

**LF100A – Contracts A**  
**Week 7 Homework Prompt**

**Submit one response to the prompt by 11:55 p.m. on Sunday, October 18, 2020. Please use the IRAC format for your response. There is a 1,500-word limit for this assignment.**

**Prompt:**

Joey is 17 years old and has recently graduated from high school and moved out of his parents' home. Joey suffers from a personality disorder that reduces his ability to control his impulses and causes him to act rashly and without thinking through the consequences of his actions. For that reason, Joey was a discipline problem at school and was in and out of counseling for much of his adolescence. Joey's parents had placed him in counseling in an effort to suppress Joey's impulsive tendencies. When money ran short, however, Joey's parents had to take him out of counseling. Joey has been out of counseling for six months. However, he is still on medication to control his impulsive tendencies when he moves out of his parents' home.

After moving out of his parents' home, and shortly after seeing a news story about semi-automatic "assault" rifles, Joey decides to purchase one. He has never owned a gun before, and knows very little about them; he just knows he wants one. He knows that the sale and possession of such rifles in the state where he lives are illegal. However, he heard on the news that there is no law prohibiting the sale of parts for assembly of such guns. Joey searches for a seller of such parts online, and finds Ned, a Gulf War veteran who sells gun parts online and lives in another state.

Although his online gun business is successful, Ned has his own problems. He frequently has "flashbacks" to his experiences in the Gulf, and these flashbacks leave him affected for long periods of time during which he has difficulty sleeping and eating, he is sensitive to loud noises and bright lights, and he has difficulty "thinking clearly" (as he has explained it to his psychiatrist).

Joey logs on to Ned's website using a credit card he has stolen from his father and orders the component parts he will need to assemble his own automatic assault rifle for \$750. Before confirming the purchase, Joey is taken to a page containing the terms of Ned's sales contract. The page allows the customer to scroll down through the terms to read them, and check a box at the bottom of the page stating that the customer agrees to the terms. Joey checks the box without reading the terms. The terms include a clause wherein the customer represents that he is at least 18 years old, the age of majority in the states in which both Joey and Ned live. The terms also include a clause in which the buyer promises that the sale and possession of the parts the customer is buying are legal in the state to which the parts are being shipped. Finally, the terms include a provision that any dispute over the sale will be subject to arbitration in Guam,

and governed by the laws of Guam, where Ned has a vacation home and where the laws are favorable to gun merchants.

Ned receives the order around midnight. He is up late checking his orders because he cannot sleep, having recently suffered a particularly debilitating “flashback.” He does not bother to verify that Joey has agreed to the terms of the sale, does not ask for verification of Joey’s age, and does not notice that the parts are to be shipped to a location in which the sale and possession of semi-automatic assault rifles is unlawful. Ned e-mails Joey a confirmation of the order, explaining that he will ship the parts immediately. Ned does not ask Joey what he plans to use the parts for, even though he is experienced enough in firearms to know what is required to assemble an assault rifle.

The next day, the credit card company alerts Joey’s father to the suspicious charge on his credit card bill. Joey’s father informs the company that he did not make the purchase and requests that the transaction be cancelled. When Ned is notified by the credit card company that the payment is unauthorized, he e-mails Joey that he will not ship the parts until he receives payment.

Assume that the elements of contract formation - offer, acceptance and consideration - are satisfied.

- (A) Ned brings a claim against Joey for breach of contract and tries to enforce the arbitration clause. What defenses can Joey raise?
- (B) Assume for purposes of this question only that after receiving Ned’s e-mail, Joey is able to scrape together the money to pay for the parts and offers to pay Ned himself. However, Ned refuses to go forward with the completed sale. If Joey sues Ned for breach of contract, what defenses might Ned raise?