

Some Oddities of the Law on Age: So You Thought You Reached Age 21 on Your 21st Birthday?

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Well, yes, you probably did as a legal matter reach (or attain) age 21 at the start of your 21st birthday, ie at midnight at the start of that day (even if you had been born later in the day).¹ But legally this has not always been the case in England and Wales.

Instead, at common law in England and Wales (at least) you were treated legally as reaching an age at midnight at the start of the day before your relevant birthday. For England and Wales, it took statutory intervention in 1969 to enshrine the more common-sense rule (and move to a day later), but this applied only from 1 January 1970.

This article looks at the history and some of the remaining nooks and crannies in this area, including:

- If a person is born on 29 February in a leap year, when is their birthday?
- What happens if a person is in a different time zone on his or her birthday? Do they reach the relevant age earlier (or later) than they would in the UK?
- An interesting story involving:
 - a death in the first world war;
 - theft of false teeth;
 - a rear admiral serving his commutation notice a day before his birthday;
 - The Pirates of Penzance;
 - soldiers in Hong Kong; and
 - a widow arguing that she had reached age 55 when her husband died (on the day before her birthday) because she was born early in the morning in the Philippines.

Some of these issues are now mainly of historical interest, but others remain potentially of importance.

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¹ The same may not apply in New Zealand: see *In Re An Infant* [1936] NZMCRp 6; (1936) 31 MCR 42 (Magistrates Court, Wellington) discussing the NZ Acts Interpretation Act 1924, s 25(b).

Reaching an age

Reaching a particular age is important. Various things happen at the age of majority (currently age 18) and (importantly for pension lawyers) pensions come into payment usually on reaching (or attaining) a particular age (eg age 60 or 65).

The Pension Schemes Act 1993, s181 includes a definition:

“age”, in relation to any person, shall be construed so that—

- (a) he is over or under a particular age if he has or, as the case may be, has not attained that age;
- (b) he is between two particular ages if he has attained the first but not the second; [...]

Similarly, in the Social Security Act 1973 and the Social Security Contributions and Benefits Act 1992, s 173.

Aside from the slightly anachronistic use of ‘he’, so far, so obvious². Why would the legislation bother to say this? And why did the common law treat the day before a person’s birthday as the day they reached that age?

Fractions of a day

At common law, the law ignores fractions of a day, unless the context otherwise requires. This might be imagined to be a purely pragmatic rule dating back to the days before watches or clocks were common, so a particular time of day may have been in practice difficult to fix (imagine dashing to the nearest sun dial). Birth certificates still do not include the time of birth.

It has long been held by the courts that the law generally recognises no fraction of a day. In *Lester v Garland*,³ Sir William Grant MR said:

‘The effect is to render the day a sort of indivisible point; so that any act, done in the compass of it, is no more referable to any one, than to any other, part of it; but the act and the day are co-extensive.’

In Australia in 1961, Dixon CJ in *Prowse v McIntyre*⁴ put forward *Fitzhugh v Dennington*,⁵ where Lord Holt explained the principle:

‘that the end of seven years was the last day of seven years, for there is no fraction of a day; and after twelve o’clock at night is after the seven years, for the day is not the end of the seven years but post expirationem. For the beginning and end of a thing is part of a thing.’

2 But see *R v Chapman* [1931] 2 KB 606 – was a person aged 23 a ‘a man of twenty-three years of age’? The Court of Criminal Appeal held that the expression was ambiguous and so covered the defendant.

3 (1808) 15 Ves Jun 248 at p 257; 33 ER 748 at p 752.

4 (1961) 111 CLR 264, at p 270. Cited on this in *Re Vito Pennisi and Director-General of Social Security* [1984] AATA 145 (but commenting to cf *Prowse v McIntyre* per Kitto J at p 274).

5 (1704) 2 Lord Raymond 1094; [1790] EngR 1498; 92 ER 225.

Dixon CJ went on (at p 271) to note *Nichols v Ramsay*,⁶ where North CJ is reported to have explained it upon the ground that: 'a day is but punctum temporis and so of no great consideration'.

In *Prowse v McIntyre*, Windeyer J (at p 277) said:

'Lawyers naturally adopt the spatial concept of time of ordinary thought and language. It follows that time is measured in periods; and any period or space of time, a year, a day, an hour, is, in theory, at all events divisible. But, as a day is for law the unit of measure in most cases, it was early said that the law was not concerned with the divisions of a day.'

This common law position was summarised in the Australian cases, *Prowse v McIntyre*⁷ and *Re Vito Pennisi*.⁸

The common law seems to have taken this principle to a logical extreme when dealing with reaching (or attaining) a particular age. Clearly a person is in their first year until they reach the day of their first birthday. Ignoring parts of the day, this means that they complete their first year (and so become treated as age one) at the end of the day just before their first birthday.

So far so good, but the common law seems to then have treated this as meaning that the person completed their first year at the end of the day before their birthday and so, ignoring part of a day, actually became aged one at the *beginning of the day before*. And so on for other ages.

This is clearly illogical (and enough to give the common law a very bad name). But over the years it became so entrenched that the courts were not able to move away from the position (unless the relevant legislation or instrument made the common-sense test applicable).

Thus, in 1961, in the High Court of Australia case of *Prowse v McIntyre*,⁹ Kitto J pointed out that the old rule was founded in fallacy, but that it had to be accepted as positive law. He pointed out:

'6. It is difficult to avoid confusion of thought in this by-way of the law, for the settled rule as to when full age is attained was itself born in confusion. When, in the 17th century, judges came to think that on the day before a person's twenty-first birthday he should be held to be of full age, the general principle as to the indivisibility of a day was treated as providing a logical foundation for the conclusion.

In truth it did not provide a foundation for the conclusion at all. It did justify treating the whole day of the birth as a day of life, so that twenty-one years might logically be considered complete at the end of the day before the twenty-first anniversary of the birth. But it was in the next step that fallacy seems to have intruded. The end of the day before the anniversary was taken to be a part of the day, so that the twenty-one years were held to end on the day, and hence (on the principle of the indivisibility of a day) at the beginning of the day.

6 (1677) 2 Mod 280 at p 281; 86 ER 1072 at p 1073. Cited on this in *Re Vito Pennisi and Director-General of Social Security* [1984] AATA 145.

7 (1961) 111 CLR 264.

8 *Re Vito Pennisi and Director-General of Social Security* [1984] AATA 145.

9 (1961) 111 CLR 264.

The error of thought is revealed in Lord Holt's aphorism that "the beginning and end of a thing is part of the thing". To use the words "beginning" and "end" in relation to a day as if parts of a day could be identified as the first and last parts of the day respectively is to misapply them.

The beginning of a day is nothing but the end of the day before, and the end of the day is nothing but the beginning of the next; just as the eastern boundary of a piece of land is identical with the western boundary of contiguous land.

The principle of the indivisibility of a day having been used as a basis for the first step in an argument which led to infancy being considered to end at some time before the midnight at which the twenty-first birthday begins, there can hardly have been an intention to desert it in the process of identifying that time; and the point to notice is that it would have been deserted if any time had been selected other than the midnight at which the day before the twenty-first birthday begins.

Consequently, when it is said, as it is in some of the cases, that full age begins at "the first moment" of that day, the word "moment" cannot be taken to refer to some point of time after the day has begun. It cannot refer to anything but the beginning of the day; and that, as I have said, is the same thing as the end of the day before.

7. Accordingly, as it seems to me, the proposition to be accepted as positive law is that full age is attained as the day before the twenty-first birthday begins. If so, the whole of the day is after the coming to or being of full age – just as the whole of a piece of land with a western boundary is east of that boundary.

In my opinion the correct view in the present case is that the disability of infancy fell from the appellant at the midnight which was at once the end of 26th November and the beginning of 27th November 1951, and that consequently the whole of 27th November 1951 was after the appellant's coming to or being of full age and must be counted in calculating the statutory six years.'

[Emphasis added]

An example from World War 1: *Re Shurey*

*Re Shurey, Savory v Shurey*¹⁰ involved a Captain Shurey who had sadly died (of wounds received in action) on the day before his 25th birthday (he was born on 22 July 1891 and died on 21 July 1916). His father's will had left assets to such of his sons as 'shall attain the age of 25 years'. So the issue arose as to whether Captain Shurey met the condition.

Sargant J (in an unreserved judgment) held that he had. Sargant J followed several earlier cases¹¹ and held that:

'a person attains the age of twenty-one years, or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty-first or twenty-fifth birthday, or other birthday, as the case may be.'

10 [1918] 1 Ch 263 (Sargant J).

11 Including: *Anonymous* 1 Salk 44; *Sir Robert Howard's Case* (1699) 2 Salk 625; and *Toder v Sansam* (1775) 1 Bro Parl Cas 468.

Sargant J noted that the ‘popular sense’ of the words might indicate that you had to reach the actual anniversary date, but he held that: ‘There is nothing to show that in this will the testator was not using the words in their legal sense’.

He noted that legislation had seemingly recognised this ‘slight legal anomaly’ by enacting in the National Insurance Act 1911 in s 79 an express provision:

‘that, for the purposes of the part of that Act in which the section is placed, a person shall be deemed to have attained the age of seventeen years, not on the day preceding the anniversary of his birth, but on the actual seventeenth anniversary of the day of his birth.’

Legislation

As noted in *Re Shurey*, before 1969 some of the legislation expressly removed the common law rule. National Insurance Act 1911, s 79 stated:

‘A person shall be deemed according to the law in England, Wales, and Ireland, as well as according to the law in Scotland, not to have attained the age of seventeen until the commencement of the seventeenth anniversary of the day of his birth, and similarly with respect to other ages.’

This survived to the National Insurance Act 1965, s 114(4):

‘(4) For the purposes of this Act—

- (a) a person shall be deemed to be over or under any age therein mentioned if he has or, as the case may be, has not attained that age;
 - (b) a person shall be deemed to be between two ages therein mentioned if he has attained the first-mentioned age but has not attained the second-mentioned age;
 - (c) a person shall be deemed, according to the law in England as well as according to the law in Scotland, not to have attained a given age until the commencement of the relevant anniversary of the day of his birth;
- [...]

Theft of false teeth

In *R v Scoffin* [1930] 1 KB 741, the accused was charged with, and convicted of, ‘stealing in a dwelling-house a set of false teeth’. In the Court of Criminal Appeal the issue arose as to whether or not the accused was ‘more than 21 years of age’ (if he was, he could not be sentenced to go to borstal). Lord Hewart CJ cited no authority but applied the common law rule (as in *Re Shurey*). He noted that the defendant had been born on 17 February 1909 and:

‘therefore completed twenty-one years on February 16, 1930. The commission day of Manchester Assizes was not until February 17, and he was sentenced on February 18. Therefore on commission day he was one day more than twenty-one years of age, and on February 18, when he was sentenced, he was two days more than twenty-one.’

Common law in Australia

Shurey was cited in 1945 in Victoria in *Belfield v Belfield*,¹² where the question was whether a divorce petition on the grounds of three years' desertion had been validly issued on the day which was the third anniversary of the desertion commencing. O'Bryan J referred to *Shurey*, but said he did not find it helpful for construction of the relevant statute.

Ultimately he noted the general rule that the day on which an act is done should be included in computing a period of time, but held, following *Re North*,¹³ that this general rule gives way if the context suggests otherwise, particularly if the statute envisages a forfeiture or loss of status. Accordingly he held that the three-year period had not expired (and so the petition was dismissed).

Australian High Court: *Prowse v McIntyre* (1961): Writ issued a day too late – issued on 27th birthday, but held more than six years from reaching age 21

Shurey has been followed in my lifetime by the High Court in Australia. In *Prowse v McIntyre*,¹⁴ the issue was whether a writ had been issued within six years of the plaintiff reaching the age of majority (then age 21). His 21st birthday was on 28 November 1951 and the writ was issued on 28 November 1957.

The High Court (Taylor J dissenting) held that he was too late by one day. He had become of full age on 27 November 1951 and so the six years expired on 27 November 1957. Dixon J referred to the old English cases, including *Shurey*. McTiernan J (in the majority) commented:

‘McTIERNAN J. The appellant's birthday being 28th November 1930 he completed twenty-one years of life on 28th November 1951 but, of course, it is not possible to say at what time by the clock on that day he did so.

A day is not in law divisible and a person is deemed in law for the purpose of computing his age to have lived through the whole of the first day of his life.

He would thus have been deemed to have attained full age with the expiration of the day preceding the twenty-first anniversary of his birth were it not for an ancient though artificial rule treating him as of full age throughout the whole of the day preceding that anniversary.

As I understand the rule of law applicable to the matter a person is deemed to have become of full age coincidentally with the passing of midnight. In this case that point of time was when the date changed from 26th November 1951 to 27th November 1951.

Then his status of infancy ceased and consequently at the earliest point of time included in the day indicated on the calendar by 27th November 1951 the appellant was *sui juris*.

12 [1945] VicLawRp 40; [1945] VLR 231.

13 *Re North, ex p Has luck* [1895] 2 QB 264, CA: a bankruptcy case on the computation of a period of days.

14 (1961) 111 CLR 264.

It follows that in computing time for the period of the statute the whole of 27th November 1951 must be included. The result is that the appellant issued the writ six years and a day after coming to full age; the writ was issued on 27th November 1957.'

A pensions case (1982): Rear Admiral Loosli was age 55, but did not realise it

In another Australian case, *Re Rear Admiral RG Loosli*,¹⁵ the Administrative Appeals Tribunal dealt with a case involving a retirement benefit with lower commutation factors if the relevant notice was served at age 55, compared to age 54.

The Rear Admiral served the notice on the day before his 55th birthday but was told by the pensions authority that he had already reached age 55 (under the common law rule) and so the reduced factor applied.

The Tribunal noted the caselaw and commented:

'[12]. *Prowse and McIntyre* has been canvassed in a number of cases throughout Australia without any judicial attempt to distinguish it. These include *Hooker Town Development v Jilba* (48 ALJR 213 at 215); *Commissioner for Superannuation v Bayley* ((1979) [1979] FCA 76; 41 FLR 385 at 400); *Associated Beauty Aids v FCT* (113 CLR 661 at 670); *McM v C* ((1980) 1 NSWLR 1 at 9). The last-mentioned case involved indirectly only a coming-of-age point upon which it was not necessary for Powell J to decide. The other cases are concerned with the question of whether the law might take account of a fraction of a day (the basis upon which the coming of age rule was said to have been built). In *Forster v Jododex* ((1972) [1972] HCA 61; 127 CLR 421), *Prowse's case* is cited in the various judgments at 446 and 449, and at 453 by Mason J, who accepts its authority but expresses adherence to the opinion of Kitto J in *Prowse's case* itself that the feudal law was founded on error. An English decision to similar effect is *Re Shurey* ((1918) 1 Ch 263). The position outlined by *Prowse's case* has been adopted into *Halsbury's Words and Phrases* (2 ed) Vol 2; and *Halsbury's Laws of England* (3 ed) 21 Vol at 134 proposes the statement "full age is attained at the close of the day preceding the 21st anniversary of birth, but inasmuch as the law does not take cognisance of fractions of a day, a person is deemed to have attained the age of 21 years at the first moment of the day preceding the 21st anniversary of his birth."

Ultimately the Tribunal held that the right test had been applied, although recommending an *ex gratia* payment, commenting:

'To quote from Windeyer J's researches into the Norman-French from the centuries of which *Prowse v McIntyre* stems (as we think, anomalously in Australia); 'CEO FUT UN NARROW PINCHE IN LE CASE' de l'Admiral Loosli.'

15 *Re Rear Admiral RG Loosli, CBE, RAN (Retd) and Chairman, Defence Force Retirement and Death Benefits Authority* [1982] AATA 13. See also *Attorney-General v Smith* (1985) 39 SASR 311.

Statutory intervention in England and Wales

The definition in PSA 1993 represents a throwback to the Social Security Act 1973 (and indeed to the National Insurance Act 1911¹⁶).

Arguably since 1970, the attained age wording has not been needed. The Family Law Reform Act 1969, s 9, applies where the relevant anniversary falls on a date after 1 January 1970 and, in relation to any enactment, deed, will or other instrument, has effect subject to any provision in it. Section 9 states:

‘9 Time at which a person attains a particular age

- (1) The time at which a person attains a particular age expressed in years shall be the commencement of the relevant anniversary of the date of his birth.
- (2) This section applies only where the relevant anniversary falls on a date after that on which this section comes into force, and, in relation to any enactment, deed, will or other instrument, has effect subject to any provision therein.’

Note that s 9 does not extend to Scotland: see s 28(4). Perhaps there was a different common law rule in Scotland?

Born on 29th February?

It seems best to consider that someone born on 29 February only reaches a further year of age on 1 March and not 28 February in a non-leap year.¹⁷ I have struggled to find any commentary on this in relation to English law.

The point has doubtless formed part of the plot in various books and plays. In Gilbert and Sullivan’s *The Pirates of Penzance* the argument is used to deceive the character of Frederic (who wanted to leave the pirates on his 21st birthday and who was also born on 29 February) into believing that he only had a birthday once every four years:

‘Though counting in the usual way, years twenty-one I’ve been alive,
Yet, reckoning by my natal day, I am a little boy of five!’

(W S Gilbert and Arthur Sullivan, *The Pirates of Penzance* (1879), Act II)

16 See *Re Shurey, Savory v Shurey* [1918] 1 Ch 263 at 265.

17 In Hong Kong, see the Age of Majority (Related Provisions) Ordinance (cap 410), s5(2): ‘Where a person has been born on 29 February in a leap year, the relevant anniversary in any year other than a leap year shall be taken to be 1 March’. In the UK, the Electoral Commission seems to take this the same view, stating (in 2009):

‘8.3 Any person who was born on 29 February in a leap year will attain the age of 18 on 1 March in a non-leap year.’

See *Managing electoral registration in Great Britain: Guidance for Electoral Registration Officers* (EROGB00GE – Updated January 2014) at B.8.3 (Part B, p 27). On the web at: http://data.parliament.uk/DepositedPapers/Files/DEP2014-0512/ERO-Guidance-Manual-2014_187341.pdf (accessed 17 May 2020).

In an Australian case, *PM v Childrens Court*,¹⁸ McWilliam AsJ cited the Gilbert and Sullivan extract and referred to earlier Australian cases *Smith* and commented:

‘The emphasised words in the extract above highlight the effect of the common law position, which was to distinguish between a person’s “birthday”, being the anniversary of the day of his or her birth, and the day that a person “attained” any age, and in the case above “attained the age of 18 years”.’

The issue in *PM* concerned a plaintiff who was born in a leap year, on 29 February 2000. She had been charged with committing certain criminal offences on 28 February 2018, being a common year (or non-leap year).

On this judicial review application, the question was whether, at the time she allegedly committed those offences, she was 17 and therefore a child at law, or 18 and therefore an adult.

McWilliam AsJ referred to the common law rule, but held that it had been superseded by the relevant Australian legislation which stated that ‘For an Act or statutory instrument, a person is an age in years at the beginning of the person’s birthday for the age.’

The judge held that the plaintiff was not an adult on 28 February but only became an adult on 1 March:

‘[43] It follows that on the proper construction of s 149 of the Legislation Act, on 28 February 2018, the plaintiff was not yet an adult, being someone who was “at least 18 years old”, because she had not yet reached the beginning of the anniversary of her birth. It was only on 1 March 2018 that she became someone who was “at least” 18 years old.’

Time zones: Greenwich Mean Time

Greenwich Mean Time (GMT) now applies throughout the UK by statute (save to the extent that British Summer Time applies): see the Interpretation Act 1978.¹⁹

Section 9 states:

‘9 References to time of day

Subject to section 3 of the Summer Time Act 1972 (construction of references to points of time during the period of summer time), whenever an expression of time occurs in an Act, the time referred to shall, unless it is otherwise specifically stated, be held to be Greenwich mean time.’

This section is apparently derived from the Statutes (Definition of Time) Act 1880, s 1. It applies to subordinate legislation as well: see s23(1).

¹⁸ *PM v Childrens Court of the Australian Capital Territory* [2018] ACTSC 258, 336 FLR 379 (McWilliam AsJ).

¹⁹ Interpretation Act 1978, ss 9, 23(3) and (applying the principles in s 9 to all Acts and subordinate legislation, whenever passed) Sch 2, paras 1, 6.

The Interpretation Act generally applies directly only to legislation. But s 9 also applies to deeds or other instruments or documents: see s 23(3), which states:

‘(3) Sections 9 and 19(1) also apply to deeds and other instruments and documents as they apply to Acts and subordinate legislation; ...’.

The Summer Time Act 1972, s 3(1), as amended, provides that:

‘Wherever any reference to a point of time occurs in any enactment, Order in Council, order, regulation, rule, byelaw, deed, notice or other document whatsoever, the time referred to shall, during the period of summer time, be taken to be the time fixed for general purposes by ‘the Summer Time Act 1972’.

However, nothing in the Summer Time Act 1972 affects the use of Greenwich Mean Time for the purposes of astronomy, meteorology or navigation, or affects the construction of any document mentioning or referring to a point of time in connection with any of those purposes: s 3(2). So pension schemes seem likely to need to use Summer Time and probably not GMT even if (I suggest) the scheme relates to astronomers, weather persons or navigators.

The volume on Time in *Halsbury’s Laws*²⁰ refers to the previous common law position as being based on local time, citing *Curtis v March*.²¹

Offences abroad and time zones: *R v Logan* [1957]

What happens if an Act of Parliament relates to actions outside the UK? In *R v Logan*,²² British soldiers stationed in Hong Kong were convicted of assault that happened at about 2.30am on 1 January 1957. They were convicted under a UK Act, the Army Act 1955, which only came into force on 1 January 1957. They appealed on the basis that the relevant UK Act had not, at the time of the offence, yet come into force in Hong Kong (being eight hours ahead of GMT).

The Courts-Martial Appeal Court heard the defendant’s counsel but did not call on the Crown counsel. Lord Goddard CJ did not cite any authority, but referred to:

‘An ingenious solicitor who appeared before the court-martial persuaded them to put in the exact time of the alleged offences, 2.30 am, and then took the point that as Hong Kong time was some hours in front of Greenwich mean time, the Army Act 1955 was not in force in Hong Kong at the time that this offence was committed.’

This defence was dismissed. Lord Goddard held:

‘If an Act is said to come into force on January 1, it comes into force on the day which is January 1 in the particular place where the Act has to be applied. I can well understand that if an offence were committed in the Western Atlantic the Act might not be in force

20 Vol 97 (Time) (2015) at [315].

21 (1858) 3 H&N 866, 157 ER 719 (Court of Exchequer) (summarised by Windeyer J in *Prowse*: see below).

22 [1957] 2 QB 589, [1957] 2 All ER 688. See also ‘*The Odd Date*’ (1957) 73 LQR 462 and the brief discussion in Sir Robert Megarry ‘*A Second Miscellany-at-Law*’ (Stevens & Sons, 1973) at p 303.

there on the same day as it would in London because the date might still be December 31 there, but the fact that it became January 1 in Hong Kong a few hours before the clock would actually show January 1 in England does not make any difference. As the Act comes into force on January 1, 1957, in Hong Kong, it comes into force on the day which is January 1 in Hong Kong. Therefore, this point fails and the appeal is dismissed.’

This of course is dealing with a statute and seems to involve the English court recognising local law on dates and times. But it seems consistent with the comments in Australia in *Prowse* noted below that:

‘any question of personal rights, capacities, disabilities, or qualifications gained or lost by the lapse of a given period of time must be determined according to the clock and the calendar at the place where the person in question is.’

R v Logan was not cited in the later Australian case, *Prowse*.

Citing *Logan*, *Halsbury’s Laws*²³ comments that GMT may not apply to events overseas:

‘It is understood that where an event is provided for in an instrument such as a policy of insurance, the hour or day of that event must be fixed with reference to Greenwich mean time, and not local time. However, the statutory rule should not be applied in a case where the instrument was executed or the event was expected to happen or did happen in a foreign country.’

Jumping ahead by travelling to Australia?

***Prowse v McIntyre* (1961)**

Some four years later in the High Court of Australia, in *Prowse v McIntyre*,²⁴ Windeyer J discussed a similar time zone point (but *Logan* was not cited). He commented that ‘time is a local phenomenon’ and that (say) a twin born second but who was in Sydney on his birthday might achieve a particular age before his ‘older’ twin who had remained in the UK. He commented:

‘4. Time is a local phenomenon. An interesting discussion of this occurred in *Curtis v. March* (1858) 3 H & N 866 (157 ER 719). Watson B had taken his seat on the bench at Dorchester punctually at ten by the clock in the Court, and the cause being called on and the defendant not appearing had directed a verdict for the plaintiff. Later, counsel appeared and claimed that the Court had sat before the appointed hour; for the Court clock recorded Greenwich time and the town clock Dorchester time, which was some minutes later.

On appeal a new trial was directed because the time of the place should prevail. “We are as much bound”, said Pollock CB, “to take judicial notice that a particular place lies east or west of Greenwich, and consequently has a different time from it, as we are to know the days of the year” (1858) 3 H & N, at p 867 (157 ER, at p 719).

²³ *Halsbury’s Laws* Vol 97 (Time) (2015) at [316].

²⁴ (1961) 111 CLR 264.

Practical difficulties arising from differences in mean solar time at different places are, however, largely overcome by the statutory adoption for legal purposes of Greenwich mean time, or of standard zone times related to Greenwich mean time (with, in some places and seasons, distortions by “summer time”): see for New South Wales the Standard Time Act, 1902, consolidating the Standard Time Act of 1894.

So that the date and time of an event or of an act are ordinarily the date and time determined by the calendar and clock at the place where the event happens or act is done, notwithstanding that the actual occurrence is at different times in different parts of the world.

When effluxion of time has to be considered, a somewhat similar result occurs. Suppose twins born at Greenwich on the same day; the elder, born just before his brother, remains in England; the younger comes to Sydney, and immediately on coming of age speaks by telephone to his elder brother in England. He is an adult, his brother is still an infant. Yet the duration of their infancy is computed from the same moment, namely the beginning of the day they were born.

Some interesting situations can be imagined on this basis with results even more striking than the experience of Phileas Fogg. It seems, however, that *any question of personal rights, capacities, disabilities, or qualifications gained or lost by the lapse of a given period of time must be determined according to the clock and the calendar at the place where the person in question is*. This matter is not directly relevant here; but it illustrates that concepts concerning the expiry of a given period of time, are elusive and in a sense artificial; and the legal problems they create must be determined by the application of rules of law. (at p 279)

[Emphasis added]

If this is followed in the UK (and there seems no reason not to), this would fix the time of reaching a particular age by the relevant time (presumably the official time) in the jurisdiction in which the person actually is at that time (even if they were usually resident elsewhere).

This still leaves open the potential for dispute about the nature of the official time (eg what happens in Somalia where there may be no recognised government) or where the dateline is disputed.

Born in the Philippines: *Roberts v Secretary of State* [2001]

In *Roberts v Secretary of State for Social Security*²⁵ an application for leave to appeal was dismissed by Arden LJ (as she then was). The case also includes some discussion of implications of relevant event happening outside the UK.

Here Mrs Roberts had been born in the Philippines on 27 June 1942. Her husband died on 26 June 1997 and so, under the Social Security Contributions and Benefits Act 1992, s 39(4), her widow's pension was subject to a 7 per cent reduction on the basis that she was under age 55 at the time the applicable qualifying condition (her husband's death) was fulfilled.

25 [2001] EWCA Civ 910.

Arden LJ noted:

‘[5] Mr Roberts died shortly after 10.50 pm on 26 June 1997. The question then is whether the applicant’s 55th birthday was due to commence at midnight on 26 June 1997, ie, shortly after her husband’s birthday or started at an earlier date. Section 173 of the 1992 Act provides that:

“For the purposes of the Act ... and in Scotland (as well in England and Wales) the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of his birth.”

Counsel argued that the difference of a few hours was *de minimis* and so should be ignored. Arden LJ held that the statutory ‘wording is expressed, [as] a mandatory provision. Thus it would be sufficient to displace the maxim’. Therefore, she held that the *de minimis* argument did not have any real prospect of success.

Counsel also argued that as Mrs Roberts had been born in the early hours of 27 June in the Philippines, this was actually still 26 June in the UK and so she must be taken to have been born on 26 June, namely the same day as her husband died. Arden LJ described this as ‘attractive’, but considered that the decision in *Logan* did not help and that the argument did not get over the problem of s 9 of the Interpretation Act 1978 which requires Greenwich Mean Time to be used (unless otherwise specifically stated). Arden LJ stated:

‘It seems to me that it would not be possible to argue that the date of the birth was anything other than 27 June, whether the birth occurred here or elsewhere. Under s 173, she attains the relevant age that her birth date starts at the commencement of her 55th birthday. In that respect then s 9 has the effect, it seems to me, of saying that Greenwich mean time must be applied to establish the commencement of her birthday irrespective of whether her birth took place here or not. In my opinion there is no prospect of success in the argument that her birth date commenced at some other date for the purposes of s39(4).’

With respect, this is not obvious. If Mrs Roberts was born in the early hours of 27 June in the Philippines, then at that time (under Greenwich Mean Time) it was presumably still 26 June in the UK – and s 9 seems to be implying that you should look at GMT on her birth date as well as when Mr Roberts died.

Having said which this is probably a pragmatic solution as otherwise even for someone now in the UK it could be necessary to give evidence of the precise time to the relevant event (eg birth) and the impact of time zones on that.

Note that as a refusal of leave to appeal, this decision is not citeable as a binding precedent in court: see the Practice Direction (Citation of Authorities).²⁶

26 [2001] 1 WLR 1001.

End piece

The attained age issue at common law seems rather odd to modern readers. Thankfully, the 1969 Act seems to have resolved the point (and there is now equivalent legislation in Australia). The wording in the pre 1969 National Insurance Acts included an odd reference to Scotland:

‘a person shall be deemed, according to the law in England as well as according to the law in Scotland, not to have attained a given age until the commencement of the relevant anniversary of the day of his birth.’

This author guesses that Scots law never went down this route.

Ultimately all of this seems to mean that there is now no need to have an express age attaining clause in pension scheme deeds.

Two random quirks on the 1969 Act:

- Sir Robert Megarry pointed out in *A Second Miscellany-at-Law* that no one can have attained a particular age on 1 January 1970, when the 1969 Act came into force. This is because anyone whose birthday was on that day would already have attained the relevant age on the day before (under the old law), whereas anyone whose birthday was 2 January 1970 would only attain the relevant age on their birthday (as the 1969 Act had then come into force).
- Robert Ham QC has pointed out that although he was born on 7 August he did not legally attain the age of majority on his birthday (or even the day before). This was because he was aged 18 but under 21 in 1970, meaning that when the 1969 Act came into force on 1 January 1970, he ceased to be a minor on that day (and not on his birthday).