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Principles of Contract Law Applied to Entertainment and Sports Contracts: A Model for Balancing the Rights of the Industry with Protecting the Interests of Minors

John H. Shannon

Richard J. Hunter Jr.

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**PRINCIPLES OF CONTRACT LAW APPLIED
TO ENTERTAINMENT AND SPORTS
CONTRACTS: A MODEL FOR BALANCING
THE RIGHTS OF THE INDUSTRY WITH
PROTECTING THE INTERESTS OF MINORS**

John H. Shannon & Richard J. Hunter, Jr.***

*This Article discusses the context of common law and statutory materials dealing with minors who participate in the entertainment and sports fields. The Article describes the changes undertaken as a result of several notorious cases involving prominent child actors, and how the California legislature dealt with issues ranging from set asides of income, approval of contracts by a competent court of jurisdiction, recognition of the legitimate interests of all parties to the contract, to principles under which a minor would be precluded from disaffirming a contract. The Article then applies and extends the principles developed in entertainment contracts to minors who participate in professional athletics and offers concrete suggestions for perfecting a balance in interests by focusing on assuring the minor with representation by “qualified counsel experienced with entertainment industry law and practices.”****

* Associate Professor of Legal Studies, Seton Hall University.

** Professor of Legal Studies, Seton Hall University.

*** This Article is dedicated to Janine Cinsneruli who, as a pioneer for equality, in 1974 was successful in breaking the barrier for girls playing in Little League baseball.

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I. INTRODUCTION

Consider this scenario. Janine has been playing basketball since she was five years old. By the time she reached the age of thirteen, she was already well over six feet tall, and by her fourteenth birthday, she had grown to nearly seven feet. She exhibits the skills required to play basketball at a very high level. She was found by ISTAR, a movie company that specializes in made-for-TV movies appealing to youngsters and early teens. She signed a six year contract with ISTAR to star in a series of six movies about a young girl who plays a variety of sports for \$100,000 per film. The first movies were very popular and Janine became an instant star. Now, after a year or so, Janine stands *over* seven feet tall and she is being actively recruited by the Philadelphia Phillies, a team in the Women's Professional Basketball League (WPBL), which offers her a sixty-five million dollar, multi-year contract. Janine is now trying to "get out from under" her ISTAR contract and sign with the WPBL.

Some professional sports organizations have imposed "artificial age limits" on their younger athletes; for example, players must be at least twenty years of age in the National Football League¹ and nineteen in the National Basketball Association.² Meanwhile, in other sports, there are some glaring examples of younger players (often minors) who have achieved a high level of success at an early age.³

- Pelé—pro soccer player at 16, World Cup winner at 17;
- Freddy Adu—pro soccer player at 14;
- Wayne Gretzky—pro hockey player at 18;
- Michelle Wie—qualified for the United States Golf Association Amateur Championship at 10;
- Alex Rodriguez—pro baseball player at 18;
- Andre Agassi—pro tennis player at 16; and
- Pete Sampras—pro tennis player at 17.

1. *See Age Limits in Professional Sports. Your Thoughts?*, DEMOCRATIC UNDERGROUND (June 21, 2005, 5:28 PM), http://www.democraticunderground.com/discuss/duboard.php?az=view_all&address=215x17914.

2. *See NBA Collective Bargaining Agreement*, NBA PLAYERS UNITED 1 (Dec. 8, 2011), <http://www.nbpa.org/cba/2011>.

3. *See Age Limits in Professional Sports. Your Thoughts?*, *supra* note 1.

With so many younger players exhibiting the skills necessary to compete successfully at the professional level, questions are necessarily being raised relating to the legitimacy of contracts entered into by the minor or by or with the athlete's parent(s) or guardian(s).⁴

Federal law is designed to prohibit practices that amount to "oppressive child labor."⁵ The seminal statute is the Federal Labor Standards Act (FLSA).⁶ In addition to this federal legislation, all fifty states and the District of Columbia have adopted child labor laws.⁷ Pursuant to the FLSA, and with the exception of children who might be performing "chores" on their family farms or who work in agricultural employment,⁸ the Department of Labor has adopted regulations that define both lawful and unlawful child labor:

4. *Sports Contracts—Basic Principles*, USLEGAL, <http://sportslaw.uslegal.com/sports-agents-and-contracts/sports-contracts-%e2%80%93-basic-principles/> (last visited Jan. 30, 2015).

5. See 29 U.S.C. §§ 203(l), 207, 212 (2012); see also 29 U.S.C. § 212(c) (2000) ("No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.").

6. See 29 U.S.C. §§ 201–19 (2012). The relevant portion of the law states: "No producer, manufacturer or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods there from any oppressive child labor has been employed." *Id.* § 212(a). This provided the constitutional basis for the statute under a Commerce Clause analysis. See Richard J. Hunter, Jr. et al., *Regulation: A Historical Perspective and Discussion of the Impact of the Commerce Clause and the Fourteenth Amendment and the Move to Deregulate the American Economy*, 32 U. LA VERNE L. REV. 137, 138 (2011).

7. See Willis J. Norlund, *A Brief History of the Fair Labor Standards Act*, 39 LAB. L.J. 715, 721 (1988).

8. For an extensive discussion of the principles associated with minors working in agricultural occupations, see *Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act (Child Labor Bulletin 102)*, U.S. DEP'T OF LABOR (rev. 2007), <http://www.dol.gov/whd/regs/compliance/childlabor102.pdf>. The provision relating to children involved in agricultural work states:

[T]he provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are . . . required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent, or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

29 U.S.C. § 213(e)(1) (2004).

- Children under the age of 14 cannot work except as newspaper deliverers;
- Children between the ages of 14 and 15 may work limited hours in nonhazardous jobs approved by the Department of Labor; and
- Children between the ages of 16 and 17 may work unlimited hours in nonhazardous jobs.

Thus, the FLSA embodies the basic premise that the employment of children under the age of *sixteen* is oppressive, unless the Department of Labor determines that the job is nonhazardous.⁹ The FLSA also restricts the hours of minors' employment. Additionally, federal regulations prohibit the employment of minors at times that would interfere with their education. However, as a general rule, the protections that are afforded to minors are not accorded to child performers because they have received a specific exemption from the FLSA.¹⁰

This Article considers the broad principles applicable in the entertainment industry and asks the question: *Should these principles be the guideposts in the area of contracts with athletes who are minors?*

9. Hazardous occupations include manufacture or storage of explosives, businesses requiring driving or assisting on a motor vehicle, logging and sawmilling, meatpacking or processing, excavating, roofing, demolition, mining (except coal), brick or tile manufacture, and businesses exposing children to radioactive substances. Children may not perform jobs requiring the operation of power-driven woodworking machines, hoisting machines, sawing or shearing machines, and metal processing, nor in the fields of meat-processing, bakery, or paper product. See Marie A. Fallinger, "Too Cheap Work for Anyone but Us": *Toward a Theory and Practice of Good Child Labor*, 35 RUTGERS L.J. 1035, 1041 n.24 (2004) (citing U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-02-880, LABOR CAN STRENGTHEN ITS EFFECTS TO PROTECT CHILDREN WHO WORK, at 5, 8 (2002)); *What Jobs Can Youth Do*, U.S. DEP'T OF LABOR, <http://www.youthrules.dol.gov/jobs.htm> (last visited Aug. 5, 2014).

10. See *Exemptions from Child Labor Rules in Non-Agriculture*, U.S. DEP'T OF LABOR, <http://www.dol.gov/elaws/esa/flsa/cl/exemptions.asp> (last visited Aug. 4, 2014); see also Jessica Krieg, Comment, *There's No Business Like Show Business: Child Entertainers and the Law*, 6 U. PA. J. LAB. & EMP. L. 429, 431 (2004) ("Minors employed as actors or performers in motion pictures or theatrical productions, or in radio or television productions are exempt from Fair Labor Standards Act (FLSA) coverage. Therefore, FLSA rules regarding total allowable number of work hours in one day and allowable times of day to work do not apply.").

II. BASIC PRINCIPLES OF CONTRACT LAW UNDER A COMMON LAW ANALYSIS¹¹

The legal issue underlying the above scenario is that of legal or contractual capacity. Courts require that parties to an otherwise valid contract have the requisite contractual capacity to enter into an agreement.¹² Courts, however, have determined that certain persons lack the required capacity; among those lacking capacity are minors, persons suffering from substantial mental incapacity, and intoxicated persons, to name a few.¹³

Minors have traditionally been considered as persons who may lack the maturity, experience, or sophistication needed to enter into contracts with adults.¹⁴ Under the common law, minors were defined as females under the age of eighteen and males under the age of twenty-one.¹⁵ Under American law, individual states have enacted statutes that define who might be considered a minor and the requisite age of majority—the age at which a minor generally acquires the right to enter into a valid contract. The most prevalent age of majority is eighteen years of age for both males and females. The age below the age of majority is referred to as the period of minority.

In order to protect the minor who has entered into a contract during the period of his or her minority, the legal system recognizes

11. *See generally* HENRY R. CHEESMAN, BUSINESS LAW ch. 12. (7th ed. 2010) (describing the application of rules that apply in determining issues relating to legal capacity to enter into a contract); RICHARD J. HUNTER, JR. ET AL., THE LEGAL ENVIRONMENT OF BUSINESS: A MANAGERIAL AND REGULATORY PERSPECTIVE ch. 9 (3d ed. 2010) (describing the application of rules that apply to determining issues relating to legal capacity to enter into a contract involving minors' contracts).

12. *See generally* ROBERT E. SCOTT & JODY S. KRAUS, CONTRACT LAW AND THEORY 481–501 (3d ed. 2002) (discussing the infancy doctrine).

13. *See, e.g.*, EDWARD J. MURPHY & RICHARD E. SPEIDEL, STUDIES IN CONTRACT LAW 546–69 (Lon L. Fuller et al. eds., 2d ed. 1972).

14. *See* Harvey v. Hadfield, 372 P.2d 985 (Utah 1962). The court noted:

Since time immemorial courts have quite generally recognized the justice and propriety of refusing to enforce contracts against minors, except for necessities. It is fair to assume that because of their immaturity they may lack the judgment, experience and will power which they should have to bind themselves to what may turn out to be burdensome and long-lasting obligations. Consequently courts are properly solicitous of their rights and afford them protection from being taken advantage of by designing persons, and from their own imprudent acts, by allowing them to disaffirm contracts entered into during minority which upon more mature reflection they conclude are undesirable.

Id. at 986 (citations omitted).

15. CHEESMAN, *supra* note 11, at 193.

what has come to be known as the infancy doctrine, which provides that the minor has the right to disaffirm a contract he or she may have entered into with an adult during the period of his or her minority.¹⁶ The infancy doctrine is based on an objective standard, determined solely upon the age of the minor. That is, courts will not inquire as to the subjective knowledge, experience, or sophistication of the minor—except in circumstances involving so-called “necessities” or “necessaries.” The only relevant criterion is the age of the party entering into an agreement.

Under the infancy doctrine, the contract entered into by the minor is not void; rather, it is voidable by the minor, who has the option to choose whether to be bound by it. The adult party to the relationship (in this case, ISTAR or the WPBL) is bound to the contract. Interestingly, if both parties to a contract are minors, both parties have the right to disaffirm the contract.

The minor may exercise his or her right to disaffirm the contract orally, in writing, or through conduct at any time prior to the minor attaining the age of majority (and an additional “reasonable time period,” to be determined on a case-by-case basis).

Many of the practical examples relating to disaffirmance appear in the context of contracts involving goods and not service or employment contracts. However, in either case, if a contract is executory—that is, neither party has performed (as, for example, had Janine changed her mind *before* production on any of the films had begun). If a contract is executory, the minor may be able to simply disaffirm the contract. If, however, the parties have begun to perform the contract or a segment of the contract (for example, a fourth film is in production), or the contract has been fully performed at the time the minor disaffirms the contract, what might be expected of either party?

Under the majority rule, the minor is only obligated to return to the adult the goods or property he or she has received in the condition it is in at the time the minor disaffirmed the contract. This rule, termed the minor’s “duty of restoration”, means that the minor may literally return the consideration in whatever form it is in—even

16. See Cheryl B. Preston & Brandon T. Crowther, *Minor Restrictions: Adolescence Across Legal Disciplines, the Infancy Doctrine, and the Restatement (Third) of Restitution and Unjust Enrichment*, 61 U. KAN. L. REV. 343, 343–44 (2012) (comparing the contract infancy doctrine to the treatment of minors in other areas of law).

if the consideration has been consumed, lost, damaged, or has depreciated in value.¹⁷ Under the modified New York rule, a minor may disaffirm but is responsible for any loss or damage or depreciation to the property or goods.¹⁸ There is a third rule that is very unsupportive of a minor's right to disaffirm. It states that a minor may *only* disaffirm if he or she can return the consideration in its exact original form—severely limiting the minor's right to disaffirm except in cases where the property has remained with the adult (for example, a lay-away sale) or where the property has not been used in any way.¹⁹ Thus, if a minor has received an advance payment in contemplation of his or her performance in a future film, the minor would be expected to return the money received for that eventuality—the exact amount to be determined by the circumstances—or perhaps whatever is remaining from the advance.

In a case where the minor has transferred consideration to the adult party before disaffirming the contract, the adult party must return the minor to the status quo—the position the minor was in before he or she entered into the contract. This has been termed as the adult (competent) party's "duty of restitution". Should the minor have engaged in intentional, reckless, or grossly negligent conduct that caused a loss to the value of the adult's property—or in some cases, where the minor has misrepresented his or her age²⁰—courts would apply a variant of the New York rule and require the minor to essentially "hold harmless" the adult under these circumstances by making appropriate compensation to the adult for the diminution in value of the property.

If a minor does not disaffirm a contract either during the period of minority or within a reasonable time after reaching the age of majority, the contract is considered to have been ratified.²¹ The contract is now valid; the minor is bound by it and there is no longer any right of disaffirmance.²² A ratification relates back to the

17. *Halbman v. Lemke*, 298 N.W.2d 562, 567 (Wis. 1980) ("[A] minor who disaffirms a contract . . . may recover his [consideration] without liability for use, depreciation, damage or other diminution in value.").

18. RICHARD J. HUNTER, JR. ET AL., *supra* note 11, at 136.

19. *Id.*

20. *See, e.g., Gill v. Parry*, 194 P. 797, 798 (Wash. 1921).

21. *See Bobby Floars Toyota, Inc. v. Smith*, 269 S.E.2d 320, 322 (N.C. Ct. App. 1980) (retaining the consideration ten months after attaining the age of majority).

22. *See, e.g., In re The Score Board, Inc.*, 238 B.R. 585, 593 (D.N.J. 1999) (holding that Kobe Bryant had, by his actions, ratified a contract with a sports memorabilia company that

creation or inception of the contract and it may be accomplished by express oral or written words or implied from the minor's conduct—usually where the minor remains silent after reaching the age of majority.

Finally, all of the rules discussed above must be contextualized by what is termed as the “necessaries” or “necessities” doctrine, which makes a minor liable in quasi contract for the reasonable value of items furnished for his or her “life, health, or safety.”²³ What a court deems necessary depends on the particular age of the minor, his or her lifestyle or status (perhaps as a celebrity or child actor), and whether or not he or she has been emancipated.²⁴ Although some courts have expanded the categories of necessaries, necessaries generally include items such as food, clothing, shelter, medical costs, and educational expenses.²⁵

As noted, in the case of Janine—our child prodigy—it would seem that under the common law, she could certainly disaffirm her contract entered into with ISTAR at any time prior to reaching her age of majority—most likely her eighteenth birthday. She might also be accorded the same right if she had ended her relationship with

required him to make a number of personal appearances, sign a large number of autographs, and license his image for various purposes, including trading cards).

23. See *Gastonia Pers. Corp. v. Rogers*, 172 S.E.2d 19 (N.C. 1970). There, Chief Justice Bobbitt quoted the following (in the original language) with approval:

An early commentary on the common law, after the general statement that contracts made by persons (infants) before attaining the age of twenty-one “may be avoided,” sets forth “some exceptions out of this generality,” to wit: “An infant may bind himselfe to pay for his necessary meat, drinke, apparell, necessary physicke, and such other necessaries, and likewise for his good teaching or instruction, whereby he may profit himselfe afterwards.”

Id. at 20 (quoting COKE ON LITTLETON 172 (13th ed. 1788)); see also *Valencia v. White*, 654 P.2d 287, 289 (Ariz. Ct. App. 1982); Larry A. DeMatteo, *Deconstructing the Myth of the “Infancy Law Doctrine”: From Incapacity to Accountability*, 21 OHIO N.U. L. REV. 481, 489 (1994) (“This narrow definition usually included ‘board, room, clothing, medical needs and education’” (quoting *Valencia*, 654 P.2d at 289)).

24. See *Kiefer v. Fred Howe Motors, Inc.*, 158 N.W.2d 288, 289–91 (Wis. 1968) (addressing the question: “Should an emancipated minor . . . be legally responsible for his contracts?” in the context of a circumstance where a minor has married; the court answered the question in the negative, noting: “However, logic would not seem to dictate this result especially when today a youthful marriage is oftentimes indicative of a lack of wisdom and maturity.”).

25. See *Valencia*, 654 P.2d at 289; see also *Rodriguez v. Reading Hous. Auth.*, 8 F.3d 961, 964 (3d Cir. 1993) (noting that “[w]hile the law on this subject varies from state to state, the predominant rule is that a minor’s contracts are generally voidable but that contracts for what are known as ‘necessaries’ are enforceable” (citing RESTATEMENT (SECOND) OF CONTRACTS § 14 (AM. LAW INST. 1981); 1 E. ALLAN FARNSWORTH, FARNSWORTH ON CONTRACTS § 4.4 at 379, § 4.5 at 385 (1990); 5 RICHARD A. LORD, WILLISTON ON CONTRACTS §§ 9:5, 9:18 (4th ed. 1993))).

ISTAR and then had entered into a contract with the WPBL prior to reaching her age of majority as well.²⁶ What she might be required to return to either ISTAR or the WPBL is another matter!

III. CHANGES IN THE COMMON LAW

The common law has been altered significantly through changes in the statutory framework in several states that have attempted to balance the rights of entertainment companies or other organizations, so-called “talent agencies,” who may expend considerable sums in the recruitment, training and maintenance of their minor performers, with protecting the legitimate rights of minors not to be taken advantage of by “designing persons”—including, in many cases their own parents or guardians. This balancing has significant implications for the common law doctrine of disaffirmance.

Unique features in entertainment industry employment contracts must be recognized. First, it should be understood that the entertainment and film industries engage in a “significant investment of both money and effort since the studios spend a great deal on training and publicity.”²⁷ Thom Hardin notes: “Presently, most film industry contracts with minors are for short-term projects. Nonetheless, a studio may invest substantial money in these projects because it is relying on a minor to fulfill his or her contractual obligations.” Hardin’s argument continues: “[i]f a minor disaffirms his or her contract with a motion picture studio, the studio may lose its competitive edge as well as its project investments.”²⁸

A second rationale for modifying the standard right of disaffirmance is found in the context of the recording industry, which provides an “example of the financial risks that an entertainment

26. Bonnie E. Berry, *Practice in a Minor Key*, L.A. LAW., May 2002, at 29 (“According to Family Code Section 6710, ‘A contract of a minor may be disaffirmed by the minor before majority.’ Once an agreement is disaffirmed, a minor has no further obligations to perform under it.”); see also *Neimann v. Deverich*, 221 P.2d 178, 182 (Cal. Ct. App. 1950) (“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 an infant. Any loss occasioned by the disaffirmance of a minor’s contract might have been avoided by declining to enter into the contract.”).

27. Erika D. Munro, *Under Age, Under Contract, and Under Protected: An Overview of the Administration and Regulation of Contracts with Minors in the Entertainment Industry in New York and California*, 20 COLUM. J.L. & ARTS 553, 555 (1996).

28. Thom Hardin, *The Regulation of Minors’ Entertainment Contracts: Effective California Law or Hollywood Grandeur?*, 19 J. JUV. L. 376, 378 (1998) (internal citations omitted).

company takes when contracting with minors.”²⁹ Erica Munro notes that the unique nature of the music industry requires recording companies to enter into multi-year contracts with minors.³⁰ In fact, “[t]o promote the popularity of child entertainers and their music, these companies invest financial resources to further the careers of their child superstars. If a recording company contracts with a minor who later disaffirms the contract, that company may suffer a financial loss that management cannot accept.”³¹

*A. Providing for the Balance: From Jackie Coogan
to Gary Coleman*

Any change in the common law must contain provisions that deal with balancing *both* considerations: protecting the legitimate financial interests of the industry and protecting the legitimate interests of the minor.

Legislative endeavors to supplement the common law and perfect this balance arose from a series of notorious cases involving “child stars.” The most famous of the cases involved Jackie Coogan, who, in 1938, was best known for his roles in Charlie Chaplin films. Coogan was “discovered” by Chaplin in 1919 and soon was cast in one of the most famous films of its time, *The Kid*. Later, Coogan gained a whole new generation of fans as he played “Uncle Fester” on television’s *The Addams Family*. After an impressive career in silent films, Coogan, like many child actors, reached the age of majority and only then realized that his parents had spent most of his earnings, which totaled \$4 million. Coogan took his parents to court, but settled the case for a mere \$35,000, because the money that a child earned at that time belonged to his parents as a matter of law. As stated in California Civil Code section 197, which was in effect at that time, “[t]he father and mother of a legitimate unmarried minor child are entitled to its custody, services and earnings.”³²

Because of the publicity and public outcry for reform of the system that followed Coogan’s suit, California became the first state to pass legislation that would provide for some degree of protection of a child’s earnings in the entertainment industry and of the

29. *Id.*

30. Munro, *supra* note 27, at 555.

31. Hardin, *supra* note 28, at 378.

32. CAL. CIV. CODE § 197 (Deering’s 1935) (repealed 1994).

legitimate business interests of the industry. This law, known broadly as Coogan's Law, was enacted in 1939.³³ At that time, California law provided some protection for the interests of the entertainment industry. Civil Code section 35, enacted in 1872, restated the common law rule discussed above that allowed the disaffirmance of a contract by a minor.³⁴ However, section 36 introduced a major exception that prevented minors from disaffirming contracts when they had entered into the contract in their own right and when their earnings would be used for basic support of themselves and their family.³⁵ And in 1931, the legislature amended section 36 to include the following:

A minor cannot disaffirm a contract otherwise valid to perform or render services as actor, actress, or other dramatic services where such contract has been approved by the superior court of the county where such minor resides or is employed. Such approval may be given on the petition of either party to the contract after such reasonable notice to the other party thereto as may be fixed by said court, with opportunity to such other party to appear and be heard.³⁶

Coogan's Law added sections 36.1 and 36.2, which provided greater protection for the earnings of child actors.³⁷ Section 36.1 granted a court the power to require the formation of a trust fund or savings plan in conjunction with the court's approval of a contract under section 36.³⁸ Furthermore, section 36.2 gave the court continuing jurisdiction over the child's earnings; the court that had approved the contract had the power to terminate or amend the plan, as long as it provided reasonable notice to the parties involved.³⁹ However, despite the protections offered to minors, children were left with the fact that at least one-half of their money could still be left under the discretion of his or her parents, depending on the decision of the judge reviewing the contract.

In spite of the enactment of the original Coogan's Law, children continued to be disadvantaged because of the law's perceived

33. CAL. CIV. CODE §§ 35–36 (Deering's 1931) (repealed 1993).

34. *Id.* § 35.

35. *Id.* § 36.

36. *Id.* § 36.

37. *See* CAL. CIV. CODE §§ 36.1–36.2 (Deering's Supp. 1939).

38. *Id.* § 36.1.

39. *Id.* § 36.2.

inadequacies. Coogan's Law was criticized on many fronts. Erica Siegel outlined some of the most important criticisms in her 2000 law review article. These included a recognition that "[a]s this law was written over sixty years ago, it failed to incorporate many paramount changes in the entertainment industry that affected child actors."⁴⁰ Siegel's criticisms can be further summarized as follows:

[T]he studio system, under which movie producers made many long-term contracts with young actors in order to cultivate their promise for stardom, declined in popularity. Children now commonly sign contracts to work in television commercials or to appear in single film projects. When children make contracts for individual projects, the risk of disaffirmance decreases. Thus, the incentive for employers or parents to have long-term contracts approved by the courts disappeared and Coogan's Law was never put to use.⁴¹

Unfortunately, the Coogan case was not an isolated incident. Shirley Temple Black, the popular and ubiquitous child star of the 1930s and '40s, supported twelve people throughout her career. Eventually, she only retained a few thousand dollars and a dollhouse.⁴² Black would go on to have a career in diplomacy, serving as United States Ambassador to Ghana and Czechoslovakia, and later as Chief of Protocol for the government.⁴³ Lee Aaker, the star of the of the television show *Rin Tin Tin* in the 1950s, only had \$20,000 remaining when he left the industry. And Beverly Washburn of the 1957 movie *Old Yeller* only had \$250 when she became an adult, after her mother squandered all of her earnings.⁴⁴

These and other similar cases led to several changes to the Coogan's Law regime over the years, which may be summarized as follows:

- In 1941, the California legislature amended section 36 once again. The amendment granted the superior court the

40. Erica Siegel, *When Parental Interference Goes Too Far: The Need for Adequate Protection of Child Entertainment and Athletes*, 18 CARDOZO ARTS & ENT. L.J. 427, 434 (2000).

41. *Id.*

42. *Id.* at 438; see also Peter M. Christiano, *Saving Shirley Temple: An Attempt to Secure Financial Futures for Child Performers*, 31 MCGEORGE L. REV. 201, 205 (2000).

43. See *Shirley Temple Black Biography*, ENCYCLOPEDIA OF WORLD BIOGRAPHY, <http://www.notablebiographies.com/Be-Br/Black-Shirley-Temple.html> (last visited Aug. 3, 2014).

44. Siegel, *supra* note 40, at 438.

authority to approve or disapprove a contract under which a minor renders services as a “participant or player in professional sports, including, but without being limited to, professional boxers, professional wrestlers, and professional jockeys.”⁴⁵

- In 1947, the California legislature left intact section 2855 of the California Labor Code, which limits the maximum term of a minor’s employment relationship to a contract to seven years.⁴⁶

A more recent case involved Gary Coleman, the famous child actor from the television show *Diff’rent Strokes*. To access his income, his parents purposely worked around Coogan’s Law by using their son’s earnings to create a pension fund *for themselves*. “When Coleman’s parents appeared before the judge to enforce this pension, they did not inform the judge that they were employees of Coleman’s production company, and when they dissolved the pension fund they received \$770,000 while Coleman received only \$220,000.”⁴⁷ In 1993, Coleman sued his parents and was awarded \$3,800,000. Unfortunately, Coleman passed away in 2010. The Coleman saga directly led to amendments to California law in 1989 law.

B. The California Amendments

California once again amended its statutes in 1989. The amendments were based on revisions made to previous laws enacted in 1939, 1941, and 1947, with some important differences. The scope of authority was expanded to include “an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor, or designer.”⁴⁸ The 1989 revisions preserved the jurisdiction of the superior court to approve professional sports contracts including, but not limited to, “services as a professional boxer, professional wrestler, or professional jockey.”⁴⁹

45. CAL. CIV. CODE § 36 (West 1992) (repealed 1993).

46. See *Warner Bros. Pictures, Inc. v. Brodel*, 192 P.2d 949, 954–55 (Cal. 1948) (discussing the language of the 1947 amendments to Coogan’s Law).

47. Siegel, *supra* note 40, at 439.

48. CAL. FAM. CODE § 6750 (West 1994); see also CAL. LAB. CODE § 2855 (West 1989).

49. CAL. FAM. CODE § 6751(c) (West 1994).

As part of the continuing balancing effort, the 1989 revisions prohibited a minor from disaffirming an *approved entertainment contract* during the period of his or her minority or at any time thereafter.⁵⁰ As in previous iterations, the maximum term of a minor's employment pursuant to a covered entertainment employment contract remained at seven years. The Labor Code also authorized the superior court to approve minors' talent agency contracts, reflecting the importance of such agents in the entertainment industry. The Labor Code defined a talent agency contract as a contract pursuant to which a talent agent agrees to secure for the minor "engagements to render artistic or creative services in motion pictures, television, the production of phonographic records, the legitimate stage"—or other areas of the entertainment field.⁵¹ Once again, if the superior court approved a minor's talent agency contract, the minor cannot disaffirm it. As in entertainment contracts, the maximum term of a talent agency contract is seven years.

It should be noted that the Labor Code did not mandate either party to these contracts to petition the superior court for approval of a contract; rather, it provided a party with an *option* to do so. Thom Hardin notes that as a practical matter, it would be the entertainment company and not the minor who would petition the superior court for approval of the contract, not only because they would have the "financial and legal resources" required to do so,⁵² but it might also be posited that approval of a contract by the court would preclude the minor's disaffirmance of the contract.

Other important provisions dealt with issues relating to the income of the minor. In order to protect the earnings of the minor derived from an entertainment contract, section 6752 of the Family Code authorizes the superior court to order, for the benefit of a minor, the preservation of a portion of his or her net earnings,⁵³ with a maximum percentage of 50 percent.⁵⁴ In addition, the court had the

50. *Id.* § 6751(a).

51. Hardin, *supra* note 28, at 382 (quoting CAL. LAB. CODE § 1700.37 (West 1989)).

52. *Id.* at 383. Hardin notes that *The Walt Disney Company* alone files 75 percent of the petitions. *Id.* at 386. He also notes that "petitions that involve professional sports services are virtually nonexistent." *Id.* at 387. In the opinion of the author of this Article, this *deficiency* calls for specific legislation that would deal with professional sports services. *See id.*

53. CAL. FAM. CODE § 6752(a) (West 1994).

54. *Id.*

power to withhold the approval of the contract unless and until a minor's parents, parent, or guardian consented to its earnings preservation order.⁵⁵

The Family Code defined a minor's net entertainment contract earnings as the total sum received for contract services *less* required taxes, "reasonable sums expended for the support, care, maintenance, education, and training of [a] minor . . . fees and expenses paid in connection with procuring the contract or maintaining the employment of [a] minor," and "attorney's fees for services rendered in connection with the contract and other business of [a] minor."⁵⁶ Hardin claims that the deduction for "reasonable sums" expended by parents in support of their minors appeared to provide yet another loophole to parents who wish to squander their children's earnings.⁵⁷ However, the Los Angeles County Superior Court construed the term "reasonable sums" to include only those sums incurred to fulfill a minor's contract.⁵⁸ Therefore, as noted by Gaglini, "meals and nights on the town are not deemed as reasonable sums."⁵⁹

The legislation required a minor's employer to place the stipulated portion of the earnings that the Los Angeles County Superior Court preserved into what is referred to as a "blocked account."⁶⁰ The account was blocked (or segregated) to prevent minors and other individuals from obtaining access to the preserved earnings. A blocked account must be set up in a financial institution that is located in the State of California and must be fully insured by either the FDIC (Federal Deposit Insurance Corporation) or SIPC (Securities Investor Protection Corporation).⁶¹ After a minor reaches the age of eighteen or becomes emancipated, he or she may apply for the release of his or her earnings from the blocked account.⁶²

55. *Id.* § 6752(b).

56. *Id.* § 6752(c)(2)–(4).

57. Hardin, *supra* note 28, at 384.

58. See Sally Gaglini, *How Key States Handle Contracts for Minors*, 13 ENT. L. & FIN. 1, 5 (1997).

59. *Id.*

60. L.A. SUPER. CT. R. 14.8(c) (Cal. 1998).

61. Gaglini, *supra* note 58, at 1, 5.

62. L.A. SUPER. CT. R. 14.8(d)(2) (Cal. 1998); see, e.g., Dane S. Ciolino & Monica Hof Wallace, *Recodifying Emancipation: A Précis of the 2009 Revision of Louisiana Emancipation Law*, 56 LOY. L. REV. 135, 135 (2010) (discussing the rights of an emancipated minor including the right to administer property and the right to create conventional obligations—including contracts).

To assure that the minor's assets were in fact preserved for the benefit of the minor, the Los Angeles County Superior Court required that "all orders issued for the setting up of a blocked account . . . shall require the [minor's employer], through its counsel, set forth in a declaration under penalty of perjury that the [minor's] funds are being deposited into an account that has been blocked pursuant to court order."⁶³ Further, the "declaration shall state that the initial deposit made into the ordered blocked account was accompanied by a copy of the order issued by the court and a cover letter identifying the minor, the account number, the trustee, and that the deposit and account are blocked pursuant to court order."⁶⁴

All of these requirements were established as a result of the negative experiences of some of the most widely known and recognized entertainers, many of which were described above.

C. Further Changes

On January 1, 2000, California once again amended Coogan's Law. The amended law now covers *all* contracts, not just those approved by the courts.⁶⁵ The revised law provides that the money earned by the child is to be considered the sole property of the minor child.⁶⁶ The new legislation ensures that a child's money will always be set aside in a trust fund and that the trust cannot be touched by anyone but the child.

IV. APPLYING AND EXTENDING PRINCIPLES TO ATHLETIC CONTRACTS: A BLENDING OF THE CALIFORNIA AND NEW YORK APPROACHES

Thom Hardin has noted that "petitions for contracts that involve professional sports services are virtually nonexistent."⁶⁷ A second practical problem is that no explanation was provided as to the type of athletic contract or athlete the California statute covers; the three examples cited were *boxers, wrestlers, and jockeys*—hardly the type of athletes envisioned by many Americans as they would observe

63. L.A. SUPER. CT. R. 14.8(c) (Cal. 1998).

64. *Id.*

65. CAL. FAM. CODE § 6752(c)(1) (West 1999).

66. *See id.* § 771(b) (providing "the earnings and accumulations of an unemancipated minor child related to a contract of a type described in section 6750 shall remain the legal property of a minor child").

67. Hardin, *supra* note 28, at 387.

younger and younger athletes enter the ranks of professional basketball, baseball, hockey, and soccer.

Erica Siegel offers an insight into a practical resolution of the problem and the possible content of a model statute or policy that might be uniformly applied to a wide variety of American sports and to younger athletes who are making their way into the professional ranks. Siegel notes that “Coogan’s Law and the corresponding California legislation regarding contracts for child entertainers and athletes served as a model for New York laws concerning the same issues.”⁶⁸ Section 35.03 of the *New York Arts and Cultural Affairs Law*⁶⁹ contains the following language:

A contract made by an infant or made by a parent or guardian of an infant, or a contract proposed to be so made, under which (a) the infant is to perform or render services as an actor, actress, dancer, musician, vocalist or other performing artist, *or as a participant or player in professional sports . . .*⁷⁰

The statute provides that a contract *can* be approved by either the supreme court (New York’s trial court) or the surrogate’s court in order to provide the kind of balance reflected in the many iterations of the California approach so as to assure an employer that a child cannot disaffirm it. Note the language: “If the contract is so approved the infant may not, either during his minority or upon reaching his majority, disaffirm the contract on the ground of infancy or assert that the parent or guardian lacked authority to make the contract.”⁷¹

In addition, the New York law grants the court the ability to set aside and protect part of the child’s earnings. In contrast to Coogan’s Law, where there was a 50 percent cap on the amount of earnings that the judge could set aside, in New York, the judge exercising jurisdiction over the contractual arrangement may set aside as much of the child’s earnings as he or she deems appropriate. New York law also differs from the earlier version of Coogan’s Law in that a contract cannot be approved if it exceeds three years; however, “if the court finds that such infant is represented by *qualified counsel*

68. Siegel, *supra* note 40, at 435.

69. N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 1998).

70. *Id.* (emphasis added).

71. *Id.*

experienced with entertainment industry law and practices such contract may be for a period of not more than seven years.”⁷²

V. SOME SUGGESTIONS

One fact that might prove critical is that most professional sports teams are part of a league that operates generally on the basis of a standard player contract, or SPK.⁷³ In addition, many contractual provisions have been included as a result of collective bargaining agreements⁷⁴ arrived at through negotiations involving the league office, its individual teams, and players (through their union representatives, called player reps). Many of these provisions deal explicitly with protecting the rights of players. An additional factor is that players’ associations require persons who negotiate a contract for any player to be registered with the players’ association and to undergo a comprehensive training program as a precondition for certification as a player’s agent.⁷⁵ The uniformity of league-wide contracting principles and representational requirements for agents would bode well for similarly including standard provisions relating to minors competing on professional athletic teams.⁷⁶

72. *Id.* (emphasis added).

73. For a sample SPK, see *Major League Baseball Uniform Players Contract*, MLB TRADE RUMORS, <http://www.mlbrumors.com/2011/03/major-league-baseball-uniform-players-contract.html> (last visited July 31, 2014). See Simon Bernstein, *Salary Caps in Professional Sports: Closing the Kovalchuk Loophole in National Hockey League Player Contracts*, 29 CARDOZO ARTS & ENT. L.J. 375, 377 n.13 (2011) (providing that the standard player contract “means the standard form contract . . . which will be the sole form of employment contract used for all Player signings . . .”).

74. An individual players’ association operates as the exclusive bargaining agent for all of its members, pursuant to section nine of the National Labor Relations Act. 29 U.S.C. § 159 (Supp. 1935).

75. See *Agent Regulations*, NFL PLAYERS ASS’N, <https://www.nflplayers.com/about-us/Rules--Regulations/Agent-Regulations> (last visited July 30, 2014); *Certified Player Agents*, NHL PLAYERS ASS’N, <http://www.nhlpa.com/inside-nhlpa/certified-player-agents/> (last visited July 30, 2014); *MLBPA Regulations Governing Player Agents*, MLB PLAYERS ASS’N, http://mlb.com/pa/info/agent_regulations.jsp (last visited July 30, 2014); *NBPA Certified Agent Application*, NAT’L BASKETBALL PLAYERS ASS’N, <http://www.nbpa.org/organizations/nbpa-certified-agent-application>; *Player Agents*, U.S. SOCCER FED’N, <http://www.ussoccer.com/about/federation-services/player-agents> (last visited July 30, 2014).

76. Professors Yasser, McCurdy, Goplerud, and Weston list the following as services provided by the typical sports agent: employment contract negotiation; legal counseling; obtaining and negotiation of endorsement and other income opportunities; financial management and planning advice; career planning counseling; marketing through public relations and other means; and dispute resolution. RAY YASSER ET AL., *SPORTS LAW: CASES AND MATERIALS* 515 (6th ed. 2006).

Of course, a legislative consensus would have to be reached on issues such as coverage, exceptions, time frame of validity of the contract—perhaps by closely tracking the major provisions enacted by the legislatures of both New York and California, as well as considering the implications of the federal *Sports Agent Responsibility and Trust Act*, which directly regulates agent contract.⁷⁷

It seems that in any scheme finally adopted, and no matter what might be the individual sport, the minimal requirements should involve: a *requirement of approval* of any contract entered into with a minor by a competent court that would develop expertise on the issues surrounding minors' participation in professional sports; a *set aside of a significant portion of the earnings of an minor athlete* in a secure or blocked account; and a provision that balances the extensive investment of professional teams in training and development of younger athletes with *limitations on a minor's right of disaffirmance* if a contract has been pre-approved. It would also be prudent to *require* that the minor be *represented by an agent, at least in contract negotiations*, who has gained the approval of the respective union and who has benefitted from a professional training and educational program sponsored by the professional players association in those sports where players are required to become members of a player association.⁷⁸

The same model might be employed when an athlete who is a minor engages in competition as an individual in a non-team sport but who is nonetheless required to enter into a contract in order to do so. The minor might be required to select from a list of agents who have received approval in the professional ranks or from a

77. See 15 U.S.C. §§ 7801–07 (2006) (regulating all aspects of student athlete and athlete agent relationship). Player agents are permitted to negotiate player contracts because the player associations have delegated a portion of the “exclusive representational authority” to the registered agents. See *Collins v. Nat'l Basketball Players Ass'n*, 976 F.2d 740 (10th Cir. 1992); *White v. Nat'l Football League*, 92 F. Supp. 2d 918 (D. Minn. 2000). In an arbitration decision, Arbitrator George Nicolau stated: “When representing players, individuals certified by the NBPA do so in the Union's stead and as the NBPA's ‘arm and extension.’ They thus act as the NBPA's agent.” *Nat'l Basketball Players Ass'n v. Stephen M. Woods*, 592 Practising Law Inst. (PLI) 169 (2000) (Nicolau, Arb.).

78. It must be recognized that regulation of agents by players associations or by a business entity or league absent a collective bargaining agreement may be subject to attack on antitrust grounds because these parties would not necessarily be protected by the non-statutory labor exemption. See *H.A. Artists Assocs., Inc. v. Actors Equity Ass'n*, 451 U.S. 704 (1981); *Collins v. Nat'l Basketball Players Ass'n*, 976 F.2d 740 (10th Cir. 1992).

specialized group of contract advisors who have received appropriate professional certification. The model found in the language of the New York statute relating to representation by “*qualified counsel experienced with entertainment industry law and practices*” would be an excellent starting point.⁷⁹ Principles regarding the *set aside of earnings* should be required even if the minor athlete is not a part of a team and has entered into an individual contract with a sports entity or competition in such individual sports as golf, tennis, bowling, etc.

79. N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 1998) (emphasis added). It might also be prudent to consider the *Uniform Athlete Agents Act*, which, as Professor Yasser and his coauthors explain, enumerates certain factors that might serve as grounds for refusal of an applicant for certification as an agent:

[B]eing convicted of a crime that would be a crime involving moral turpitude or a felony; made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent; engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity; engaged in conduct prohibited by the Act; had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal or registration or licensure as an athlete agent in any State; engaged in conduct the consequences of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or engaged in conduct that significantly adversely reflects on the applicant’s credibility, honesty, or integrity.

YASSER ET AL., *supra* note 76, at 525–26 (quoting UNIF. ATHLETIC AGENTS ACT § 6 (UNIF. LAW COMM’N 2000), www.uniformlaws.org/shared/docs/athlete_agents/uaaa_finalact_2000.pdf).

