

MINORS CONTRACTS:
ITS LEGAL AND EQUITABLE EFFECTS

A Research Paper
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•PREFACE

The objective of this project paper is to look into the agreements made by minors whose contractual capacity has long been considered a controversial matter. Now the capacity of minors to contract has been fixed at 18 and this reduction from 21 was mainly due to the interferences of legislative bodies in introducing measures to make an agreement in which a minor is one of the parties, more equitable between the parties. But issues which are questionable and disputable still arise from the agreements made by those under 18. This matter needs to be scrutinised especially when it is concerned with the division of powers and rights of the contracting parties. Therefore in discussing that area, the writer will focus on the legal and equitable effects of such agreements. The discussion will be made by looking at the position under the Contracts Act, 1950 with references to be made to English Common Law and Indian authorities which are applicable.

The introduction of an Amendment Act, 1976 of the Contracts Act, 1950 with regard to scholarship agreements entered into by minors has brought about some significances in its nature. By its strict application, the distinct changes in it have led the creation of a notion of unequal bargaining of power between the contracting parties. This notion is concerned with the

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CHAPTER I

A. INTRODUCTION

Since contracts are agreements which are legally enforceable, the legal system will not enforce agreements made by individuals and persons who are in the eyes of law incapable of making such agreements. The concept of legal capacity used by law is in the main identical to the layman's concept of what sort of individual or person should be able to be bound in contract and be responsible for his contractual obligations.

Thus both the law and common layman would agree that a human being 10 years of age should not have legal capacity but if the age be raised to 15 years, some of them will be found to agree that such person should be held responsible. But the main concern here is the contractual capacity of persons who are subject to the requirements imposed by the statutory provisions.

Traditionally, in the law of contracts, a person who has not attained the age of majority, is called an infant or a minor. Insofar as the contractual capacity is concerned, the age of majority at Common Law, the Malaysian Age of Majority Act LSI I and the Indian Majority Act 1875 is 18 years. Before that, the position was that the contractual competency was at 21

and the reduction of that age to 18 has left some implications on the rules determining the extent to which such persons are bound by their contracts.

in the past,many of the problems in this area have concerned the contract of persons between 18 and 21,whose contractual capacity is now normal i.e.the capacity of persons above 18 cannot be disputed anymore as the contract will bind on them. But the question whether persons under 18 are bound by their contracts can still arise today,for example,a person under 18 who enters into a scholarship agreement or the contract of young professionals or atheletes,or out of hire-purchase agreement or contract of employment involving infants.Legal and equitable problems can also arise where a claim is made by the infants,either to enforce the other party's part of the contract or to recover back the money or property with : which the infants has parted under the contract.

Therefore,both the legislature and common law have at various times interfered with the freedom of contract to introduce measures to make contracts more equitable between parties. Thus minors,lunatics,purchasers of goods and hirers of goods, all enjoy, the degree of protection acquired not by their own bargaining strength but by judicial and legislative interventions.In one of the trends of providing such measures,the laws have to some extent been countered by amendments in the