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An Appraisal of the Legal Capacity and Contractual Right of the Child under the Child's Right Act, 2003 <https://doi.org/10.53982/alj.2024.1201.09-j>

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### **AN APPRAISAL OF THE LEGAL CAPACITY AND CONTRACTUAL RIGHT OF THE CHILD UNDER THE CHILD'S RIGHT ACT, 2003.**

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**Abubakar Mohammed Bokani, Ph.D**

#### **Abstract**

*It is a fundamental principle of law of contract that parties to contract are at liberty to enter into contract, and agree on the terms of the contract. Accordingly, the Child's Right Act, 2003 (CRA 2003) and other Child's Right laws of various states in Nigeria confer the child with the right to enter into contract. However, the law seems to limit the contractual right and capacity of the child to contract of necessities. Consequently, a child does not possess the requisite legal capacity and right to enter into contracts in respect of non-necessaries. Unfortunately, CRA 2003, s 18 does not define what constitutes 'necessaries' and the effect of such void contracts. This article deployed doctrinal research method to appraise the legal capacity and contractual right of the Child in Nigeria, and the objective is to determine the scope of the contractual right and capacity of the Child and legal effect of contracts of non-necessaries. Thus, the question is, what is the extent of the contractual right of the child in Nigeria? This article found that the lack of definition of what constitutes necessities in CRA 2003 has created uncertainty in the scope of the contractual right and capacity of the child in Nigeria. More so, CRA 2003 s18 is oblivious to the principle of 'best interest of the child' which is the philosophy that underpins contracts involving the child. It was thus recommended that the CRA 2003, s18 and similar laws should be amended to adopt the common law definition of what constitutes 'necessaries'. In addition, contract of non-necessaries entered into by the child should not be treated as void ab initio. Rather, they should be construed as voidable against the child but binding on the adult.*

**Keywords:** Child, Child Right, Necessaries, Contractual Capacity.

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## 1.1 Introduction

The doctrine of freedom of contract is a fundamental principle of the law of contract. It entails that parties are free to enter into contract, and to decide with whom to enter into contract.<sup>1</sup> More so, the law is trite that parties to a contract are bound by the terms of the contract in the absence of fraud, mistake, deception or misrepresentation.<sup>2</sup> For a valid contract to exist there must be offer, acceptance, consideration and intention to create legal relations. It is therefore important that a party to a contract should understand the nature of the contract and the legal consequences of the transaction. The ability of a party to understand the transaction with the attendant legal consequence depends on a party's level of maturity. Therefore, in a contract to which a child is a party the law takes the position that the child has limited capacity to enter into such contracts. The reason is that the child is incapable of forming the requisite intention to be bound by the contract and invariably cannot give a valid consent.<sup>3</sup> The idea behind this position is the need to protect the child against unscrupulous adults, and to also balance the interest of the child with the need to avoid allowing the child take undue advantage of his minority against honest adults.<sup>4</sup> In addition, the purpose of the restriction on the contractual capacity of the child is to protect the child from his inexperience and exuberance.<sup>5</sup>

On the one hand, the Child' Right Act<sup>6</sup> provides that the age of majority is 18 years<sup>7</sup> which has also been adopted in the Child Rights Laws of various states of Nigeria.<sup>8</sup> On the other

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<sup>1</sup> Rumi Suwardiyati et al, "Principles of Freedom of Contract in Public Contract",[2019](59) *Advances in Economics, Business and Management Research*, 283

<sup>2</sup> *Edikon Nig Ltd v Uba* [2017]18 NWLR pt 1596 ,74 [99][D-F]

<sup>3</sup> Albert A Ehrenzweig, 'Contractual Capacity of Married Women and Infants in the Conflict of Laws',(1959)(43) *Minnesota Law Review*,900.

<sup>4</sup> MC Okany, *Nigerian Commercial Law* (Africana- Feb Publishers Ltd, 1992) 95

<sup>5</sup> Austen-Baker,R. and Hunter,K, 'Infants' Contracts: Law and Policy in the 18<sup>th</sup> and 19<sup>th</sup> Century'. <[https://eprints.lancs.ac.uk/id/eprint/139393/1/JC\\_Infants\\_Capacity\\_JCL\\_Final\\_Rev\\_1\\_1.pdf](https://eprints.lancs.ac.uk/id/eprint/139393/1/JC_Infants_Capacity_JCL_Final_Rev_1_1.pdf)> Accessed on 21 February 2021.

<sup>6</sup> Child's Right Act 2003 (CRA 2003),s 18

<sup>7</sup> Child Rights Act, 2003 (CRA 2003) s277.

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hand, the common law provides 21 years as age of majority in Nigeria.<sup>9</sup> Therefore, the question is, 'what is the age of majority in Nigeria for purposes of determining the contractual capacity and right of the child to enter into contract'? More so, there seems to be uncertainty and confusion about the contractual capacity of the child as to the type of contracts the child can enter into in Nigeria. The CRA 2003 provides that no child can enter into contract except contract of necessities.<sup>10</sup> Unfortunately, the CRA 2003 seems not to have defined the meaning of 'necessaries'. Thus, the question is what constitutes 'necessaries' under the Child's Right Act and similar laws?

Finally, the CRA 2003 and other Child Right laws of various states stipulate that except for necessities, any contract entered into by the child is void. But the CRA 2003 has not defined the legal effect or consequence of such contract as it is not clear whether the void contract should be construed to be void *ab initio* or merely void. The aim of this paper is to appraise the contractual capacity and the right of the child to enter into contract in Nigeria, and the objective is to determine the age of majority and scope of the contractual right and capacity of the child to enter into contract in Nigeria.

## 1.2 Conceptual Clarification of Key Terms

This research focuses on the scope of the contractual right and legal capacity of the child and effect of the contract involving the child. It is therefore important to clarify certain concepts and terms such as 'contract', 'child', 'capacity to contract' and 'necessaries', because there are no absolute or generally accepted definition of these terms. More so, clarification of these terms will aid to put the article in a proper perspective and achieve the objective of the research.

### 1.2.1 The Concept of Contact

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<sup>8</sup> Niger State Child Rights Law ( NSCRL 2021) s 9

<sup>9</sup> I E Sagay, *Nigerian Law of Contract*, ( Third Edn, Spectrum Books Ltd, 2018), 557-558;  
Saidu Mohammed Also, 'A Comparative Analysis of the Contractual Capacity of Infant under the Common and Islamic Laws', (2020) (9) (11) *International Journal of Sciences and Research*, 1385

<sup>10</sup> The Child Rights Act, 2003, s 9; Niger State Child Right Law, 2021, s 11(2).

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There is no generally acceptable definition of contract even though it is easy to grasp the general idea of contract. The definition of contract usually cast contract in terms of promises or agreements. Sagay defines contract as an agreement which the law will enforce or recognise as affecting legal rights and duties of the parties. He also defined contract as a promise or set of promises the law will enforce.<sup>11</sup> Similarly, Pee defined contract as an agreement which is legally binding on parties to the contract and which if broken may result to an action in court against the party in breach.<sup>12</sup> The two foregoing definitions depict contract in terms of agreements or promises. As a result, some criticisms have been leveled against this approach to the definition of contract in terms of promises. First, such definitions give the impression that the law 'enforces' contracts although it is arguable that the law hardly enforce contracts. The law does not always compel a party to perform obligation under the contract; it usually grants remedy in form of damages for breach of contract.<sup>13</sup> Thus, it has been argued that what the court does in the event of breach of contract is to order a party to do what he promised or agreed to do where damages cannot be adequate compensation to the innocent party.<sup>14</sup> This point underpins the theoretical basis of the law of contract as agreement which is binding on the parties.<sup>15</sup> In any case, whether a contract is defined by promise or agreement, it is significant to note that some legal duties are recognized in a contract and yet unenforceable.<sup>16</sup> Damages therefore, can only be awarded as compensation to the innocent party if the contract is not enforceable.

The second problem with the definition is that it assumes that promises are abstract things which exist outside the contract. However, it has been opined that promises in a contract are as abstract as contract itself.<sup>17</sup> Therefore, promises and the contract are part and parcel of each other and thus inseparable. Thirdly, the definitions presuppose that parties enter into contract once they have made some promises or agreements. That is, it is a sequence of event from promise to performance of contract. This is not always the case as parties usually enter into contracts

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<sup>11</sup> (n,9) 1.

<sup>12</sup> E. Pee, *The Law of Contract* (Divine Press Ltd, 2013) 115

<sup>13</sup> P.S.Atiyah, *An Introduction to the Law of Contract* (Fourth Edn, Clarendon Press Oxford, 1989) 40.

<sup>14</sup> Gilbert Kodilinye, *An Introduction to Equity in Nigeria*, (Spectrum Books Ltd, 1975) 157.

<sup>15</sup> ( n,13) 40-41.

<sup>16</sup> *ibid.*41.

<sup>17</sup> *ibid.*42.

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without prior express agreement.<sup>18</sup> Finally, the definitions imply that promises *ipso facto* make contracts without the requirement of intention to enter legal relations. Therefore, those who argue that contract is not based on promise rely on the 'intention to contract doctrine' to argue that a promise or agreement is only enforceable where the parties have manifested intention to create legal relations.<sup>19</sup>

Notwithstanding the above analysis, it is not safe to define contract by reference to promises or agreements. Rather, it is better to define it as contractual obligations. In this regard, contract has been defined as an agreement giving rise to obligations which are enforced or recognised by law.<sup>20</sup> This represents the classical definition of contract as a legally enforceable obligation created by agreement between the parties.<sup>21</sup> However, the modern legal theory on contract tends to move away from the classical conception of contract. The new approach considers that contract can arise in the absence of promise, agreement, bargain or consideration.<sup>22</sup> What is significant is that a legally enforceable obligation has been created by deliberate act or conduct of the parties with knowledge of the legal consequences of such act or conduct.

### 1.2.2 Concept of Capacity to Contract

The law presumes that all parties to a contract have the power to enter into a contract. However, certain restrictions have been placed on some groups of persons to enter into contractual obligations. The ideal model of the natural person entering into a contract is that of the sane, sober and adult individual.<sup>23</sup> Thus, the law takes a different position when a child is involved in a

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<sup>18</sup> *ibid.* 44.

<sup>19</sup> Prince Saprai, 'Balfour v. Balfour and the Separation of Contract and Promise'. [2017] (37) (3) *Legal Studies*, 469.

<sup>20</sup> <<http://www.a4id.org/wp-content/uploads/2016/10/A4ID-english-contract-law-at-a-glance.pdf> >  
Accessed on 16 March, 2023.

<sup>21</sup> Sidney W. Delong, 'What is a Contract?' (2015)(16)(1), *South Carolina Law Review*, 101.

<sup>22</sup> *Ibid* 101-102.

<sup>23</sup> Paul Richards, *Law of Contract*. (Seventh Edn, Pearson Educational Limited, 2006) 84.

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contract with an adult. In such a case, the law seeks to protect the child against his inexperience and prevent adult from taking unfair advantage of the child, or inducing him to enter into contract which, though fair, is simply improvident.<sup>24</sup> This principle underpins the general rule that a child is not bound by his contract because he lacks contractual capacity.<sup>25</sup> More so, the law seeks to ensure that adults do not suffer unnecessary hardship while they deal fairly with the children. Under this principle, certain contracts with the children are valid while others are voidable in the sense that they are binding on the child unless he repudiates them.<sup>26</sup> This principle governed certain contracts with the infant which were binding on the child at common law unless he repudiates them before attaining majority.

However, there is uncertainty over the requirement of capacity to contract as an essential element in the formation of contracts in Nigeria. This can be traced to recent decision of the Nigerian Court that has held that five important elements must be present in a valid contract: offer, acceptance, consideration, intention to enter into legal relations and capacity to contract.<sup>27</sup> All the elements must co-exist as a contract cannot be formed if any of the elements is absent. Thus, the contractual capacity of a party to the contract is fundamental to the formation of a contract because the law has placed limitation on the capacity of the child to enter into a contract. Consequently, a child is a person that is underage lacks capacity,<sup>28</sup> and consequently is not allowed to enter into contracts.<sup>29</sup>

Similarly, in French law, capacity to contract is one of the essential elements for the formation of a contract.<sup>30</sup> Without capacity to contract, a valid and enforceable contract cannot be created. However, in English law, capacity to contract is not an essential requirement but a vitiating factor because it normally renders a contract only voidable and not void.<sup>31</sup> Although the position of the law in Nigeria on the effect of contractual capacity to contract appears to be

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<sup>24</sup> E. Peel, *The Law of Contract*. (Twelfth Edn, Sweet & Maxwell, London, , 2007) 566.

<sup>25</sup> *ibid*, 567.

<sup>26</sup> *ibid*.

<sup>27</sup> *Dr. Kenneth Ojo v Abt Associates Incorp.* (2017) 9 NWLR pt 1570,161 [187] [C-E]

<sup>28</sup> Adam, E.M, An Appraisal of the Regime of Juvenile Justice under the Child's Right Act in Nigeria, (2013) (12)(82) *Arabian Journal of Business and Management Review* 12.

<sup>29</sup> *M.O. Omidiji v Federal Mortgage Bank of Nigeria* (2001) 13 NWLR Pt.731 646, [672] [A-B]

<sup>30</sup> Samuel Geoffray, *Contract Law: Cases and Materials* (Sweet & Maxwell, 2007) 214.

<sup>31</sup> *ibid*

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uncertain, it seems the provisions of the CRA 2003 and similar laws have made contractual capacity to be a requirement for formation of a valid contract.

### 1.2.3 The concept of necessities

The Act and other Child Right laws which permit a child to make a contract of necessities are silent on what constitutes 'necessaries'. The question of what goods or items comprises 'necessaries' is important because it determines whether a child will be liable for the goods supplied to him. The doctrine of necessities was said to have been developed by the English Court as a way of ensuring that a husband fulfilled his duty to support his wife in marriage.<sup>32</sup> This rule thus made it possible for wife who was neglected by her husband to obtain goods or items that are necessary for her sustenance on his credit. Subsequently, the rule was been extended to contracts involving children. Another justification of development of necessities is that infants would be subjected to significant hardship and deprivation if they could not get certain goods or items necessary for sustenance due to contractual incapacity. As such, the doctrine of necessities was extended to infants to enable them obtain goods they wanted while protecting them against exploitation.<sup>33</sup> The Sale of Goods Act defines 'necessaries' as goods suitable to the condition in life of such infant or minor, or other person, and to his actual requirements at the time of sale and delivery."<sup>34</sup> This statutory definition is significant because it has cleared doubt that existed about the concept of necessities under common law and has given statutory recognition to the definition of 'necessaries' under common law.<sup>35</sup> Unfortunately, this definition of necessities is in relation to contract for sale of goods and may not be applicable to other contracts. The Black's Law Dictionary defines 'necessaries' as:<sup>36</sup>

Things that are indispensable to living < an infant's necessities include food, shelter, and clothing> Necessaries include whatever food, medicine, clothing, shelter, and personal services are usu. considered reasonably essential for the

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<sup>32</sup> Michigan Law Review, the Unnecessary Doctrine of Necessaries, (82) (82) *Michigan Law Review*, 1767.

<sup>33</sup> James Gilbert, 'A Major Misunderstanding of Minor's Contract? Enforcement and Restitution under Minor's Contracts Act, 1969', (2009) (40) *Victoria University of Wellington Law Review*, 723.

<sup>34</sup> Sale of Goods Act 1893 (SGA 1893) , s2.

<sup>35</sup> Kingsley Ikem Igweike, *Sale of Goods*, (Third Edn, Mathouse Press Ltd, 2015) 28.

<sup>36</sup> Bryan A Garner, *Black's Law Dictionary* (Tenth Edition, Thomson) 1192.

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preservation and enjoyment of life, to the extent that a person having a duty of protection must furnish them... Things that are essential to maintaining the lifestyle to which one is accustomed....

This means any goods or item that is required for food, shelter and clothing without which a child cannot enjoy decent living is considered 'necessaries'. In some cases, necessaries include goods or terms beyond the requirement of food, shelter and clothing. Similarly, under the Sale of Goods Act,<sup>37</sup> 'necessaries' mean '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. It thus includes other essentials such as food, shelter and clothing, and in deciding the issues the courts can take into account the social status of the particular infant.<sup>38</sup>

The court at the first instance, when deciding if a contract is one for necessaries, determine whether the goods or services are capable of amounting to necessaries in law, and the process involves a determination of question of law. Thereafter, the court considers whether they are in fact necessaries as far as the child is concerned, and this involves question of fact. At the final analysis, the result of the determination is that the child will be bound by consumer contract by which he can secure necessaries.<sup>39</sup> Igweike submitted that the liability of the child is quasi-contractual because a person who is incompetent in law cannot bind himself to pay necessaries though he is under obligation in law to pay reasonable price, not contract price.<sup>40</sup> Under common law, the child is allowed to enter into contracts for his future trade, instruction, education or profession or to obtain livelihood; such a contract must however be substantially for the benefit of the child to be binding on him.<sup>41</sup> The fact that few terms in the contract are prejudicial to the infant will not be enough to render it void provided it is substantially to his advantage.

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<sup>37</sup> SGA 1893, s3(2)

<sup>38</sup> Ethott, C. And Quinn, F, *Contract Law* (Pearson Education Limited, Sixth Edn,2007)62-63

<sup>39</sup> Raphael Nyarkotey Obu, 'To What Extent Does the Law Provide Sufficient Protection for Those who Enter into Contract with a Person who, Through Age, Mental Illness, or Intoxication, May Be Said To Lack the Capacity To Make a Binding Agreement?' (2021)(4)(6)*Scholars International Journal of Law, Crime and Justice*, 392. < [https://saudijournals.com/media/articles/SIJLCJ\\_46\\_389-397.pdf](https://saudijournals.com/media/articles/SIJLCJ_46_389-397.pdf)> Accessed on 18 March 2023.

<sup>40</sup> (n, 35) 32.

<sup>41</sup> *De Francesco v Barnum* (1890) 45 Ch D 430.



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### 1.3 What is the contractual age of majority?

The question who is a child depends upon the age at which a person attains majority at law. This question is significant because it determines whether the person who claims to be a child can be sued, and the extent of the person's liability. More importantly, the question touches on a child's contractual right and capacity to enter into a contract. Although it is easy to state that a child is someone below the age of majority, it is difficult to determine the age of majority in Nigeria regarding the various laws applicable to the child. For instance, in *Musa v State*<sup>42</sup>, the Supreme Court held that under section 2 of the Children and Young Persons Law of Jigawa State, a child is a person who has not attained the age of fourteen years. Unfortunately, there is no specific judicial pronouncement on the contractual age of a child in Nigeria. The common law stipulates 21 years as the age of majority, and by virtue of the Interpretation Act, the Common law remains a reliable source of Nigerian law.<sup>43</sup>

Sagay submitted that for all practical purposes in Nigeria, the contractual age in Nigeria is 21 years because English law governs almost every aspect of contract in Nigeria.<sup>44</sup> According to Pee, an infant in Nigeria is someone who is below 18 years.<sup>45</sup> In England, Contracts made by infants, that is persons under 18 years of age are governed by the rules of common law are altered by the Minors' Contracts Act 1987.<sup>46</sup>

This issue of the applicability of 21 years as age of majority and whether the Infants Relief Act 1874 apply in Nigerian came up in the case of *Labinjoh v Abake*<sup>47</sup>. In this case, the plaintiff, a Nigerian adult and trader sued the defendant, a Nigerian girl for the sum of 48 pounds 18 shillings 8 pence being the balance due to the plaintiff for the goods sold and delivered to the defendant. In answer to the plaintiff's claim, the Defendant pleaded the Infant Relief Act 1874

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<sup>42</sup> (2019)2 NWLR pt1655,140 [154] [E-F], [156][C-D]

<sup>43</sup> *Elias v Elias* (2001)9 NWLR pt718, 429

<sup>44</sup> (n,9) 560.

<sup>45</sup> (n,12) 127.

<sup>46</sup> MP, Frumston, *Law of Contract* (Thirteenth Edn Butterworths, 1996) 440.

<sup>47</sup> (1924)5 NLR, 33.

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by virtue of which the contract between the plaintiff and defendant under English law was void. The Magistrate Court held that the Infant Relief Act 1874 was a statute of General Application, and by virtue of section 1 of the Act, the plaintiff's claim was void. On appeal to the Divisional Court, appeal was allowed and found the defendant liable for their goods on the ground that the Infant Relief Act did not state the age of majority and that in Nigeria, infancy ended at the age of puberty.

However, on further appeal to the Full Court, it was argued on behalf of the plaintiff that the transaction was governed by customary law, and since the age of majority is the age of puberty, the defendant was liable since she was over that age. The Full Court held that the Infant Relief Act was a Statute of General application and the lower court was wrong to alter it to suit local conditions. The court consequently, remitted the case to the trial court for determination of the issue of the applicable law, either customary law or English law.

Therefore, age of majority at common law is 21 years which has been the position in Nigeria. However, it is difficult to understand the rationale for 21 years as age of majority more so that the common law position is no longer relevant in the context of modernization and development. Consequently, by the Family Law Reform Act<sup>48</sup>, it was lowered to 18 years.<sup>49</sup> The United Nations Convention on the Rights of the Child defines a child as a person below the age of 18 years.<sup>50</sup> From this model, the CRA 2003 defines a 'child' to mean, a person under the age of eighteen years.<sup>51</sup> Similar provisions have been made in the Child Rights Laws of various States. For instance, Niger State Child Right Law defines as a child as a person under the age of eighteen (18) years.<sup>52</sup>

However, there are two (2) legal regimes stipulating different ages as the limits for determining age of majority. While the CRA 2003 and state Child Right law provide for 18 years, the position of common law as stated in *Labinjoh v Abake* is 21. What then constitutes age

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<sup>48</sup> Family Law Reform Act of England 1969, s1

<sup>49</sup> A.G. Guest, *Anson's Law of Contract* (26<sup>th</sup> Edn, Clarendon Press, 1984) 183

<sup>50</sup> Article 1 of the United Nations Convention on the Rights of the Child adopted by the UN General Assembly Resolution 44/25 of 20<sup>th</sup> November, 1989

<sup>51</sup> CRA 2003, s 277

<sup>52</sup> NSCRL 2021, s 2

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of majority for contract purposes in Nigeria? The Nigerian Constitution defines 'full age' (age of majority) as 18 years and above for purposes of renunciation of citizenship.<sup>53</sup> Although it was contended that the voting age of 18 years can be applied to determine the age of majority for all purposes in Nigeria, the Court of Appeal in Nigeria held thus:<sup>54</sup>

Where the legislature enacts a statute including constitutional enactments prescribing some age other than the common law full age of 21 years as the qualifying age for exercising a particular legal right, such enactment leaves the common law rule relating to full age untouched for other purposes. Consequently, the fact that the 1979 constitution puts the voting age at 18 years with capacity to challenge any act under the Electoral laws does not have the effect of altering the age of majority prescribed under the common law because if the legislature had intended to prescribe any age other than 21 years as full age it would have done so.

Before the enactment of the CRA 2003, the age of majority in Nigeria was 21 years. However, the CRA 2003 appears to have modified for the contractual rights of the Child and 18 years as age of majority. This is also the position of majority of states that have domesticated the CRA 2003. That means, the legislature has prescribed 18 years thereby altering the age of majority at common law. However, it is submitted that the common law position on the age of majority for contracts purposes continues to apply in few states that have not yet enacted the Child Right law with similar provisions.

#### **1.4 Liability of Infants for Contracts at Common law**

The only class of contracts at common law to which infancy did not afford some sort of defence was a contract of 'necessaries'. In all other cases, common law treated an infant contract as being voidable at his option, either before or after the attainment of his majority.<sup>55</sup> At common law, contracts for necessaries as well as beneficial contract of service are binding on the infant.<sup>56</sup> However, there are certain contracts in which an infant acquired an interest of a permanent or

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<sup>53</sup> CFRN 1999, s 29(4).

<sup>54</sup> *Elias v. Elias* (2001) 9 NWLR pt 718,429, [442-443] [para E-A]

<sup>55</sup> (n,49) 196

<sup>56</sup> J.C.Smith, *A Casebook on Contract* (Eighth Edn, Sweet & Maxwell, 1987) 504

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continuous nature; these were binding on the infant until he repudiated them during infancy or within a reasonable time after his majority.<sup>57</sup> Examples of these contracts are those by which the infant acquired shares in a company or an interest in land.

In the case of contracts that were not continuous in their operation, the rule of common law was that they were not binding unless the infant ratified them, within a reasonable time upon attaining majority. Thus, a promise by an infant to perform an isolated act, such as to pay goods supplied to him other than necessities, or to recompense another for work and labour done at his request, required an express ratification after attaining majority before the infant would be bound.<sup>58</sup> It can thus be argued that contracts for necessities are not affected by the Child Right Act and Child Right Laws, and therefore remain subject to Common Law rules.<sup>59</sup> Although necessities may be goods or services,<sup>60</sup> contracts of employment, apprenticeship or instruction are also treated as contract for necessities.<sup>61</sup> An infant is bound by a contract for necessities only if it is on the whole, for his benefit. Otherwise, the child is not bound by it, unless he ratifies it after reaching majority.<sup>62</sup>

These are contracts in which an infant acquires in property, of a permanent nature, with continuing obligations attached to it. As stated above, these include contracts to lease or purchase land, marriage settlements, shares in companies, and partnerships. These contracts are binding on him until repudiated, and he may repudiate either during infancy or within a reasonable period of the attainment of majority. Thus, it was held in *Edwards v. Carter*<sup>63</sup> that an infant who was a party to a marriage settlement could no longer repudiate it at the age of twenty- four (three years after attaining majority). In the circumstance, it was too late to repudiate.

Until the child avoids the contract, the child is bound to fulfil the obligations under it as they fall due. Thus, in *North Western Ry. v. M' Michael*<sup>64</sup>, it was held that infant shareholders in

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<sup>57</sup> (n,49) 196.

<sup>58</sup> Ibid, 196-197.

<sup>59</sup> T. Antony Downes, *Textbooks on Contract*, (Blackstone Press Ltd, Fifth Edition, 1987) 168.

<sup>60</sup> Apex, 12. *Dairies on Contract*. Sweet & Maxwell, 1999) 172;

<sup>61</sup> (n,59)

<sup>62</sup> *ibid*, 172- 173.

<sup>63</sup> (1893) AC 360.

<sup>64</sup> (1850)5 Exch 114.

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companies are liable for calls on their shares. On the other hand, in all contracts of this class, the effect of avoidance or repudiation by the infant is that he escapes from liability to perform obligations which have not accrued at the time of repudiation. He must, however, meet all obligations which have already accrued. Moreover, he cannot recover any money paid or property transferred under such a contract unless there has been total failure of consideration. In *Steinberg v Scala (Leeds) Ltd*<sup>65</sup>, an infant applied for and was allotted shares in a company and paid amounts due on allotment and on the first call. It was held that upon subsequently repudiating the contract during infancy she could not recover back what she had paid, for although she had received no dividends she had received "the very consideration for which she bargained".

At common law; this class of Contract (by far the largest) consisted of contracts which were enforceable by the infant, but which were not binding on him unless he expressly ratified them after coming of age. This class included all contracts other than contracts for necessities, beneficial contracts of service and contracts involving an interest in property, of a permanent nature. Thus, at common law, he might sue, but could not be sued for breach of promise of marriage or for non-necessary goods. However, under the Infants Relief Act, this group of contracts is no longer capable of ratification by the infant after majority. Indeed, contracts for goods other than necessary goods are now void as against the infant.

However, a fresh promise (not mere ratification) made after majority will be binding and enforceable. Thus, in *Ugbomah v Morah*<sup>66</sup>, the defendant who was engaged to the plaintiff for ten years, married someone else in 1939. The plaintiff sued him for breach of promise of marriage. In his defence, the defendant claimed that he became engaged to the plaintiff at the age of twenty and his promise was, therefore, not enforceable. However, the evidence before the court showed that he wrote a fresh letter of marriage proposal to the plaintiff five years later, when he was already twenty-four years old. The court held that he was held bound by this fresh promise and therefore liable for breach of promise of marriage.<sup>67</sup>

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<sup>65</sup> (1923)2 Ch 451.

<sup>66</sup> (1940) 15 NLR

<sup>67</sup> (n,9) 484.

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### 1.5 Liability of Infants for Contracts under the Infant Relief Act, 1874

The Infant Relief Act provides that three particular types of contracts with infants are absolutely void. They are:<sup>68</sup>

All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent or for goods supplied or to be supplied (other than contracts of necessities) and all accounts with infants shall be absolutely void provided always that this enactments shall not invalidate any contract into which an infant may, by any existing or future statute or by the rules of common law or equity, enter except such as now by law are voidable.

This shows that contracts of loan, i.e. lending money to an infant, contract for goods other than necessities, and account stated are absolutely void and such contracts cannot be enforced against the infant. The effect of the above provisions of the Infants Relief Act is that it recognizes contracts which are binding at common law unless he repudiates them upon attaining majority. The Infants Relief Act further provides that:<sup>69</sup>

No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after age of any promise or contract made during infancy, whether there shall or shall not be any consideration for such promise or ratification.

Thus, contracts which were not binding on the infant, unless ratified by him after attaining majority, can no longer be ratified by him after majority because such contracts are now void. Thus, voidable contracts at common law which did not bind the infant but he could ratify upon attaining majority are not preserved by the Infant Relief Act, and therefore unenforceable.<sup>70</sup> However, the Infant Relief Act did not change the Common Law position of the Infants'

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<sup>68</sup> IRA 1874, s 1.

<sup>69</sup> IRA1874, s 2.

<sup>70</sup> M C Okanny, *Nigerian Commercial Law* (Africana- Fep Publishers Limited,1992) p. 97.

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contracts for necessities as well as those for his benefits, and voidable contracts which are binding on the infant unless and until he repudiates them.

### **1.6 Legal Effect of Lack of Contractual Capacity of the Child under the CRA 2003**

There is no doubt that rules of Common Law and the provisions of Infants Relief Act are part of the received English law which apply to contracts entered into by children in Nigeria. This was particularly so due to absence of legislation in Nigeria before the enactment of the CRA 2003. However, the Nigerian National Assembly enacted the CRA 2003<sup>71</sup> which seeks to protect the right of the Child, especially the contractual right of the child. The CRA 2003<sup>72</sup> provides as follows:

- (1) No child shall enter into a contract, except as provided in this section.
- (2) Any contract, except a contract for necessities, entered into by a child for repayment of money lent or for payment of goods supplied to the child, shall be void.
- (3) Accordingly-
  - (a) no action shall be brought against a child by a person after the child has attained the age of majority, to pay a debt contracted before majority or ratified on majority or any promise of contract made by the child before majority, whether or not there was new consideration for the promises or ratification after the child attained majority ;
  - (b) If a child who has entered into a contract for a loan which is void agrees after majority to pay the loan, the agreement in whatever form it may be, shall be void so far as it relates to money which is payable in respect of the loan.

The above provision of the Act seems to fundamentally alter position of the law on the contractual capacity of the child. The Act defines the age of majority and contractual capacity of the Child in Nigeria. It has been argued that the Act is a federal legislation within the

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<sup>71</sup> CRA, 2003.

<sup>72</sup> CRA, 2003, s 18.

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legislative list and therefore Child Right Laws of various states that are not compatible with the Act may be void.<sup>73</sup> However, under the Nigerian Constitution, the power to make laws relating to the rights of the child seems to have been categorized under the Residual Legislative List. This means that states are entitled to adopt the Child Rights Act or refuse to adopt it. As such, the Child Rights Act cannot be enforced in the states that have not yet enacted the Child Rights Law.<sup>74</sup> In any case, there are Child Right Laws that provide for contractual capacity of the Child. For instance, the Niger State Child Right Law with provisions which are modeled on the Child Right Act in relation to contractual capacity of the Child provides as follows<sup>75</sup>:

- (1) Except as provided for in this section, no child is capable of entering into a contract.
- (2) Any contract except a contract for necessities entered into by a child for repayment of money lent or for repayment or goods supplied to the Child, shall be void;  
Accordingly:
  - (a) No action shall be brought against a child by a person after the child has attained the age of maturity, to pay a debt contracted before maturity or ratified on maturity or any promise of contract made by the child before maturity, whether or not there was no consideration for the promises or ratification after the child attained maturity.
  - (b) If a child who has entered into a contract for loan which is void agrees after maturity to pay the loan, the agreement in whatever form, shall be void as far as it relates to money which is payable in respect of the loan.

This shows that a child does not possess the legal capacity to enter into a contract for any type of goods or services except necessities. Consequently, any contract with a child for goods or services other than necessities is a party is void. More so, no action can be brought against a child by a person after the child has attained the age of majority.<sup>76</sup> This provision is in *pari*

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<sup>73</sup> MA AjaNwachuku, 'A Legal Analysis of the Nebulous Concept of Childhood in Nigeria', (2016)(7), *Beijing Law Review*, 125 <[https://www.scirp.org/pdf/blr\\_2016060610362506.pdf](https://www.scirp.org/pdf/blr_2016060610362506.pdf)> Accessed on 17 March 2023.

<sup>74</sup> *ibid*, 163.

<sup>75</sup> NSCRL, 2021, s 11; see also Lagos State Child's Rights Law of Lagos, 2007 s 17; Oyo State Child Rights Law 2006, s 20; Benue State Child Right Law 2009, s 20; Plateau State Child Rights Law, 2005, s 20; Nasarawa State Child's Right Law 2005, s 18; Kebbi State Child's Right Law, 2021, s 10.

<sup>76</sup> CRA 2003, s18(3)(1)



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*materia* with the provisions of the Infant Relief Act.<sup>77</sup> Although the child can only enter into contract of necessities, there are other contracts which are valid and enforceable against the child. Harun *et al* have identified marriage contract, contract of employment and apprenticeship, insurance as exceptions to the general rule.<sup>78</sup> Thus, it seems a child who is more than 16 years can enter into contract of employment but a child less than 16 can only enter into contract of apprenticeship in Nigeria.<sup>79</sup>

However, the CRA 2003 and the Child Right Laws are silent on the legal effect of a void contract. Is it void *ab initio* or it is void against the other party and not the child whose interest the law protects? There is no doubt that the Infant Relief Act is still applicable in Nigeria as a Statute of general application, especially in few states that are yet to domesticate the Child Rights Act.<sup>80</sup> More so, there are Child Protection Laws of some states similar to the Child Right Act that have not provided for the contractual right of the child. For instance, Kaduna State Child Welfare and Protection Law<sup>81</sup>, Zamfara State Child Protection Law<sup>82</sup>, 2021, Kano State Child Protection Law<sup>83</sup> and Katsina State Child Protection Law<sup>84</sup> have not provided for contractual right of the child. Thus, it is doubtful whether the position under common law has changed in these states which enacted the Child Protection Laws. However, it is doubtful whether the CRA 2003 intended to render the child completely incapable of entering into any contract except for necessary goods. Olarinde has argued that the contractual rights of children are not co-extensive with those of adults and this is so because the law seeks to protect the interest of the child.<sup>85</sup> Thus, the underlying philosophy of the Act based on the United Nations Convention on the

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<sup>77</sup> IRA, s 1.

<sup>78</sup> Noraida Harun, Asiah Bidin et al, 'Minor's Capacity to Contract in Malaysia: Issues and Challenges' (2019)(8)(12) International Journal of Academic Research in Business and Social Sciences, 1552-1553. <[https://hrmars.com/papers\\_submitted/5257/Minor%E2%80%99s\\_Capacity\\_to\\_Contract\\_in\\_Malaysia\\_Issues\\_and\\_Challenges.pdf](https://hrmars.com/papers_submitted/5257/Minor%E2%80%99s_Capacity_to_Contract_in_Malaysia_Issues_and_Challenges.pdf)> Accessed on 18 March 2023.

<sup>79</sup> Labour Act, Cap L1, LFN, 2004, s 9(3)

<sup>80</sup> <<https://www.thisdaylive.com/index.php/2022/11/29/fg-34-states-have-domesticated-childs-rights-act/>> Accessed on 12 March 2023.

<sup>81</sup> Kaduna State Child Welfare and Protection Law, 2018

<sup>82</sup> Zamfara State Child Protection Law, 2021

<sup>83</sup> Kano State Child Protection Law, 2023 assented to on 24/05/2023

<sup>84</sup> Katsina State Child Protection Law, 2020

<sup>85</sup> Elisabeta, Smaranda Olarinde, 'Reflections on the Basic Rights of the Nigerian Child under the Child Rights Act, 2003' (2005)(4) *University of Ibadan Journal of Private and Business Law*, 101.

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Rights of the Child which requires governments that the Child receives best protection in the society and all decisions affecting the child are in the best interest of the child.<sup>86</sup> Although the definition of the principle of the 'best interest of the child' has been problematic, the approach is to construe the principle by reference to other rights of the child provided under the Child Right Act and Child Right laws.<sup>87</sup> In this regard, it has been submitted that the Convention on the Right of the Child, Child Right Act, and the Child Right Laws provides the framework and standards for determining 'the best interest of the child'.<sup>88</sup> Consequently, it is thus posited that such void contracts involving the child are only void against the child but binding on the other party.<sup>89</sup>

It seems the position of the CRA 2003 and other similar laws which restrict the capacity of the child to contract except for necessary goods is not in the best interest of the child. Children enter into contracts daily from buying of bus ticket to opening of accounts on social media platforms. The law which renders such transactions or contracts void will deny the child access to such valuable good and services. Swaminathan and Surana argued that such rule as the provision of the CRA 2003 which does not allow the child to enter into such contracts will prejudice the interests of the child whom the law seeks to protect and interests of adults who fairly deal with the child.<sup>90</sup>

The position of the Child Rights Act seems to be similar to the position taken by the Privy Council in an Indian case of *Mahori Bibee v Dhramodas Gbese*<sup>91</sup> where it was held that contracts entered into by a child are void *ab initio*. It has been argued that in case of unilateral contracts though a child has no obligation to perform a contract, where the child has performed his obligation in a contract, there should be nothing to prevent him from enforcing the contract against the other party.<sup>92</sup> Thus, in *Raghava Chariar v Srinivasa*,<sup>93</sup> a child had lent money on

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<sup>86</sup> *ibid*, 90.

<sup>87</sup> Aron Degol and Shimelis Dinku, Notes on the Principle "Best Interest of the Child": Meaning, History and its Place under International Law, [2011](5)(2) *Mizzan Law Review*, 325

<sup>88</sup> Noor Aziah Mohd Awal, 'The Best Interest Principle within Article 3(1) of the United Nations Conventions on the Rights of the Child', [2019](19)(4) *International Journal of Business, Economics and Law*, 35

<sup>89</sup> (n,9) 568.

<sup>90</sup> Shivprasad Swaminathan and Ragini Surana, 'Minors' Contracts: A Major Problem with the Indian Contract, 1872', (2021) (42(1), *Statute Law Review* 102,114.

<sup>91</sup> (1903) 30 ILR Cal 539.

<sup>92</sup> (n,90) 106.

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security to the defendant. The mortgage was challenged on the basis that the child lacked capacity to enter into such a contract. The court held that provided he child had fulfilled his obligation under the contract, the child could not be precluded from enforcing the obligation due from the defendant. This reasoning based on 'unilateral contract' is considered as an exception to the rule that contracts of the child are void *ab initio*.

The CRA 2003 is also silent on whether the money or goods supplied to the child can be recovered where the contract is void. It has been stated that money paid by the child for goods in a void contract is recoverable by him but money or property paid or transferred to him under a void contract are not recoverable from the child.<sup>94</sup> In such circumstance, the adult who can neither sue for the price nor recover the property will suffer injustice. In fact, even if the child lied or misrepresented his age, no action in deceit will lie against the child because that will enable the contract to be enforced against the child.<sup>95</sup> Unfortunately, the Act does not provide any remedy or remedy to the adult who suffers injustice on account of such void contract. In England, the law now provides some redress albeit to a limited extent, to the plaintiff if the court thinks that it is just and equitable to order the child to return the property received from the plaintiff under the contract.<sup>96</sup> Unfortunately, there is no similar provision in the Child Rights Act to provide redress to an adult who has transferred money or property to the child.

Finally, CRA 2003 seems not to address recent development and advancement in information technology. In this age, digital contracts are more usually entered into by children than adults. Such digital contracts include creating social media accounts such as face book, uploading content on personal YouTube channels or podcasts and creating apps for sale on Google or Apple App Store.<sup>97</sup> An example of digital contract by children on the digital platform is e-Sport player contracts which involves multiplayer video game played online. They are performed only on the digital platform. E-sports organisations contract with players and hold tournaments. The careers of these young players usually take off before they attain 18 years making their

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<sup>93</sup> (1917) 40 ILR Mad 308 [314]

<sup>94</sup> (n,9) 567-568.

<sup>95</sup> Roger Brownsword, *A Casebook on Contract*, (14<sup>th</sup> Edition, Sweet & Maxwell, 2021)884

<sup>96</sup> Minors' Contracts Act, 1987, s3

<sup>97</sup> Shivangi Gangwa, 'Minor's Contracts in the Digital Age' (2022) (43), *Liverpool Law Review*, 253.

contractual capacity an issue in such contract.<sup>98</sup> Thus, the validity of such Contracts in Nigeria depends on whether it is found to be contract of necessities or not, and considering the provisions of the CRA 2003, s 18, the contract may be considered void.

## 1.7 Conclusion

CRA 2003 and other Child's Right Laws provide 18 years as the age of majority in Nigeria. Thus, the capacity of a child to contract is restricted to contract for necessities as other types of contracts void. The provision of the CRA 2003 is replicated in most Child Right law of the states which provision is meant to protect the child. However, this article makes the following findings arising from the appraisal of the contractual capacity of the child under the CRA 2003. First, the question of the contractual capacity of the child depends on whether the contract is for necessities or not. Unfortunately, the CRA 2003 has not defined what constitutes 'necessaries' and has not given indication for the criteria for its definition. It is doubtful whether the CRA and similar laws have adopted the position of the Sale of Goods Act and common law on infant's liability for necessities. Secondly, the CRA 2003 and similar laws have taken the position that any contract, except for necessities, entered with a child is void even though it is for his benefit. This is different from the position at common law where the contract for the benefit of the child is merely voidable at the instance of the infant. The implication is that capacity to contract becomes a requirement for creation of contract, rather than a vitiating element, considering the effect of a child's lack of capacity on the contract.

Thirdly, the article found that the position of the law which does not allow restitution of money or property from the child is unfair and unjust to the adult who has fairly dealt with the child under the contract. Such a position will make it possible for the law to be used as an engine of fraud by the child who misrepresent his age against the innocent adult. Finally, this article reveals that the CRA 2003 and Child Right Laws of States that have adopted CRA, s18 seem to provide for restricted contractual right of the Child to enter into contract for necessities only.

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<sup>98</sup> *ibid*, 255.

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However, the Child Protection Laws of some Northern States which have not replicated the provision of CRA 2003,s 18 do not provide for contractual right of the child. Thus, it is argued that the common law position is still applicable in these states with the result that the common law rules will govern a child's liability for contracts in these states.

It is therefore recommended that the court should have recourse to the common law rules in defining necessities under the CRA 2003 and other Child Right laws. This will fill in the lacuna in the CRA due to absence of definition of 'necessaries'. Secondly, the CRA 2003 should be amended to provide for contracts that are binding on the child unless repudiated by him either during minority or within a reasonable period after attaining majority. This will be a line with the international best practice of ensuring that policies and legislation affecting children are made for the protection of the child and in their best interest. Thirdly, the Act should provide for restitution of money or property to the adult where it is unjust and inequitable for the child to retain the money or property under a void contract. Finally, it is recommended that CRA 2003, the Child Right Laws, and the Child Protection laws should be amended to make comprehensive provision for the contractual right of the Child to avoid uncertainty in the law, and ensure uniformity of the law across Nigeria.