



# Statutes of Limitation and Repose

Torts  
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# Statutes of Limitation

## **Statute of limitations basics**

- It's a bright-line deadline for filing a lawsuit claim
- It serves as a complete bar to suit
  - (i.e., it's a threshold inquiry)
- It is an affirmative defense
  - Must plead in answer
- It varies by state and kind of action
- Analogous equitable doctrines are laches and estoppel
  - For equity, it's not a bright-line deadline. Instead, it's essentially a fairness inquiry. Reliance can be important.
- Federal statutes often borrow state limitations.
- It's a legal malpractice trap!

## **Common rationales for statutes of limitation**

- 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

**Try your luck with these examples ...**

***Note: These examples could be out-of-date!  
Check the up-to-date law!***

# Louisiana vs. Rhode Island

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Where do you have longer to file a tort  
action for property damage, Louisiana or  
Rhode Island?

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Where do you have longer to file a tort action for property damage, Louisiana or Rhode Island?

- Louisiana has a 1-year limit.
- Rhode Island has a 10-year limit.

**California vs.  
Alaska**

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Where do you have longer to file a tort action for property damage, **California** or **Alaska**?

- California has a 3-year limit.
- Alaska has a 6-year limit for real property and a 2-year limit for chattels.

# Delaware vs. Wyoming

**Try your luck with these examples ...**

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Where do you have longer to file a tort action for a defective product, **Delaware** or **Wyoming**?

## Try your luck with these examples ...

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Where do you have longer to file a tort action for a defective product, **Delaware** or **Wyoming**?

- Delaware has a 2-year limit from the time injury is or should have been discovered.
- Wyoming has a 4-year limit from the time of the injury.

## Flexibilities

While the statute of limitation is ostensibly a bright-line deadline, there are some key flexibilities:

- When the statute starts running
- When it is tolled
  - (i.e., when the clock is put on pause)
- 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

- These are outside time limits that runs from the act.
  - The “act” can vary by state. For negligence, it’s probably the breach. For product defects, the statute might run from manufacture date, first sale, or first use.
- The duration depends on the state. Some examples: 5 years, 10 years, 12 years, 15 years, 20 years, “the expiration of the ordinary useful life of the product.”
  - As a baseline/fallback, if the act is more than 20 years in the past, you can figure the statute of repose is likely a claim-killer no matter where you are.
- Even if you are within the statute of limitations in filing a claim, your claim might still be barred by the statute of repose.
- Defendants helped include product manufacturers, engineers, architects, physicians.

# Examples/ Problems

## **Vintage Blender**

**Example:** You buy a vintage 1950s blender at a garage sale. You get injured by a product defect of the blender that same day and immediately sue the manufacturer.

***Will the manufacturer have a winning statute of limitation or statute of repose defense?***

## Vintage Blender

**Example:** You buy a vintage 1950s blender at a garage sale. You get injured by a product defect of the blender that same day and immediately sue the manufacturer.

***Will the manufacturer have a winning statute of limitation or statute of repose defense?***

**The statute of limitations will not bar your claim. But the statute of repose almost certainly will.**

## Used Car Seat

**Example:** On Monday Bob buys a 12-year-old car seat (automotive baby safety seat) from a thrift store. The reasonable thrift store doesn't sell such old car seats. Because of an outdated design, currently counting as a product defect, the car seat injures Bob's baby on Tuesday. ***If the baby sues the thrift store for strict products liability and negligence, does the store have a good statute of limitations or statute of repose defense?***

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The statute of limitations won't bar either claim. The statute of repose won't bar the strict product defect claim if the statute of repose starts running from the defendant's act, but it could if it runs from manufacture, first sale, or first use. The statute of repose shouldn't bar the negligence claim.