

*Halijah v. Morad*¹

The recent case of *Halijah v. Morad*¹ is an interesting case in contract. The case illustrates a number of different points relating to the law of contracts in the Malay States, particularly in the State of Kedah, viz., (1) the law applicable to Kedah prior to the Contracts (Malay States) Ordinance, 1950; (2) the age of majority in Kedah ; and (3) application of Infants Relief Act, 1874.

Before going into each of these issues, it may be necessary to look at the facts of the case. The four plaintiffs in this case claimed possession of a piece of land in Kedah from the defendant. The defendant admitted occupation of the land but stated that she did so by virtue of a written agreement signed by the plaintiffs and their mother (since dead) in April 1948. The defendant therefore counterclaimed for an order that the land be transferred to her in pursuance of the said agreement.

The plaintiffs, in answer to the counterclaim, denied that they ever executed this agreement or, in the alternative, if they had executed the agreement, they were infants at the time of the execution. It was proved that the agreement which was signed was for securing a loan of money on the land in question. It was further proved in evidence that, by virtue of the Kedah Enactment No. 62 (Majority),² the third and fourth defendants were infants at the time the agreement was signed. The Federal Court had to consider the effect of the agreement with regard to these two defendants. The Court, by virtue of Kedah Enactment No. 25 (Courts)³ applying the law applicable in the Straits Settlement, applied the common law of England as qualified by the English Infants Relief Act 1874. Accordingly it held that the agreement was nothing more than a contract for the repayment of money lent and was therefore absolutely void as against the third and fourth defendants by virtue of section 1 of the Infants Relief Act.

It should be realised that the Court was applying the law relating to contracts in Kedah in 1948 when the agreement in question was made.

The law relating to contracts in Kedah in 1948

The F.M.S. Contract Enactment 1899⁴ which preceded the Contracts (Malay States) Ordinance, 1950, did not apply to Kedah. This 1899 Enactment was applicable only to the Federated Malay States, namely, Perak, Selangor, Negri Sembilan and Pahang. Among the Unfederated Malay States,⁵ only Johore in 1931 introduced its own Contract Enactment.⁶ As far as the other Malay States were concerned, they did

1. [1972] 2 M.L.J. 166.

2. Kedah Revised Edition of Laws, 1353, Vol. III.

3. Kedah Revised Edition of Laws, 1353, Vol. II.

4. Cap. 52, F.M.S. Revised Edition of Laws, 1935.

5. Johore, Trengganu, Kedah, Perlis and Kelantan.

6. No. 1 of 1931.

not have any legislation of their own and their laws relating to contract were neither clear nor uniform. The Courts in most cases were therefore uncertain as to what law to apply in these States. In a 1948 Kelantan case, *Engku Leh v. Che Wok*,⁷ Murray-Aynsley C.J. held to be void an agreement which was made for the purpose of stifling a criminal prosecution for criminal breach of trust. After pointing out that such an agreement "was one which was void both by English law and by the law of the former Federated Malay States", the Judge said:

Although neither English law nor the Contract Enactment of the Federated Malay States appear to be part of the law of Kelantan where there has been no legislation on the subject, we consider that where questions of public policy of this kind are concerned, there ought, as far as possible, to be uniformity within the Malayan Union.

As far as Kedah was concerned, it was provided in the Kedah Enactment No. 25 (Courts)⁸ that the Court of Appeal "shall apply in matters of Tort and Contract the principles of law and equity in force for the time being in the colony of the Straits Settlement"⁹ which was English law. It was under this provision that the Federal Court in *Halijah v. Morad*¹⁰ applied the English Infants Relief Act 1874 to determine whether the agreement entered into by the infants was enforceable or not. It would therefore appear that the English law of contract applied in Kedah under the Enactment No. 25.

However, by the introduction of the Courts Ordinance, 1948,¹¹ which came into effect on 1st January 1949, the Kedah Enactment No. 25 was repealed.¹² The Contracts (Malay States) Ordinance was only introduced in 1950. What then was the law applicable in Kedah during the interim period between the date when the Kedah Enactment was repealed and the date when the Contracts (Malay States) Ordinance came into force?¹³ There seems to be no clear answer to this query. The better opinion appears to be that English law continued to apply.

Age of Majority in Kedah

Prior to the Age of Majority Act, 1961,¹⁴ the Federated Malay States, Johore, Kedah and Trengganu had their own separate Enactments relating to the age of majority.¹⁵ Except in Johore, all these Enactments provided that the age of majority for every person professing the Muslim religion would be 18 years, whereas for all other

7. (1948-49) M.L.J. Supp. 8.

8. This Enactment, noted earlier, was No. 10 of 1339.

9. S. 11, thereof.

10. [1972] 2 M.L.J. 166.

11. No. 48 of 1948, Federation of Malaya.

12. See s.110 and Fifth Schedule of the Ordinance.

13. The Contracts (Malay States) Ordinance came into effect on 23rd May 1950.

14. No. 9 of 1961 (now repealed and replaced by the Age of Majority Act, 1971).

15. The F.M.S. Age of Majority Enactment, Cap. 68 (introduced in 1933); Johore Age of Majority Enactment, No. 135 (introduced in 1934); Kedah Enactment No. 62 (Majority) (introduced in 1923); and Trengganu Majority Enactment, Cap. 35 (introduced in 1937).

persons the age of majority would be 21 years.¹⁶ Under the Johore Enactment, no distinction was drawn between Muslims and non-Muslims and, irrespective of religion, all persons attained the age of majority at 21.¹⁷

However, the position before the introduction of the Age of Majority Enactments was not clear. In the Federated Malay States, the Contracts Enactment 1899 contained a provision, section 11, which stated that "Every person is competent to contract who is of the age of majority according to the law to which he is subject..."¹⁸ In *Kandasamy v. Suppiah*,¹⁹ the Court had to determine the scope of this section. The Magistrate, from whose decision an appeal was brought before Innes A.C.J.C., had held that under the section the personal law of the person concerned was to be applied.²⁰ Innes A.C.J.C., in reversing the Magistrate's decision, said that the words "the law to which he is subject" did not mean the personal law of the person concerned but meant what he called the "common law" in the Malay States. The Judge, after noting that there were many gaps in the law in these States, observed that:

In some instances the practice of this Court and of the legal profession has filled these blanks and has brought into life what in a British Court is described as "a common law".²²

He then simply declared that by "this common law" the age of majority for general purposes in these States was 21.

Whether or not Innes A.C.J.C.'s ruling in the case was a sound one, his view which was based on an inarticulate premise that there ought to be one general law for the Malay States could no longer hold when the various States introduced their own Age of Majority Enactments. Apparently, with the passing of these State Enactments, the age of majority in each State was governed by its respective enactment.

In 1961 by the Age of Majority Act²² the age of majority was made uniform in all the states of Malaya: 18 years for Muslims and 21 years for non-Muslims. In 1971, a new Act²³ was passed to replace the 1961 Act and by virtue of the new Act, all persons, whether Muslims or non Muslims, attain the age of majority at 18.

16. See s.3 of the Enactments.

17. S.3, thereof.

18. My own emphasis.

19. (1919) 1 F.M.S.L.R. 381.

20. In this case, the personal law of the defendant was the Hindu law which placed the age of majority at 16.

21. (1919) 1 F.M.S.L.R. 381, at 382.

22. No. 9 of 1961.

23. Act 21.

Application of Infants Relief Act 1874

As has been noted, Lord President Azmi in the recent case in determining the validity of the contract in question, held that by virtue of section 11 of the Kedah Enactment No. 25 (Courts) the law applicable was the law in force in the Straits Settlement — “i.e. the English common law as qualified by the English Infants Relief Act 1874”. It is unfortunate that the learned Lord President did not give any authorities for applying the Infants Relief Act. There has been considerable doubt as to whether the Infant Relief Act was ever applicable to the Straits Settlement, though, in the case of *Ngo Bee Chan v. Chia Teck Kim*,²⁴ the Straits Settlement Court held that the Infants Relief Act was applicable to the Straits Settlement by virtue of the section 6 of the Civil Law Ordinance.²⁵ It was probably on the authority of this case that the learned Lord President applied the Infants Relief Act. It is however submitted that the learned Lord President should have considered in detail the application of the Infants Relief Act, especially since the validity of the decision in *Ngo Bee Chan* has been doubted.²⁶

24. (1912) 2 M.C. 25.

25. Civil Law Ordinance 1909.

26. See H.G. Calvert in *Malaya and Singapore*, ed. Sheridan, at p. 288.

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