

## COMING OF AGE

I have always been perplexed by the bewildering variety of ages of children that are relevant in different areas of the law for one reason or another. In preparing this paper, I was surprised to discover that the situation is in fact far worse than even I had imagined and what follows is a gingerly walk through a legal minefield.

### Under Twelve

At common law a child was entirely exempt from criminal responsibility until the day before his 7th birthday<sup>1</sup>. The relevant age is now 12 and the provision is to be found in section 3 of the Juveniles Act, which provides that it "shall be conclusively presumed that no child under the age of twelve years can be guilty of any offence". Even though there may be the clearest evidence that the child caused an actus reus with mens rea, he cannot be convicted once it appears that he had not, at the time he did the act, attained the age of 12: he is doli incapax. As is well known, this is more than a procedural bar and no crime at all is committed by the infant.<sup>2</sup>

With regard to provisions for the protection of children section 71(1) of the Juveniles Act provides that no child under 12 may be employed, save by his parents in light domestic, horticultural or agricultural work. It should also be noted that any man convicted of carnal knowledge of a girl

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<sup>1</sup> See Smith & Hogan, 4th ed., page 155

<sup>2</sup> Walters v Lunt [1951] 2 All ER 645. Prior to its amendment in 1975, the age of criminal responsibility was 8

under 12 is guilty of a felony, punishable by life imprisonment.

Twelve to Fourteen

Professor Granville Williams has described this category as a "twilight zone"<sup>3</sup>, in which infants are exempt from criminal responsibility unless it is proved, not only that they caused an actus reus with mens rea, but also that they did so with a "mischievous discretion"<sup>4</sup>. A special offshoot of this rule relates to boys under 14, who cannot be convicted of rape, assault with intent to commit rape or sodomy<sup>5</sup>. The rule is theoretically based on a presumption of incapacity but, as no evidence is admissible in rebuttal, it is in effect a rule of law. He can, however, be convicted on the same facts of indecent assault.<sup>6</sup> Hale's view was that this result flowed from the law's presumption of the boy's impotency and in Sutton v Fowler<sup>7</sup>, the Full Court of Appeal of the then British Guiana, it was held that it was also an irrebuttable presumption of law that a boy under 14 at the time of the last act of intercourse before the conception of a child could not be the father.

More recently, this question came up again in the English case of L. v. K.<sup>8</sup>, in which it was held that the rule of the criminal law that there is an irrebuttable presumption that a boy under 14 is not able to have sexual intercourse is

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<sup>3</sup> [1954] Crim L.R. 494

<sup>4</sup> Hale, 1 PC 630

<sup>5</sup> See generally Smith & Hogan, op. cit. at page 158 and the cases there cited

<sup>6</sup> Williams [1893] 1 Q.B. 320

<sup>7</sup> [1957] L.R. B.G. 64

<sup>8</sup> [1985] 1 All ER 961

not a rule that applies to the civil law. Accordingly, paternity cases should be decided on a common sense basis on the facts in the particular case, without any preconceived notions or presumptions. I think this must be a preferable decision, bearing in mind that paternity is, after all, a question of fact and requires no mens rea.

By section 69 of the Offences against the Person Act, it is an offence to steal a child under 14 (punishable by up to 7 years imprisonment). Finally, a child under 14 is deemed to be unable to maintain himself by reason of tender years.<sup>9</sup>

#### Fourteen

A "child" is defined in several statutes as a person under the age of 14. This is the definition given in the Juveniles Act<sup>10</sup>, the Corrections Act<sup>11</sup> and the Crime (Prevention of) Act<sup>12</sup>. This may be contrasted with the provisions of the Children (Adoption of) Act, and the Children (Guardianship and Custody of) Act, for instance, where a child is defined as a person under 18, who has never married<sup>13</sup>, or with the Education Act, where a child is defined as a person under 15<sup>14</sup>. Persons who wish to join the Jamaica Combined Cadet Force must have attained the minimum age of 14, save that where there is an insufficient number of persons of that age available to maintain the strength of the force, a number of persons of 13 1/2 years and upwards may be allowed to join,

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<sup>9</sup> Maintenance Act, section 11  
<sup>10</sup> Section 2(1)  
<sup>11</sup> Section 2  
<sup>12</sup> Section 2  
<sup>13</sup> Section 2(1) & S. 2 respectively  
<sup>14</sup> Section 2

so long as their numbers do not exceed one fifth of the total complement of the Force!<sup>15</sup>

Fifteen

We have already noted that the definition of a child in the Education Act is a person under 15. That Act also defines "tertiary education" as that which is provided for students over 15.<sup>16</sup> Apart from that, the legislators do not appear to feel that 15 is a particularly significant age, save for the Jamaica Social Welfare Commission Act, which defines a "young person" as being between the ages of 15 and 25<sup>17</sup>, Section 72 of the Juveniles Act, which provides that no juvenile under 15 should be employed in any industrial undertaking and section 3(1) of the Apprenticeship (Motor Mechanic Trade) Order 1959 which prescribes 15 as the minimum age for employment as an apprentice in that trade<sup>18</sup>.

Sixteen

16 is, on the other hand, an age of great significance in several areas of the law and I will not bore you by going through them all here. I have, however, set out those which I do not mention below in the Schedule which is attached to the paper. One of the best known consequences of attaining age 16 is, of course, that it is the age at which a young girl can give her consent to sexual intercourse. Prior to 1988, the age of consent was 14, but was increased in that year by an amendment to the Offences against the Person Act, under section 50 of which unlawful carnal knowledge of a girl

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<sup>15</sup> Jamaica Combined Cadet Force Rules 1971, section 12

<sup>16</sup> Section 2

<sup>17</sup> Section 2

<sup>18</sup> This Order is made under the provisions of the Apprenticeship Act.

between 12 and 16 is an offence. The well known proviso to that section affords a defence to a man charged with carnal <sup>actual</sup> knowledge, who is aged 23 or under, -if it can be established that he had reasonable cause to believe that the complainant was in fact over 16.

16 is also an age of significance under the provisions of the Marriage Act, which provides in section 3(2) that a marriage solemnized between persons, either of whom is under that age, shall be void. Once a person attains the age of 16, however, he or she may marry with the consent of their parents or guardians, pursuant to the provisions of section 24 of the Act. Similar provisions are to be found in the Hindu Marriage Act<sup>19</sup> and the Muslim Marriage Act,<sup>20</sup> both of which however disclose a special peculiarity to which I shall return below.

In both the Affiliation and the Maintenance Acts, orders for maintenance ordinarily end at age 16, though both Acts contain provisions permitting the Court to direct that payments continue to age 18, in proper cases.<sup>21</sup> Both Acts also make further provision for cases in which a child is or will be engaged in a course of training after age 18, in which case the Court may order that maintenance payments continue to age 21<sup>22</sup>. Interestingly enough the power to make an order for maintenance of a child is also expressly given by section 7(3) of the Children (Guardianship and Custody of) Act and the power to extend the order to age 21 in that Act is not

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<sup>19</sup> Section 8

<sup>20</sup> Section 7

<sup>21</sup> Affiliation Act, section 13  
Maintenance Act, section 8

<sup>22</sup> Affiliation Act, section 13A, Maintenance Act, section 8

qualified by the need for the child to be engaged in any course of training.

The only other provision that I have found to be worthy of specific mention is Section 73 of the Insurance Act, which provides that a minor who has attained the age of 16 may effect a policy of insurance on his own life or that of anyone in whose life he has an insurable interest. Notwithstanding the statutory provision, nice questions could still arise as to an insurer's right to recover money loaned to a minor on the security of the cash surrender value of a policy, bearing in mind the law's traditional attitude to contracts for the repayment of money made by infants.<sup>23</sup> Of course, this is probably an entirely academic speculation, given the time that it usually takes for an insurance policy to acquire a cash surrender value!

#### Seventeen

A person ceases to be juvenile for the purposes of the Juveniles Act at the age of 17 and becomes thereafter generally subject to the provisions of the criminal law in the same way as adults. Indeed, the general category of juvenile offenders known as "young persons" has 17 as the upper limit.<sup>24</sup> However, it should be noted that the Corrections Act does make special provisions for a "young inmate", who is an inmate under 18 years, by providing that he should be separated from adults in any correctional facility.<sup>25</sup> Similarly, the Criminal Justice (Reform) Act gives power to the Court in sentencing offenders to deal with persons over 17

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<sup>23</sup> See Colinvau, Law of Insurance (5th edition) page 296

<sup>24</sup> Juveniles Act, section 2

<sup>25</sup> Corrections Act, sections 2 and 30(c)

but under 23 other than by imprisonment.<sup>26</sup> But perhaps the greatest claim to fame of 17 as a landmark birthday is that it is the age at which a person may lawfully obtain a driver's licence.<sup>27</sup>

### Eighteen

This is, of course, the big one, the age of majority,<sup>28</sup> whereupon several disabilities fall away. So that one can make a valid will,<sup>29</sup> do jury service,<sup>30</sup> be registered as an elector<sup>31</sup> and do a host of other things. At 18 young persons ought to feel justified in asserting that they have come of age. But yet so many anomalies remain. For instance, under the Marriage Act, no consent is needed to a marriage between persons over 18; however, in both the Hindu and the Muslim Marriage Acts, though an intended wife may marry without consent at age 18, an intended husband cannot do so until he has attained the ripe old age of 21.<sup>32</sup> Again, one is entitled to vote at age 18, the prescribed age for the purposes of section 37 of the Constitution, but is not qualified to be appointed a Senator or to be elected to the House of Representatives, by virtue of section 39 of the Constitution. <sup>(Must be 21)</sup> And then section 6(1) of the Legal Profession Act still requires an aspirant to the profession to satisfy

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<sup>26</sup> Criminal Justice (Reform) Act section 3(1)

<sup>27</sup> Road Traffic Act, section 18(1)(iii)

<sup>28</sup> Law Reform (Age of Majority) Act

<sup>29</sup> Wills Act, section 5

<sup>30</sup> Jury Act, section 2(1). At the other end of the spectrum, one becomes disqualified for jury service at age 65

<sup>31</sup> Registration of Electors (Prescribed Age) Special Act

<sup>32</sup> Hindu Marriage Act, section 8(2), Muslim Marriage Act, section 7

the Council that he has attained the age of 21 years. And the Adoption Act takes it even further by requiring an applicant for an Adoption Order, or one of them when there are two, to be at least 25, save that in the case where the applicant is a relative of the child whom it is being sought to adopt, 18 will suffice.<sup>33</sup> One final oddity: the only places I have been able to find age 19 surfacing at all are in the Constables (Special) Act and the Constabulary Force Act. In both Acts, where a constable dies while in the Force, but not in circumstances attributable to the discharge or nature of his duty, the Governor General may grant a pension to such of his children who are under 19 years of age.<sup>34</sup> But though eligibility ceases at age 19, it may be extended, if the child is engaged in a course of higher education, to age 23, in the case of members of the regular, but apparently not the special, constabulary force.

### Conclusion

Coming of age, as the old saying goes, is not easy. Even an old rule, once well settled by authority, has now been changed: where it is necessary to ascertain whether a person had attained a certain age before the happening of a certain event, the rule was that the person attains the specified age on the day preceding the anniversary of his birth and not on the anniversary day. So that in the case of In re Shurey<sup>35</sup>, a deceased testator left his residuary estate upon trust for such of his 3 sons "as shall attain the age of 25 years". The eldest son was born on July 22, 1891 and died on July 21, 1916 and it was held that he had, in accordance with the rule propounded above, attained the age of 25 years at the time of his death. The rule was changed in England by section 9(1) of

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<sup>33</sup> Adoption Act, section 10(1)

<sup>34</sup> Sections 44 & 62 respectively

<sup>35</sup> [1918] 1 Ch.263.



the Family Law Reform Act 1969, which provides that the time at which a person attains a particular age expressed in years shall be the commencement of the relevant anniversary date of his birth. The identical provision is now to be found in section 4(1) of the Law Reform (Age of Majority) Act. But while this tells us how to determine that a person has attained a certain age, the foregoing survey demonstrates that the question of which age is relevant, and for what purpose, is often difficult to ascertain. I venture to suggest that this is an area that, with care and effort, can benefit from greater uniformity. In addition to harmonisation of the various provisions, though, I am sure that this group will agree with me that there really is no need for an upward age limit with regard to the definition of a "young person".

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S C H E D U L E

Aliens Act, sections 11 & 12 - no requirement for registration of children under 16

Civil Aviation (Births, Deaths & Missing Persons) Regulations 1967, sch. 2 - children under 16 should be recorded as "son of" and "daughter of"

Coroners Act, section 22A - A summons may be served by delivering it to a person "apparently over 16 years"

Deportation (Commonwealth Citizens) Act, section 2(1) - "dependant", means child under 16 years

Immigration Restriction (Commonwealth) Act, section 2(1) - "dependant", means child under 16 years

Incest (Punishment) Act, female over 16 consenting to intercourse with family member guilty of an offence

Law Reform (Age of Majority) Act, section 8(1) a minor who has attained the age of 16 may give an effective consent to any surgical, medical or dental treatment.