



Statutes of Limitation and Repose

Torts
Eric E. Johnson
ericejohnson.com



Konemark
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?

It depends on what rule is applicable in a given jurisdiction.

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

Tolling

These are “time outs” on the running of the limitation period.

Reasons might include:

- Minority age
- Military service
- Mentally incompetent
- Prison
- Another suit pending on the same matter
- Prerequisite administrative proceedings
- 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
- E.g., blender bought at garage sale