

Should the legal age of majority be reduced to 18 years

Law



Minority is one of the most important factors that influence a person's status, not only in South Africa but all over the world. The legal view in South Africa is that because people's juristic acts are dependent on the expression of will, they say that only people who have some understanding and judgement should have the capacity to act. So in this view one can see that they are leaning away from eighteen because they say that at that age, one is not capable of fully understanding what it is that they are doing in the legal sense.

Another way of saying it is to say that the law confers capacity to act and enter into juristic acts, only (this is the important part) if the person can understand the nature, purpose and consequences of their actions. Now obviously the younger one is, this is going to effect their powers of judgement. So for that reason the law has put in place rules that protect the young by limiting their capacity to act and participate in legal interaction. And in ending, from a legal point of view a young person does not have the intelligence or the experience to participate in legal dealings, independently, before the age of 21 years.

Ages of legal importance

Generally speaking, at the age of 21 people acquire full capacity to enter into legal interaction. There are however, some other earlier ages of legal importance. For example, those children below the age of 7 (known as infantes) have no capacity to act, and they may not be held accountable for their actions, whether criminally or delictually. Between the ages of 7 and 14, children are rebuttably presumed not to be criminally or delictually

responsible, except at the age of 14 when a rebuttable presumption arises that they are responsible.

From 14 to 21 years old minors have a limited capacity to act, which means that they can only enter into contracts with the assistance of their guardians or parents. Over 10 year olds must consent to their adoption. The age of puberty in a girls is set at 12 years, and 14 for boys, this means that they are forbidden and may not get married below this set age. At age 18 years a minor may take and deal with policies on their own life, they may also acquire a domicile of choice and even approach the high court for a declaration of majority. Also at age 18 years a minor loses the special protection afforded by the children's rights clause of the Constitution of the Republic of South Africa 108 of 1996.

The Legal Status of a Minor

Minors are children between the age of 7 and 21, and they have a limited capacity to act. They do however have the capacity to enter into legal contract as long as their guardians assist them. They can however enter a contract without their guardians as long as the contract improves their position without imposing duties on them. For example a minor may accept a donation without the guardians consent.

The reason that a guardian must assist a minor is to protect them from their immaturity of judgement. The guardian's assistance can take many forms. In the first instance the guardian may act on the minors behalf. In the second instance the minor ma enter into contract with the guardians consent. And

the third instance is when the guardian ratifies the agreement after it has been concluded. Ratification is when the guardian validates the contract. A minor once reaching majority may also ratify a contract initially concluded without the guardian's consent.

Capacity to Incur Delictual and Criminal Liability

This deals with whether a minor can be held accountable for their unlawful actions, they can only be held accountable if they knew the difference between right and wrong, the wrongfulness of their actions, and to act in accordance. In terms of the common law it is stated that minors between the age of 7 and 14 cannot be held accountable for their action, criminal and delictual. However if evidence were given to show that the child was capable and knew what the consequences would be, certain procedures would have to be followed.

Termination of Minority

The attainment of majority has been fixed by statute at the age of 21 years for both sexes. The South African Law Commission has recommended lowering the age of majority to 18 years and has included a clause to this effect in its draft Children's Bill.

There is a way of obtaining majority before the age of 21, and that is to marry. Once you have been married you become a major for all purposes. If death or divorce dissolves the marriage before the person turns 21, the person still remains a major. However an annulment of a voidable marriage does restore the minor's limited capacity.

<https://assignbuster.com/should-the-legal-age-of-majority-be-reduced-to-18-years/>

In common law the head of state could grant a minor a concession to act as a major, and this was known as *venia aetatis*. This would make the minor, in the eyes of the law, a major, with the exception that the minor could not alienate immovable property or burden it with mortgage unless this capacity was expressly conferred.

The Age of Majority Act 57 of 1972

It states that anyone who has reached the age of 18 years may apply to the high court to be declared a major. The application form must be in the form of a notice of motion and must be supported by an affidavit stating the following:

- a) the applicant's full names, ordinary place of residence and date of birth;
- b) particulars which enable the court to judge whether the applicant is a fit and proper person to manage her own affairs. In this regard the court must have due regard to the applicant's behaviour, mental development and business acumen;
- c) whether the applicant lives with her parents and, if so, whether she intends to continue living with them;
- d) whether he applicant's parents or guardian supports the application;
- e) full particulars of any immovable property of which the applicant is the owner or will probably become the owner;

- f) full particulars of any movable or immovable property the applicant owns and which is subject to a fideicommissum, usufruct or similar right, or which is subject to the control of the master, a tutor, curator or administrator;
- g) any other relevant information which enables the court to judge whether it is " necessary or desirable in the interests of the applicant to grant the application".

If the court declares the applicant a major, she or he is deemed to have obtained majority " for all purposes". Meaning that the court cannot make conditions to withhold any normal incidents of majority.

The Child Care Act, discussion paper

In this discussion, all of what has been said above is discussed. It discusses how a minor may obtain majority, and then at the end states that if the if the age of majority is advanced to 18 years, then little justification for the retention of the Age of Majority Act 57 of 1972 remains and the Act can be repealed.

Conclusion

Although there is the issue of reducing majority to the age of 21 years, we should all appreciate that even as minors, or majors now, that we were given enough freedom. This age between 18 and 21 is our learning period where we can make mistakes and learn from them without the full force of the law falling on us, this is the time when we mature and become more responsible, and after this time we become the people we were made to be.