. *See Laredo*; Col. Civ. Code Sections 3802, 3804. That said, a court may find that GamerTrax's belief was unreasonable, given that the "agent" spent \$9,000 playing a video game. However, if the court does find that Ryan had apparent authority to spend the money (and Janice and Ryan are unable to disaffirm the contract), Janice will be liable for the entire \$9,000. Col. Civ. Code Section 3810.

PT: SELECTED ANSWER 2

MEMORANDUM

To: Margery Turner

From: Applicant

Date: October 6, 2020

Re: Potential Wright Litigation

I. INTRODUCTION

This Memorandum will analyze the issue presented by our long-time client, Ms. Janice Wright, who is attempting to disaffirm the majority of the \$9,000 charge on her credit card that had been incurred by her son, Ryan. Janice gave her son permission to use her credit card to purchase \$20 worth of items on GamerTrax, an online gaming website, and Ryan accidentally incurred an additional \$8,980 in charges. As Ryan is a minor and purportedly had the authority of his mother to enter into this transaction, the Memorandum will analyze the following issues; (1) whether Ryan is able to disaffirm the contract with GamerTrax; (2) whether Janice's letter disaffirmed the contract on behalf of Ryan; and (3) whether Janice will be held liable on an agency theory for the contract Ryan entered into. Ultimately, the Memorandum will conclude that the contract may be disaffirmed, was disaffirmed, and our client should not be held liable.

II. RYAN MAY DISAFFIRM THE CONTRACT

A. *A Minor Has a Right to Disaffirm a Contract Pursuant to the Columbia Family Code*

At issue first is whether Ryan may disaffirm the contract he entered into with GamerTrax. Columbia Family Code, Section 6701 states that "a minor may make a contract in the same manner as an adult, subject to the power of disaffirmance." CFC 6701. Section 6702 describes this power to disaffirm -- "[A] contract of a minor may be disaffirmed by the minor or the minor's parent or guardian before majority." The policy reason behind these provisions is simple: "the law shield minors from their lack of judgment and experience . . . although in many instances such disaffirmance may work a hardship on those who deal with the minor, the right to avoid contracts is *conferred by law* upon a minor for his protection against his own improvidence and his . . . immaturity." *Brady v. Thomas* (Columbia Ct. App. 2004). The court of appeals went on to explain that any loss that might come to the party on the other side of the minor's contract "might have been avoided by declining to enter into the contract in the first place . . . *one who provides a minor with services does so at his or her own risk.*"

In *Brady*, the Columbia Court of Appeals analyzed the two relevant sections of the Family Code in *Brady v. Thomas*. In that case, a mother (Martha Thomas) and her minor son (Craig) entered into an Artist Management contract with a manager. The minor did not sign the contract, but the contract bound him -- the manager was to be his exclusive personal manager and she would receive 15 percent of all his wages. The mother attempted to cancel the contract two years

later, and the manager filed suit against the son for breach of contract. The Court overturned a trial court holding that Craig was liable, because a contract entered into by a minor is disaffirmable under Columbia law.

Ms. Wright and Ryan's situation is exactly comparable to that of *Brady*. Ryan entered into a contract with GamerTrax, an online video game company. While he did so with the permission of his mother, he also did so on his own behalf. This is what occurred in *Brady*; a minor, with the permission of a parent (who was in fact present at the signing and signed for him), contracted with a manager. When the time came to disaffirm the contract, the Court allowed the minor to do so. *Brady*, p. 8. Here, Ms. Wright and Ryan would like to disaffirm a contract entered into by Ryan. *Brady* and the Columbia Family Code are unequivocal -- Ryan may do so.

B. Exception to A Minor's Right to Disaffirm -- CFC 6703

The general right of a minor to disaffirm is modified only by one provision in the Columbia Family Code -- Section 6703, which states that an otherwise valid contract entered into during minority "may not be disaffirmed on the [ground of minority] if: (a) the contract is to pay the reasonable value of things necessary for the support of the minor to the minor's family; (b) these things have been actually furnished to the minor or to the minor's family; and (c) the contract is entered into by the minor when not under the care of a parent or guardian able to provide for the minor." CFC, Section 6703.

The Columbia Court of Appeals analyzed a case under Section 6703. In *Miller v. Miller*, Bryce Miller (a minor) sued his mother, Josephine, for payments she had

withheld from him when he was a minor. These payments were paid to him pursuant to a valid artist contract where Bryce was to perform in a television series. Bryce allowed \$26,000 of his \$30,000 paycheck to be given to his mother, who had signed away her rights to that money, with the oral provision that she use it to "take care of both of us." Instead, Josephine used the \$26,000 to pay for, in her own words, "the good things of life," rather than necessities. The court of appeals noted that, had she used that money to pay for such necessities, such a contract would not be disaffirmable pursuant to Section 6703. Because the money was for the "good things," the court of appeals overturned a judgment in favor of Josephine, and suggested that Josephine would have to return the \$26,000 that she spent.

Section 6703 does not apply to the GamerTrax contract that Ryan entered into. The contract with GamerTrax was for Ryan to play an online video game called "Galactic Odyssey" (File, p. 5). Ryan gave his mother's credit card and opened up a "GamerTrax Treasure" account, agreeing to pay for all charges that he accrued and that all charges were "final and reversible." (*Id.*). The Galactic Odyssey and GamerTrax system was such that gamers were quickly able to accrue thousands of dollars in charges without realizing it. (*Id.*). When compared to *Miller*, it is clear that the situations are quite similar. In that case, the minor Bryce was able to disaffirm money his mother had spent that was, not for necessities, but for "the good things." *Miller*, p. 6. It is hard to argue that an online video game is far from a "necessity": indeed, it might be the definition of something one might do only to live "the good life."

In sum, pursuant to *Miller* and Section 6703, Ryan's contract with GamerTrax was not one for necessities, and is disaffirmable under Sections 6701 and 6702 of the Columbia Family Code.

III. JANICE'S LETTER DISAFFIRMED THE CONTRACT

The second issue presented by Ms. Wright's situation is whether she may disaffirm the contract on behalf of her son, Ryan. Section 6702 of the Columbia Family Code states that "a contract of a minor may be disaffirmed by the minor *or by the minor's parent or guardian*" before majority or within a reasonable time afterwards. CFC, Section 6702. *Brady* confirms the language of the Family Code -- in that case, Craig's mother disaffirmed the contract on behalf of her child by sending a letter to her son's manager, unequivocally telling the manager that she and Craig were "terminating" the contract. *Brady*, p. 7. The court stated that "no specific language is required to communicate an intent to disaffirm a minor's contract . . . [it] may be avoided by *any* act or word disclosing an unequivocal intent to repudiate." *Brady*, p. 8 (emphasis added).

Janice's letter, sent on September 21, 2020, was sufficient to terminate the contract on Ryan's behalf. As soon as Janice discovered the charges on her credit card bill, she sent said letter to GamerTrax requesting that they reverse all charges but the \$20 that she had authorized. (File, p. 5). She has not paid the bill, and therefore has not affirmed the contract via performance. (*Id.*). Her letter stated that she was writing to "request that [GamerTrax] reverse the amount of \$8,980 for unauthorized charges." (File, p. 6). While this is not quite as express

as the letter in *Brady* that stated that the mother was "terminating" the contract, the Columbia courts do not require any magic language to disaffirm. The contract may be avoided by *any* word disclosing an unequivocal intent to repudiate. *Brady*, p. 8. While GamerTrax might argue that Janice's letter is not unequivocal because she is requesting a disaffirmance instead of demanding or actively terminating, the Columbia courts would not be so draconian. Janice's intent was sufficiently communicated, as her "request for reversal" combined with the description of the charges as "unauthorized" indicate that she intends to not follow through with the extra charges.

In sum, Janice may disaffirm the contract, and indeed has done so pursuant to her September 21, 2020 letter.

IV. JANICE IS NOT LIABLE FOR THE \$8,980 CHARGE

The final issue presented by Ms. Wright is whether she is liable as a principal for the charges entered into by her son, whether or not she successfully disaffirmed the contract. The issue implicates Columbia's agency statutes. The Columbia Civil Code states that an agency is a "fiduciary relationship that arises when one person ("a principal") manifests assent to another person (an "agent") that the agent shall act on the principal's behalf." CCC Section 3800. There are two ways for a principal to be bound by a contract entered into by her agent; either actual authority or apparent authority. Both will be discussed below.

A. Ryan Did Not Have Actual Authority to Enter Into the GamerTrax Contract

First we must analyze whether Janice had given Ryan actual authority to enter into the contract. Actual authority is when an agent "reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." CCC, Section 3801. Such authority is created "by a principal's manifestation to an agent that, as reasonably understood by the agent, expresses the principal's assent that the agent take action on the principal's behalf." CCC, Section 3803. Any act taken according to actual authority has binding effect. CCC, Section 3810. In analyzing a situation where a fruit corporation attempted to claim it was not liable on a contract entered into by its salesman, the Columbia Supreme Court noted that it was likely the agent did not have actual authority to enter into a \$30,000 contract with an orange grower. *Laredo v. Purcell Fruit Co.*, Col. Sup. Ct. 1950. This was because the company only allowed its agent to enter into a contract for a maximum of \$10,000, which the agent was aware of.

Here, Ryan clearly did not have actual authority to enter into the GamerTrax contract for anything more than \$20. Granted, Janice did give Ryan her credit card to use for purchasing options such as extra lives or extra weapons on Galactic Odyssey (File, p. 5). Further, she gave him the expiration date and the security code. However, she then expressly limited his actual authority -- she told him he could only spend \$20. (*Id.*). Ryan, of course, ended up incurring charges of \$9,000. This is almost identical to the situation in *Laredo*, where the agent had been informed that he could enter into a contract for no more than \$10,000 but entered into one for \$30,000. The Court in that case held no actual authority

because the agent could not have reasonably believed, based on manifestations by the principal, that he was authorized to so contract. Here, the result is exactly the same: Janice placed strict rules on how Ryan could use her card, therefore Ryan could not have reasonably believed that he could have charged \$9,000. In sum, Janice would not be bound on a theory of actual authority for the charges over and above the authorized \$20.

B. Apparent Authority

The issue of whether Ryan had apparent authority is a much closer one. Apparent authority is "the power held by an agent . . . to effect a principal's legal relations with third parties when a *third party* reasonably believes the actor has authority to act on behalf of the principal *and* that belief is traceable to the principal's manifestations." CCC, Section 3802. Such authority is created "by a person's manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party *reasonably* believes the actor to be authorized *and* the belief is traceable to the manifestation." CCC, Section 3804. Like actual authority, transactions entered into pursuant to apparent authority bind the principal. CCC, Section 3810.

In *Laredo* (discussed briefly above), the Columbia Supreme Court held that while the fruit company's agent, Mr. Hand, did not have *actual* authority to enter into the contract for \$30,000 with an orange grower, he *did* have apparent authority to do so. This was for a number of reasons that were highly fact dependent. First, the company had entered into many contracts effected by Mr. Hand (the agent),

and had *never* disavowed one. *Laredo*, p. 10. Mr. Hand drove a truck that identified him as the fruit company's agent, and had formed contracts printed by the company and bearing its name. Further, the company's owner had visited all the orange grower's in the plaintiff's area and told them that Mr. Hand would be "calling on them" to purchase oranges. *Id.*

Here, although it is certainly a close call, Janice most likely would not be bound on a theory of apparent authority. As discussed above, she limited Ryan's actual authority to \$20 when she gave him her credit card (File, P. 4). Ryan then opened a "GamerTrax Treasure" account, which would allow him to purchase game options for Galactic Odyssey including extra lives and extra weapons. In doing so, he had to sign a terms of service. The Terms stated that "all transactions were final and irreversible," that "[Ryan] was authorized to use the card for any and all amounts," and, critically, he provided his mother's email address since he was under 18. (File, p. 5). GamerTrax then contacted Janice, and "she verified that she had given Ryan permission." *Id.* Ryan then began playing Galactic Odyssey and ultimately accrued the charges at issue here (though he did so unknowingly).

GamerTrax will certainly argue that Janice has manifested such that it had a reasonable belief that Ryan was authorized to make the payments that he did. Their strongest evidence, of course, is that they called Janice directly and confirmed the Terms of Service that Ryan signed. They would compare this to *Laredo*, where Mr. Hand was found to have actual authority when the owner of

his company told the orange growers to expect Mr. Hand to come by and purchase oranges. Their argument would state that, though the contract Hand entered into was far and above what his actual authority granted, it didn't matter - the fruit company owner had manifested apparent authority, such that the orange growers reasonably believed that Hand could enter into such a contract. Their argument will ultimately fail, however. First, the manifestation created by Janice is not anywhere near the manifestation of authority created by the fruit company owner in *Laredo*. Here, Janice merely received a telephone call and confirmed that Ryan had permission to use her credit card for GamerTrax. (File, P. 5). That was the sole amount of her "manifestation." Compare to *Laredo*, where Hand had been the company's agent for years, the company had *never* disaffirmed a contract for oranges, and every orange grower in the region knew of these relevant facts. Those facts are critical to the analysis that the court granted actual authority for a contract that was \$20,000 over the agent's actual authority. *Laredo*, p. 10. Compare to Janice's situation: she never gave any sort of manifestation to GamerTrax that she had authorized a charge in excess of \$100, much less \$9000. There was no prior relationship that GamerTrax had with Janice or Ryan that would indicate she would accept such a thing. This is particularly true considering that GamerTrax may have set up their games in such a way that gamers could be charged without realizing it -- note that our facts indicate that "he did not believe he was spending any money to obtain these additional options." (File, p. 5).

In absence of a prior relationship and/or more sufficient manifestations of authority, and due to their disguised-payment system for games, GamerTrax's belief that Ryan -- who they knew was a minor, as they telephoned his mother -- had permission to execute charges for \$9000, was not reasonable. As stated clearly in the Columbia Civil Code, apparent authority is *only* created when the third party *reasonably* believes the agent has authority. Pursuant to the facts laid out above, GamerTrax cannot win on an argument that it had such reasonable belief. Janice will not be bound to the extra \$9,980 on a theory of apparent authority.

V. CONCLUSION

Janice will not be liable for the extra \$9,980 that Ryan charged to her credit card while playing Galactic Odyssey. Pursuant to the analysis above, Ryan may disaffirm the contract, Janice may disaffirm on his behalf (and indeed did so in her letter to GamerTrax), and Janice will not be held separately liable on a principal/agency theory. Therefore, we should alert her not to pay the fee and to bring suit against GamerTrax for a refund of the excess \$9,890.