

Agreement made by minors are not contracts

Law



An agreement is something made between two parties where the both of them are on agreeable terms. For example, A agrees to buy the cake while B agrees to buy dinner. The parties have agreed on their respective duties and rights and thus have reached agreement. 1

While a contract is a string that binds the parties together making them accountable to each other. It is an agreement which is legally binding between the parties. 2 The Contracts Act 1950 is the law that governs contracts. There are 7 elements that make up a contract. These 7 elements are offer, acceptance, intention to create legal relations, consideration, certainty, capacity, consent and legality. 3

A minor on the other hand, is a person who is under the age of eighteen who enters into a contract and whose liability under that contract is regulated by the recent Minors' Contracts Act. 4 Traditionally the age was anyone who was of 21 years old and younger. Back then, minors were known as infants and were under the common law, and then it was changed to the Infants Relief Act 1874. However, later on in 1969, the Family Law Reform Act not only changed the term 'infant' to 'minor' but also reduced the age from 21 to 18.

A person who is of the age of majority which is 18, must be of sound mind and is not disqualified from contracting by any law 5 can make a contract. This shows that a minor has not reached the age of contractual capacity and therefore the agreements made by them should not be considered as contracts.

A minor may not be mature enough to understand the contents of the contract to be able to enter it. Besides that, there are some adults who knowing that they are dealing with minors, take advantage of that. For example, Restaurant A hires a minor to work at the restaurant as a waiter. However, he not only has to serve the customers but also has to wash the toilets, be the cashier and also close the counter after hours. His wages is however, still the same. This shows that the employer is taking advantage of the minor because his job requirement is to be a waiter, not having to do other things except to take orders from the customers and also to serve them, plus there was no increase in his pay either.

The Minors' Contracts Act 1987 was made to protect minors from entering into unfair contracts and also to protect adults that deal with minors⁶. There are however, 3 exceptions that allow minors to make contracts. These contracts are valid contracts.

The first exception is that the contract was made on necessities.

Necessaries usually mean items that are essential in surviving. For example, food, clothing and shelter. The wants of a person is different to that of the necessities. A want is something that is fulfills the pleasure of the person, whereas the need is the requirement of daily essentials. Under the Sale of Goods Act 1979, s. 3(2) 'necessaries' means 'goods suitable to the condition in life of the minor or other person concerned and to his actual requirements at the time of sale and delivery'. ⁷

For example, John, a minor who is still studying purchases a branded pair of sneakers worth RM 1, 800. As a student, he does not need to have a branded

pair of sneakers, a normal pair that ranges from RM 100- 200 is just as good. Besides that, he does not have the capacity to pay so much with his own money. The landmark case of the necessities is the case of 'Nash v Inman'8. In this case, a Cambridge University undergraduate refuse to pay a tailor that sold 11 fancy waistcoats to him. The minor has sufficient clothes therefore the 11 fancy waistcoats were not necessities. Hence, the contract was unenforceable.

Another case is 'Mohori Bibee v Dharmodas Ghose' 9. The defendant (a minor), borrowed a sum from the plaintiff by executing a mortgage of his property in favor of the defendant. Subsequently, the defendant sued for setting aside the mortgage. The mortgage is not valid, therefore the plaintiff can't recover the sum advanced to the defendant, because a minor is not competent to contract and hence the minor's contract is void.

In the case of 'Peter v Fleming'10, an undergraduate (who had a wealthy father) purchased rings, pins, and a watch chain to be his necessities. The court needed to judge whether these items purchased were necessities for him while taking into consideration his status and actual needs at the time he entered into the contract. However, in the next case which is 'Ryder v Wombwell'11, a minor purchased a pair of cufflinks (i.e. 1/225) and an antique goblet (i.e. 1/215). With an annual income of i.e. 1/2500, these items could be considered as necessities to him. The court left their judgment aside as the evidence could not justify such findings properly.

Another case would be 'Chappel v Cooper'12. An undertaker sought to recover the cost of a funeral carried out at the request of a widow for her

husband, the widow was still a minor. The minor was held liable to pay for the services as being necessary to the minor at that point of time.

When concerning a contract with minors, it would otherwise be enforceable against the minor as a contract for necessities unless it contains terms which are harsh or onerous on him. Such is the case of 'Fawcett v Smethurst' 14 a minor was held not to be bound by a contract for the hire of a car which was found to be void; even though it was a necessary service in this case. This is because the contract included a term making him liable for damage to the car whether or not the damage was his fault.

Besides that, the contract of service allows minors to make contracts and is enforceable against a minor. The contract of service is where a person agrees to employ another as an employee and that other agrees to serve his employer as an employee. It also includes an apprenticeship contract. 15 Minors are bound by the contract of service only if it is beneficial to them. For example, if Lily, a master in patisserie agrees to take in Sally (a minor) to be her apprentice, then this contract is valid as it beneficial for Sally.

One case which involves a minor in the contract of service is 'De Francesco v Barnum'16. In this case, a 14 year old girl was entered into a stage-dancing apprenticeship with De Francesco. She was completely subject to De Francesco's commands. The agreement also allowed him to send her abroad, and to put an end to the agreement at any time. He, however, made no commitment to employ her, and stated that if he did do so it would be at a very low rate of pay. Consequently, the court held that the contract was not for the minor's benefit, and could not therefore be enforced against her.

Another case is that of 'Roberts v Gray'.¹⁷ Roberts was a famous billiards player. He agreed to take Gray (a minor) on a world billiards tour and to pay his expenses. Before the tour began, Gray pulled out from the contract. The Court of Appeal held that Roberts could recover damages, even though Gray had not received any instruction from him because Roberts had spent time and trouble and incurred liabilities in making preparation for the tour. Besides that, this tour was beneficial to Gray as it was to teach Gray on billiards.

In 'Clements v London and North Western Rly Co'¹⁸, a minor entered into a contract of employment as a porter with the railway company, promising to accept the terms of an insurance scheme to which the company contributed and to forego any claims he might have against the company under the Employers' Liability Act 1889. The courts held that the contract was for his benefit and that he was bound to it.

Besides that, in the 'Mercantile Union Guarantee Corp v Ball'¹⁹ case, a minor who operated a haulage business was not held liable on a hire purchase contract that he had entered into in relation to the business because this trading contract did not have any element of education that would be beneficial to the minor.

The second exception that allows a minor to go into contract is contract for scholarship. The Contracts Act 1976 provides that a scholarship agreement entered by an infant is valid when the award, bursary, loan or scholarship is granted by the federal or state government, a statutory authority, or an educational institution such as an university²⁰.

For example, Jacqueline (a minor) receives a full scholarship by College A. If she accepts this scholarship, it will become a contract between her and the college even though she is a minor. She would then have to make sure that her grades would maintain at a certain level in order to prove that she is capable of getting this scholarship. If anything happens, and she suddenly decides to drop out from the college, she would lose the scholarship from the college.

The third exception that allows a minor to enter a contract is the contract of insurance. Under the Insurance Act 1963 (Revised 1972), an infant over the age of ten may enter into a contract of insurance. However, if he is below the age of sixteen, he can only do so with the written consent of his parents or guardian²¹.

An example is Mike, a minor, decides to purchase insurance in order to protect himself. So if there is any unforeseen event, the insurance would be able to cover the costs. However, due to the fact that he is a minor, he would have to get the written consent of his parents or guardian before being able to enter a contract of insurance.

Contracts that involve minors are usually voidable contracts. This means that the contract is binding on both parties unless the minor avoids it before reaching the age of 18 or within a short period after reaching 18. This includes contract by a minor to buy or sell land, a purported lease by or to a minor, a contract by a minor to buy shares, a contract to bring property into marriage settlement and a partnership agreement²².

The contract can be ratify expressly or impliedly, as long as the minor has reached the age of majority. Ratification is an act when one accepting and giving legal for to an obligation that previously was not enforceable. 23 Besides that, the parent or guardian is never liable for a minor's contract unless the minor acts as his agent, nor can a minor's invalid contract be validated by subsequent parental ratification. 24

The cases for voidable contracts pertaining minors are as follow. 'Steinberg v Scala (Leeds) Ltd'²⁵. The plaintiff, a minor, bought shares in Scala which were not fully paid up. The court case arose because she later decided to reject the contract, and wanted her RM250 back. Her claim failed: the court held that although terminating the contract meant she was free from any future obligation to make payment, she could not get the RM250 back because there had not been a total failure of consideration. She had the shares, so she had got something in return for her money.

In 'Edwards v Carter'²⁶ a minor tried to repudiate on an agreement to pay $\frac{1}{2}$ 1, 500 to the trustee under a marriage settlement about 4. 5 years after reaching the age of majority (at that time 21). Whilst minors can repudiate an agreement, they could face a law suit for liabilities that occurred. It was held to be an unreasonable delay after having already entered adulthood. The other party cannot avoid the contract.

For the case 'Corpe v Overton'²⁷, a minor agreed to enter a partnership to be formed in the future and paid $\frac{1}{2}$ 100 in advance. He repudiated this agreement and was allowed to recover the $\frac{1}{2}$ 100 as there had been a total failure of consideration.

For the case of 'Arunasalam Chetty v Aziz Khan', the lender could recover the full amount that was taken by the minor before he reached the age of majority.

A minor can be made liable in tort whenever he is old enough to know what he is doing. An 18 year old can be held liable for trespassing or for stealing a product from a shop. However, a minor cannot be made indirectly liable on a void contract through being sued in tort, but they can be sued in tort if their acts are a kind not contemplated by the contract. 28

A well-known case would be 'Leslie Ltd v Sheill'²⁹. A minor got a loan of £400 by misrepresenting his age fraudulently. However, the minor can't be sued because the effect of his action would likely to enforce the contract indirectly, which will also challenge the law of contract's protection.

However, in this case, the minor was held liable. 'Burnard v Haggis'³⁰. A minor hired a horse subject to a condition that he was not to use it for jumping. He broke his part of the agreement, and the horse died in a jumping accident. In this case the owner's tort action succeeded because the minor had done an act that was told not to and in doing so had caused the death of the horse.

Contrast to that is the case of 'Jennings v Rundall'³¹, where a minor hired a horse for 'riding' and rode it so hard that it was injured. He was held not liable in tort because all he did was an act contemplated by the contract, although in an excessive manner. Since he was not liable in contract, he could not be made indirectly liable on the contract by bringing a tort action.

Upon researching on the Minors Contract Act and information that are related to minors, we have decided that agreements made by minors are not contract. This is because firstly, law was made so that they are some guidelines for people to follow, if not, people would do as they like and chaos would happen.

Secondly, a minor does not have the capacity and sufficient knowledge to understand what a contract is. A contract does not simply mean a piece of paper where two parties just sign, it is a legal bond between the two parties and it also mean that the two parties have to give full cooperation and also understanding in making the contract work. It involves give- and- take relationship between both parties. Besides that, what if the minor breaches the contract? Would the minor know what the consequences are for breaching the contract or what if the other party decides to file a law suit against him? Being a minor, the person is not mature enough to think what the consequences are or how to deal with a law suit.

On the other hand, some people upon seeing that they are dealing with minors would just take advantage of them without them even realizing. At such a tender age, minors should be protected, not having to be taken advantage or oppressed by other people. Upon saying that, there are some minors who take advantage by lying about their age and enter contracts in order to gain monetary benefits.

There are adults who are skeptical when it comes to dealing with minors because when they deal with minors, they have to be extra careful. Besides that, if the minor breaches the contract, then there is every possibility that

the company would incur unwanted losses. Therefore, the Minors Contract Act 1987 is also to protect the adult that deals with the minor.

Minors should abide by the law by only going into a contract when it is a contract for necessities, contract for scholarship and contract for insurance. They are protected by the Minors Contracts Act 1987 when they enter these contracts. There is no other point for them to enter into contracts. At such a young age, they do not need to purchase cars, luxury goods, houses or enter into businesses. Only when they reach the age of majority, then only would there be a need for those things.