

NOTES ON LEGISLATION

MAJORITY AND THE PROPERTY AND INHERITANCE STATUTES

The purpose of this short note is to discuss a number of important amendments to property and inheritance statutes which Parliament passed in the last few years in order to lower the age of majority in them from twenty-one to eighteen years. The amendment Acts are the Trustee (Amendment) Act 1974, the Distribution (Amendment) Act 1975 and the Wills (Amendment) Act 1976. The change in the age of majority in the revised Probate and Administration Act 1959 (Revised 1972) is also dealt with.

The stage was set in 1971 when the Age of Majority Act was passed. Sections 2 and 4 of this new Act read as follows:

"2 Subject to the provisions of section 4 the minority of all males and females shall cease and determine within Malaysia at the age of eighteen years and every such male and female attaining that age shall be of the age of majority"

"4 Nothing in this Act shall affect

- (a) the capacity of any person to act in the following matters, namely, marriage, divorce, dower and adoption;
- (b) the religion and religious rites and usages of any class of persons within Malaysia;
- (c) any provision in any other written law contained fixing the age of majority for the purpose of that written law"

The effect of s.4(c) is that if a statute contains a provision specifying a particular age as the age of majority then that provision and not s.2 of the Age of Majority Act 1971 is to prevail. On the other hand if there is no provision in a statute fixing a specific age as majority then the age as provided by s.2 would operate.

This Act repealed the Age of Majority Act 1961 which had fixed a different age of majority, namely, the ages of eighteen and twenty-one years, for Muslims and non-Muslims, respectively. At the time the Age of Majority Bill 1971 was debated in Parliament the Attorney-General told the Dewan Rakyat, that the purpose of this important new legislation was to remove this anomaly and to provide for a uniform age of majority for Muslims and non-Muslims.¹

¹Proceeding of the Dewan Rakyat 17th March 1971 at p. 1354.

Among the important statutes affected by the new provisions were the National Land Code 1965 and the Bills of Exchange Ordinance 1949 both of which did not specify a particular age for attaining the status of majority. The Contracts Act 1950,² s.11 of which deals with capacity to contract in the following words,

"Every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from any law to which is subject"³ was also affected.³ It may not be out of place to mention that with regard to contracts of insurance the Insurance Act 1963⁴ had enacted, as early as 1963, that a person who has attained the age of ten years and has the consent in writing of his parent or guardian may enter into an insurance contract. Under the relevant section, namely s.41(1), such consent is not required if the infant has reached the age of sixteen years.

The Age of Majority Act 1971 did not affect the following important statutes in the area of property and inheritance law, namely, the Probate and Administration Ordinance 1959, the Trustee Ordinance 1949, the Distribution Ordinance 1958 and the Wills Ordinance 1959, all of which contained provision fixing capacity for the particular purposes of the respective statute at twenty-one years.

The first step to reduce the age of majority in this area of the law was taken in 1972 when the Probate and Administration Ordinance 1959 was revised and re-enacted as the Probate and Administration Act 1959.⁵ The Ordinance had provided in s.2 a definition of a minor as any person who had not attained the age of twenty-one years. This definition affected s.20(1) and s.8(1) which dealt with the capacity for the purposes of obtaining representation and renunciation to representation respectively. When the Ordinance was revised this definition was omitted from the Act thereby bringing s.2 of the Age of Majority Act 1971 into operation. As a result of this change a person who has attained the age of eighteen is now given the capacity to petition for a grant of representation or effectively renounce his right to do so.

²At that time the Contracts (Malay States) Ordinance, 1950.

³See the Selangor case of *Kandasamy v. Suppiah* (1919) 1 F.M.S.L.R. 381 where the meaning of "the law to which he is subject . . ." was dealt with.

⁴Now the Insurance Act 1963 (Revised 1972) Act 89.

⁵The Probate and Administration Act 1959 has been extended to Sabah and Sarawak but the date for the coming into force of the Act in these states has not been fixed. See a statement on this subject by the Malaysian Attorney-General in the *Straits Times*, of 22nd June, 1976.

Under s.6 of the Distribution Ordinance 1958⁶ whenever an intestate's estate is distributable among a class of beneficiaries, namely, the deceased's issue, brothers and sisters, uncles and aunts and great uncles and great aunts, the members of which may be indefinite in number and some of them under age, the Ordinance provides that it shall be held for them in the statutory trusts set out in s.7. By s.7 in its unamended form the interest of a beneficiary under such a trust was contingent and did not vest until he attained the specifically-mentioned age of twenty-one years or married under that age.⁷ Although the trustees of the fund may apply the income of the beneficial share to which he is contingently entitled for his maintenance and make advancement from the capital, the fact that he had to await his twenty-first birthday to be entitled to the corpus was clearly unsatisfactory. For although a person who attained the age of eighteen could contract, own land and be granted probate or letters of administration he could not, if he belonged to any of the classes of beneficiaries mentioned above, completely enjoy his share of an intestate's distributable estate until he attained the age of twenty-one years or married under that age. The situation has been altered and the age reduced to eighteen years by s.2 of the Distribution (Amendment) Act, 1975 which reads as follows,

"Section 7(1) of the Distribution Ordinance, 1958 is hereby amended by substituting for the words "twenty-one years" appearing in lines 7, 8 and 10 thereof the word, "majority."

As neither the Ordinance nor its amending Act define the word "majority", s.2 of the Age of Majority Act 1971 comes into play.

Parliament next dealt with the Trustee Ordinance 1949 by passing the Trustee (Amendment) Act 1974. Section 2 of the Amendment Act reads as follows,

"Section 3 of the Trustee Ordinance 1949 (hereinafter referred to as the Ordinance) is hereby amended by deleting the definition of minor appearing in subsection (1) thereof"

⁶This Ordinance applies in West Malaysia only.

⁷The reason for the creation of such a statutory trust is found in the Report of the Select Committee of the Federal Council on the Distribution Bill (Proceedings of the Federal Council, 17th March 1958 at p. 4416). Paragraph four reads as follows:

"The new Bill will prevent payment of death duties in case of death of infant beneficiaries. Under our present law if a man dies intestate, his estate, subject to the rights of his widow, will vest absolutely on his children, some of whom may be infants. Should the infants die, estate duty is again payable in respect of the infants' estate, although their father's estate has not yet been distributed to them. The new Bill seeks to prevent this inequity. Under sections 6 and 7 of the new Bill, their share will not vest in term unless and until they attain the age of 21 years or marry under that age. This is a legal device to prevent these infant beneficiaries who die having to pay estate duty a second time.

"Minor" had been defined in the Ordinance as "as person who is under twenty-one years of age". The definition was deleted with the obvious intention of bringing s.2 of the Age of Majority Act 1971 into operation.

However the draftsman appears to have overlooked the fact that s.33, which deals with maintenance, not only speaks of "minor" and "minority" but also specifically refers to the age of twenty-one years in three places. Subsections (1) and (2) cited in full read as follows (emphasis added):

"33. (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property -

(a) during the *minority* of any such person, if his interest so long continues, the trustee may at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is -

- (i) any other fund applicable to the same purpose; or
- (ii) any person bound by law to provide for his maintenance or education; and

(b) if such person on attaining the age of *twenty-one years* has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under sub-section (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a *minority* to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the minor and his requirements and generally to the income of more than one fund is applicable for the purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the *minority* of any such person, if his interests so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in

authorised investments, and shall hold those accumulations as follows —

- (a) if any such person —
 - (i) attains the age of *twenty-one years* or marries under that age, and his interest in such income during his minority or until his marriage is a vested interest; or
 - (ii) on attaining the age of *twenty-one years* or on marriage under that age becomes entitled to the property from which such income arose;
- the trustees shall hold the accumulations in trust for such person absolutely, and so that the receipt of such person after marriage, and though still a minor, shall be a good discharge; and
- (b) if any other case the trustees shall, notwithstanding that such person had a vested interest in such income hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes; but the trustees may, at any time during the *minority* of such person if his interest so long continues, apply those accumulations or any part thereof, as if they were income arising in the then current year.

If we are to apply s.2 of the Age of Majority Act to construe words "minor" and, as a corollary, the word "minority" it would mean that the statutory power of maintenance under s.33(1)(a) terminates once a beneficiary reaches the age of eighteen years. However, we note that s.33(1)(b) which deals with the payment of future income to a beneficiary who has attained majority but not a vested interest refers specifically to the age of twenty-one years. The effect appears to be that although the statutory power to maintain ceases when a beneficiary (who has not a vested interest) attains the age of eighteen years he is not entitled to the income of the trust fund until he is twenty-one years of age, unless the trust instrument contains a provision to the contrary. This position is clearly unsatisfactory and an early amendment is desirable. This oversight could have been avoided if the procedure used by the English Family Law Reform Act 1969 to amend *inter alia*, the Trustees Act 1925 had been adopted by our draftsman.⁸

Does the amendment allow a person of eighteen years of age to be appointed a trustee? Neither the Malaysian Trustee Ordinance 1949 nor

⁸See Mellows, *Law of Succession* (1973) 2nd Ed. pp. 642-652.

the English Trustee Act 1925 on which our Ordinance is based, has a provision preventing a minor from becoming or being appointed a trustee. However, in England s.20 of the Law of Property Act, 1925 expressly declares void the appointment of a minor as a trustee. This prohibition would seem to apply to express trusts only for in *Re Vinogradoff*⁹ it was held that a minor is capable of taking as trustee under an implied or resulting trust. In Malaysia the only relevant written law dealing with the situation of a minor as a trustee is s.37(1). This section which is in pari materia with s.36(1) of the English Act deals with the appointment of new or additional trustees. It merely says that where a trustee, either original or substituted, and whether appointed by the Court or otherwise, is inter alia, a minor, then one or more persons may be appointed in his place by the persons specified and the mode prescribed in that section. It is clear that the section merely gives a power to appoint a new trustee: it does not impose a duty to appoint. What is therefore the position of minors in this country? *Re Vinogradoff* a decision which was decided before the date specified in s.33(1) of our Civil Law Act 1959, may be followed by our Courts. As to whether an infant may be appointed an express trustee the position is extremely curious. This is because the Law of Property Act 1925 does not apply here and, secondly, there appears to be no written law in our country expressly forbidding a minor from becoming or being appointed a trustee.

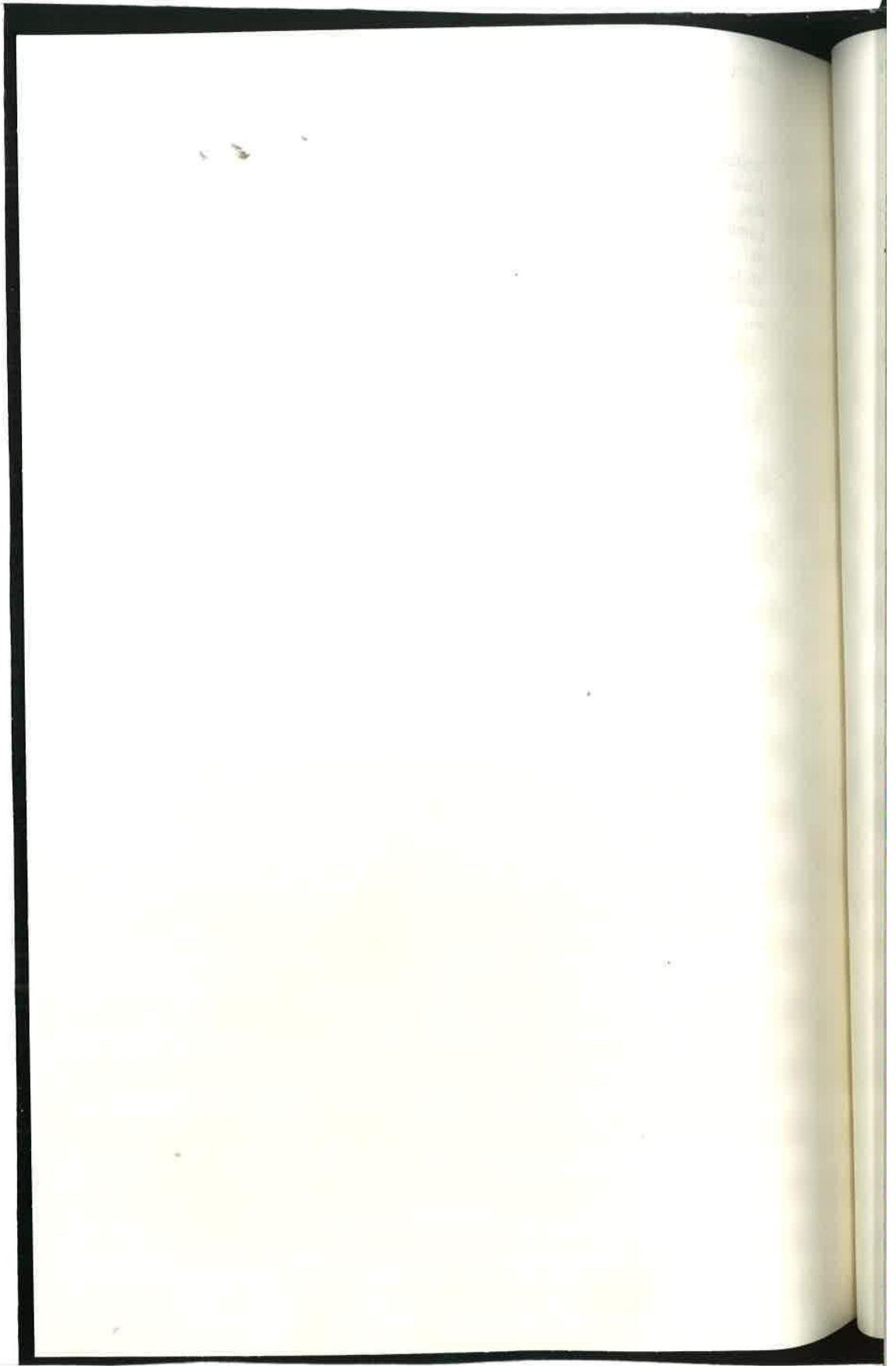
The Wills (Amendment) Act appears to be the latest attempt of Parliament in its efforts to reduce the age of majority in the property statutes. The Explanatory Note to the bill mentions that its purpose is to "bring the Wills Ordinance 1959 in line with the Trustee Ordinance 1949 and the Probate and Administration Act 1959 which by way of amendment have omitted the word minor". Section 2 of the Wills (Amendment) Act amends the Wills Ordinance 1959 by substituting in s.4 of the Ordinance for the words "twenty-one years" the word "majority". A person who has attained the age of eighteen may now make a will. However, unlike the Trustee Ordinance 1949 the Wills Ordinance 1959 has not yet been extended to East Malaysia and as a result there is no complete uniformity in the law applicable in East and West Malaysia.¹⁰

⁹[1935] W.N. 68.

¹⁰The Trustee Ordinance 1949 was extended to Sabah and Sarawak by the Trustee Investment Act 1965, s. 2. Sabah has its own legislation on wills, Cap. 158 of the Law of North Borneo (Revised Edition) Vol. IV. There is no legislation on non-Muslim wills in Sarawak and as a result (see Civil Law Act s. 3(1)(c)) the English Wills Act 1837 applies. However, Sarawak has an Ordinance on Muslim wills, namely Cap. 96 of the Laws of Sarawak.

Parliament must be commended for its efforts to provide for a uniform age of majority in the sphere of property and inheritance law. However, in its well-meaning enthusiasm to bring about this uniformity it has, by an oversight, failed to see that in some cases the desired change in a particular statute may not be completely achieved by merely deleting the definition of "minor" from that statute. Again, certain statutes in this area of law have not to date been extended to Sabah and Sarawak. This is another aspect of uniformity which Parliament and the relevant authorities must strive at.

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LEGISLATION

The following list of Acts passed and revised in Malaysia is a continuation of the list of Federal Acts contained in Vol. 3, Part 1 [1976] J.M.C.L. 161-169.

FEDERAL ACTS PASSED

<i>Bil. Akta</i> <i>Act.No.</i>	<i>Tajuk Ringkas/Short Title</i>
173	Akta Instituti Teknologi MARA 1976. Institusi Teknologi MARA Act 1976.
174	Akta Institusi-institusi Pelajaran (Tatatertib) 1976. Educational Institutions (Discipline) Act 1976.
175	Akta Cap Dagangan 1976. Trade Marks Act 1976.
176	Akta Eksais 1976. Excise Act 1976.
178	Akta Yayasan Tun Razak, 1976. Tun Razak Foundation Act, 1976.
179	Akta Lembaga Pendaftaran dan Pelesenan Minyak Kelapa Sawit (Perbadanan), 1976. Palm Oil Registration and Licensing Authority (Incorporation) Act, 1976.

FEDERAL ACTS REVISED

<i>Bil. Akta/ Act No.</i>	<i>Tajuk Ringkas/Short Title.</i>
57	Akta Pencegah Rasuah, 1961 (Disemak - 1971). Publication of National Language text.
177	Industrial relations Act, 1967 (Revised 1976). Publication in English only.