

**Statutes of Limitation
Statutes of Repose**

**Torts I
Fall 2009
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**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.

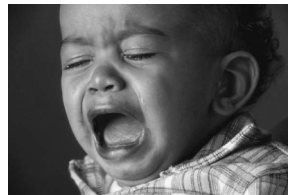
When does the statute start running?

- **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**

