

Statutes of Limitation Statutes of Repose

Eric E. Johnson
Associate Professor of Law
University of North Dakota

EricEJohnson.com
ejohnson@law.und.edu

© 2011 All rights reserved.
Most rights sharable.



Statutes of Limitation

Basics

- Bright-line deadline
- Serves as a complete bar to suit (threshold inquiry)
- Affirmative defense
 - Must plead in answer
- Varies by state and kind of action
- Comparison to equity
 - Fairness inquiry
 - Reliance
- Federal statutes borrow state limitations
- Legal malpractice trap

Rationales

- Deterioration of evidence
- Avoiding the re-ignition of conflicts quieted by time
- Peace of mind for potential defendants
- Ability to throw out trash
- Promotes forward-looking investments
- Avoids costs to society through increased insurance costs
- Social value of stable transactions and relationships

Criticisms

- Having a claim one day but not the next is irrational
- Bars otherwise just claims
- Inflexible
- Prevents some kinds of torts from being compensable at all

Flexibilities

- When statute starts running
- When tolled
- Which statute applies

Control over these variables introduces room for courts to tailor the application of the law to conceptions of fairness.

When does the statute start running?

- Accrual rule
 - Harm (vs act)
 - When damage is done and you can sue
- Discovery rule
 - When relevant facts are discovered (or should be discovered by the reasonable person)
 - E.g., foreign object left by surgeon

Tolling (time outs)

- Minority age
- Prison
- Military service
- Mentally incompetent
- Another suit pending on same subject matter
- Administrative proceedings prerequisite to suit
- Defendant's agreement

Statutes of Repose

Statutes of Repose

- Outside time limit that runs from act
 - Counters operation of accrual or discovery rule
- Defendants helped:
 - Architects
 - Engineers
 - Product manufacturers
 - Physicians
- Helps to replace privity rule
- E.g., blender bought at garage sale