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Legal Computation of Periods of Time in Pennsylvania

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Situations constantly arise in the practice of all lawyers which necessitate the computation of periods of time. Examples are the fifteen-day period granted defendants to file affidavits of defense; the calculation of proper dates for the return of summons; and limits set by election laws for the filing of nomination papers and the withdrawal of candidates.

Despite the many decisions which have set forth the proper method of calculating periods of time under various statutes and in various situations, the question is by no means a settled one. This is due to the fact that the same rule is not applied to the computation of time under all circumstances, and also because the courts, even under the same circumstances, seem unable, sometimes, to agree upon a uniform method of calculation.

There are several distinct types of situations in which the calculation of time is frequently necessary. These are:

1. Situations where a property interest passes (such as arises when a lease is executed);

2. Problems which arise with regard to elections and which must be solved by reference to the election laws;

3. Situations where a party is entitled to a certain number of days' notice before an act may be performed by the one giving the notice;

4. Situations where a party is given a certain time to do an act; and

5. Situations involving return days, etc., in which the question is as to the legality of some action taken by a magistrate, court, or officer thereof.

If these various types of situations are distinguished, the problem of correctly computing time is considerably simplified, and most, although not all, of the apparently conflicting decisions in the field may be reconciled.

Type I—Where a Property Interest Passes

The law is plain as regards the first type of situation. If a lease is executed on June 1 for a period of one year, the count starts on June 1 and the year expires May 31.[1] And the count starts with the day of execution, even though, as in the above case, the words were: "to continue during and until the full term of 21 years *next ensuing* the day and year above written".

And where a bond is dated July 22, and made payable in five years "from date", it is payable on July 21. The count starts on the day of execution.[2]

However, there may be, in connection with the sale of a bond or other property, an agreement which is not governed by the above method of counting time. Where bonds were sold April 21, and the buyer agreed to hold them for one year, it was held that the count began with April 22, in obedience to the so-called "general rule", discussed below, under the fourth type of situation.[3]

Type II—Where Periods of Time are Connected with Elections

Taking up the second type of situations, that is, those connected with elections, the law is clear that periods of time ante-dating the election are computed under the Act of July 9, 1919, P. L. 832, amending the Act of June 10, 1893, P. L. 419 and the Act of July 9, 1897, P. L. 223, whose provision as to the calculation of time "is part of the general election system of the Commonwealth"[4] and reads:

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[1]Nesbit v. Godfrey, 155 Pa. 251 (1893).

[2]Lysle v. Williams, 15 S. & R. 135 (1827).

[3]Weed v. Barker, 153 Pa. 465 (1893).

[4]Ellwood City Borough's Contested Election, 286 Pa. 257, on page 263 (1926). Note that the Act of July 9, 1919, P. L. 832, is erroneously referred to as P. L. 382.

"In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed, or notice given, shall be excluded from, and the date of the election shall be included in, the calculation or reckoning".

So that where a (substitute) nomination for burgess was filed October 14, and the election was November 3, the filing was held to be within the twenty days provided for by the Act of July 9, 1919, P. L. 832.[5]

Type III—Where a Party Is Entitled to a Certain Notice Before an Act May Be Performed by the One Who Gives the Notice

We must now consider the third type of situation, where the one receiving the notice is entitled to a certain number of days' notice before an act may be performed by the one giving the notice.

There are two possible sub-classifications under this third type of situation. First, we have a set of circumstances under which the purpose of the notice is to give the party notified a certain number of days to take some action, in the absence of which the notifying party may then proceed. Secondly, we have a set of circumstances under which there is no action which the party notified can take, and the notice is given merely to enable the notified party to prepare himself for the action which the notifying party proposes to take. The following situations are illustrative:

First sub-classification: Where a superintendent of schools on July 6 notified a teacher that he proposed to annul the teacher's certificate on July 16, under a statute giving the superintendent this power and requiring the superintendent to give "at least 10 days' previous notice to the teacher", it was held that the notice was insufficient, because the purpose of the notice was to enable the teacher to present any defense which he might have, that the teacher was entitled to 10 full days in which to present this

[5]Ellwood City Borough's Contested Election, supra.

defense, and the count should start on July 7. The teacher would therefore be entitled to the 10 days from July 7 to July 16, inclusive, and any action by the superintendent prior to July 17 would be premature.[6]

Where a distress for rent was levied upon a tenant's goods on February 1, and a statute provided that the tenant was entitled to five days therefrom in which to replevy the goods, if he so desired, after which the landlord might proceed to appraise and sell the goods, it was held that the count of the five days started with February 2, and the tenant was entitled to the five days from February 2 to February 6 inclusive, and that any appraisement by the landlord prior to February 7 would be premature.[7]

Under the first sub-class of the third type appear, also, the situations where a rule is taken by a plaintiff to do some act, such as to file an affidavit of defense "within 15 days from the service" of the statement of claim upon him. The count in such case starts on the day following the service, and the defendant has 15 full days to file his affidavit of defense. If this is not done, plaintiff may take judgment by default, on the day after the expiration of the period. So that where a writ and statement were served on February 18, plaintiff would have been entitled to judgment in default of an affidavit of defense on March 6.[8]

It will be observed that the rule in this first sub-classification of the third type is the same as the rule under the fourth type of situation, to be discussed *post.*

Second sub-classification: Where a lease was made on March 25 for a year (and would consequently expire at the end of March 24 next), and the tenant was entitled to three months' notice to quit, it was held that notice on December 25 was sufficient. There was no action which the tenant could take during the period of notice. The notice was given him merely to enable him to prepare for the action (re-entry) to be taken by the landlord at the end of the

[6]Scheibner v. Baer, 174 Pa. 482 (1896).

[7]Whitton v. Milligan, 153 Pa. 376 (1893).

[8]Muir v. Preferred Accident Ins. Co., 203 Pa. 338 (1902).

period of notice. Therefore the count would start with December 25, the date of the notice, the three-months' period would cover the dates December 25 to March 24 inclusive, and the landlord would be entitled to re-enter on March 25.[9]

Similarly, where, after appraisement of a tenant's goods, public sale thereof could take place by the landlord only "after six days' public notice", but the tenant had no power to take any action during the notice period, it was held that notice on February 7 would support a sale on February 13.[10] It should be observed, however, that the Court in this case did not start the count on the day of the notice, but on the next day, February 8, and counted the sale day to make up a total of six days' notice. It would appear much more logical to start the count on the day of notice and not to count the sale day.

So, also, in *Rich v. Boguszinsky,*[11] where a statute[12] required a sub-contractor intending to file a mechanics' lien to serve notice on the owner "at least one month before the claim is filed," and notice was given October 19, and a claim was filed November 19, it was held that the notice was sufficient. Instead of starting the count on the day of notice, however, the Superior Court invoked the Act of June 20, 1883, P. L. 136, began the count on October 20 and included November 19 as the last day of the month of notice, even though the claim was made on that day. The Court apparently misconstrued the act of 1883. This act applies only to the computation of a period *succeeding* some certain date, during which period a party may perform an act, if he wishes. The act does not apply to notice periods antedating an act, during which period the one notified can do nothing but wait.

The error of the Superior Court is indicated by its reliance, in *Rich v. Boguszinsky, supra,* upon *Herr v. Moss*

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[9]Duffy v. Ogden, 64 Pa. 240 (1870).

[10]Whitton v. Milligan, supra.

[11]88 Pa. Super. Ct. 586 (1926).

[12]Act of June 4, 1901, P. L. 431 amended by the Act of March 24, 1909, P. L. 65.

Cigar Co., 237 Pa. 232, (1912), where it was held logically that the act of 1883 did protect an owner against mechanics' liens where a copy of the contract was filed by the cautious owner with the prothonotary "within 10 days after its execution," with the execution on May 23 and the filing on June 3 (June 2 being a Sunday and so omitted from the count). In other words, this period of time *succeeded* the date of execution of the contract.

The result, however, is the same in cases falling under this second sub-class, whether the count starts with the day of notice and continues until, but not including the day of the act, or whether the day of the notice is omitted, the count starting with the next day, and continuing to, and including, the day of the act.

Type IV—Where a Party is Given a Certain Time to Act

The fourth type of situation involves the computation of the period of time given, by some law or rule of court, to some party for the performance of an act.

The leading case on this subject is *Cromelien v. Brink, 29 Pa. 522 (1858),* where land was sold for taxes on June 10, 1850, and redeemed on June 10, 1852. Two years were given for redemption. The Court decided that the redemption was in time, because the count of the period allowed for the performance of the act started on June 11, 1850, the day *after* the so-called *terminus a quo.*

The statute of June 20, 1883, P. L. 136, sec. 1, is declaratory of the prior common law covering this situation.[18]

The cases of *Hampton v. Erenzeller, 2 Browne 18 (1811); Thomas v. Afflick, 16 Pa. 14 (1851),* and *Agnew v. Philadelphia, 2 Phila. 370 (1857),* are no longer law, having been overruled by *Cromelien v. Brink, supra.*

Type V—Where the Legality of the Issuance or Service of Writs, Summons, and Other Like Papers Is Involved

We now take up the computation of time where the circumstances of the case fit the fifth type of situation. In

[18]Lutz's Appeal, 124 Pa. 280 (1889).

cases involving the computation of time connected with the issuance or service of writs, summons, and other like papers, where the words in the controlling statute are "at least (so many days) before" or "returnable not less than (so many days) nor more than (so many days) after issuance (or service)," the day *a quo* (that is, the day on which the originating act is performed) should be omitted from the count, the count should start with the day following the issuance or service, and the final or return day should be omitted.

So where a summons is returnable not less than five days after its issuance, and issuance is on the tenth of the month, the count starts on the eleventh, and the fifth day will be the fifteenth. The earliest return day will be the sixteenth.

And, correspondingly, where a summons is returnable "not more than eight days after issuance", and issuance is on the first of the month, the last possible return day is the ninth. If the tenth inst. is made the return day, it is too late.[14]

Contrary to the above decisions is the much-cited case of *Justice v. Meeker, 30 Pa. Super. Ct. 207 (1906).* In this case the Superior Court overruled a long line of cases holding similarly to the citations in the preceding paragraph, and held that the count should start on the day following the issuance of the summons, *and include the return day.*

So where a summons issued on May 17, and the statute required appearance to be "not more than eight nor less than five days after the date of the summons," and the summons was made returnable May 22, it was held to be valid. The count started May 18, May 22 was day number five, and May 22 was one of the "five" days, although it was also the return day. However, this decision stands

[14]See the leading case of Gregg's Estate, 213 Pa. 260 (1906); followed in Guyer v. Bender, 4 D. & C. 466 (1923); Conoway v. Smith, 16 Dist. R. 501 (1907); Biever v. Troiano, 2 D. & C. 487 (1923) and Wilver v. Keim, 8 D. & C. 56 (1926).

unsupported, except for one case, *Hughes v. Swartz, 30 Dist. R. 715 (1921).*

Miscellaneous Elements

It will be worth while to take up now several miscellaneous elements entering into the legal computation of time.

Sundays.—Sundays are always counted except in two situations. Sunday is *not* counted when it is the *last* day of a period coming either under the first sub-classification of the third type of situation or under the fourth type. So where a decree was handed down on April 12 and 20 days were allowed for an appeal, the last day of the period falling on May 2, which was a Sunday, an appeal was allowed on May 3.[15]

The other situation in which Sunday is omitted from the count arises when, after verdict, a motion is made for a new trial or in arrest of judgment. Four days are allowed, and the count starts the day after the verdict is rendered, and Sunday is omitted in the count.[16] *Quaere* as to whether, since the Statute of 1883, *supra,* Sunday would be omitted if it fell on other than the fourth day. Logically, it should not be omitted. The cited cases are older than the statute, and the question has not arisen for judicial decision since the passage of the statute.

In connection with negotiable instruments, the final Sunday is omitted. So that where a 15-day note is executed on the first inst., and the 15th inst. is Sunday, that Sunday is omitted, and the note matures on the 16th inst.

Legal Holidays.—With regard to legal holidays, by the Act of June 23, 1897, P. L. 188, section 5, re-enacting prior law, legal processes on these days are valid. So writs and summons may be issued, served and entered. And it was

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[15]Gosweiler's Estate, 3 P. & W. 200 (1831); Herr v. Moss, 237 Pa. 232 (1912).

[16]Parkinson v. Snyder, 2 W. N. C. 428 (1876); Golder v. Blackstone, 1 T. & H. Practice, section 415 (1820); Sims v. Hampton, 1 S. & R. 411 (1815).

held that where the last day for taking an appeal was Labor Day, an appeal the next day was too late.[17] However, by these cases, it seems that if the offices of courts and prothonotaries are closed on legal holidays, that later action may be allowed *nunc pro tunc.*

Month.—A month is a calendar month, unless otherwise expressed, in contracts and civil proceedings.[18] Where prison sentences are concerned, however, *quaere.* There are two cases, *Comm. v. Martin, 2 D. R. 330 (1893),* holding that a month means a lunar month (of 28 days), in obedience to the old English common law, and *Comm. v. Lewis, 19 D. R. 770 (1910),* which holds that "at this day, the word month ought to be deemed to be a calendar month." In practice, *Comm. v. Lewis* is followed.

Fractions of Days.—Fractions of days, do not count in computing legal periods of time. A day is an indivisible point of time. It has neither length nor breadth, but simply position without magnitude.[19]

And there is no longer any legal difference in the phrases: "From an act done," "from the day of the date," "From a day" and "from a date."

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[17]Patterson v. Gallitzin B. & L. Assn., 23 Pa. Super Ct. 54 (1903), overruling prior cases. Cited favorably in Ambrose v. Laughlin, 81 Pa. Super. Ct. 437 (1923).

[18]Shapley v. Garey, 6 S. & R. 539 (1821).

[19]Justice v. Meeker, supra and Cromelien v. Brink, supra.

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