

**A COMPARATIVE ANALYSIS OF STATUTORY REMEDY UNDER THE
RESTITUTIO IN INTEGRUM PRINCIPLE FOR CONTRACTS INVOLVING
MINORS IN MALAYSIA, ENGLAND AND WALES**

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ABSTRACT

This paper reports the findings of a study on the application of the principle of *restitutio in integrum* as a form of statutory remedy for void contracts involving minors. Within the Common Law legal system in Malaysia, England and Wales, the legal capacity to enter into a contract has been codified as one of the elements of a valid contract. Section 11 of the Malaysian Contracts Act 1950 (Act 136) (CA 1950) explicitly requires age of majority as one of the conditions of a competent person, whereby the legal effect of contracts with minors is void. The research problem stems from the apparent lack of legislative protection for adults who fairly entered into contracts with minors under the CA 1950. While restitution resulting from a void contract can be sought under section 66 of the CA 1950, the relief under the section can only be invoked if the agreement is "discovered to be void". The research endeavours to overcome the unfairness suffered by the adult contracting party through the legislative reform of restitution in contracts involving minors. To achieve this aim, the research conducted a comparative legal analysis of the legislation on contracts entered into by minors between Malaysia, England and Wales. The samples for analysis are the Minors' Contracts Act 1987 (MCA 1987), case law, textbooks, journal articles, and scholarly writings related to this area. The primary and secondary legal resources were analysed using doctrinal and content analysis to compare the legal position on restitution in a minor's contract between both jurisdictions. The research proposed that section 66 of the CA 1950 is amended by taking into account section 3 of the MCA 1987, which leaves the issue of restitution to the discretion of the court based on justice and fairness. It is anticipated that the amendment would protect adults who have fairly entered into agreements for non-necessaries with minors in Malaysia.

Keywords: Contracts Act 1950; legal capacity; minor; void; restitution

Introduction

People of all ages, including minors, enter into agreements every day when they buy goods or services, whether offline or online (Gangwar, 2022). However, not all of these agreements are recognised as contracts. Under the existing contract law applicable to the Common Law legal system, for an agreement to become a contract and be enforceable under section 2(h) of the Contracts Act 1950 (Act 136) (CA 1950), several elements of a contract must be fulfilled. Among the elements that need to be met is legal capacity. Capacity refers to the legal ability of a person to enter into a contract (KC et al., 2023). The requirement of capacity to enter into a contract is stated in section 10(1) of the CA 1950, which reads “*All agreements are contracts if they are made by the free consent of parties competent to contract ...*”.

Section 11 of the CA 1950 further explains the legal qualifications of a competent person who has the capacity to enter into a contract. A competent person is any person who has attained the age of majority, has a sound mind, and is not barred by any law from entering into a contract. In terms of the age of majority, the section has to be read with section 2 of the Age of Majority Act 1971 (Act 21) (AMA 1971) which explains that the age of majority is 18 years and above. This provision implies that any person under 18 is regarded as a minor. Thus, a minor is not competent to enter into a contract subject to several exceptions, including a contract for necessities. While section 11 of the CA 1950 requires a person to attain the age of 18 to enter into a contract, the Act is silent as to the effect of an agreement entered into by a minor. In the absence of an express provision, reference has to be made to judicial decisions made by the Malaysian courts on the legal effect of such agreement. Referring to the case of *Tan Hee Juan v. Teh Boon Keat* (1934) MLJ 96, the Court held that the transfer of land by a minor is void. The same principle was subsequently applied in the Federal Court’s case of *Leha binte Jusoh v. Awang Johari bin Hashim* (1978) 1 MLJ 202. Among the reasons why minors are considered to have no legal capacity to enter into a contract is because they often do not know the effects and consequences of entering into a contract, lack experience, and are easily influenced by manipulation, fraud, and coercion (Kim, 2017).

Although it is clear that subject to several exceptions, a contract made by a minor is void, little has been investigated on the legal implications of a void contract to an adult contracting with a minor. A review of the existing literature indicates that minors have considerable purchasing power, particularly in the context of online goods and services (Preston & Crowther, 2012). Previous research in Malaysia has explored the legal effects of minor’s contracts, exceptions in which minors are bound by contracts, online contracts entered into by minors, and restitution in illegal contracts (Rosmawani & Farah Nini, 2023; Noraida et al., 2018; Naemah & Roshazlizawati, 2011; Trakic, 2022). However, there is a dearth of studies on restitution in minors’ contracts, particularly pertaining to the right to restitution of an adult contracting party who acted fairly when entering into a contract with the minor. To fill in the gap, the research aims to propose a legislative reform of Malaysian contract law to clarify the rights of adult contracting parties seeking restitution for his goods that have already been conferred to the minor.

Research Methodology

The research adopted legal research methodology as the research problem stems from apparent lack of legislative protection for adults who fairly entered into contracts with minors under the CA 1950. The data collection involved primary legal sources (statutes and judicial decisions) and secondary legal sources (textbooks, journal articles, and

scholarly writings). The primary and secondary legal sources were retrieved from the official website of the UK Government, online database of academic publications, as well as Google search engine. The primary legal sources selected as the sample of analysis were the CA 1950 and Minor's Contracts Act 1987 (MCA 1987). The MCA 1987 was selected as a sample of analysis since the UK Parliament has reformed the legal position of restitution in a minor's contract.

Qualitative data analysis involving doctrinal and content analysis was conducted on the primary and secondary legal sources. The research analysed restitution in a minor's contract under section 66 of the CA 1950, and how far the relief under the section can be pleaded by an adult who has contracted fairly with a minor. In addition, a comparative analysis that focused on the substantive provisions of restitution in a minor's contract in the CA 1950 and the MCA 1987 was conducted to find the similarities and differences between the legislation. The findings from the qualitative analysis were used to propose a legislative reform through amendment of the Malaysian Contracts Act for the purpose of protecting adults who fairly entered into a contract with minors in Malaysia.

Findings and Discussion of the Research

Legal position of a contract made by a minor in Malaysia and England and Wales

Malaysia

Before examining restitution under a minor's contract in detail, it is worth reviewing the legal status of a minor contract in Malaysia, England and Wales. In Malaysia, subject to several exceptions, a minor is not competent to enter into a contract. It is important to note the CA 1950 is silent as to the legal effect of a contract entered into by a minor. Hence, reference to the case of *Tan Hee Juan v Teh Boon Keat* (1934) MLJ 96 is necessary to comprehend its legal status. The facts of the case were the plaintiff, a minor, executed transfers of lands in favour of the defendants. The transfers were witnessed and subsequently registered. The plaintiff through his friend applied to the court for an order setting aside the transfers and for incidental relief. The court made an order declaring the transfers void, and refused to order the refund of the purchase price paid by the defendants. In reaching the decision, the court had referred to the case of *Mohori Bibee v Dhurmodas Ghose* [1903] 1 LR 30. In the case, the plaintiff was a minor who had mortgaged his property in favour of the defendant, Brahma Dutt, who was a moneylender, to secure a loan of Rs. 20,000. At the time of the transaction, the attorney, who acted on behalf of the moneylender, had the knowledge that the plaintiff was a minor. The plaintiff brought an action against the defendant stating that he was a minor when the mortgage was executed by him and, therefore, the mortgage was void. The Privy Council held that the combined effect of sections 9 and 10 of the Indian Contract Act 1872 which is in *pari materia* to sections 10 and 11 of the Malaysian CA 1950, rendered such contracts void because of lack of capacity (Zuhairah et al., 2021). The same principle was later applied in the Federal Court's case of *Leha binte Jusoh v. Awang Johari bin Hashim* (1978) 1 MLJ 202 and the Court of Appeal's case of *Khairil Anuar bin Muda & Ors v Sulong bin Muda & Anor* [2017] 6 MLJ 192 to the effect that the agreement entered by a minor is *void*.

Although a minor is not qualified to enter into a contract due to his incompetency, there are exceptions which bind a minor to a contract. Among them are contracts for necessities (section 69 of the CA 1950), scholarship contracts (section 4 of the Contract Act (Amendment) Act 1976), and contracts of insurance (Financial Services Act 2013). Under these exceptions, the contract becomes valid and is enforceable by law (Rosmawani & Farah Nini, 2023; Kamaliah et al., 2018). In brief, subject to a few exceptions as discussed, the legal effect of a minor's contract is void, rendering the contract unenforceable by law under section 2(g) of the CA 1950.

England and Wales

Laws on minors' contracts in England and Wales can be traced back to 1874. Under section 1 of the Instant Relief Act 1874, contracts with infants, unless falling within a relevant exception, were rendered void (Eggers, 2016). The IRA 1874 was later repealed by the Minors' Contracts Act 1987 (MCA 1987) (Probert & Harding, 2018) to the effect that subject to certain exceptions, contracts made by a minor are voidable at his option (Ellinger et al., 2011). A minor is a person under 18 years of age. As opposed to Malaysia, a contract made by a minor in England and Wales is not void. Although the minor is not bound, the other party is bound by the contract. That means the contract is voidable at the option of the minor and not void *ab initio*. Thus, minors have the freedom to choose whether to repudiate or be bound by the contract (Star & Dhankar, 2022). However, Merkin and others (2021) explained that there are a few exceptions to this general rule in which minors are bound by contracts as follows:

- a) contract for necessities;
- b) contracts that are binding on the minor unless repudiated by the minor before they reach the age of 18 or within a reasonable time of doing so;
- c) where the minor ratifies a non-binding contract on attaining their majority.

a. Contract for necessities

The first exception can be seen in section 3 of the Sales of Goods Act 1979 (SGA 1979). Section 3(2) of the SGA 1979 indicates that a minor must pay a reasonable sum for necessities. The term "necessaries" is further defined by section 3(3) of the same Act to mean "*goods suitable to the condition in life of the minor ... and to his actual requirement at the time of the sale.*" Roach (2016) stated that necessities include not only items such as food, drink, and clothing, but also services such as education and medical services. A case in point is *Elkington v Amery* [1936] 2 All ER 86, where it was held that a holiday is a necessity if it were for convalescence after an illness or the minor's condition of life is such that holidays spent in hotels were an inevitable part of it.

b. Contracts that are binding on the minor unless repudiated by the minor before they reach the age of 18 or within a reasonable time of doing so

Certain contracts made by minors are voidable but become valid when the minor attains majority, unless they are repudiated before or within a reasonable time after he reaches the age of 18 (Macdonald et al., 2014). Common examples of contracts that fall within this category are contracts to acquire interest in land or to acquire shares in a company (Poole, 2016). If the minor decides to repudiate the contract, the minor can recover money paid or property transferred only if there has been a total failure of consideration (Merkin et al., 2021). In other words, if the minor did not receive any benefit from the contract, the minor has grounds to recover what was exchanged. Conversely, if the minor did benefit from the contract, they cannot reclaim what they traded. This principle was applied in *Steinberg v. Scala Ltd* [1923] 2 Ch 452. In this case, the contract involved the minor purchasing shares for the required amount. The Court ruled that since there had been no failure of consideration, the minor could not recover the money paid to the company.

c. Contracts ratified on majority

Previously, under the Instant Relief Act 1874, enforcement of a ratification relating to minor's contracts was prevented. However, this Act was repealed by the MCA 1987, thus reinstating the common law rule of an enforceable ratification (Chandler, & Brown, 2007).

In general, contracts which are not for necessities nor involve continuous rights and duties are not binding unless ratified by a minor within a reasonable time after reaching the age of majority (Beatson et al., 2020). Although not binding on the minor, the contracts are binding on the other party. This is because the rule exists to protect the minors and not to prevent any party from entering into a contract (Merkin et al., 2021). Thus, the minors can choose to ratify the contract expressly or impliedly on reaching the age of 18.

Legal Framework of Restitution in Agreement Entered by a Minor in Malaysia, England and Wales

Malaysia

In Malaysia, the effect of a minor's contract is void, rendering the contract unenforceable by law under section 2(g) of the CA 1950. This raises the question of whether an adult who enters into a contract with a minor can seek restitution for his goods that have already been conferred on the minor. The principle of restitution can be found in the CA 1950. Apart from the provisions in Part VI which contain sections 69 to 73, section 66 of the Contracts Act is also based on the doctrine of *restitutio in integrum*, which contains the principle of restitution, aiming to prevent unjust enrichment (*Abdallah Syed Ismaeel Co v Evermaster Wood Product Sdn Bhd (In Receivership)* [2011] MLJU 1485). The term "restitution" can be defined as giving back or generally restoring a previous situation which has been altered (Zatorski, 2023). Meanwhile, the term "unjust enrichment" refers to a situation where one party has unfairly benefited or gained at the expense of another (Tang, 2021). A void contract gives rise to a right to restitution (Birks, 1993). When the agreement is unenforceable, it would be fair to put the parties in the original condition where they were before entering into the contract. This was explained by the Federal Court case of *Tan Chee Hoe & Sdn Bhd v Code Focus Sdn Bhd* [2014] 3 MLJ 301, where it was decided that the right to restitution may arise out of a failure of a contract.

Under section 66 of the CA 1950, there are two terms used, which are "agreement" and "contract". For the former, the section states, "*When an agreement is discovered to be void*". Meanwhile, for the latter, the section mentions "*when a contract becomes void*". For the former, it means that the agreement creates no legal obligations to perform. Meanwhile, for the latter, initially the contracts are valid, but become void because of subsequent impossibility (Rachit & Anju, 2021). An example of the former is an agreement entered into by a minor. This is because such an agreement is not considered to exist in the first place due to a lack of capacity (Swaminathan & Surana, 2021). That said, it does not mean that when an agreement is void because of a minority, section 66 of the CA 1950 can be automatically invoked to seek restitution. This is because a careful reading of section 66 of the CA 1950 sets out some prerequisite conditions for the application of the section. For a better understanding, section 66 of the CA 1950 is reproduced below:

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

This section shows that to seek restitution under the section, the agreement is discovered to be void (*Shanmuganathan a/l Venugopal v Azizie bin Din* [2015] MLJU 1967). Hence, a brief reading of this section implies that the contracting party must prove that he had no knowledge of the other party being a minor before entering into the agreement. If the contracting party already knew about the other party's status as a minor from the very beginning and did not discover it later, the question may arise as to whether it can fall within the ambit of section 66 of the CA 1950. The issue of the plaintiff's lack of knowledge about the voidness of the agreement is a prerequisite condition for a successful relief under section 66 of the CA 1950 and has long been debated in court. What happens if the plaintiff already knows about the voidness of the agreement due to illegality or minority?

Can it affect the plaintiff's chance to succeed in his claim for restitution under this section? In *Leha bte Jusoh v Awang Johari bin Hashim* [1978] 1 MLJ 202, the respondent, who was a minor, alleged that he entered into an agreement to purchase certain lands belonging to the estate of Mat bin Jusoh (the deceased) where the appellant was the administratrix. The learned trial judge held that the agreement was void. The judge further ruled that, since the purchase was paid in full and the respondent was allowed into possession of the land, a constructive trust had been created and the deceased held the lands in trust for the respondent. The appellant appealed. The appeal was allowed, and the court ordered the appellant to repay the \$5000 purchase price to the respondent (minor) on the respondent's vacating the lands. This decision was made pursuant to section 66 of the Contracts Act. This case shows that the lands that were conferred on the minor should be restored to the appellant as a condition for the return of the former's money. Although section 66 of the CA 1950 was referred to by the Federal Court, no analysis was provided regarding its application (Krishnan & Abdul Majid, 2019), particularly the court's interpretation if the party was aware of the minor's status before entering into the agreement with the latter.

Besides *Leha bte Jusoh*, no case law pertaining to the plea of restitution under section 66 of the CA 1950 stemming from a minor contract can be found based on a case search from CLJ Prime and Lexis Advanced Malaysia. Hence, reference is made to the plea of restitution under the same section, due to the contract being void by reason of illegality. The discussion remains relevant to comprehend the court's interpretation of the issue, given the fact that the legal effect of both contracts entered into by a minor (*Tan Hee Juan v Teh Boon Keat*), and illegal contracts (section 24 of the CA 1950) is the same, which is void. Among the early cases discussed regarding this issue is the Federal Court's case of *Ng Siew San v Menaka* [1973] 2 MLJ 154. In this case, the respondent (Menaka), a licensed moneylender, provided the appellant with a loan in Menaka's personal name and the loan was not made in the registered name of the moneylender, thus violating section 8(b) and (c) of the Moneylenders Ordinance. When the appellant defaulted, Menaka sought to auction the pledged property. The appellant argued that the loan was illegal, and the Federal Court agreed, dismissing Menaka's auction request. However, the Federal Court held by split decision that Ng Siew San must repay the loan amount and interest to Menaka under section 66 of the Contracts Act 1950. In reaching this decision, the Federal Court emphasised that Menaka was unaware of the loan's illegality when it was made. The judgement explicitly highlighted that Menaka's lack of knowledge about the illegality was a prerequisite for being eligible for restitution under section 66 of the CA 1950.

However, Tracic (2022) noted that the words "discovered to be void" have been given a wider interpretation by the court in the Federal Court's case of *Tan Chee Hoe & Sons Sdn Bhd v Code Focus Sdn. Bhd.* [2014] 3 CLJ 14. In this case, the plaintiff (buyer) and defendant (seller) entered into a sale and purchase agreement (SPA) for the sale of shares in a company, with the main focus on acquiring a piece of land owned by the company. The SPA outlined a 10% down payment, with the remaining amount due upon the defendant delivering vacant land. As the relationship soured, the plaintiff claimed the defendant breached the SPA by not delivering the land, while the defendant argued the plaintiff was in breach by not making the full payment. The defendant also stated that approval from all company shareholders in an extraordinary general meeting, as per the Companies Act 1965 (Malaysia), was a condition precedent. However, before executing the SPA, the plaintiff sent a side letter waiving the shareholder approval condition. The main issue for the Federal Court was whether this side letter, which violated a mandatory statutory requirement under section 132C of the Companies Act, rendered the SPA void. The court needed to determine if the defendant was obligated to return the 10% down payment under the Contracts Act 1950. The Court held that the SPA was an illegal agreement, not because of its terms, but because of how it was to be performed. As for the 10% down payment, the court ordered its restitution to the plaintiff as per section 66

of the CA 1950. Trakic (2022) argued that if section 66 is construed as it was in *Ng Siew San v Menaka*, it cannot be asserted that the agreement was discovered to be void. The plaintiff already knew about the illegality before it was discovered. Nonetheless, the plaintiff's wrongdoing did not prevent him from receiving restitution.

Reverting to the minor contracts, applying the restrictive interpretation as decided in *Ng Siew San v Menaka*, if an adult contracting with a minor already knew he contracted with a minor before the agreement, it is very unlikely for an adult contracting party to succeed in a restitutionary relief claim under section 66 of the CA 1950. In other words, prior knowledge of the minor's actual age will cause the plea of restitution to fail. Sinnadurai (2011) emphasised a similar interpretation, stating that for restitution under section 66 of the CA 1950 to succeed, the party seeking it should not have been aware of the illegality when entering into the agreement. On the same note, Rachit and Anju (2021) argued that if an agreement was void since the beginning and both parties knew this fact, section 65 of the Indian Contracts Act, which is in *pari materia* with section 66 of the CA 1950 does not apply. On the other hand, applying a flexible interpretative approach, the plea for restitution might succeed on the grounds that having an agreement with a minor is not illegal *per se* but is merely void if it does not fall under any exception. Swaminathan and Surana (2021) argued that the application of the section should not be treated the same as other illegal contracts and made subject to the *ex turpi causa* principle which means a person will not be able to pursue a cause of action if it arises from his own illegal act. The reasons behind this are twofold: firstly, the court will not enforce a contract that is expressly or impliedly forbidden by statute; secondly, the court will not allow a claimant to recover a benefit from his own wrongdoing (*Stone & Rolls Ltd (in liquidation) v Moore Stephens (a firm)* UKHL 39; Poole, 2016). In contrast, unlike cases involving clearly wrongful actions, contracts with minors are not illegal but merely void. The decision to enforce such contracts depends on several factors such as protecting minors from hasty decisions and considering the interests of those who fairly deal with the minor (Swaminathan & Surana, 2021). The foregoing analysis shows that there are two lines of interpretations; one which is more restrictive, and another which is a more flexible interpretation over the same phrase "discovered to be void." This may give rise to legal uncertainty. For the former, when an adult knowingly enters into a contract with a minor, it is very unlikely for the adult to obtain restitutionary relief under section 66 of the CA 1950. Meanwhile, by adopting the latter interpretation, even if the adult is aware of the minor's status before the agreement, the plea for restitution might succeed on the basis that agreements with minors are not inherently illegal but rather void unless they fall under specific exceptions such as necessities, thus rendering the contract to be valid.

Besides the CA 1950, remedies can also be found in the SRA 1950. The relevant provision to be discussed is section 40 of the SRA 1950. The section provides that "*On adjudging the cancellation of an instrument, the court may require the party to whom the relief is granted to make any compensation to the other which justice may require.*" It is worth noting that section 40 of the SRA 1950 is in *pari materia* with section 41 of the Indian Specific Relief Enactment 1903 (Cheong, 2016). This latter section was considered in *Tan Hee Juan v Teh Boon Keat*, whereby the High Court ruled that the phrase "may require" in section 41 gives the court discretion to issue such an order. However, this discretion would be exercised only where the parties are in such a fiduciary relationship to one another that it would be unfair to the defendant to allow the plaintiff to retain both the benefit of the purchase money standing as part of his estate and also to recover the property. Further, Hereford J in this case opined on the principle behind the section giving the court to order a refund where the minor had obtained an unfair advantage "... *it would be unfair to the defendants that if the infant has had the advantage of the purchase money or the proceeds of the mortgage, he should have the advantage of being the owner of the property as well without being called on to return that money or those proceeds.*"

It is important to note that matters relating to “cancellation of an instrument” are discussed in section 38 (1) of the SRA 1950, which states:

“Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.”

Krishnan and Abdul Majid (2019) argued that when sections 38 and 40 of the SRA 1950 are read together, even if the latter section applies to minor’s contracts, it will be limited in its application because section 38 only applies to written instruments. This does not reflect the general definition of a contract that can be formed not only in writing, but also orally or through conduct or any combination thereof.

The position in England and Wales

By comparison, in England and Wales, matters on restitution are governed under section 3 of the MCA 1987. Section 3 (1) of the Minor’s Contract Act 1987 provides:

Where —

- a) A person (‘the plaintiff’) has after the commencement of this Act entered into a contract with another (‘the defendant’), and
- b) The contract is unenforceable against the defendant (or he repudiates it) because he was a minor when the contract was made,

The court may, if it is just and equitable to do so, require the defendant to transfer to the plaintiff any property acquired by the defendant under the contract, or any property representing it.

The provision leaves the issue of restitution to the discretion of the court. It shows that while some contracts entered into by minors may not be for essential items (necessaries), minors are not entirely exempt from the legal consequences of contracts they enter into (Jones, 2011). For instance, A, a minor, bought some non-essential items—a racehorse—from B for \$10,000 but has not paid or returned the horse. The court has a discretion to order A to return the horse (Davies, 2018) if the court considers it is just and equitable to do so as succinctly stated in section 3 of the MCA 1987. Thus, Charman (2013) argued that if the contracting party took advantage of the minor’s inexperience or exploited him, the court might not order restitution. In other words, the court has to strike a balance between the need to preserve the minor’s protection and considering the interests of the other party who provided benefits to the minor. Reddy & Johnson (2011) argued that the MCA 1987 aims to improve the position of those who fairly deal with minors. Hence, non-necessary items can no longer be retained, and the minor cannot be unjustly enriched (Reddy & Johnson, 2011).

In short, this section does not stipulate a condition that it must be “discovered to be void or voidable” before restitution under it can be sought. That means the fact that a contracting party knows that he/she is entering into a contract with a minor will not prevent the former from seeking restitution for non-necessary goods under the section, as long as it is deemed just and equitable to do so.

Table 1 below explain the differences between the plea of restitution stemming from minor contracts in Malaysia, England and Wales:

Table 1: Differences between restitution in Malaysia and England and Wales

| Features | Malaysia | England and Wales |
|------------------------|---|---|
| Relevant law | Restitutory remedy stemming from void contract due to minority can be sought under section 66 of the CA 1950. | Restitutory remedy stemming from voidable contract due to minority can be sought under section 3 of the MCA 1987. |
| Application of the law | Section 66 of the CA 1950 is not a specific remedy that can be obtained due to voidness of contract by reason of minority but also from other factors, including illegality. | Restitution under section 3 of the MCA 1987 was designed to provide restitutory relief arising from contracts with minors with the aim to not only protect the interests of minors but also to safeguard the rights of those who fairly enter into contracts with them. |
| Condition | The condition stipulated under section 66 of the CA 1950 is that the agreement is “discovered to be void.” This condition has been subject to two interpretations, which may lead to uncertainty. | No condition similar to section 66 of the CA 1950 is stated in the MCA 1987, as long as it is deemed just and equitable for the court to order restitution. |

Conclusion and Recommendations

The legal position with regards to the right to restitution for an adult who fairly entered into a contract with a minor in Malaysia is subject to the strict statutory condition “discovered to be void”. This term has been interpreted inconsistently, leading to two interpretations. The restrictive line of interpretation implies that if an adult contracting with a minor already knew he contracted with a minor before the agreement, it is very unlikely for an adult contracting party to succeed in a restitutory relief claim under section 66 of the CA 1950. The section does not apply if the adult contracting with a minor already knew he was contracting with a minor before the agreement. This provides less protection to adults who deal fairly with minors. Meanwhile, in applying a flexible interpretative approach, the plea for restitution might succeed on the grounds that having an agreement with a minor is not illegal per se but is merely void if it does not fall under any exception. These two different interpretations of the same term “discovered to be void” may give rise to legal uncertainty. Moreover, invoking section 40 of the SRA 1950 may also cause some difficulties because as posited by Krishnan and Abdul Majid (2019) that the combined reading of sections 38 and 40 of the SRA 1950 suggests that even if the latter pertains to contracts involving minors, its scope would be restricted. This limitation arises because section 38 only applies to written instruments. This differs from the general definition of a contract, which includes not only written agreements but also oral, conduct and a combination thereof.

It is worth noting that the legal position of restitution in Malaysia is different from England and Wales, where the MCA 1987 leaves it to the discretion of the court to decide on the right to restitution of an adult who fairly entered into a contract with a minor. Therefore, it is proposed that section 66 of the CA 1950 is amended by taking into account section 3 of the MCA 1987, which leaves the issue of restitution to the discretion of the court based on justice and fairness. In other words, the court may consider various factors including circumstances surrounding the making of the contract to determine whether or not it is fair and just to require the minor to transfer to the plaintiff any property acquired by the minor under the contract. The fact that the adult contracting party was aware of the minor status should not bar his plea for restitutory remedy under section 66 of the CA 1950 because various factors must be taken into account by the court in reaching the decision. Denying the contracting party’s right to restitution to his goods that have already been conferred on the minor just because he knew that the other person was a minor without engaging in

deception or coercion is unfair and unjust to the contracting party. This is because simply disregarding the interests of a contracting party who, in good faith, enters into a contract for non-necessaries with a minor will lead to harsh consequences for them. This approach can provide better protection to the adult contracting party in terms of the right to restitution of property and at the same time prevent unjust enrichment to the minor.

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