

# Minors and the Age of Majority: Entering into Contracts with Minors

If I am to enter into a contract with a minor is there anything which I should be aware of?

What is meant by a minor?

A minor is someone under the age of 18 years according to the Births and Deaths Registration Amendment Act (No 1) 2002.

## The Age of Majority

Anyone over the age of 18 is said to be over the age of majority. Prior to 2002 the age of majority was 21, being reduced by this act.

## Contracting with a minor

In what situations would I need to contract with a minor?

There are many situations in which minors would have to enter into contracts, for example when purchasing something they may be required to sign the terms and conditions of sale for particular goods. When purchasing goods they may also enter into an agreement in relation to a warranty.

There may also be times in the sporting context whereby a contract would be entered by a minor; this could even be in relation to their potential employment or for the potential for someone to be employed on their behalf.

Accordingly you can contract with someone under the age of majority, you must just be aware of certain factors when doing so.

## The general position when contracting with a minor

In order to form a legally binding contract the general elements of a contract must be present, for example there must have been an offer, acceptance and an intention to form a legally binding contract. Without all of these elements being in place a contract will not be legally binding.

If all these elements are in place a contract will be legally binding, however, the law presumes that certain people do not have the power to enter into a contract. If you have the above elements and enter into a contract with one of the following kinds of people the contract will be void:

- Children under 7 years of age
- People who are diagnosed as mentally insane
- People whose judgement has been impaired by being very drunk or drugged

There is no exception in the law along the above lines for a minor meaning that a minor is free to enter into a contract with the contract being legally valid.

However, there is an assumption made by the law that a minor cannot fully understand the implications of a contract.

## The implications of a contract

If a minor is assumed not to understand the implications of a contract a minor will remain fully protected by the law even if this is to the disadvantage of the other party and regardless of what clauses have been inserted into the contract.

## Voidable Contract

A contract entered into with a minor is voidable. This means that the minor is able to cancel any contract at any time prior to reaching the age of majority and for a reasonable time afterwards.

### Will a minor have to have a justifiable reason for this?

There is no requirement for a minor to have a justifiable reason for cancelling the contract at any time, they can do it for whatever reason and if they feel it may be advantageous for them to do so.

All of the above is designed specifically to protect those under the age of majority when entering into a legally binding contract.

## Are there any exceptions to the general rules in relation to minors?

The situation is not necessarily as clear-cut as simply applying the above provisions to all contracts entered into involving someone under the age of majority.

There is one extremely important exception to the above position. The general position in relation to contracts with minors does not apply to contracts of service, apprenticeship and education with children.

### What is the reason for this?

The reason for this is that the requisite organisations that enter into these kinds of contracts with children require some form of certainty that enables the child to earn his living or start to do so.

The law views these contracts as beneficial to the minor and so it would be an untenable position if the contract could simply be unilaterally cancelled by the minor.

### Does this apply to all contracts entered into by children?

This rule will always be subject to the minor being at least old enough to understand the nature of the contract that they are entering into.

### What is the case if the child is not deemed old enough?

If the child is not deemed old enough to understand the nature of the contract then the contract will fall outside of this exception and will be void in line with the general position outlined above.

## Court Enforcing a contract

If the child was deemed old enough to understand the nature of the contract and the contract was deemed beneficial as it applied to a contract of service, apprenticeship or education there is still the small issue of the way in which the court would enforce the contract.

A court would never force someone – whether that person is an adult or a minor – to perform a contract for personal service due to a matter of public policy that parties should not be forced to continue in a personal relationship against their will.

### What options for a remedy will be available in this situation?

As a court will not order the performance of a contract in this manner the only available option for remedy would be that of damages.

### Is there a way around this position?

When entering into a contract with a minor it is a good starting off point to ensure that you include a guarantor provision in the contract.

### What is meant by a guarantor?

A guarantor is another party to the contract, in most cases the parent. This does not take away from the fact that the primary party to the contract will be the minor it just provides for situations where there may have been a default in payment on the contract or a similar issue.

## Entering into a contract with the guardian

A better way to solve the issues of entering into a contract with a minor is to organise for the guardian – in most cases a parent – to enter into the contract on behalf of the minor.

However, there are slight issues flowing from case law which states that a parent will not be liable on their child's contract unless they act as their agent and that a minor's contract cannot be validated by consent or authorisation of their parent or guardian.

To avoid this many feel that it is good practice to enter a clause into a contract dealing specifically with the parent continuing to remain liable if the contract has been breached by the minor.

For further information please click [here](#).