

LIMITATION OF ACTIONS

EFFECTS OF EXPIRY OF LIMITATION PERIODS

The effects of the limitation periods are procedural rather than substantive in that they bar a remedy and do not extinguish the claim itself. Sir John Donaldson MR stated:

‘it is trite law that the English Limitation Acts bar the remedy and not the right, and furthermore, that they do not even have this effect unless and until pleaded’. (*Ronex Properties v John Laing Construction* [1983] QB 393, 404)

Exceptionally, rights themselves may be extinguished. For example, rights in conversion are extinguished by lapse of time (s3 Limitation Act 1980) and rights under the Consumer Protection Act 1987 are barred by the ten-year long stop (s11A(3) Limitation Act 1980).

THE PRIMARY LIMITATION PERIOD IN TORT

The present limitation periods are mainly to be found in the Limitation Act 1980 (as amended by the Latent Damage Act 1986 and by the Consumer Protection Act 1987).

The basic principle is that actions in tort are subject to a limitation period of six years from the date on which the cause of action accrued (s2). But there are some important exceptions:

- In actions in tort for damages for personal injury, the relevant period is three years. This starts to run either from the date on which the cause of action accrued or from the date upon which the person injured first had knowledge of his injury (ss 11 and 14).
- A discoverability test is provided for in cases of latent damage to property, considered below (ss14A, 14B).
- The normal limitation period for claims under the Consumer Protection Act 1987, whether for personal injuries or for other forms of damage actionable under that Act, is three years (s11A).
- The limitation period for defamation claims is also three years (s57 Administration of Justice Act 1985).

THE ACCRUAL OF THE CAUSE OF ACTION

The limitation period begins to run from the date on which the claimant's cause of action accrued. In torts actionable *per se* (such as battery or conversion) the claimant will normally be aware of the act of interference which constitutes the tort. A rare exception is:

Stubbings v Webb [1993] 1 All ER 322.

In torts requiring damage, the cause of action accrues when the damage is first sustained, regardless of the claimant's knowledge. Although the damage may increase in scale and extent over time, the cause of action accrues when the damage first starts to occur and there will be no new cause

of action unless a fresh causative factor is involved or a different kind of damage is sustained (*Cartledge v Jopling Ltd* [1963] 1 All ER 341, HL; *Pirelli v Oscar Faber* [1983] 1 All ER 65, HL).

THE DISCOVERABILITY TESTS

As far as personal injury caused by negligence, nuisance, or other breach of duty (including contractual and statutory duties) is concerned, the 1980 Act provides that the relevant limitation period is three years from *either* the occurrence of the damage *or* the 'date of knowledge' of the injured party (s11(2) and (1)).

Should the claimant die without initiating an action within this three-year period, the period is extended to a further three years either from his death or from the 'date of knowledge' of the personal representative (s11(4)-(6)). Similarly with claims under the Fatal Accidents Act 1976, there will be no claim if the claimant's own claim would have been time-barred, but if not, the deceased's dependants have three years to bring their fatal Accidents Act claim either from his death or from their 'date of knowledge' (ss12-13).

The 'date of knowledge' is defined by s14(1) of the 1980 Act as the first date on which the claimant has knowledge of the following facts:

- (a) that the injury in question was significant; and
- (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and
- (c) the identity of the defendant; and
- (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant.

LATENT DAMAGE

There is a separate regime in the Limitation Act 1980, as amended by the Latent Damage Act 1986, for latent damage in cases of negligence leading to property or financial loss (for personal injury see ss11-14, above).

Section 14A(4)(a) begins by preserving the basic rule that the period of limitation starts with the accrual of the cause of action and runs for six years.

Section 14A(4)(b) then sets up an exception in the case of latent defects, in respect of which there is a three-year period from the 'earliest date on which the plaintiff or any person in whom the cause of action was vested before him had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring the action'.

'Knowledge' is defined in more or less the same way as it is for personal-injury cases (above).

Section 14B then provides for a 'long-stop' according to which the claimant will necessarily be time-barred once fifteen years have elapsed from the defendant's breach of duty.

In addition, s3 of the latent Damage Act 1986 provides that in the case of successive owners of property with a latent defect which has not yet been discovered, a fresh cause of action accrues each time a new purchaser

acquires an interest. Hence the new purchaser will be able to take advantage of the discoverability period of three years.

Finally, the 1986 Act provides that the provisions of ss14A and 14B of the 1980 Act and s3 of the 1986 Act do not affect causes of action accruing before the 1986 Act came into force (18 September 1986).

SECTION 33 LIMITATION ACT 1980

Under s33, the court has a wider power to 'disapply' the normal time-limits on actions in respect of personal injury and death. The Limitation Act 1980 lays down six guidelines for the exercise of this power:

- (a) the length of and reasons for the claimant's delay;
- (b) the extent to which the cogency of evidence adduced by either party might be affected by the delay;
- (c) the defendant's conduct after the cause of action arose, including his response to requests by the claimant for information or inspection for the purpose of ascertaining relevant facts;
- (d) the duration of a disability of the claimant after the cause of action arose;
- (e) the extent to which the claimant acted promptly and reasonably once he knew whether or not the act or omission of the defendant might be capable of giving rise to an action for damages; and
- (f) the steps taken by the claimant to obtain expert advice and the nature of the advice he received.

LEGAL DISABILITY, FRAUD OR CONCEALMENT

The court can extend the normal limitation rules in a case where the claimant was under a disability of some kind at the point when the cause of action accrued (ss 28 and 28A). For the purposes of this Act a person shall be treated as under a disability while he is an infant, or of unsound mind (s38(3)).

The court can also postpone the limitation period in cases of fraud, concealment or mistake (s32). The period of limitation shall not begin to run until the claimant has discovered the fraud, concealment or mistake or could with reasonable diligence have discovered it. However, this does not apply to property purchased for valuable consideration by an innocent third party (s32(3)), the Consumer Protection Act 1987 long-stop period (s32(4A) and s11A(3), and the Fatal Accidents Act 1976 (s32(4A) and s12(1)).