

THE JUDICIAL DEPARTMENT, FEDERATION OF MALAYA.  
REGISTRAR'S CIRCULAR NO. 9 OF 1954

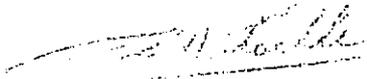
Court of Appeal Amendment Rules, 1954 (L.M. 532/54).

Certain officers have found some difficulty in connection with the recent Registrar's Circular No.8/54.

2. The first difficulty, which is in reference to the example given in paragraph 7 in the Circular, can best be resolved by re-stating the method of ascertaining the last day for filing the Record in a rather different manner. Using the same example, there is no difficulty in ascertaining the "next sitting of the Court of Appeal", which for this example, is the Penang sitting gazetted for 16th August. Counting back 28 days from this date (i.e. 16th, 15th, 14th etc.) we come to the 19th July. Then it is necessary to apply Section 36(a) of the Interpretation and General Clauses Ordinance, 1948. For this purpose we must regard the period by counting forward from the date on which, to use the wording of that sub-section "the act or thing (i.e. in this case the filing of the record) is done". The sub-section excludes the day on which "the act or thing is done", and therefore the record must be filed on or before the 18th July. If it was filed on the 19th, as that day is excluded by the sub-section, it would be found on counting forward to the date of the "next sitting" that the period was under 28 days.

3. This example also can be used in explaining a second point of difficulty. The 18th July 1954 was a Sunday. In Kedah, Sundays are not "weekly holidays" and therefore the reasoning in paragraph 2 above is correct for such a State. But if these dates had been applicable in a State or Settlement where Sunday was a weekly holiday, or if in Kedah the 18th July 1954 had been a Friday and in all cases everywhere where the last date for filing a record of appeal falls on an "excluded day" (defined in the Interpretation Ordinance as a "weekly holiday or public holiday"), sub-section (c) of Section 36 of the Interpretation Ordinance applies and has the effect of allowing the filing to take place on the next day, i.e. the 19th. This point is of importance as the Court of Appeal frequently sits on a Monday, and therefore by counting back 28 days and going one day further, as described in paragraph 2 above we come to a Sunday. It follows that in all such cases, in States and Settlements where Sundays are "weekly holidays", filing can take place on the subsequent Monday, despite the fact that this does not allow the full 28 days to the next sitting.

4. It would appear that, at present, if any dispute arises between a Senior Assistant or Assistant Registrar and a party or Solicitor as to whether or not a document is to be filed or some action is to be taken within a prescribed time, the Registrar has no discretion to refuse to file or to take other necessary action, but must leave it to the Court to decide whether the party is in time or not. This situation contains the possibility of considerable inconvenience and consideration is being given by the Chief Justice to the making of Rules under Section 10 of the Court Ordinance to remedy it.

  
(D.H. SHACKLES)  
REGISTRAR.

The Federal Registry,  
Supreme Court, F. of M.,  
Kuala Lumpur. 13th December, 1954.  
(RSC.39/54: RSC.95/54-1: DHS/tkc)

To: All Senior Assistant Registrars, Supreme Court.