

Matters relating to limitation

This topic is dealt with in much more detail in Module 8 of the Civil Litigation course – this document is intended only to give you general information.

A limitation period is a period of time during which a claimant can sue a defendant after a ‘wrong’ was done (or is alleged to have been done) to the claimant by the defendant. Different causes of action have different limitation periods. If a claimant fails to bring an action within the applicable limitation period, the defendant, if he so chooses, has a complete defence to the claim. Limitation is a procedural defence: the court has no power to direct a defendant to rely on the fact that a relevant limitation period has expired. It may be that, for whatever reason, the defendant does not wish to take advantage of the limitation period, or that he has some reason for wishing to defend the claim. This would be a very rare occurrence, but it is possible.

Some limitation periods

Below, we will deal with when the limitation period commences, but here are the most common limitation periods: tort – six years; simple contract – six years; personal injury – three years; fatal accident – three years (whether for the benefit of the deceased’s estate or for a dependant); contribution or indemnity – two years; latent damage – six years (subject to an exception – see below).

When the limitation period begins

A limitation period begins on the date that the claimant has a right to bring an action. That date is usually the date when the cause of action arises either because of a breach, or a negligent act or omission or some nuisance. However, there are some circumstances when the start of a limitation period is delayed.

Discovery or knowledge

In personal injury claims, the period of limitation will usually run from the date of the act or omission which gives rise to the cause of action. For example, a pedestrian is injured by a driver on 10 January 2015. This is the date of the ‘act or omission’. The ‘act’ in this case is

the collision of the vehicle with the pedestrian. Since the limitation period in personal injury is three years, the victim (the claimant) has three years to bring a claim against the driver (the defendant). The claimant must do so by 10 January 2018.

Now let us suppose that the driver left the scene of the accident before anybody could find out who he was, and it was some months before his identity could be established. Time does not begin to run for limitation purposes until the claimant is able to establish the driver's identity. The reasoning is very straightforward: you do not have a cause of action if you do not know who to bring the claim against.

Similarly, let us suppose we know the driver's identity from the start but the victim's injuries do not seem to be serious in the beginning. Considerable time may pass, perhaps a year or even more, before the person begins to suffer symptoms caused by the accident. Again, time will not begin to run for limitation purposes until the injured person knows that those injuries are significant.

It is also the case that although the victim may know that the injuries are significant, and may know the identity of the driver, he may not know that the injuries are attributable to the accident – there could be some other apparent reason for them. Again, time will not begin to run until this fact is also known.

So, to sum up, the injured person must know all of these things:

- (i) that the injury is significant; and
- (ii) that the injury is attributable to the accident; and
- (iii) the identity of the defendant.

The date that the above three facts are all known by the victim, or his or her representative, is known as the date of knowledge.

Note: the injury does not have to be entirely attributable to the accident – it could be the case that an existing injury was made worse. Providing reliable expert medical advice can be obtained which confirms that position, then the victim has the right to bring a claim against, in this example, the driver.

The date of accrual

When talking about limitation, it is necessary to understand the concept of accrual. The date of accrual is the date on which the cause of action arises. For example, in a breach of contract

claim, the date of accrual is the date on which the defendant is alleged to breach the contract. Let us say that D has contracted to deliver 1,000 widgets to C on 10 December 2015. D fails to deliver the widgets on that date, and in fact does not deliver the widgets at all. C can bring a claim against D at any time within the six year period following 10 December 2015, namely at any date up until, but not beyond, 10 December 2021. So, 10 December 2015 is the date of accrual, or the date on which the cause of action accrued. The relevant limitation period for breach of contract is six years from the date of accrual. Therefore C, the claimant, must bring an action within six years after 10 December 2015. The last date for bringing a claim is 20 December 2021.

Concealment, mistake and fraud

The six year period of limitation referred to above, as well as certain other periods of limitation, can be extended beyond the prescribed limitation period under some circumstances, namely in cases of fraud, concealment and mistake.

Supposing the supplier of the widgets in the previous example regularly delivers, not the 1000 widgets ordered, but, say, 900, and he does this quite deliberately. The buyer does not discover this for a considerable period of time, long after he has ceased using that supplier. In that case, the supplier has been acting fraudulently: he has purported to sell a particular quantity, but has in fact delivered much less than that quantity.

In this type of instance, the period of limitation will only begin to run from the time the buyer discovers that he has been defrauded. The same restriction on the limitation period beginning to run will apply to cases of mistake and concealment.

Bringing a claim

For limitation periods the date on which the claim is 'brought' is critical. Typically, a claimant will obtain a copy of the relevant claim form, N1, either online or by post or in person from the court. The claimant then completes that form and returns it to the court, which places its seal on the form, thereby 'issuing' the claim.

However, when a claim form arrives in a court office it may be some days before it is actually issued. These intervening days may cause the claim to lapse if the day the claim form arrives at the court office is not taken into account. So, for limitation purposes, the date the form arrives in the court office is the date that the claim is brought, even if that is different

from the date the form is issued.

Usually, the court will stamp the claim form when it receives it in the court office or, if the form is accompanied by a letter, the letter may be stamped with the date of receipt. It is up to the claimant to verify with the court office the date on which the form is received there.

Let us imagine that a relevant limitation period expires on 10 October. The claim form is issued on 11 October. Technically, the claim has been issued after the limitation period expired, and therefore the claimant is 'out of time'.

However, if the claim form was received in the court office on 9 or 10 October, that will be the date that the claim is 'brought' for limitation purposes. This is subject to two conditions, set out below.

First, if the claimant wishes to amend the claim form in some way before it is issued, he may do so. However, the claim form is not then the same claim form 'as received', and so, if the amendment takes place on a date later than that on which the claim form is received in the court office, then the date on which the claim form was received will be the date on which it is altered. Thus, to take advantage of the date of bringing the claim, the claim form may not be altered or amended once it arrives in the court office, i.e. the claimant cannot turn up at the court office on the next day, make an alteration to the claim form, and then expect the claim form to have been 'brought' for limitation purposes on the date it was originally received in the court office.

The second condition is that the fee must be enclosed with the claim form, or it cannot be considered to have been received for limitation purposes, and – absent the fee – it will not be issued either.