NOTES *and* COMMENT

Age

By NORBERTO J. QUISUMBING

TIME is continuous, and, of course, not in fact severable. There is no instant between the ending of one period and the beginning of the succeeding one. The law grants certain rights and privileges to one who is twenty-one years of age, which it withholds from one who is not yet of that age. But when twenty-one years have passed, the twenty-second year will have begun. If twenty-one years must actually pass, he would be more than twenty-one years in fact before he becomes entitled to those rights and privileges.

True, this is merely a matter of split seconds. But out of split seconds, very interesting questions of law arise.

A

1. Definition

"Age" is defined in law as that period of life at which the law allows persons to do acts or discharge functions which for want of years they were prohibited from doing or undertaking before. *(Bouvier's Law Dictionary p. 56; 2 C. J. 401)*

The ages of males and females, as provided by law, are different for different purposes. Thus, we have the age of majority, the age of legal consent, and age qualifications for various purposes.

2. Arbitrariness in Fixing Age

The fixing of these age-requirements are, of necessity, arbitrary. There is but an inappreciable difference in the discretion of a person on the day before and on the day after a certain age is attained. But this is an arbitrariness which is necessary for certainty and practical facility in the application of the law.

Of twenty-one years as the age of majority, it has been said: "A minor who has nearly attained his majority may be as able to protect his interests in a contract as one who has passed that period. But the law must necessarily fix some precise age at which persons shall be held *sui juris*. It cannot measure the individual capacity in each case as it arises." *(McCarty v. Carter, 49 Ill. 53, 55; 95 Am. Dec. 572)*. "Whenever he arrives at majority, a time fixed by an arbitrary rule, which in the nature of things cannot affect the personal capabilities of its subject, the law presumes that he has acquired all the wisdom and prudence necessary for the proper management of his affairs; hence the law imposes on him full responsibility for all his acts and contracts." *(Harner v. Dipple, 31 O. S. 72, 74)*. Unless some arbitrary point of time is fixed by law, the capacity of the infant would necessarily be a question of fact in each case; and from the uncertainty and practical difficulty that would be thus caused the courts have always shrunk. *(3 Page on Contracts, Sec. 851)*.

3. Various Computations of Age

As to the exact moment an age is attained, there is no conformity among the systems of law and the authorities in each system.

(a) *Common Law*

A person, under the Common Law, reaches a designated age on the beginning of the day preceding the anniversary of his birth. *(1 Am. & Eng. Ency. Law (2 Ed.) 827; 15 Cyc 290 Note 1; 1 Blackstone Com. 460, 463; Frost v. State, 153 Ala. 654, 45 S. 203, 204; Erwin v. Benton, 120 Ky. 536, 87 S. W. 291; Montoya de Antonio v. Miller, 7 N. M. 289. 34 Pac. 40, 21 L. R. A. 699).*

(b) *Civil Law*

The common-law rule that an age "is completed on the beginning of the day preceding the anniversary of the person's birth" does not prevail in countries under the regime of the civil law. *(State ex rel. Fleming v. Joyce, 123 La. 637. 49 S. 221).*

There are three theories of computing age under the Civil Law:

(1) An age is attained at the *commencement* of the anniversary day of his birth. Thus, a minor born June 30, 1883, will become of legal age June 29, 1904, at midnight.

(2) An age is attained at the *expiration* of the anniversary day of his birth. Thus, a minor born June 30, 1883, will not become of legal age until June 30, 1904, at midnight.

(3) Where the hour is fixed in the certificate of birth, age is computed "de momento ad momentum."

(Manresa, "Comentarios al Codigo Civil Español" Vol. 2 p. 750; Carpenter-Du Saint "Repertoire General de Droit Francaise" Vol. 28 folios 62, 63).

(c) *In the Philippines*

Manresa, in commenting on Article 320 of the Spanish Civil Code fixing the age of majority, believes that the third mode of computing age "de momento ad momentum" is the mode accepted by the Civil Code. Baudry-Lancautionerie in his "Treatise of the Civil Code" (vol. 4, pp. 705-707) commenting on Art. 488 of the Code Napoleon relative to the age of majority, says that the Romans computed the time for attaining the age of majority by hours, *de momento ad momentum*, and not *de die ad diem*, and that the former is the proper mode of computation under the Code Napoleon because another article (57) requires the hour to be inserted in the registration of birth. The Philippine Civil Registry Act (Act No. 3375 sec. 5), requiring record of the "date and hour" of birth, tends strongly to support this interpretation.

(d) *Suggested Article on "Age"*

The following provision is humbly suggested for consideration by the Code Committee, now engaged in the revision and codification of our existing substantive laws:

"Art. ——. An age is attained at the commencement of the anniversary day of one's birth. Age shall be computed from the first minute of the day on which a person is born to the same minute of the corresponding day completing the period required."

The second part of the above-proposed article is taken from section 26 of the California Civil Code, relative to the age of majority. The proposed article relates to age in general and not only the

age of majority. It would therefore be applicable to age requirements that may be prescribed by the new Code and by any applicable statute.

B

In the computation of age, the authorities follow one of two modes, namely: *de momento ad momentum* or from moment to moment and *de die ad diem* or from day to day.

In the computation of time, Philippine law adopts the method of computing from day to day. It regards a day as an indivisible point of time and therefore an event or act and the day on which such act or event occurred as coextensive. Thus, where a period of time is to be computed from or after a specified act or event, the moment of the act or event is disregarded and the day of such act or event considered. Then the period of time is computed from day to day and not from moment to moment by excluding the day of the act or event and including the last day of the period, in accordance with the general rule of exclusion and inclusion. *(Rule 28 sec. 1 of New Rules of Court, taken from Code of Civil Procedure, Sec. 4; Rev. Adm. Code sec. 13; Negotiable Instruments Law sec. 86; U. S. v. Painaga 27 Phil. 18).*

There seems to be no reason for adopting one mode in the computation of age and another mode in the computation of time. Age, after all, is time. That time for purposes of age be computed in one way and for other purposes, be computed in another way—is, it seems, unjustifiable in theory as well as impractical.

This is particularly so where both time and age are to be determined in the same case, as in exceptions to the statute of limitations granted in favor of persons within the age of minority. *(Code of Civil Procedure, Secs. 42, 45, 578, 579; Rule 74 Sec. 5, Rule 100 sec. 8).* To illustrate, let us suppose that a person entitled to bring an action for acknowledgment of a natural child is, at the time the cause of action accrues, within the age of minority. Sec. 45 of the C.C.P. provides that in such a case, he may bring such action within two years after the disability (of minority) is removed. If we suppose that he was born on July 25, 1896 at 10:11 A. M., he would be of age, applying Manresa's computation from moment to moment, on July 25, 1917 at 10:11 A. M. Since he is allowed two years after the disability (of minority) is removed or after the attainment of majority, it follows that he may bring the action at any time before 10:11 A. M. of July 25, 1919 and not after that time. But the Supreme Court in several of its decisions *(Suarez v. Suarez, 43 Phil. 903; Ullman v. Hernaez, 30 Phil 69; Velasquez y Teodoro, 46 Phil. 757; Quijano v. Gomez, 49 Phil. 263)* in determining limitation of action, applied the computation from day to day provided in Sec. 4 of the Code of Civil Procedure and now embodied in Rule 28 sec. 1 of the New Rules of Court. Thus, in the above illustration, the plaintiff may bring the action even after 10:11 A. M. of July 25, 1919, as he is given the whole of that last day.

It is apparent that both modes of computation cannot be applied in the same case or that if both are applied, the fine results of Manresa's computation of age from moment to moment are

ignored in the subsequent computation of time from day to day.

Section 15 of the Revised Naturalization Law (*C. A. 473*) also contemplates of a case where both time and age is to be determined. It provides that a child born outside of the Philippines after the naturalization of his parent to be considered a Philippine citizen, must within one year after reaching the age of majority register himself as a Philippine citizen at the American consulate of the country where he resides and take the necessary oath of allegiance. Here again, it would be idle to compute his age from moment to moment, since in the subsequent computation of the one-year period, the moment is disregarded and the day considered.

Uniformity in the computation of time and age is to be desired. Of course, the problem of attaining uniformity is a choice of one of the two modes of computation. We may either adopt the computation of from moment to moment or adopt the other computation of from day to day for both time and age. It seems that the choice should be in favor of the computation which conforms "with the customs, traditions, and idiosyncracies of the Filipino people and with the progressive principles of the science of law." (*Executive Order No. 308 creating the Code Committee*).

It is submitted that the computation from day to day conforms with the progressive principles of the science of law. The Philippines adopted this mode in October 1, 1901 in the Code of Civil Procedure (Sec. 4) and subsequent legislations, Negotiable Instruments Law (Sec. 86), 1911, and the Revised Administrative Code (Sec. 13), 1917, have approved this mode. The Supreme Court recently added its approval in Rule 28, Sec. 1 of the New Rules of Court.

In the earlier American decisions (*Griffith v. Rogert, 18 How 158, 15 L. Ed. 307; Arnold v. U. S., 9 Cranch 104, 120, 3 L. Ed. 671; Dutcher v. Wright, 94 U. S. 553, 24 L. Ed. 130*) a distinction between a limitation running from a day and from an event has been laid down. But the later cases have generally departed from this distinction. (*U. S. v. Barber, 24 F. Supp. 229*). In most jurisdictions (62 C. J. 988), that distinction is at present disregarded on the ground that, as a day is an indivisible point of time, an act and the day on which it is done are coextensive, and, therefore, where a period of time is to be computed from and after a specified act or event, the moment of the act is ignored and the day of such act considered.

Justice Holmes in *Burnet v. Willingham L. & T. Co., 282 U. S. 437, 75 L. Ed 448*, said: "The fiction that a day has no parts is a figurative recognition of the fact that people do not trouble themselves without reason about a nicer division of time." That this is particularly true of Filipinos has to be admitted when the well-known "Filipino time" is remembered to mean not exactly the appointed time.

Justice Holmes expressed the true basis of the proper computation from day to day. Indeed, if the people do not trouble themselves without reason about a nicer division of time, the law should not. For if the law should take notice of a fraction of a day,

if the law should compute age from moment to moment, the application of the law would entail unnecessary cumbersomeness. So, if a man is born May 2, 1900, at 11:01 A. M., he can legally contract marriage on May 2, 1916, at or after but not before 11:01 A. M. (Act 3613 sec. 2). He can make a valid will or be a witness to a will on May 2, 1918, at or after but not before 11:01 A. M. (C.C.P. 614, 620). He is considered of age on May 2, 1921, at or after 11:01 A. M. but before 11:01 A. M., he is still a minor, generally incapacitated to act, and cannot give consent. (Civil Code Art. 32 No. 2, 1263 No. 1). A petition for naturalization can be heard by the court on May 2, 1921 at or after but not before 11:01 A. M. (C. Act 473 sec. 2). If the day of election falls on the twenty-first anniversary day of his birth, he can legally vote in such election at or after 11:01 A. M. but his vote cast before 11:01 A. M. is a nullity. (C. Act 357 sec. 92, 93). Again if the day of election falls on the anniversary day of his birth and he presents his candidacy for a public office, he can be voted for at or after 11:01 A. M. but all votes cast for him before 11:01 are null and void. Many other absurd results arise from the law on adoption, guardianship, penal laws, lands acts and homestead acts, etc.

Absurdities cannot be the purpose of law and yet that is often the inevitable result of the application of Manresa's computation from moment to moment. If the people do not in practice accept the troublesome and vexatious regard for moments, the law should not.

As to the adoption of the computation *de die ad diem*, there is still a choice to be made from the Common Law rule and the two theories of the Civil Law.

The Common Law rule that a person reaches a designated age on the beginning of the day preceding the anniversary of his birth has been assailed by Professor Minor as absurd *(1 Minor Inst. 514)*, is regarded as a "blunder" by Redfield *(Law of Wills p. 19)*, and has been criticized by many courts of the United States. If it is at present adhered to, it is because "it has been too long established now to depart from it." *(Erwin v. Benton, 120 Ky 536, 87 S. W. 291)*.

The two choices left are the two theories of the Civil Law, one which holds that an age is attained at the commencement of the anniversary day of a person's birth and the other at the expiration of that day. In view of the fact that people today arrive at the 'age of discretion' earlier, the first theory should be favored.

D

Controversies, the determination of which will depend on the definiteness and certainty of the rule on computation of age, do not arise frequently. Thus, a provision of law on age may be thought of as unimportant. But the test of a good law is not its frequency of application but its definiteness in case of application.