

# Du toit v lotriet case summary essay sample



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### Facts:

The Plaintiff “ Du Toit” entered into a contract to lease his agricultural land for two years, starting on the 15th of July 1918 with the option of sale with the defendant “ Lotriet”. The plaintiff was a minor at the time the contract was entered into in June 1916 and yet the contract was only going to commence after the plaintiff had reached majority. The plaintiff's father (the guardian) did sign the contract on 15th of July 1916 but it is argued that it was merely a mechanical signature as the father did not know what the contents of the contract were and so did not give informed consent. The plaintiff wants the contract to be null and void as if the contract goes through it will not be to the benefit of the plaintiff but to his prejudice.

### Issues:

The main issue discussed in this case is that of whether a contract that is entered into by a minor that only takes effect after the minor has become a major, a valid and binding contract? Two other issues that tend to arise in the case are what were the circumstances that led to the father's signature being on the contract? Did the guardian have informed consent at the time of signing the contract or was it simply a mechanical signature? The other issue raised refers to whether the contract is to the prejudice of the minor and if so the contract will be null and void. Maasdorp CJ:

Law: the rule of law that applies in this case is a general rule, if it is necessary to enter into a contract which whilst commencing during guardianship, unavoidable extends to a moderate time period after the individual reaches majority, being in accordance with the customs of the country, the ‘ ward’ will be bound by such contracts until the termination

thereof. A guardian however, has no authority to enter into any contract which is only to commence after the termination of the guardianship. The Old Authorities say:

Voet: minors are bound after they reach majority to ratify leases of their landed property made by their guardian's, bona fide (good faith) Van Sande: A minor must continue to abide by any contract that he entered into as a minor with the aid of his guardian when he reaches majority. As the guardian had authority to enter into the contract and so he recommends that the 'ward' do the same. Reasoning:

In the face of the old Authorities we are bound to come to the conclusion that the father had no authority to enter into such a contract as the one in question in this case and consequently no authority to ratify the same. We also consider the contract not to be to the benefit of the minor but to his prejudice after taking into account the pleadings and the evidence and therefore the judgement must go in favour of the plaintiff declaring the contract of July 15th 1916 null and void.

McGregor :

Case Law:

Batch v Frankel (1913, T. P. D, at p306)- when there is no valid confirmation by a guardian the question arises as to whether the contract is valid or void. De Beer v Est de Beer (1916, C. P. D. at p127)- any contract entered into by a minor that is to his prejudice are automatically invalid. The old authorities say:

Sande: guardians are required to provide assistance or supervision to their minor and so once the minor ceases to be such there is no need for assistance, therefore no need for the guardian. Post-majority contracts are not within the ambit of the guardian's authority. Sande does not even consider a new lease which only becomes operative when the minor reaches majority. Voet- When a minor reaches majority they should stand by leases of their property made by their guardian Bona Fide, given the lease runs from before the minor reaches majority. Roman-Dutch Authorities

Lybrecht- A guardian should not contract over a period running into the 'wards' majority. He does not even consider a contract in which its terms only apply when the minor reaches majority. Reasoning:

We can conclude that this contract was one where there was no valid confirmation by a guardian. He refers to the *de beer v Est de Beer* (1916, C. P. D. at p127) case as confirmation to this. Therefore the question we are left with is whether the contract is void or voidable. He concludes that if the contract is null and void, then the case ends and the plaintiff succeeds. If the contract is only found to be voidable he still believes that the contract should be set aside on the grounds that restitution is granted when the facts are out of the ordinary such as in this case. Ward J:

Concurs with Maasdorp and McGregor. In respect of their 'wards' a guardians power should only be influential whilst they are minors and in the absence of special circumstances they should cease to exist once the minor reaches majority, they should not be used to deprive the minor to deal freely with his property upon reaching majority.

**Conclusion:**

Ratio: A guardian has no power to grant a lease of the minor's property to take effect only after the minor attains his majority. As well as this, the contract entered into is too the prejudice of the minor and was entered into without the informed consent of the guardian.

**Outcome:**

The judgment is in the favour of the plaintiff therefore declaring the contract of July 15th 1916 null and void, ordering the ejection of the defendant from the farm and for the defendant to continue to pay rent of £30 per annum until the 15th of July 1916. The defendant is also required to pay the costs incurred by the plaintiff and of the plaintiff's witness expenses.