

Chitty on Contracts 32nd Ed.
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Volume I - General Principles
Part 8 - Remedies for Breach of Contract
Chapter 28 - Limitation of Actions ¹
Section 1. - Periods of Limitation

Introductory

28-001

It is the policy of the law that there should be an end to litigation and that “stale demands”² should be suppressed. The reasons for this policy have been said to be ³: first, that defendants should be protected against claims being made on them after a long period during which they may have lost the evidence available to them to rebut those claims; secondly, that claimants should be encouraged not to go to sleep on their rights, but to institute proceedings without unreasonable delay; thirdly, that defendants should be in a position to know that, after a given time, an incident which might have led to a claim against them is finally closed. The state also has an interest in ensuring that trials are heard at a time when there is sufficient reliable evidence and in promoting legal certainty for the benefit not only of potential defendants but also third parties. Accordingly, the legislature has laid down certain periods of limitation after the expiry of which no action can be maintained. The principal statute to which reference must be made for the law of limitation of actions is the Limitation Act 1980.⁴ Subject to exceptions which do not affect the law of contract, the Act applies to proceedings by or against the Crown as it applies to proceedings between subjects⁵; but it does not apply to any action or arbitration for which a period of limitation is prescribed by or under any other enactment.⁶ The main provisions of the Act so far as it affects the law of contract are discussed in the following pages.

Simple contracts

28-002

By s.5 of the 1980 Act, no action⁷ founded on simple contract can be brought after the expiration of six years from the date on which the cause of action accrued. The section must also:

“... be taken to cover actions for money had and received, formerly actions on the case ... though the words used cannot be regarded as felicitous.”⁸

Restitutionary claims will, therefore, in general be barred after six years,⁹ although they may be affected by the special provisions of the Act relating to fraud, concealment or mistake¹⁰ or the fact that they are equitable claims.¹¹ An action for an account cannot be brought after the expiration of any time limit under the Act which is applicable to the claim which is the basis of the duty to account.¹²

Specialties

28-003

By s.8 of the 1980 Act, no action upon a specialty can be brought after the expiration of 12 years from

the date when the cause of action accrued ¹³; but this does not affect any action for which a shorter period of limitation is prescribed by any other provision of the Act. ¹⁴ The words “action upon a specialty” refer to any action to enforce an obligation created or secured by an instrument which is executed as a deed. ¹⁵ They extend to an action for damages. ¹⁶ However, the period of limitation prescribed by the Act to recover arrears of rent ¹⁷ or arrears of interest on a mortgage ¹⁸ is six years even if the lease or mortgage is by deed.

28-004

The Companies Act 2006 provides that the provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions. ¹⁹ Further, money payable by a member to the company under its constitution is a debt due from him to the company. ²⁰ The liability of contributories on a winding-up is in the nature of an ordinary contract debt. ²¹ There is little doubt that the obligations between a company incorporated under the Companies Acts and its members arising out of the memorandum and articles are contractual. ²² But judicial opinion is divided as to the appropriate period of limitation to be applied to an action by a member against the company to recover dividends or capital repayable on a reduction of capital. In *Re Artisans' Land and Mortgage Corp.*, ²³ Byrne J. applied the period of limitation then applicable to actions upon specialties. But in the later case of *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* ²⁴ Slade J. held that the six-year period applied, on the ground that, while the Companies Act 1948 ²⁵ provided that the deemed contract constituted by the memorandum and articles was to be treated as if executed by the members under seal, and for money payable by members to the company to be specialty debts, it did not make the same provision with respect to the obligations of the company to members or money payable by the company to members under the deemed contract.

Contracts (Rights of Third Parties) Act 1999

28-005

This Act enables a person who is not a party to a contract (a “third party”) in certain circumstances to enforce a term of the contract. ²⁶ In ss.5 and 8 of the 1980 Act the references to an action founded on a simple contract and an action upon a specialty shall respectively include references to an action brought by the third party relating to a simple contract or to a specialty. ²⁷

Personal injuries and death

28-006

In the case of any action for breach of duty existing by virtue of a contract where the damages claimed by the claimant consist of or include damages for personal injuries to the claimant or any other person, neither the period applicable to simple contracts ²⁸ nor that applicable to specialties ²⁹ applies, but the limitation period is three years from: (a) the date on which the cause of action accrued; or (b) the date of the claimant's knowledge (if later) of certain facts relevant to his right of action against the defendant. ³⁰ “Personal injuries” includes any disease and any impairment of a person's mental or physical condition. ³¹ But it has been held that an action against insurance brokers for damages for breach of duty (in failing to arrange insurance so that the claimant is unable to recover against his insurers for personal injury) is not within s.11 because the damages claimed do not include damages in respect of personal injuries. ³² And a claim under the Third Party (Rights Against Insurers) Act 1930 is not a claim for damages in respect of personal injuries because it is a claim for an indemnity once a claim for damages has been quantified. ³³

28-007

An action under the Fatal Accidents Act 1976 cannot be brought after the expiration of three years from: (a) the date of death; or (b) the date of knowledge of the person for whose benefit the action is brought of certain facts relevant to his right of action against the defendant, whichever is the later. ³⁴

28-008

A discretion is, however, vested in the court to override the time limits mentioned above. ³⁵

Product liability

28-009

In the case of an action for damages by virtue of Pt I of the Consumer Protection Act 1987 ³⁶ in which the damages claimed by the claimant consist of or include damages for personal injuries to the claimant or any other person or loss of or damage to any property, the limitation period is three years from whichever is the later of: (a) the date on which the cause of action accrued; and (b) the date of knowledge of the injured person of certain facts relevant to his right of action against the defendant or, in the case of loss of or damage to property, the date of knowledge of the claimant or (if earlier) of any person in whom his cause of action was previously vested. ³⁷ The normal three-year time limit in respect of Fatal Accident Act claims also applies. ³⁸ The court has a discretion to override these time limits, ³⁹ except where the damages claimed by the claimant are confined to damages for loss of or damage to any property. ⁴⁰ However, there is an overall long-stop period of 10 years after which any action for damages by virtue of Pt I of the 1987 Act is barred and extinguished. ⁴¹ This 10-year period usually begins to run from the time when the defendant ⁴² supplied the product to another. ⁴³ A product is supplied, or in the words of Directive 85/374 “put into circulation”, when it is taken out of the manufacturing process operated by the producer and enters a marketing process in the form in which it is offered to the public in order to be used or consumed. ⁴⁴

Latent damage in actions for the tort of negligence

28-010

Section 14A of the Limitation Act 1980 ⁴⁵ prescribes a special time limit for negligence actions (other than actions involving personal injuries) ⁴⁶ where the facts relevant to the cause of action are not known at the date on which the cause of action accrues. It is important to appreciate that this section applies only to an action for damages for *negligence*. ⁴⁷ Although it might be thought that the word “negligence” was intended to extend to breach of a contractual duty, for example, to use reasonable care and skill, ⁴⁸ it has been held ⁴⁹ that the section is restricted to actions in tort for negligence, on the ground (inter alia) that it provides ⁵⁰ that the six-year period of limitation applicable to actions founded on tort ⁵¹ is not to apply to actions within its scope, but does not similarly disapply the six-year period applicable to actions founded on simple contract. ⁵² It follows that the section will only be of assistance to a contracting party who has a concurrent or independent cause of action in tort for negligence. ⁵³ A contractual cause of action continues to accrue at the date of breach and the limitation period is not extended by reason of the fact that the damage caused by the breach is latent. A claimant who sues in contract cannot therefore rely on this section and will have to rely (if at all) on s.32(1)(b) of the Act, viz that a fact relevant to his right of action has been deliberately concealed from him by the defendant. ⁵⁴

28-011

⚠ In cases to which s.14A of the Act applies, the period of limitation is either: (a) six years from the date on which the cause of action accrued, ⁵⁵ that is to say the date on which damage first occurred; or (b) three years from the earliest date (the “starting date”) on which the claimant or any person in whom the cause of action was vested before him ⁵⁶ first had both the knowledge required for bringing an action for damages in respect of the relevant damage ⁵⁷ and a right to bring such an action, if that three-year period expires later than the six-year period. ⁵⁸ For the purposes of the section, a person’s knowledge includes knowledge which he might reasonably have been expected to acquire from facts observable or ascertainable by him or from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek. ⁵⁹ ⚠ Thus if the damage inflicted is latent and is not discovered or discoverable until (say) five, or even seven, years after it first occurred, the claimant

will have three years from the starting date in which to bring his action in respect of that damage. But if the damage is discovered or becomes discoverable one year after it first occurs, then the claimant's right of action will not become time-barred until six years from the date on which it first occurred. The burden of establishing that his case falls within the section rests upon the claimant.⁶⁰ This may be tried as a preliminary issue.⁶¹

28-012

In *Haward v Fawcetts*⁶² s.14A was examined for the first time by the House of Lords. It was held that a claim against an accountant for negligent advice (or failure to advise), leading to loss-making investment in 1994 and 1995, was statute-barred. The claimant had had the relevant knowledge more than three years before commencing proceedings in December 2001. The case principally turned on the interpretation of s.14A(8)(a): "that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence". Their Lordships adverted to the apparent tension between s.14A(8) and s.14A(9). According to the latter: "knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant". Their Lordships recognised that knowledge that the defendant had given "flawed" advice was necessary under s.14A(8)(a); and that the courts could safely look for knowledge that, factually, "something had gone wrong" without contravening s.14A(9).

28-013

Actions to which s.14A applies cannot be brought after the expiration of 15 years from the date (or, if more than one, from the last of the dates) on which there occurred any act or omission: (a) which is alleged to constitute negligence; and (b) to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).⁶³ This 15-year long-stop is an absolute bar⁶⁴ to the remedy⁶⁵ and operates even though the cause of action has not yet accrued⁶⁶ and even though the starting date for the extension available in respect of latent damage has not yet occurred.⁶⁷

Loans

28-014

The 1980 Act contains special provisions in respect of the time limit for actions in respect of certain loans.⁶⁸ It is not clear, however, whether these provisions apply if the contract of loan is executed as a deed. It is probable that the action is then upon a specialty and subject to the 12-year period.⁶⁹

Contribution

28-015

Where under s.1 of the Civil Liability (Contribution) Act 1978 any person becomes entitled to a right to recover contribution in respect of any damage from any other person, no action to recover contribution by virtue of that right is to be brought after the expiration of two years from the date on which that right accrued.⁷⁰

Action on a judgment

28-016

By s.24(1) of the 1980 Act, an action upon a judgment obtained in England or Wales is barred after the expiration of six years from the date on which the judgment became enforceable.⁷¹ In *Lowsley v Forbes*⁷² the House of Lords held that "an action upon a judgment" does not include proceedings to execute a judgment (such as proceedings for a charging order or a garnishee order). This was followed in *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd*⁷³ in holding that a winding up or bankruptcy

petition by a judgment creditor is not “an action upon a judgment” within s.24(1) of the 1980 Act. According to the Court of Appeal “an action upon a judgment” has the special meaning of a “fresh action” brought upon a judgment in order to obtain a second judgment, which can be executed. Insolvency proceedings, whether personal or corporate, do not fall within the scope of that special meaning. By s.24(2) no arrears of interest in respect of any judgment can be recovered after the expiration of six years from the date on which the interest became due.⁷⁴ A foreign judgment of a court of competent jurisdiction gives rise to an implied contract to pay the amount of the judgment,⁷⁵ and the six-year period for actions founded on simple contract applies to an action upon such a judgment.⁷⁶

Action on an award

28-017

An arbitrator’s award is usually enforced by summary procedure under s.66 of the Arbitration Act 1996.⁷⁷ But it may also be enforced by bringing an action on the award, and this is the only method available in some situations, for example if the submission to arbitration was not in writing.⁷⁸ By s.7 of the Limitation Act 1980, an action to enforce the award of an arbitrator, where the submission was not by deed, cannot be brought after the expiration of six years from the date on which the cause of action accrued.⁷⁹ The same six-year limitation period under s.7 applies not only to an ordinary action on the award but also to the enforcement under s.66 of the Arbitration Act 1996.⁸⁰

Equitable relief

28-018

The time limits prescribed by ss.5 and 8 of the Act⁸¹ in respect of actions upon simple contracts and specialties do not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as they may be applied by analogy.⁸² Such claims may, however, be barred by laches or acquiescence, equitable doctrines which are discussed elsewhere in this chapter.⁸³

Breach of trust or fiduciary duty

28-019

Actions for breach of trust and breach of fiduciary duty are distinct from actions for breach of contract; and commonly such actions are brought outside a contractual context. Nevertheless, where one contracting party owes fiduciary duties to the other, an action for breach of fiduciary duty may be brought. It may therefore be thought helpful here to refer, albeit very briefly, to the law on limitation of actions for these equitable causes of action. As regards breach of trust, the crucial section of the Limitation Act 1980 is the complex s.21. The basic regime of that section is that there is a six-year limitation period, running from the date when the right of action accrued, for a breach of trust⁸⁴ (or, as laid down in *Williams v Central Bank of Nigeria*,⁸⁵ for the equitable wrongs of dishonest assistance or knowing receipt) but that actions for fraudulent breach of trust to which the trustee was a party or privy to, or to recover from the trustee trust property or its proceeds are excluded and have no statutory limitation period.⁸⁶ As regards a breach of fiduciary duty outside s.21, the courts tend to apply a six-year limitation period by analogy under s.36(1) of the Limitation Act 1980.⁸⁷

Special limitation periods

28-020

Certain statutes provide periods of limitation which differ from those provided by the Limitation Act 1980.⁸⁸ These, so far as they affect the law of contract, are as follows:

Salvage

28-021

Article 23 of the International Convention on Salvage, contained in Sch.11 to the Merchant Shipping Act 1995, prescribes that any action relating to payment under the Convention is to be time-barred if judicial or arbitral proceedings are not instituted within a period of two years from the day on which the salvage operations are terminated (although the period may be extended by declaration to the claimant). Actions for an indemnity may be instituted within the time allowed by the *forum* where the proceedings are instituted.

Carriage by sea

28-022

Where the Hague-Visby Rules are incorporated in a contract of affreightment by the Carriage of Goods by Sea Act 1971,⁸⁹ the carrier⁹⁰ and the ship are discharged⁹¹ from all liability whatsoever in respect of the goods, unless suit⁹² is brought within one year of their delivery⁹³ or of the date when they should have been delivered.⁹⁴ This period may, however, be extended if the parties so agree after the cause of action has arisen.⁹⁵ An action for an indemnity against a third person may nevertheless be brought even after the expiration of the year if brought within the time allowed by the law of the court seised of the case,⁹⁶ i.e. in an English court, within the six-year period of limitation applicable to simple contracts.⁹⁷

28-023

⚠ The Athens Convention of 1974 relating to the carriage of Passengers and their Luggage by Sea (as amended by the 1976 Protocol thereto) has the force of law in the United Kingdom.⁹⁸ It provides⁹⁹ ⚠ for a two-year limitation period in respect of any action for damages arising out of the death of or personal injury to a passenger¹⁰⁰ or for the loss of or damage to luggage. The commencement of the period depends on the nature of the claim made, but in general is not earlier than the date of disembarkation or the date when disembarkation should have taken place. The period may be extended by written declaration of the carrier or by written agreement of the parties after the cause of action has arisen.

Carriage by air

28-024

The Carriage by Air Act 1961¹⁰¹ applies to the international carriage by air of persons, baggage and cargo for reward or gratuitously by an air transport undertaking. The right to damages in respect of the carrier's liability is extinguished if an action¹⁰² is not brought within two years,¹⁰³ reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.¹⁰⁴ Similar provisions are contained in the Carriage by Air Act (Application of Provisions) Order 2004¹⁰⁵ in cases to which the 1961 Act (or EU legislation) does not apply. But the limitation period for claims under Council Regulation (EC) No.261/2004 for compensation for cancellation of, or long delays to, flights is governed by national law and in England and Wales, applying s.9 of the Limitation Act 1980, the period is therefore six years.¹⁰⁶

Carriage by rail

28-025

The Railways (Convention on International Carriage by Rail) Regulations¹⁰⁷ gives the force of law to

the Convention (as modified by the Vilnius Protocol) concerning International Carriage by Rail (COTIF). ¹⁰⁸ Under the Convention, the periods of limitation for actions for damages based on the liability of the railway in case of death of, or personal injury to, passengers are: (a) for the passenger, three years from the day after the accident; and (b) in a case where the claimant is not the passenger himself, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident. ¹⁰⁹ The Convention also contains limitation provisions with respect to other actions arising from a contract for the international carriage of passengers and luggage by rail ¹¹⁰ and for actions arising from a contract for the international carriage of goods by rail, ¹¹¹ the period of limitation being in general one year with an extension to two years in certain cases. The starting point of the limitation period varies according to the nature of the claim, ¹¹² but in the case of carriage of goods: (a) in actions for compensation for total loss, it runs from the thirtieth day after the expiry of the transit period; and (b) in actions for compensation for partial loss, for damage or for exceeding the transit period, it runs from the day when delivery took place. ¹¹³

Carriage by road

28-026

Under the Carriage of Goods by Road Act 1965, ¹¹⁴ which gives effect to the Convention on the Contract for the International Carriage of Goods by Road (CMR), the period of limitation is one year, or, in the case of wilful misconduct or equivalent, three years. ¹¹⁵ The period of limitation begins to run: in the case of partial loss, damage or delay in delivery, from the date of delivery; in the case of total loss, from the thirtieth day after the expiry of the agreed time limit or where there is no agreed time limit from the 60th day from the date on which the goods were taken over by the carrier; and in all other cases, on the expiry of three months after the making of the contract of carriage. ¹¹⁶

Sale of goods

28-027

By the Uniform Laws on International Sales Act 1967, where the Uniform Law of International Sales (ULIS) applies, ¹¹⁷ the buyer loses his right to rely on lack of conformity with the contract at the expiration of a period of one year after he has given notice as provided in art.39. ¹¹⁸ Such notice must be given promptly after he has discovered the lack of conformity or ought to have discovered it, and must in any event be given within a period of two years from the date on which the goods were handed over, unless the lack of conformity constituted a breach of a guarantee covering a longer period. ¹¹⁹

Employment

28-028

Unless the employee has previously made a claim for a redundancy payment by notice in writing given to his employer and in certain other cases, a claim for such a payment cannot be entertained by an employment tribunal after the end of the period of six months beginning with the relevant date (usually the date of termination of his employment). ¹²⁰ And an employment tribunal cannot consider a complaint of unfair dismissal unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months. ¹²¹ Short periods of limitation are further provided for proceedings where an employer has not provided an employee with a statement of terms of employment ¹²² and in respect of guarantee payments. ¹²³

28-029

Legal proceedings by the employer of a worker in retail employment for the recovery from the worker of any amount in respect of a cash shortage or stock deficiency cannot be instituted after the end of a

period of 12 months beginning with the date when the employer established the existence of the deficiency or (if earlier) the date when he ought reasonably to have done so, unless he has within that period made a statutory demand for payment in respect of that amount. ¹²⁴ An employment tribunal cannot entertain a complaint in respect of unauthorised deductions from the wages of a worker or an unlawful payment to an employer unless it is presented within the period of three months from the date of payment of the relevant wages or the date of the receipt of the payment by the employer or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months. ¹²⁵

Equality Act 2010

28-030

For claims under the Equality Act 2010, the general limitation period is six months from the date of the act to which the claim relates or such other period as the court thinks just and equitable. ¹²⁶ However, there are also a number of special time limits applying to, for example, complaints before an employment tribunal relating to breach of an equality clause of rule. ¹²⁷

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1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.
 2. *Cholmondeley v Clinton* (1820) 2 J. & W. 1; 4 Bl. 1; *A'Court v Cross* (1825) 3 Bing. 329, 333; *R.B. Policies at Lloyd's v Butler* [1950] 1 K.B. 76.
 3. Report of the Committee on Limitation of Actions in Cases of Personal Injury, 1962, Cmnd.1829, para.17; Law Reform Committee, Twentieth Report, 1974, Cmnd.5630; Twenty-First Report, 1977, Cmnd.6923, paras 1.7–1.14; Twenty-Fourth Report, 1984, Cmnd.9390; Law Commission Consultation Paper No.151, *Limitation of Actions* (1998), paras 1.22–1.38.
 4. The Act has been amended by the Latent Damage Act 1986 (below, paras 28-010—28-012), by the Consumer Protection Act 1987 (below, para.28-009), by the Defamation Act 1996 s.5 (defamation and malicious falsehood) and by the Arbitration Act 1996 (below, paras 28-116, 28-126).
 5. s.37(1).
 6. s.39.
 7. Defined in s.38(1).
 8. *Re Diplock* [1948] Ch. 465, 514, followed in *Kleinwort Benson Ltd v Sandwell BC* (1993) 91 L.G.R. 323, 382–384.
 9. *Kleinwort Benson Ltd v Lincoln CC* [1999] 2 A.C. 349. See Goff and Jones, *The Law of Unjust Enrichment*, 8th edn (2011), Ch.33; McLean [1989] C.L.J. 472; Burrows, *The Law of Restitution*, 3rd edn (2011), pp.604–610.
 10. See below, para.28-021.
 11. See below, para.28-132.
 12. s.23. cf. *Tito v Waddell (No.2)* [1977] Ch. 106, 250–251; *Att-Gen v Cocke* [1988] Ch. 414;


Paragon Finance Plc v Thakerar & Co [1991] 1 All E.R. 400, 415.

13. s.8(1).
14. s.8(2).
15. Or under a statute (except where s.9 applies as in, e.g., *Re Farmizer (Products) Ltd* [1997] 1 B.C.L.C. 589): *Collin v Duke of Westminster* [1985] Q.B. 581; *Rahman v Sterling Credit Ltd* [2001] 1 W.L.R. 496. The *Rahman* case was distinguished in *Patel v Patel* [2009] EWHC 3264 (QB), [2010] 1 All E.R. (Comm) 864, where it was held that a cause of action for relief under ss.140A–140D of the Consumer Credit Act 1974 (claiming that there is an “unfair relationship”) is a continuing one so that the limitation period under s.9 does not expire 12 years after the contract is made. In *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542, [2007] 1 W.L.R. 2404, it was held that a claim, under s.423 of the Insolvency Act 1986, by a trustee in bankruptcy for the avoidance of a transaction is subject to a six-year limitation period under s.9 (statute) or the 12-year limitation period under s.8 (specialty). On the facts, it did not matter which of these two was applied. The cause of action ran from the date when the bankruptcy order was made. In another case on s.423 brought by a creditor, s.8, and not s.9, was held to be applicable because the initial remedy sought was a challenge to the validity of a property transfer rather than to recover a sum of money; and the cause of action was held to accrue when the creditor became a victim which was when he became “capable of being prejudiced” by the transfer: *Giles v Rhind* [2007] EWHC 687 (Ch), affirmed [2008] EWCA Civ 118. For contracts under seal, see *Leivers v Barber, Walker & Co Ltd* [1943] 1 K.B. 385, 398; *Whittall Builders Co Ltd v Chester-le-Street D.C.* (1986) 11 Const. L.R. 40. But the requirement of a seal for a deed executed by an individual was abolished by the Law of Property (Miscellaneous Provisions) Act 1989, and see also (deeds executed by companies) ss.43–47 of the Companies Act 2006; above, paras 1-118, 1-119, 1-123 et seq. See, generally, *Matadeen v Caribbean Insurance Co Ltd* [2002] UKPC 69, [2003] 1 W.L.R. 670. The execution of a document under seal is itself not sufficient to make it “clear on its face” that it is intended to be a deed and therefore a specialty: see above, para.1-125. Also in *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch. 146, it was held that an action to enforce an obligation which was merely acknowledged or evidenced by a sealed instrument was not an “action upon a specialty”.
16. *Aiken v Stewart Wrightson Members’ Agency Ltd* [1995] 1 W.L.R. 1281.
17. s.19. See also *Romain v Scuba TV Ltd* [1997] Q.B. 887 (action against guarantor of lessee).
18. s.20(5). See also *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch. 146 (arrear of interest on bond). But where the mortgagor is seeking to redeem or the mortgagee is accounting to the mortgagor for the surplus, more than six years’ interest may be retained by the mortgagee: *Edmunds v Waugh* (1866) L.R. 1 Eq. 48; *Holmes v Cowcher* [1970] 1 W.L.R. 834; *Ezekiel v Orakpo* [1997] 1 W.L.R. 340. The limitation period for an action to recover a principal sum of money secured by a mortgage or the proceeds of the sale of land is 12 years from the date on which the right to receive the money accrued: s.20(1). See, generally on s.20, *Bristol & West Plc v Bartlett* [2002] EWCA Civ 1181, [2003] 1 W.L.R. 284; *Scottish Equitable Plc v Thompson* [2003] EWCA Civ 225, [2003] H.L.R. 48; *West Bromwich Building Society v Wilkinson* [2005] UKHL 44, [2005] 1 W.L.R. 2303; *Gotham v Doodes* [2006] EWCA Civ 1080, [2007] 1 W.L.R. 86; *Yorkshire Bank Finance Ltd v Mulhall* [2008] EWCA Civ 1156, [2009] 2 All E.R. (Comm) 164.
19. s.33(1).
20. s.33(2).
21. Insolvency Act 1986 s.80. cf., under old legislation, *Buck v Robson* (1870) L.R. 10 Eq. 629; *Re Muggerridge* (1870) L.R. 10 Eq. 443 (calls on shares).
22. *Hickman v Kent or Romney Marsh Sheep Breeders’ Association* [1915] 1 Ch. 881. cf. *Rayfield v Hands* [1960] Ch. 1.
23. [1904] 1 Ch. 796, following *Smith v Cork and Bandon Ry* (1870) I.R. 5 Eq. 65, *Re Drogheda*


Steam Packet Co [1903] 1 Ir. R. 512. Byrne J. also considered whether an action for sums due for repayment of capital under a scheme of arrangement, sanctioned by the court in the exercise of its statutory jurisdiction, would be an action to recover sums “recoverable by virtue of any enactment”, for which the period is six years under s.9 of the 1980 Act, but did not decide this point. cf. Preston and Newsom, *Limitation of Actions*, 3rd edn, p.58; Franks, *Limitation of Actions* (1959), p.84; *Cork and Bandon Ry v Goode (1853) 13 C.B. 826*.

24. [1980] Ch. 146.
25. s.20(1), now, with slightly different wording, s.33(1) of the Companies Act 2006.
26. See above, para.18-090.
27. Contracts (Rights of Third Parties) Act 1999 s.7(3).
28. s.11(2).
29. ss.8(2), 11(2).
30. ss.11, 14. See Clerk & Lindsell on Torts, 21st edn (2014), paras 32–36—32–69.
31. s.38(1).
32. *Ackbar v C.F. Green & Co Ltd [1975] Q.B. 582*. cf. *Howe v David Brown Tractors (Retail) Ltd [1991] 4 All E.R. 30 CA*; *Bennett v Greenland Houchen & Co [1998] P.N.L.R. 458 CA*.
33. *Burns v Shuttlehurst Ltd [1999] 1 W.L.R. 1449*. From a date to be appointed, the 1930 Act will be replaced by the Third Party (Rights Against Insurers) Act 2010.
34. Limitation Act 1980 ss.12, 13, 14. See Clerk & Lindsell on Torts, 21st edn (2014), para.32–69.
35. Limitation Act 1980 s.33. Clerk & Lindsell on Torts 21st edn (2014), paras 32–54—32–67.
36. See Vol.II, para.44-449.
37. Limitation Act 1980 s.11A (inserted by s.6 of and Sch.1 to the Consumer Protection Act 1987) and s.14 (as so amended). See Clerk & Lindsell on Torts, 21st edn (2014), para.32–82.
38. Limitation Act 1980 ss.12, 13, 14 (as so amended); see above, para.28-007.
39. Limitation Act 1980 s.33 (as so amended).
40. Limitation Act 1980 s.33(1A).
41. Limitation Act 1980 s.11A(3). This cannot be overridden: s.33(1A).
42. Being a person to whom s.2(2) of the 1987 Act applies, i.e. the producer or ostensible producer or the importer of the product into a Member State of the EU.
43. i.e. the “relevant time” within the meaning of s.4 of the 1987 Act. But see s.4(2)(b).
44. *O’Byrne v Sanofi Pasteur MSD Ltd [2006] 1 W.L.R. 1606*, [2006] 2 C.M.L.R. 24 ECJ.
45. Introduced by s.1 of the Latent Damage Act 1986.
46. s.11; see above, para.28-006.
47. s.14A(1). It therefore does not apply to an action for damages for breach of a strict duty imposed by statute, e.g. under the Defective Premises Act 1972. Nor does it apply to a claim for damages under s.2(1) of the Misrepresentation Act 1967 because under s.2(1) there is no onus

on the claimant to prove negligence: *Laws v The Society of Lloyd's* [2003] EWCA Civ 1887, *The Times*, January 23, 2004 at [78]–[93].

48. See below, para.28-033.
49. *Iron Trades Mutual Insurance Co Ltd v Buckenham Ltd* [1989] 2 Lloyd's Rep. 85; *Société Commerciale de Reassurance v Eras International Ltd* [1992] 1 Lloyd's Rep. 570, 601–603; *West Bromwich Building Society v Mander Hadley & Co*, *The Times*, March 9, 1998.
50. s.14(A)(2). See also s.32(5) (introduced by s.2(2) of the 1986 Act).
51. s.2.
52. s.5.
53. See below, para.28-033.
54. See below, para.28-085. For the relationship between ss.14A and 14B and s.32(1)(b), see s.32(5).
55. s.14A(4)(a).
56. s.14A(5). In *Graham v Entec Europe Ltd* [2003] EWCA Civ 1177, [2003] 4 All E.R. 1345, it was held that, where an insurer is bringing a subrogated action in the insured's name, the insurer's knowledge—including the knowledge of its loss adjuster—is relevant under s.14A.
57. s.14A(6), (7), (8), (9). See *Iron Trades Mutual Insurance Co Ltd v Buckenham Ltd* [1989] 2 Lloyd's Rep. 85; *Horbury v Craig Hall & Rutley* [1991] E.G.C.S. 81; *Bradstock Trustee Services Ltd v Nabarro Nathanson* [1995] 1 W.L.R. 1405; *Hallam-Eames v Merrett Syndicates Ltd* [1996] 7 Med. L.R. 122; *Higgins v Hatch & Fielding* [1996] 1 E.G.L.R. 133; *Wilson v Le Fevre Wood & Royle* [1996] 1 P.N.L.R. 107; *Hamlin v Edwin Evans* [1996] P.N.L.R. 398; *Finance for Mortgages Ltd v Farley & Co* [1996] E.G.C.S. 35; *Henderson v Merrett Syndicates Ltd (No.3)* [1997] L.R.L.R. 247; *Perry v Moysey* [1998] P.N.L.R. 657; *Birmingham Midshires Building Society v Infields* [1999] Lloyd's Rep. P.N. 133; *Mortgage Corp Plc v Lambert & Co* [1999] Lloyd's Rep. P.N. 947; *Oakes v Hopcroft* (2000) 56 B.M.L.R. 136; *Fennon v Anthony Hodari & Co* [2001] Lloyd's Rep. P.N. 183; *New Islington & Hackney Housing Association Ltd v Pollard, Thomas and Edwards Ltd* [2001] Build. L.R. 74; *Lloyd's Bank Plc v Burd Pearce* [2001] Lloyd's Rep. P.N. 452; *Bowie v Southorns* [2003] P.N.L.R. 7; *McCarroll v Statham Gill Davies* [2003] EWCA Civ 425, [2003] P.N.L.R. 25.
58. s.14A(4)(b).
59.  s.14A(10) (but see the qualification to this subsection where the person has taken all reasonable steps to obtain expert advice). Section 14A(10) therefore makes clear that constructive knowledge may be sufficient. For a consideration of s.14A(10), see *Gravgaard v Aldridge & Brownlee* [2004] EWCA Civ 1529, [2005] P.N.L.R. 19; *Jacobs v Sesame Ltd* [2014] EWCA Civ 1410, [2015] P.N.L.R. 6; *Schumann v Veale Wasbrough* [2015] EWCA Civ 441, [2015] P.N.L.R. 25.
60. *Iron Trades Mutual Insurance Co Ltd v Buckenham Ltd* [1989] 2 Lloyd's Rep. 85, 98: cf. *Nash v Eli Lilly and Co* [1993] 1 W.L.R. 782, 796. See also below, para.28-062.
61. *Busby v Cooper*, *The Times*, April 2, 1996.
62. [2006] UKHL 9, [2006] 1 W.L.R. 682. The approach to s.14A(8) in *Hallam-Eames v Merrett Syndicates Ltd* [1996] 7 Med. L.R. was approved, while that in *HF Pension Trustees Ltd v Ellison* [1999] P.N.L.R. 894 was disapproved. See, subsequent to *Haward v Fawcetts*, *Harris Springs Ltd v Howes* [2007] EWHC 3271 (TCC), [2008] B.L.R. 229; *Boycott v Perrins Guy Williams* [2011] EWHC 2969 (Ch); *Integral Memory Plc v Haines Watt* [2012] EWHC 342 (Ch); *Roger Ward Associates Ltd v Britannia Assets (UK) Ltd* [2013] EWHC 1653 (QB).

- [63.](#) s.14B(1), inserted by s.1 of the Latent Damage Act 1986.
- [64.](#) Subject to s.32(5); below, para.28-092.
- [65.](#) But the long-stop does not extinguish the claimant's right of action: *Financial Services Compensation Scheme Ltd v Larnell (Insurances) Ltd* [2005] EWCA Civ 1408, [2006] 2 W.L.R. 751.
- [66.](#) s.14B(2)(a).
- [67.](#) s.14B(2)(b).
- [68.](#) s.6; see below, para.28-036.
- [69.](#) The action does not appear to be one "for which a shorter period of limitation is prescribed by any other provision of this Act" (s.8(2)) as under s.6(1) only s.5 of the Act is involved.
- [70.](#) s.10. See also below, para.28-051 (accrual of right). That the Civil Liability (Contribution) Act 1978 does not apply to a claim for contribution from a co-debtor means that the two-year limitation period applicable to the 1978 Act does not apply to such a claim for contribution: *Hampton v Minns* [2002] 1 W.L.R. 1.
- [71.](#) For the purposes of s.24, an order for costs becomes enforceable and time starts to run when the costs are quantified and certified by the process of taxation, and not before: *Chohan v Times Newspapers Ltd* [2001] 1 W.L.R. 1859.
- [72.](#) [1999] 1 A.C. 329.
- [73.](#) [2005] EWCA Civ 92, [2005] 1 W.L.R. 2871.
- [74.](#) This sub-section does apply to the recovery of interest by way of execution after six years: *Lowsley v Forbes* [1999] 1 A.C. 329.
- [75.](#) *Grant v Easton* (1883) 13 Q.B.D. 302; *Re Flynn (No.2)* [1969] Ch. 403.
- [76.](#) This does not apply to the enforcement of a judgment registered under the Administration of Justice Act 1920, the Foreign Judgments (Reciprocal Enforcement) Act 1933 or Pts I and II of the Civil Jurisdiction and Judgments Act 1982. But certain time limits for registration are imposed by the 1920 and 1933 Acts.
- [77.](#) See Vol.II, para.32-185.
- [78.](#) See Vol.II, para.32-186.
- [79.](#) For accrual of the cause of action, see below, paras 28-060—28-061.
- [80.](#) *National Ability SA v Tinnu Oils and Chemicals Ltd, The Amazon Reefer* [2009] EWCA Civ 1330, [2010] 2 All E.R. 899 (which actually concerned the predecessor to s.66 of the Arbitration Act 1996 which was s.26 of the Arbitration Act 1950).
- [81.](#) s.7 (actions to enforce arbitral award); s.9 (statute) and s.24 (actions on judgments) are also inapplicable.
- [82.](#) s.36(1). As to the application of the statute by analogy, see below, para.28-136.
- [83.](#) s.36(2); below, paras 28-137—28-138.
- [84.](#) s.21(3).
- [85.](#) [2014] UKSC 10, [2014] 2 W.L.R. 355.

- [86.](#) s.21(1). See *Tito v Waddell (No.2)* [1977] Ch. 106, 247–249, *Armitage v Nurse* [1998] Ch. 241, *Gwembe Valley Development Co Ltd v Koshy* [2003] EWCA Civ 1048, *Re Loftus* [2006] EWCA Civ 1124, [2007] 1 W.L.R. 1124, *Statek Corp v Alford* [2008] EWHC 32 (Ch), [2008] B.C.C. 266. In *Re Loftus*, it was further held that where the Limitation Act 1980 lays down that there is no limitation period prescribed by the Act (as, e.g. under s.21(1) for fraudulent breach of trust or to recover trust property), that does not preclude the operation of laches and acquiescence. See below, para.28-140.
- [87.](#) *Soar v Ashwell* [1893] 2 Q.B. 390, 393, *Taylor v Davies* [1920] A.C. 636, 652, *Paragon Finance Plc v Thakerar & Co* [1999] 1 All E.R. 400, *Coulthard v Disco Mix Club Ltd* [2000] 1 W.L.R. 707, *Cia de Seguros Imperio v Heath (REBX) Ltd* [2001] 1 W.L.R. 112, *Harrison (Properties) Ltd v Harrison* [2001] EWCA Civ 1467, [2002] 1 B.C.L.C. 162, *Gwembe Valley Development Co Ltd v Koshy* [2003] EWCA Civ 1048. cf. *James v Williams* [2000] Ch. 1. See below, para.28-136.
- [88.](#) s.39.
- [89.](#) See ss.1, 2, 4, 5.
- [90.](#) cf. *Freedom General Shipping SA v Tokai Shipping Co Ltd* [1982] 1 Lloyd's Rep. 73.
- [91.](#) The cause of action is extinguished: see below, para.28-127; (Hague Rules) *Aries Tanker Corp v Total Transport Ltd* [1977] 1 W.L.R. 185; *Casillo Grani v Napier Shipping Co* [1984] 2 Lloyd's Rep. 481; *Payabi v Armstel Shipping Corp* [1992] Q.B. 907.
- [92.](#) "Suit" includes arbitration: *The Merak* [1965] P. 223; *Nea Agrex SA v Baltic Shipping Co Ltd* [1976] Q.B. 933; see also below, para.28-116. The suit may be in another competent jurisdiction: *The Nordglimt* [1988] Q.B. 183, distinguishing *Compania Columbiana de Seguros v Pacific Steam Navigation Co* [1965] 1 Q.B. 101. See also *Central Insurance Co Ltd v Seacalf Shipping Corp* [1983] 2 Lloyd's Rep. 25; *Hispanica de Petroleus SA v Vencedora Oceania Navegacion SA* [1986] 1 Lloyd's Rep. 211; *Government of Sierra Leone v Marmaro Shipping Co Ltd* [1989] 2 Lloyd's Rep. 130; *Transworld Oil (USA) Inc v Minos Naviera SA* [1992] 2 Lloyd's Rep. 48; *Mauritius Oil Refineries Ltd v Stolt-Nielsen Nederlands BV* [1997] 1 Lloyd's Rep. 273. *Contrast Thyssen Inc v Calypso Shipping Corp SA* [2000] 2 Lloyd's Rep. 243 (suit brought in incompetent jurisdiction).
- [93.](#) See *The Beltana* [1967] 1 Lloyd's Rep. 531.
- [94.](#) Sch. art.III r.6.
- [95.](#) See *The Clifford Maersk* [1982] 1 W.L.R. 1292; *Mitsubishi Corp v Castletown Navigation Ltd* [1989] 2 Lloyd's Rep. 383 (Hague Rules). cf. *Alma Shipping Corp v Union of India* [1971] 2 Lloyd's Rep. 494, 502 (after expiry of period new agreement required).
- [96.](#) Sch. art.III r.6 bis.
- [97.](#) See *China Ocean Shipping Co v Andros* [1987] 1 W.L.R. 1213. cf. Limitation Act 1980 s.10 (claims to contribution), above, para.28-014.
- [98.](#) Merchant Shipping Act 1995 Sch.6.
- [99.](#)  Athens Convention 1974 art.16. See *Gold Shipping Navigation Co SA v Lulu Maritime Ltd* [2009] EWHC 1365 (Admlty), [2010] 2 All E.R. (Comm) 64 (which also clarified that the two-year period extends to counterclaims). In *Feest v South West Strategic Health Authority* [2015] EWCA Civ 708, [2016] Q.B. 503 it was held that the two-year limitation period under the Athens Convention does not bar a claim by an alleged tortfeasor for contribution against the carrier, under the Civil Liability (Contribution) Act 1978, in respect of personal injury to a passenger.
- [100.](#) The court's discretion to override the time-limit for such claims contained in s.33 of the 1980 Act (above, para.28-008) does not apply to this two-year period: *Higham v Stena Sealink Ltd* [1996]

1 W.L.R. 1107.

- [101.](#) For the complex web of relevant statutory provisions and amendments, see below, Ch.35.
- [102.](#) Or arbitration: Carriage by Air Act 1961 s.5(3).
- [103.](#) That this two-year period is the relevant limitation period follows from s.39 of the Limitation Act 1980, which saves other limitation enactments. Moreover, s.33(2) of the 1980 Act uses the 1961 Act to illustrate the point that there is only a discretion to disapply s.12(1) (laying down the time limit for actions under the Fatal Accidents Act 1976) where the reason why the person injured could no longer maintain an action was because of the s.11 time limit and not some other time limit. See, generally, *Sidhu v British Airways* [1997] A.C. 430; *Laroche v Spirit of Adventure (UK) Ltd* [2009] EWCA Civ 12, [2009] Q.B. 778; *Hall v Heart of England Balloons Ltd* [2010] 1 Lloyd's Rep. 373 (Birmingham County Court).
- [104.](#) Sch.1 art.29 and Sch.1B art.35 (see Vol.II, para.35-017). See also s.5 of the Act and s.3(2) of the Carriage by Air (Supplementary Provisions) Act 1962; s.4(4) of the Limitation Act 1963. For the time limits for complaints, see Sch.1 art.26 to the 1961 Act and Vol.II, paras 35-053, 35-064, 35-065.
- [105.](#) SI 2004/1899; see Vol.II, para.35-074.
- [106.](#) *Dawson v Thomson Airways Ltd* [2014] EWCA Civ 845, [2015] 1 W.L.R. 883.
- [107.](#) SI 2005/2092. See also the Rail Passengers' Rights and Obligations Regulations 2010, giving effect to Regulation (EC) 1371/2007, which in turn gives effect in the EU to the Convention concerning International Carriage by Rail 1980.
- [108.](#) See Vol.II, para.36-079.
- [109.](#) COTIF, Appendix A (CIV) art.60(1); Vol.II, para.36-117. For the time limits for complaints, see art.58; Vol.II, para.36-116.
- [110.](#) COTIF, Appendix A (CIV) art.60(2), (3); Vol.II, para.36-117. For the time limits for complaints, in respect of registered luggage, see art.59; Vol.II, para.36-116.
- [111.](#) COTIF, Appendix B (CIM) art.48; Vol.II, para.36-099. For the time limits for claims, see art.47; Vol.II, para.36-098.
- [112.](#) COTIF, Appendix A (CIV) art.60(3); Appendix B (CIM) art.48(2).
- [113.](#) COTIF, Appendix B (CIM) art.48(2)(a), (b).
- [114.](#) See Vol.II, para.36-118.
- [115.](#) Carriage of Goods by Road Act 1965 Sch. art.32(1) see below, Vol.II, para.36-144. For the time limits for complaints, see art.30 and Vol.II, para.36-143.
- [116.](#) See Vol.II, para.36-144.
- [117.](#) See Vol.II, para.44-013.
- [118.](#) Uniform Laws on International Sales Act 1967 Sch.1 art.49(1) (unless he has been prevented from exercising his right because of fraud on the part of the seller). But see art.49(2).
- [119.](#) art.39(1).
- [120.](#) Employment Rights Act 1996 s.164(1). But see s.164(2). See Vol.II, para.40-258.
- [121.](#) s.111(2). But see s.111(3)(4). See Vol.II, para.40-244.

- [122.](#) s.11(4) (three months); Vol.II, para.40-045.
- [123.](#) s.34(2) (three months); Vol.II, para.40-090.
- [124.](#) s.20(5); see Vol.II, para.40-098.
- [125.](#) s.23(2)–(4); see Vol.II, para.40–096.
- [126.](#) s.118.
- [127.](#) s.123.

Chitty on Contracts 32nd Ed.
Consolidated Mainwork Incorporating Second Supplement
Volume I - General Principles
Part 8 - Remedies for Breach of Contract
Chapter 28 - Limitation of Actions ¹
Section 2. - Accrual of the Cause of Action

Meaning of cause of action

28-031

Section 5 of the Limitation Act 1980 provides that the action “shall not be brought after the expiration of six years from the date on which the cause of action accrued”. The ascertainment of this date is often a question of some difficulty. There is no definition of the term “cause of action” in the Act, and therefore the old law is still applicable. In 1888 it was defined by Lord Esher as:

“... every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.” ¹²⁸

In 1891 Lindley L.J. said “it has always been held that the statute runs from the earliest time at which an action could be brought”. ¹²⁹ And in 1927 Lord Dunedin defined cause of action to mean “that which makes action possible”. ¹³⁰ There must also be in existence at this moment a competent claimant and a competent defendant. ¹³¹ There is no competent defendant if, e.g. he enjoys diplomatic privilege ¹³² or, being a corporation, it has been dissolved in the country of its incorporation. ¹³³ On the other hand, the mere fact that the defendant cannot be traced, so that in practice the claimant cannot start proceedings, does not prevent the cause of action from accruing. ¹³⁴ Where a claim arises at or after the death of an intestate and not before (e.g. for a debt payable after the death of the creditor or debtor) it appears to be the rule that there is no competent claimant or defendant, as the case may be, in the interval between the death and the grant of letters of administration so that the cause of action does not accrue until the grant of letters. ¹³⁵ This is because the title of an administrator is derived from the grant and he cannot sue or be sued until a grant is made. There is also some authority for saying that if at the time when the cause of action would have accrued the potential claimant and defendant were one and the same person, so that the hand to pay and the hand to receive were the same, the cause of action does not accrue and time does not begin to run. ¹³⁶ It should be noted that what is said above about competent parties refers only to the accrual of the cause of action. It does not refer to the suspension of the statute once time has begun to run. ¹³⁷

General rule in contract

28-032

The general rule in contract is that the cause of action accrues, not when the damage is suffered, but when the breach takes place ¹³⁸:

“In an action of assumpsit, the Statute of Limitations begins to run not from the time when the damage results from breach of the promise, but the time when the breach of promise takes place.” ¹³⁹

The gist of an action for breach of contract is the breach, and not any resulting damage which may be occasioned thereby. Consequently, the Act runs from the time when the contract is broken, and not from the time at which any damage resulting therefrom is sustained by the claimant. Therefore, although such damage may occur within six years before the action is brought, the action will be barred if the contract was broken before that period. For example, in an action for breach of warranty or condition against a seller of goods, the cause of action accrues when the goods are delivered, and not when the defect is discovered. ¹⁴⁰

Concurrent liability in tort

28-033

It is, however, well established that in the tort of negligence the cause of action arises when the damage is suffered and not when the act or omission complained of occurs. If, therefore, a claimant has, independently of or in addition to any cause of action in contract, a cause of action in tort for negligence, time will not begin to run in respect of his claim in tort until the damage is sustained. In a number of cases it was held that an action for negligence against, for example, a solicitor ¹⁴¹ or architect ¹⁴² was contractual in nature, so that the cause of action accrued when his negligent act or omission took place. ¹⁴³ But more recent cases have held that the existence of a contractual relationship between the parties does not necessarily exclude a concurrent or independent cause of action in tort. ¹⁴⁴ So an action may be brought in tort for negligence in respect of professional services rendered, for example, by a solicitor, ¹⁴⁵ insurance broker, ¹⁴⁶ architect ¹⁴⁷ or engineer ¹⁴⁸ within six years of the date when the claimant first sustains damage. ¹⁴⁹

28-034

Where the negligence has induced the claimant to enter into a contract (with the defendant or a third party), the cause of action in the tort of negligence (including liability under s.2(1) of the Misrepresentation Act 1967) will often accrue when that contract is entered into. ¹⁵⁰ But it may accrue at a later date, e.g. when the claimant incurs expenditure or sustains other damage in consequence of having entered into the contract. ¹⁵¹ In *Law Society v Sephton & Co* ¹⁵² the House of Lords held that the Law Society's cause of action in the tort of negligence against an accountant only accrued when claims were made by former clients of a corrupt solicitor for compensation from the Solicitors Compensation Fund. Prior to then, the Law Society had only a contingent liability to pay out compensation. Such a pure contingent liability, which might or might not eventuate, did not count as damage so as to constitute the accrual of a cause of action. This situation was to be distinguished from that dealt with in almost all the prior English cases, which concerned entering into disadvantageous transactions or suffering a diminution in value of an asset.

Successive and continuing breaches



28-035

❗ Where the innocent party elects to treat himself as discharged from further performance consequent upon a breach of the contract, ¹⁵³ time begins to run immediately. For instance, if there is an anticipatory breach accepted by him as a repudiation of the contract, his cause of action accrues at once, and not from the failure of the party in default subsequently to perform at the time fixed for performance. ¹⁵⁴ But if there are one or more breaches which do not give rise to a discharge either because they are not sufficiently fundamental or because the innocent party declines to accept them as having that effect, each will give rise to a separate cause of action. ¹⁵⁵ There may also be a series of breaches of a single covenant. Examples are failure to pay instalments of interest ¹⁵⁶ or rent. ¹⁵⁷ Or the breach may be a continuing one, e.g. of a covenant to keep in repair. ¹⁵⁸ In such a case the claimant will succeed in respect of so much of the series of breaches or the continuing breach as occurred within the six (or 12) years before action brought. If the breach consists in a failure to act, it may be held to continue die in diem until the obligation is performed or becomes impossible of performance or until the innocent party elects to treat the continued non-performance as a repudiation of the contract. Thus the failure of a solicitor to register an interest in land will ordinarily constitute a continuing breach of his retainer, and the client's cause of action will not become barred until six

years after registration ceases to be possible. ¹⁵⁹ 

Money lent

28-036

 At common law, where no time for repayment was specified in a contract of loan, or where the loan was expressed simply to be repayable “on demand”, the lender’s cause of action in general ¹⁶⁰ accrued when the loan was made and time began to run from that moment. ¹⁶¹ As a result, once the loan was outstanding for more than six years (which not infrequently happens in the case of loans between friends or members of a family) ¹⁶² the lender’s right to recover the money lent became barred notwithstanding that no demand for repayment had been made. But by s.6 of the Limitation Act 1980, if: (a) a contract of loan does not provide for repayment of the debt on or before a fixed or determinable date; and (b) does not effectively (whether or not it purports so to do) make the obligation to repay the debt conditional on demand for repayment made by or on behalf of the creditor or any other matter, then the right of action on the contract of loan is not barred after six years from the date of the loan. ¹⁶³ Instead, the sixyear period does not start to run unless and until a demand *in writing* for repayment of the debt is made by or on behalf of the creditor (or, where there are joint creditors, by or on behalf of any one of them). ¹⁶⁴  However, the section establishes an exception in the case where, in connection with taking the loan, the debtor enters into any collateral obligation to pay the amount of the debt or any part of it (as, for example, by delivering a promissory note ¹⁶⁵ as security for the debt) on terms which would exclude the application of the section to the contract of loan if they applied directly to repayment of the debt. ¹⁶⁶

28-037

Where the contract of loan does provide for repayment of the debt on or before a fixed or determinable date, or does effectively make the obligation to repay conditional upon a demand for repayment ¹⁶⁷ or any other matter, ¹⁶⁸ it is a question of construction when the lender’s cause of action accrues. Thus where there was a loan for five years with interest, and the lender was entitled to call in the loan on any default in the payment of interest, it was held that the lender’s cause of action accrued on the first such default taking place. ¹⁶⁹

28-038

Once the right to recover the principal sum is barred, arrears of interest falling due within six years before the action is brought are also irrecoverable, for the interest is accessory to the principal. ¹⁷⁰

Banker and customer

28-039

The relationship between banker and customer is the contractual one of debtor and creditor, not that of trustee and cestui que trust. ¹⁷¹ It is well settled that, unless the contrary is agreed, a demand by the customer is a condition precedent to repayment, whether the money is on current or deposit account. ¹⁷² Accordingly time runs from the date of the demand ¹⁷³ and not from the date when the account was opened or the money paid in, so that banks may be faced with claims that have lain dormant for years. However, in one case, money on a deposit account was unclaimed for 60 years, there being no evidence of repayment or of a demand for repayment, and the court drew the inference from all the circumstances that the money had at some time been repaid. ¹⁷⁴ Where sums are wrongly debited to the customer’s account, time runs from the date on which the customer demands repayment of the credit balance remaining when those sums are left out of account. ¹⁷⁵ If the relationship of banker and customer is terminated before a demand is made, e.g. by dissolution of the bank, the money thereupon becomes repayable. ¹⁷⁶

Overdrafts

28-040

An overdraft is a loan by the banker to the customer. At common law, in the case of an overdraft repayable on demand, a demand was in general not a condition precedent to bringing an action and time ran against the banker in respect of each advance from the time when it was made.¹⁷⁷ But now, by virtue of s.6 of the 1980 Act, time will not as a normal rule start to run against the banker until a demand in writing is made for repayment of the advance.

Negotiable instruments¹⁷⁸

28-041

The liability to the holder of the acceptor of a bill or the maker of a note payable at a fixed or determinable future time arises upon the maturity of the instrument,¹⁷⁹ unless presentment for payment is necessary to charge the acceptor or maker, in which case the liability arises at the date of presentment.¹⁸⁰ Therefore, on a bill payable on a certain date, or at a certain period after date, the limitation period runs from the time it falls due.¹⁸¹ In the case of a bill drawn payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.¹⁸² If a bill is payable at a fixed period after sight, the liability of the acceptor arises at the end of the fixed period calculated from the date of acceptance.¹⁸³

28-042

If a bill or note is payable at sight¹⁸⁴ or on demand, the liability of the acceptor or maker to the holder arises on the date of acceptance or, in the case of a note, on the date of the note (or of its issue if later), and no demand is necessary to establish liability.¹⁸⁵ Accordingly, the limitation period will run from that time. It would appear that the cause of action by the holder of a cheque against the drawer, being the party primarily liable on the instrument, likewise accrues on the date of the cheque (or of its issue if later).¹⁸⁶

28-043

As regards the drawer of a bill and the indorser of a bill or note, time begins to run in his favour when he receives notice of dishonour, or, if notice of dishonour is excused, from the date of dishonour.¹⁸⁷ If a bill is dishonoured by non-acceptance, and afterwards by non-payment, no fresh cause of action accrues to the holder against the drawer by reason of the dishonour by nonpayment.¹⁸⁸

28-044

It would seem that the cause of action of a drawer of a bill, and of the indorser of a bill or note, who has been compelled to pay the instrument accrues against the acceptor or maker on the making of the payment.¹⁸⁹ Likewise, with respect to the claim of an indorser against the drawer of a bill or prior indorsers of a bill or note, it would seem that the cause of action arises when he is compelled to and does pay the instrument.¹⁹⁰

Securities

28-045

In the case of registered securities, time begins to run in respect of payment of dividends from the date on which the dividend is declared or from the date provided by the declaration for its payment, whichever is the later,¹⁹¹ and in respect of a scheme or reduction of capital involving an immediate repayment of capital on the date when the scheme or reduction becomes effective.¹⁹² In the case of bearer securities, the question arises whether the document must be presented to the company before the liability of the company accrues, and this is to be determined by reference to the

company's articles of association and the terms on which the securities were issued. ¹⁹³

Principal and surety

28-046

Unless otherwise agreed in the contract of guarantee, the liability of the surety to the creditor arises on the principal debtor's default, so that time begins to run in favour of both of them at that moment. ¹⁹⁴ If the surety undertakes to pay on demand, a demand is a condition precedent to liability and the creditor's cause of action accrues only when a demand is made and not complied with. ¹⁹⁵ Where it was agreed that the guarantee should be a continuing one and should apply to the balance that was then or might at any time thereafter be owing, it was held that this was a guarantee of each debit balance as it was constituted, so that the cause of action accrued not when each advance was made to the principal debtor, but when the debit balance in question was constituted. ¹⁹⁶

28-047

Unless otherwise agreed, the surety's implied right to an indemnity from the principal debtor accrues when the surety's liability to the creditor is ascertained, and time runs from that moment. ¹⁹⁷ If a surety pays a statute-barred debt, he cannot recover the amount from the principal debtor. ¹⁹⁸

28-048

As between co-sureties, the right to contribution of one who has paid more than his share accrues at the time of such payment, ¹⁹⁹ and of one who has been called upon to pay the whole of the debt at the time the claim of the creditor against him is established. ²⁰⁰ It is immaterial that, at the time of the action for contribution, time has run out between the creditor and the co-surety. ²⁰¹

Indemnity against liability

28-049

Where a contract of indemnity is to indemnify a person against liability to a third party (e.g. under a liability insurance policy), the general modern rule is that the limitation period starts to run when the indemnifying party's liability is established by judgment, arbitration or binding settlement. ²⁰² However, that general rule is subject to the construction of the contract of indemnity. ²⁰³ This may mean that the indemnifying party is liable as soon as the indemnified party is liable (that is, even before any establishing of that liability by, for example, judgment). ²⁰⁴ At the other extreme, the contract may on its true construction provide that the indemnity is conditional on actual payment by the indemnified party in which case the cause of action will accrue only when such payment has been made. ²⁰⁵

Non-liability insurance

28-050

Under a non-liability insurance policy, a cause of action would appear to accrue, in the case of insurance against loss, when the casualty causing the loss occurs ²⁰⁶; and in the case of life or accident insurance, upon the occurrence of the event which gives rise to the claim. ²⁰⁷ But regard must be had to the terms of the policy; on its true construction it may be that the liability of the insurer will not arise unless and until a claim is made or certain other conditions are satisfied. ²⁰⁸

Civil Liability (Contribution) Act 1978

28-051

⚠ In respect of the special two-year period of limitation ²⁰⁹ for claiming contribution under s.1 of the Civil Liability (Contribution) Act 1978, the right of action to recover contribution accrues on the date on which judgment is given or an arbitral award made. ²¹⁰ Where there are separate judgments (or arbitration awards) in relation to liability and quantum, the two-year period runs from the judgment on quantum. ²¹¹ ⚠ In the absence of any judgment or award, if the person entitled to recover contribution in respect of any damage makes or agrees to make any payment to one or more persons in respect of that damage (whether he admits any liability in respect of the damage or not), time begins to run from the earliest date on which the amount to be paid by him is agreed between him (or his representative) and the person (or each of the persons, as the case may be) to whom the payment is to be made. ²¹²

Sale of goods

28-052

In a contract of sale of goods, the property in which has passed to the buyer, ²¹³ the seller's right of action for the price accrues at the time for payment specified in the contract or, if no time is specified, when the seller informs the buyer that he is ready and willing to deliver the goods. ²¹⁴ If the sale is upon credit, the right of action accrues upon the expiry of the period allowed. ²¹⁵ The buyer's right of action for breach of the implied term as to title accrues at the time of sale or (in the case of an agreement to sell) at the time when the property is to pass, ²¹⁶ and in the case of a breach of the term as to quiet possession when the buyer's possession is disturbed. ²¹⁷ Otherwise the buyer's right of action for breach of an express or implied warranty relating to goods accrues when the goods are delivered, and not when the defect is discovered or damage ensues. ²¹⁸ Where there is a wrongful neglect or refusal to deliver or accept and pay for the goods, the Sale of Goods Act 1979 ²¹⁹ provides that an action may be maintained for damages for non-delivery or non-acceptance. Normally time would appear to run from the time or times when the goods ought to have been delivered or accepted as the case may be, ²²⁰ except in the case of an anticipatory breach accepted as a repudiation of the contract, when the limitation period runs from that time. ²²¹ The buyer's right of action for damages for delay in delivery of goods which are nevertheless accepted by him would appear to accrue at the time or times when the goods ought to have been delivered.

Work and services

28-053

Unless a time for payment is otherwise agreed, the right to claim payment upon an entire contract accrues when the work is completed. ²²² This applies to work done by a solicitor, although by statute ²²³ he cannot bring an action to recover costs until one month after delivery of a proper bill. He is thus deprived of at least one month of the six-year limitation period. ²²⁴ The contractual cause of action for breach of duty in respect of defective work arises when the breach of duty occurs ²²⁵ and not when the defect is discovered or damage ensues. ²²⁶ Failure to carry out the work may nevertheless amount to a continuing breach of the contract. ²²⁷ However, there may be a separate action in tort for negligence, and the tortious cause of action will not accrue until the claimant first suffers damage. ²²⁸

Building contracts

28-054

In building contracts, except in cases of fraud or concealment, any cause of action in contract in respect of defective work accrues when the contractor is in breach of his express or implied obligations under the contract (normally on practical or substantial completion), and not from the time when the defect is discovered or damage occurs. If the contractor delays in completing the works or fails to complete the works in whole or in part, the cause of action presumably accrues when the works ought to have been completed ²²⁹ or when the employer elects to treat the failure of performance as a repudiation of the contract. ²³⁰

28-055

There may, however, be an alternative cause of action in the tort of negligence against the contractor where the works which he is employed to carry out are defective. ²³¹ The cause of action arises when relevant injury or damage is sustained, even though this may be later than the completion of the works. ²³² Moreover, special limitation provisions apply to latent damage (other than personal injury) in the tort of negligence. ²³³

28-056

In *Aspects Contracts (Asbestos) Ltd v Higgins Construction Plc* ²³⁴ the question arose as to the limitation period that applies to recover sums paid by one party to a construction contract to another under the adjudication scheme laid down in the Housing Grants, Construction and Regeneration Act 1996 where it has subsequently been finally determined that those sums were not due. It was held that, leaving aside the possibility of a claim in unjust enrichment which was not argued (although it appears to provide the most straightforward answer), the limitation period applicable was six years from when the payment was made, applying the reasoning that there was an implied term in the contract that such monies would be repaid.

Defective Premises Act 1972**28-057**

Under s.1 of the Defective Premises Act 1972, any cause of action in respect of duty imposed by the Act (the duty to build dwellings properly) is deemed, for the purposes of limitation, to have accrued at the time the dwelling was completed; but if after that time a person who has done work for or in connection with the provision of a dwelling does further work to rectify the work he has already done, any such cause of action in respect of that further work is deemed for those purposes to have accrued at the time the further work was finished. ²³⁵

Breach of trust etc.**28-058**

The right of action by a beneficiary to recover trust property or in respect of any breach of trust normally accrues upon the breach of trust being committed. ²³⁶ Time does not normally begin to run between partners in respect of any claim arising out of the partnership until it is dissolved ²³⁷ or until an act of ouster occurs. ²³⁸

Unjust enrichment**28-059**

The claimant's cause of action will normally accrue when he pays money to the defendant or to the defendant's use. ²³⁹ But the running of time may be postponed in the case of fraud, concealment or mistake, ²⁴⁰ or be affected by the fact that the relief claimed is equitable ²⁴¹ or that the defendant is a constructive trustee. ²⁴²

Arbitration and award**28-060**

The parties can agree that the award of an arbitrator shall be a condition precedent to a right to bring an action on the contract. ²⁴³ This is known as a “*Scott v Avery*” clause. ²⁴⁴ Since the effect of such a term in an arbitration agreement is that no cause of action accrues in respect of any matter required

by the agreement to be referred until an award is made under the agreement, it was formerly held that time ran from the date of the award and not from the date of the original cause of arbitration, and that no limitation period was applicable at all for arbitration proceedings.²⁴⁵ But s.13(3) of the Arbitration Act 1996 now provides that, in determining for the purposes of the Limitation Acts²⁴⁶ when a cause of action accrued, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which an arbitration agreement applies is to be disregarded.

28-061

The limitation period for the enforcement of an arbitral award accrues when the claimant is entitled to enforce the award.²⁴⁷ Alternatively, if the claim is for damages for breach of an implied promise to pay the award, then it accrues when a reasonable time to pay the award has elapsed.²⁴⁸

Burden of proof

28-062

In principle it might be expected that the defendant, having pleaded the statute,²⁴⁹ would bear the burden of proving that the claimant's cause of action accrued outside the limitation period and was in consequence statutebarred.²⁵⁰ However, there is weighty authority for the view that the burden of proof is on the claimant to show that his cause of action accrued within the statutory period.²⁵¹ In *Cartledge v E. Jopling and Sons Ltd*²⁵² the Court of Appeal so held. But in the House of Lords²⁵³ Lord Pearce placed a gloss on this proposition when he stated that, although the initial onus was on the claimant, once he had satisfied that onus, the burden passed to the defendant to show that the apparent accrual of a cause of action was misleading and that in reality the cause of action accrued at an earlier date. Nevertheless it is not sufficient for the claimant to prove, for example, that a breach of contract occurred at some time during the limitation period. In *London Congregational Union Inc v Harriss & Harriss*²⁵⁴ Ralph Gibson L.J. stated that the claimant must show, on the balance of probabilities, that the cause of action accrued, i.e. came into existence, on a day within the period of limitation. Only then would the onus shift to the defendant. The burden of proof may less often be of significance in contractual actions than actions in tort, but may still be of importance in certain cases.²⁵⁵

1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

^{128.} *Read v Brown* (1888) 22 Q.B.D. 128, 131. See also *Cooke v Gill* (1873) L.R. 8 C.P. 107, 116; *Coburn v Colledge* [1897] 1 Q.B. 702, 706, 707; *Central Electricity Board v Halifax Corp* [1963] A.C. 785, 800, 806. *Letang v Cooper* [1964] 1 Q.B. 232, 242; *Paragon Finance v Thakerar & Co* [1999] 1 All E.R. 405.

^{129.} *Reeves v Butcher* [1891] 2 Q.B. 509, 511.

^{130.} *Board of Trade v Cayzer, Irvine & Co* [1927] A.C. 610, 617. See also *Letang v Cooper* [1965] 1 Q.B. 232, 242.

^{131.} *Thomson v Lord Clanmore* [1900] 1 Ch. 718, 728–729 (Vaughan Williams L.J.).



^{132.} *Musurus Bey v Gadban* [1894] 2 Q.B. 352.

^{133.} *Re Russo-Asiatic Bank* [1934] Ch. 720, 738.

^{134.} *R.B. Policies at Lloyd's v Butler* [1950] 1 K.B. 76; Goodman (1966) 29 M.L.R. 366. cf. *Clark v*


Forbes Stuart (Thames Steel) Ltd [1964] 1 W.L.R. 836; Limitation Act 1980 ss.14(1)(c), 14(1A)(c), 14A(8)(c).

135. *Jolliffe v Pitt* (1715) 2 Vern. 694; *Murray v East India Co* (1821) 5 B. & Ald. 204; *Douglas v Forrest* (1828) 4 Bing. 686, 704; *Pratt v Swaine* (1828) 8 B. & C. 285; *Burdick v Garrick* (1870) L.R. 5 Ch. App. 233, 241; *Chan Kit Sam v Ho Fung Ham* [1902] A.C. 257; *Meyappa Chetty v Supramanian Chetty* [1916] 1 A.C. 603, 610. But there is some doubt about whether this rule can stand subsequent to RSC Ord.15 r.6A—now CPR r.19.8—which was made by virtue of s.2 of the Proceedings against Estates Act 1970 (now repealed). There are also statutory limitation provisions for particular causes of action which presumably override any such rule, e.g. Limitation Act 1980 ss.11(5), 12(2). See also s.26 of the Limitation Act 1980 (recovery of land). For accrual after date of death where there is an executor, see *Webster v Webster* (1804) 10 Ves. Jun. 93; *Flood v Patterson* (1861) 29 Beav. 295; *Knox v Gye* (1871) L.R. 5 H.L. 656; *Lovett v Ambler* (1876) 3 Ch. D. 198; *Meyappa Chetty v Supramanian Chetty* [1916] 1 A.C. 603, 608.
136. *Binns v Nichols* (1866) L.R. 2 Eq. 256; *Re Pardoe* [1906] 1 Ch. 265.
137. As to this, see below, paras 28-066—28-067.
138. *Gould v Johnson* (1702) 2 Salk. 422; *Battley v Faulkner* (1820) 3 B. & Ald. 288; *Short v M'Carthy* (1820) 3 B. & Ald. 626; *Howell v Young* (1826) 5 B. & C. 259; *Walker v Milner* (1866) 4 F. & F. 745; *Gibbs v Guild* (1881) 8 Q.B.D. 296, 302.
139. *Howell v Young* (1826) 5 B. & C. 259, 265.
140. *Battley v Faulkner* (1820) 3 B. & Ald. 288; *Lynn v Bamber* [1930] 2 K.B. 72, 74.
141. *Short v M'Carthy* (1820) 3 B. & Ald. 626; *Brown v Howard* (1820) 2 Brod. & B. 73; *Howell v Young* (1826) 5 B. & C. 529; *Bean v Wade* (1885) 2 T.L.R. 157; *Wood v Jones* (1889) 61 L.T. 551; *Groom v Crocker* [1939] 1 K.B. 194; *Somers v Erskine* [1944] Ir.R. 368; *Clark v Kirby-Smith* [1964] Ch. 506. See also *Cook v Swinfen* [1967] 1 W.L.R. 457; *Heywood v Wellers* [1976] Q.B. 446; *Rowe v Turner Hopkins & Partners* [1980] N.Z.L.R. 550.
142. *Bagot v Stevens Scanlon & Co Ltd* [1966] 1 Q.B. 197.
143. *Clark v Kirby-Smith* [1964] Ch. 506; *Bagot v Stevens Scanlon & Co Ltd* [1966] 1 Q.B. 197.
144. *Henderson v Merrett Syndicates Ltd* [1995] 2 A.C. 145. See above, paras 1-125—1-197, 28-010—28-012.
145. *Midland Bank Trust Co Ltd v Hett, Stubbs & Kemp* [1977] Ch. 384; *Forster v Outred & Co* [1982] 1 W.L.R. 86; *D.W. Moore & Co Ltd v Ferrier* [1988] 1 W.L.R. 267; *Bell v Peter Browne & Co* [1990] Q.B. 495; *Khan v Falvey & Co* [2002] EWCA Civ 400, [2002] P.N.L.R. 28; *McCarroll v Statham Gill Davies* [2002] EWCA Civ 425, [2003] P.N.L.R. 25; *Nouri v Marvi* [2010] EWCA Civ 1107, [2011] P.N.L.R. 7; *Green v Eadie* [2011] EWHC 824 (Ch), [2012] 2 W.L.R. 510; *Boycott v Perrins Guy Williams* [2011] EWHC 2969 (Ch); *Lane v Cullens Solicitors* [2011] EWCA Civ 547, [2012] 2 W.L.R. 821; *Berney v Saul* [2013] EWCA Civ 640, [2013] P.N.L.R. 26.
146. *Iron Trades Mutual Insurance Co Ltd v Buckenham Ltd* [1989] 2 Lloyd's Rep. 85; *Islander Trucking Ltd v Hogg Robinson & Gardner Mountain (Marine) Ltd* [1990] 1 All E.R. 826; *Punjab National Bank v De Boinville* [1992] 1 W.L.R. 1138; *Knapp v Ecclesiastical Insurance Group Plc* [1998] P.N.L.R. 172. See also *Société Commerciale de Reassurance v Eras International Ltd* [1992] 1 Lloyd's Rep. 570 (insurance management agreement); *Henderson v Merrett Syndicates Ltd* [1995] 2 A.C. 145 (Lloyd's underwriting agents).
147. *Kensington and Chelsea and Westminster Area Health Authority v Wethertern Composites Ltd* [1985] 1 All E.R. 346; *London Congregational Union Inc v Harriss & Harriss* [1988] 1 All E.R. 15; *Wessex Regional Health Authority v HLM Design* (1994) 10 Const. L.J. 165; *New Islington & Hackney Housing Association Ltd v Pollard, Thomas and Edwards Ltd* [2001] Build. L.R. 74.

- [148.](#) *Pirelli General Cable Works Ltd v Oscar Faber and Partners* [1983] A.C. 1; *Wessex Regional Health Authority v HLM Design* (1994) 10 Const. L.J. 165.
- [149.](#) For extension of the period in cases of latent damage in the tort of negligence, see above, paras 28–010–28–012.
- [150.](#) See *Forster v Outred & Co* [1982] 1 W.L.R. 86; *D.W. Moore & Co Ltd v Ferrier* [1988] 1 W.L.R. 267; *Iron Trades Mutual Insurance Co Ltd v Buckenham Ltd* [1989] 2 Lloyd's Rep. 85; *Bell v Peter Browne & Co* [1990] 2 Q.B. 495; *Islander Trucking Ltd v Hogg Robinson & Gardner Mountain (Manne) Ltd* [1990] 1 All E.R. 826; *Knapp v Ecclesiastical Insurance Group Plc* [1998] P.N.L.R. 172; *Byrne v Hall Pain & Foster* [1999] 1 W.L.R. 1849; *McCarroll v Statham Gill Davies* [2002] EWCA Civ 425, [2003] P.N.L.R. 25; *Shore v Sedgwick Financial Services Ltd* [2008] EWCA Civ 863, [2008] P.N.L.R. 37; *Pegasus Management Holdings SCA v Ernst & Young* [2008] EWHC 2720 (Ch), [2009] P.N.L.R. 11; *Axa Insurance Ltd v Akther and Darby Solicitors* [2009] EWHC 635 (Comm), [2009] P.N.L.R. 25 (in which Law Society v Sephton & Co was distinguished); *Green v Eadie* [2011] EWHC 824 (Ch), [2012] 2 W.L.R. 510; *Boycott v Perrins Guy Williams* [2011] EWHC 2969 (Ch); *Co-operative Group Ltd v Birse Developments Ltd* [2014] EWHC 530 (TCC), [2014] B.L.R. 359.
- [151.](#) *Toprak Enerji Sanayi A.S. v Sale Tilney Technology Plc* [1994] 1 W.L.R. 840; *Wardley Australia Ltd v State of Western Australia* (1992) 175 C.L.R. 514; *UBAF Ltd v European American Banking Corp* [1984] Q.B. 713, 726; *Nykredit Mortgage Bank Plc v Edward Erdman Group Ltd (No.2)* [1997] 1 W.L.R. 1627.
- [152.](#) [2006] UKHL 22, [2006] 2 W.L.R. 1091.
- [153.](#) For discharge by breach, see above, Ch.24.
- [154.](#) *Reeves v Butcher* [1891] 2 Q.B. 509.
- [155.](#) *Arnott v Holden* (1852) 18 Q.B. 593.
- [156.](#) *Bowyer v Woodman* (1867) L.R. 3 Eq. 313. See s.20(5)(6)(7). But cf. below, para.28-036
- [157.](#) *Archbold v Scully* (1861) 9 H.L.C. 360. See s.19.
- [158.](#) *Spoor v Green* (1874) L.R. 9 Ex. 99, 111. There was held to be no continuing obligation to deliver goods of the correct quality, so that there was a simple breach at the time of delivery, in *VAI Industries (UK) Ltd v Bostock & Bramley* [2003] EWCA Civ 1069, [2003] B.L.R. 359.
- [159.](#)  *Midland Bank Trust Co Ltd v Hett, Stubbs & Kemp* [1979] Ch. 384. Although not involving any question of limitation, as regards the apparent conflict regarding whether there was a continuing breach of contract between *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp* [1979] Ch. 384 and *Bell v Peter Browne & Co* [1990] 2 Q.B. 495, the majority of the Court of Appeal in *Capita (Banstead 2011) Ltd v RFIB Group Ltd* [2015] EWCA Civ 1310, [2016] P.N.L.R. 17, indicated that they preferred (and indeed, as a matter of precedent, were bound to apply) the latter case rather than the former.
- [160.](#) For exceptions, see below, para.28-039 (banker and customer); para.28-046 (guarantees).
- [161.](#) *Rumball v Ball* (1712) 10 Mod. 39; *Garden v Bruce* (1868) L.R. 3 C.P. 300; *Re Brown's Estate* [1893] 2 Ch. 300, 305; *Bradford Old Bank v Sutcliffe* [1918] 2 K.B. 833, 840, 845–846, 848, 849; *Tate v Crowdsen* [1938] Ch. 869, 881; *Lloyd's Bank v Margolis* [1954] 1 W.L.R. 644, 648.
- [162.](#) Twenty-First Report of the Law Reform Committee, 1977, Cmnd.6923, paras 3.19–3.26.
- [163.](#) For agreements made by deed, see above, para.28-003.
- [164.](#)  See, generally, *Boot v Boot* [1996] 2 F.C.R. 713; *Goldsmith v Chittell* [2016] EWHC 630 (Ch).

165. Defined in s.6(4).
166. s.6(2). See *Boot v Boot* [1996] 2 F.C.R. 713; *Von Goetz v Rogers Unreported July 29, 1998 CA*.
167. *Lloyds Bank v Margolis* [1954] 1 W.L.R. 644 (legal charge with covenant to repay on demand given as collateral security); and see below, para.28-039 (customer's account with bank).
168. *Re McHenry* [1894] 3 Ch. 240.
169. *Reeves v Butcher* [1891] 2 Q.B. 509.
170. *Hollis v Palmer* (1836) 2 Bing. N.C. 73; *Cheang Thye Phin v Lam Kin Sang* [1929] A.C. 670; *Elder v Northcott* [1930] 2 Ch. 422.
171. *Foley v Hill* (1848) 2 H.L.C. 28.
172. *Joachimson v Swiss Bank Corp* [1921] 3 K.B. 110, *Arab Bank v Barclays Bank* [1954] A.C. 495, *Hart v Sangster* [1957] Ch. 329. See also *Re Dillon* (1890) 44 Ch. D. 76, 81.
173. But repeated demands do not start time running afresh: *Bank of Baroda v Mahomed* [1999] Lloyd's Rep. Bank 14.
174. *Douglass v Lloyds Bank* (1929) 34 Com. Cas. 263.
175. *National Bank of Commerce v National Westminster Bank* [1990] 2 Lloyd's Rep. 514. cf. 517 (account ultimately in debit).
176. *Re Russian Commercial Bank* [1955] Ch. 148.
177. *Parrs Banking Co v Yates* [1898] 2 Q.B. 460. Contrast *Lloyds Bank v Margolis* [1954] 1 W.L.R. 644 (legal charge with covenant to repay on demand given as collateral security).
178. See Byles on Bills of Exchange and Cheques, 28th edn (2007) pp.439–449; Chalmers and Guest on Bills of Exchange and Cheques, 17th edn (2009) paras 7–056–7–060.
179. Except where a bill is accepted after maturity, when time runs from the date of acceptance: Bills of Exchange Act 1882 s.10(2).
180. Bills of Exchange Act 1882 ss.19(2)(c), 52, 87.
181. *Montague v Perkins* (1853) 22 L.J.C.P. 187.
182. Bills of Exchange Act 1882 s.39(1).
183. Bills of Exchange Act 1882 ss.11(1), 14(2), (3); *Holmes v Kerrison* (1810) 2 Taunt. 323.
184. Bills of Exchange Act 1882 s.10(1)(a).
185. *Norton v Ellam* (1837) 2 M. & W. 461; *Re Brown's Estate* [1893] 2 Ch. 300, 304; *Re British Trade Corp* [1932] 2 Ch. 1. But see Bills of Exchange Act 1882 ss.19(2)(c), 52(2), 87(1) (presentment for payment). Contrast (instruments payable at a certain period after demand): *Thorpe v Booth* (1826) Ry. & M. 388; *Re Rutherford* (1880) 14 Ch. D. 687.
186. *Robinson v Hawksford* (1846) 9 Q.B. 52, 59; *Laws v Rand* (1857) 3 C.B.(N.S.) 442, 449; *Re Bethell* (1887) 34 Ch. D. 561.
187. Bills of Exchange Act 1882 ss.43, 47, 48, 50(2), 55, 87(2), (3); *Kennedy v Thomas* [1894] 2 Q.B. 759.
188. *Whitehead v Walker* (1842) 9 M. & W. 506; *Wilkinson v Verity* (1871) L.R. 6 C.P. 206, 209.

- [189.](#) Bills of Exchange Act 1882 ss.57, 59. But since the claim is analogous to that of a surety against the principal debtor (para.28-047, below), it is arguable that the cause of action arises when his liability to pay is ascertained, or even when he receives notice of dishonour.
- [190.](#) Bills of Exchange Act 1882 s.55(1)(2). But contrast *Webster v Kirk* (1852) 17 Q.B. 944 (date of receipt of notice of dishonour).
- [191.](#) *Bond v Barrow Haematite Steel* [1902] 1 Ch. 353; *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch. 146.
- [192.](#) *Re Artisans' Land and Mortgage Corp* [1904] 1 Ch. 796; *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch. 146.
- [193.](#) *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch. 146.
- [194.](#) *Parrs Banking Co v Yates* [1898] 2 Q.B. 460.
- [195.](#) *Re Brown's Estate* [1893] 2 Ch. 300; *Bradford Old Bank v Sutcliffe* [1918] 2 K.B. 833; *Esso Petroleum Co Ltd v Alstonbridge Properties Ltd* [1975] 1 W.L.R. 1474; *Bank of Baroda v Patel* [1996] 1 Lloyd's Rep. 390.
- [196.](#) *Wright v New Zealand Farmers' Co-operative Association* [1939] A.C. 439. cf. *Hartland v Jukes* (1863) 1 H. & C. 667.
- [197.](#) *Wolmershausen v Gullick* [1893] 2 Ch. 514; *Re Richardson* [1911] 2 K.B. 705, 709.
- [198.](#) *Coneys v Morris* [1922] 1 Ir.R. 81.
- [199.](#) *Davies v Humphreys* (1840) 6 M. & W. 153; *Re Snowden* (1881) 17 Ch. D. 44.
- [200.](#) *Wolmershausen v Gullick* [1893] 2 Ch. 514; cf. *Robinson v Harkin* [1896] 2 Ch. 415 (contribution between co-trustees).
- [201.](#) *Wolmershausen v Gullick* [1893] 2 Ch. 514.
- [202.](#) *County & District Properties Ltd v C. Jenner & Son Ltd* [1976] 2 Lloyd's Rep. 728 (Swanwick J.); *R. H. Green & Silley Weir v British Rys Board* [1985] 1 W.L.R. 570 (Dillon J.); *Telfair Shipping Corp v Inersea Carriers SA* [1985] 1 W.L.R. 553 (Neill J., who distinguished an indemnity against liability from a general indemnity, express or implied); *Bradley v Eagle Star Insurance Co Ltd* [1989] A.C. 957; *North Atlantic Insurance Co Ltd v Bishopsgate Insurance Co Ltd* [1998] 1 Lloyd's Rep. 459; *City of London v Reeve & Co Ltd* [2000] Build. L.R. 211, 215.
- [203.](#) *Telfair Shipping Corp v Inersea Carriers SA* [1985] 1 W.L.R. 553, 566; *Firma C-Trade SA v Newcastle Protection and Indemnity Association* [1991] 2 A.C. 1; *Total Liban SA v Vitol Energy SA* [1999] 2 Lloyd's Rep. 700.
- [204.](#) *Bosma v Larsen* [1966] 1 Lloyd's Rep. 22.
- [205.](#) *Firma C-Trade SA v Newcastle Protection and Indemnity Association* [1991] 2 A.C. 1.
- [206.](#) *Chandris v Argo Insurance Co Ltd* [1963] 2 Lloyd's Rep. 65, approved in *Castle Insurance Co Ltd v Hong Kong Islands Shipping Co Ltd* [1984] A.C. 226. See also *Scott Lithgow v Secretary of State for Defence* (1989) 45 Build. L.R. 1 HL; *Firma C-Trade SA v Newcastle Protection and Indemnity Association* [1991] 2 A.C. 1, 35; *Bank of America National Trust and Savings Association v Christmas* [1994] 1 All E.R. 401; *Callaghan v Dominion Insurance Co Ltd* [1997] 2 Lloyd's Rep. 541; *Universities Superannuation Scheme Ltd v Royal Insurance (UK) Ltd* [2000] 1 All E.R. (Comm) 266.
- [207.](#) *Re Haycock's Policy* (1876) 1 Ch. D. 611; *London & Midland Bank v Mitchell* [1899] 2 Ch. 161. See also *Virk v Gan Life Holdings Plc* (2000) 52 B.M.L.R. 207.

- [208.](#) *Virk v Gan Life Holdings Plc* (2000) 52 B.M.L.R. 207.
- [209.](#) Limitation Act 1980 s.10(1); above, para.28-014.
- [210.](#) s.10(2), (3).
- [211.](#)  *Aer Lingus Plc v Gildercroft Ltd* [2006] EWCA Civ 4, [2006] 1 W.L.R. 1173. Similarly, an interim payment does not start the two-year limitation period running: *Jellett v Brooke* [2016] EWHC 2828 (QB), [2017] 1 W.L.R. 1177.
- [212.](#) s.10(2), (4). In *Knight v Rochdale Healthcare NHS Trust* [2003] EWHC 1831 (QB), [2003] 4 All E.R. 417 it was held that time ran from the date of the agreement even though that agreement was later embodied in a consent order: that is, s.10(4) of the Limitation Act 1980 applied, not s.10(3).
- [213.](#) Sale of Goods Act 1979 s.49(1). But see s.49(2).
- [214.](#) s.28.
- [215.](#) *Helps v Winterbottom* (1831) 2 B. & Ad. 431.
- [216.](#) Sale of Goods Act 1979 s.12(1). But see s.32 of the Limitation Act 1980; below, paras 28–085—28–087.
- [217.](#) Sale of Goods Act 1979 s.12(2)(b).
- [218.](#) *Battley v Faulkner* (1820) 3 B. & Ald. 288; *Walker v Milner* (1866) 4 F. & F. 745.
- [219.](#) ss.50(1), 51(1).
- [220.](#) ss.50(3), 51(3).
- [221.](#) See above, para.28-035.
- [222.](#) *Emery v Day* (1834) 1 Cr. M. & R. 245, 248.
- [223.](#) Solicitors Act 1974 s.69.
- [224.](#) *Coburn v Colledge* [1897] 1 Q.B. 702.
- [225.](#) *Bagot v Stevens Scanlan & Co Ltd* [1966] 1 Q.B. 197.
- [226.](#) *Bagot v Stevens Scanlan & Co* [1966] 1 Q.B. 197. See also the cases cited in para.28-032, above.
- [227.](#) See above, para.28–035.
- [228.](#) See above, para.28–033.
- [229.](#) *Kitney v Jones Lang Wootton* (1988) 20 E.G. 88.
- [230.](#) *Pegler Ltd v Wang (UK) Ltd* [2000] Build. L.R. 218.
- [231.](#) *Dove v Banhams Patent Locks Ltd* [1983] 1 W.L.R. 1436; *Murphy v Brentwood DC* [1991] 1 A.C. 398; *Department of the Environment v Thomas Bates and Son Ltd* [1991] 1 A.C. 499; *Nitrogen Eireann Teoranta v Inco Alloys Ltd* [1992] 1 W.L.R. 598.
- [232.](#) *Dove v Banhams Patent Locks Ltd* [1983] 1 W.L.R. 1436; *Nitrogen Eireann Teoranta v Inco Alloys Ltd* [1992] 1 W.L.R. 598.

- [233.](#) See above, paras 28–010—28–012.
- [234.](#) [2013] EWCA Civ 1541, [2014] 1 W.L.R. 1220.
- [235.](#) Defective Premises Act 1972 s.1(5). See *Alderson v Beetham Organisation Ltd* [2003] EWCA Civ 408, [2003] 1 W.L.R. 1686. Since the liability is strict, the extension in respect of latent damage in actions in tort for negligence under s.14A of the 1980 Act (above, paras 28–010—28–012) is not available.
- [236.](#) *Re Swain* [1891] 3 Ch. 233; *Re Somerset* [1894] 1 Ch. 231; *Thorne v Heard* [1895] A.C. 495.
- [237.](#) *Knox v Gye* (1872) L.R. 5 H.L. 656; *Noyes v Crawley* (1878) 10 Ch. D. 31. cf. *Betjemann v Betjemann* [1895] 2 Ch. 474; *Gopala Chetty v Vijayaraghavachariar* [1922] 1 A.C. 488.
- [238.](#) *Barton v North Staffs Ry* (1888) 38 Ch. D. 458, 463.
- [239.](#) *Baker v Courage & Co* [1910] 1 K.B. 56; *Re Jones* [1914] 1 Ir.R. 188; *Anglo-Scottish Beet Sugar Corp Ltd v Spalding U.D.C.* [1937] 2 K.B. 607, 609, 627; *Re Diplock* [1948] Ch. 465, 513; *Maskell v Horner* [1915] 3 K.B. 106; *Re Mason* [1928] Ch. 385, 392, [1929] 1 Ch. 1; *Re Blake* [1932] 1 Ch. 54, 60; *Kleinwort Benson Ltd v Sandwell BC* (1993) 91 L.G.R. 323, 382–384; *Kleinwort Benson Ltd v South Tyneside Metropolitan BC* [1994] 4 All E.R. 972, 978; *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 A.C. 349, 409; *Fuller v Happy Shopper Ltd* [2001] 2 Lloyd's Rep. 49. See generally McLean [1989] C.L.J. 472; Goff and Jones, *The Law of Unjust Enrichment*, 8th edn (2011), Ch.33; Burrows, *The Law of Restitution*, 3rd edn (2011), pp.604–614; Burrows, *A Restatement of the English Law of Unjust Enrichment* (2012) pp.143–149. See also above, para.28–002.
- [240.](#) See below, paras 28–082—28–092.
- [241.](#) See below, para.28–135, and *Tito v Waddell (No.2)* [1977] Ch. 106.
- [242.](#) See s.21 of the Act. But see above, para.28–018.
- [243.](#) See Vol.II, para.32–047.
- [244.](#) *Scott v Avery* (1856) 5 H.L.C. 811.
- [245.](#) *Board of Trade v Cayzer, Irvine & Co* [1927] A.C. 610.
- [246.](#) Defined in s.13(4) of the 1996 Act.
- [247.](#) *International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India* [1996] 1 All E.R. 1017.
- [248.](#) *Agromet Motoimport v Maulden Engineering Co (Beds.) Ltd* [1985] 1 W.L.R. 762; *International Bulk Shipping Ltd v Minerals and Metals Trading Corp of India* [1996] 1 All E.R. 1017.
- [249.](#) See below, para.28–108.
- [250.](#) *Lochgelly Iron & Coal Co Ltd v McMullen* [1934] A.C. 1, 35.
- [251.](#) *Hurst v Parker* (1817) 1 B. & A. 92; *Beale v Nind* (1821) 4 B. & A. 566, 571; *Wilby v Henman* (1834) 2 C. & M. 658; *Darley Main Colliery Co v Mitchell* (1886) 111 App. Cas. 127, 135; *O'Connor v Isaacs* [1956] 2 Q.B. 288, 364; *Cartledge v E. Jopling and Sons Ltd* [1963] A.C. 758; *London Congregational Union Inc v Harriss and Harriss* [1988] 1 All E.R. 15; *Crocker v British Coal Corp* (1996) 29 B.M.L.R. 159; *Arab Monetary Fund v Hashim* [1996] 1 Lloyd's Rep. 589, 607–608; *Lloyds Bank Plc v Crosse & Crosse* [2001] EWCA Civ 366, [2001] P.N.L.R. 34 at [41]; *Haward v Fawcetts* [2006] UKHL 9, [2006] 1 W.L.R. 682 at [106], per Lord Mance; *Fiona Trust & Holding Corp v Privalov* [2010] EWHC 3199 (Comm) at [135]. For an approach which puts the burden of proving limitation on the defendant, see the decision of the Victorian Supreme Court

in *Pullen v Gutteridge, Haskins & Davey Pty Ltd* (1992) *Aust. Torts. Rep.* 81, noted by *Mullany* (1993) 109 *L.Q.R.* 215.

[252.](#) [1962] 1 *Q.B.* 189, 202, 208.

[253.](#) *Cartledge v E. Jopling and Sons Ltd* [1963] *A.C.* 758, 784 (with whom the other members of the House of Lords effectively agreed).

[254.](#) [1988] 1 *All E.R.* 15, 30.

[255.](#) *Chandris v Argo Insurance Co Ltd* [1963] 2 *Lloyd's Rep.* 65, 73; *NV Stoomv Maats "De Maas" v Nippon Yusen Kaisha* [1980] 2 *Lloyd's Rep.* 56 (overruled on other grounds in *Kodros Shipping Corp of Monrovia v Empresa Cubana de Fletes (No.2)* [1983] 1 *A.C.* 736); *Arab Monetary Fund v Hashim* [1996] 1 *Lloyd's Rep.* 589.

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Chapter 28 - Limitation of Actions ¹

Section 3. - Computation of the Period

Commencement of the period

28-063

The computation of the period may require the court to determine the precise day on which the period starts running. In the preceding section of this chapter it was pointed out that in actions for breach of contract, the cause of action accrues when the breach takes place and not when the damage is suffered. But does the cause of action accrue on the day of the breach or on the following day? If the breach consists in failure to do something on a particular day, e.g. to pay money, and the person who has to do the act has the whole of that day in which to do it, ²⁵⁶ the cause of action is not complete until the commencement of the following day, and it would seem that time begins to run from and is inclusive of the day when the cause of action accrues. ²⁵⁷ On the other hand, if the breach consists in the doing of a positive act (e.g. the delivery of defective goods under a contract of sale), or of an event, no doubt the cause of action accrues on the day when the act is done or the event occurs. Nevertheless, it is now settled law that the day of the act or event is to be excluded from the computation of the period within which the action should be brought, and time begins to run from the following day. ²⁵⁸

End of the period

28-064

If the period of limitation ends on a Sunday or some other day when the court offices are closed, and the necessary act (e.g. the issue of a claim form) is one which can only be done if the court office is open on the day when time expires, the period is extended until the next day on which the court office is open. ²⁵⁹

^{1.} See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

^{256.} See *Afovos Shipping Co SA v R. Pagnan & Filli* [1983] 1 W.L.R. 195.

^{257.} *Gelmini v Moriggia* [1913] 2 K.B. 549 (failure to pay a promissory note) would appear still to be good law on this point. cf. *Sale of Goods Act 1979 s.29(5)*; *Roper v Johnson* (1873) L.R. 8 C.P. 167, 179; *Bremer Handelsgesellschaft mbH v Vanden Avenne-Izegem PVBA* [1978] 2 Lloyd's Rep. 109.

^{258.} *Radcliffe v Bartholomew* [1892] 1 Q.B. 161; *Marren v Dawson Bentley & Co Ltd* [1961] 2 Q.B.

135; *Pritam Kaur v S. Russell & Sons Ltd* [1973] Q.B. 336.

[259.](#) *Pritam Kaur v S. Russell & Sons Ltd* [1973] Q.B. 336, not following *Gelmini v Moriggia* [1913] 2 K.B. 549 and *Morris v Richards* (1881) 45 L.T. 210. See also *Hodgson v Armstrong* [1967] 2 Q.B. 299; CPR r.2.8(5); *The Clifford Maersk* [1982] 1 W.L.R. 1292.

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Section 4. - The Running of Time

Introductory

28-065

The general principle is that once time has started to run it continues to do so until proceedings are commenced or the claim is barred. ²⁶⁰ The principle (if any is possible in so technical a matter) is that a claimant who is in a position to commence proceedings, and neglects to do so, accepts the risk that some unexpected subsequent event will prevent him from doing so within the statutory period. ²⁶¹ The principle is illustrated by a famous group of seventeenth century cases deciding that the closing of the courts during the Civil War did not suspend the running of time. ²⁶² Thus, if a cause of action has accrued in favour of or against a person who subsequently dies, the fact of his death will not suspend the running of the limitation period even though there may be an interval of time between his death and the grant of letters of administration. ²⁶³ However, in the case of a personal injuries action, ²⁶⁴ if the person injured dies before the expiration of the limitation period, the period as respects the cause of action surviving for the benefit of the estate of the deceased by virtue of s.1 of the Law Reform (Miscellaneous Provisions) Act 1934 is extended to three years from the date of death, or the date of the personal representative's knowledge of certain facts relevant to his right of action against the defendant, whichever is the later. ²⁶⁵

Personal representatives

28-066

Before 1980, if a debtor became the administrator of his creditor, the running of time was suspended for the duration of his appointment, because during that time it was impossible for him to sue himself. ²⁶⁶ This rule did not apply when the creditor by will appointed the debtor his executor. In such a case, since the appointment was a voluntary act, the common law held that the appointment extinguished the debt, ²⁶⁷ although equity intervened by treating the debtor-executor as if he had paid the debt to himself, so that he became accountable for the amount of the debt as being an asset of the estate. ²⁶⁸ The two situations were assimilated by s.21A of the Administration of Estates Act 1925, ²⁶⁹ and the running of time is no longer suspended if the debtor becomes his creditor's administrator. Instead, if a debtor becomes his deceased creditor's executor (by representation) or administrator, his debt ²⁷⁰ is thereby extinguished, and he is accountable for the amount of the debt as part of the creditor's estate, as if he had been appointed as an executor by the creditor's will. ²⁷¹

28-067

The running of time is not suspended or otherwise affected in the converse case where the creditor becomes executor or administrator of his debtor, since he can satisfy his debt by exercising his right of retainer. ²⁷²

Abrogation of arbitration award or agreement

28-068

An exception to the rule that, once time has started to run, it runs continuously is provided by s.13(2) of the Arbitration Act 1996. Where the court orders that an arbitration award is to be set aside or to be of no effect (in whole or in part), the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Acts ²⁷³ for the commencement of proceedings (including arbitral proceedings) with respect to the dispute which is the subject matter of the award.

International carriage

28-069

Further exceptions to the rule that time runs continuously are contained in certain international conventions relating to carriage by land. Under the Convention on the Contract for the International Carriage of Goods by Road (CMR) ²⁷⁴ and the Convention concerning International Carriage by Rail (COTIF), ²⁷⁵ a written claim, which has been duly made, suspends the period of limitation until the date on which the carrier rejects the claim by notification in writing and returns any documents accompanying the claim. ²⁷⁶ This principle is familiar in continental law; but in English law it is confined to claims arising under these conventions.

Limitation (Enemies and War Prisoners) Act 1945

28-070

The running of any limitation period may be suspended by virtue of this Act. ²⁷⁷

Bankruptcy and winding-up

28-071

The presentation of a petition by a petitioning creditor is an action within the Limitation Act 1980 and so stops time from running against him. ²⁷⁸ Otherwise, the making of a bankruptcy order stops time running in respect of all claims against the bankrupt which are provable in the bankruptcy, ²⁷⁹ and the making of a winding-up order against a company has a similar effect. ²⁸⁰ However, the making of an administration order does not stop time running for limitation purposes. ²⁸¹

1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

^{260.} *Prideaux v Webber* (1661) 1 Lev. 31; *Rhodes v Smethurst* (1840) 6 M. & W. 351; *Homfray v Scroope* (1849) 13 Q.B. 509; *Fenny v Brice* (1865) 18 C.B.(N.S.) 393; *Boatwright v Boatwright* (1873) L.R. 17 Eq. 71; *Re Benzon* [1914] 2 Ch. 68; *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch. 104. But see below, para.28-083. For the principle of "suspension" in some civil law jurisdictions, see Law Commission Consultation Paper No.151, *Limitation of Actions* (1998), paras 10.137–10.140, 10.162–10.165.

^{261.} *Re Benzon* [1914] 2 Ch. 68, 76.

^{262.} e.g. *Prideaux v Webber* (1661) 1 Lev. 31.

- [263.](#) *Rhodes v Smethurst* (1840) 6 M. & W. 351; *Fergusson v Fyffe* (1841) 8 Cl. & Fin. 121, 140; *Fenny v Brice* (1865) 18 C.B.(N.S.) 393; *Boatwright v Boatwright* (1873) L.R. 17 Eq. 71; *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch. 104. See also CPR r.19.8.
- [264.](#) See above, paras 28–006—28–008.
- [265.](#) Limitation Act 1980 ss.11(5), 11A(3), 14.
- [266.](#) *Seagram v Knight* (1867) L.R. 2 Ch. App. 628, a complicated case which is discussed fully in *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch. 104.
- [267.](#) *Nedham's Case* (1610) 8 Co. Rep. 135a.
- [268.](#) *Re Greg* [1921] 2 Ch. 243.
- [269.](#) Inserted by s.10 of the Limitation Amendment Act 1980 and amended by s.40(2) of and Sch.3 to the Limitation Act 1980. See the Twenty-First Report of the Law Reform Committee, 1977, Cmd.6923, paras 3.85–3.93.
- [270.](#) Or liability: s.21A(3) of the 1925 Act.
- [271.](#) s.21A(1), subject to the exception in s.21A(2).
- [272.](#) See below, para.28–132.
- [273.](#) Defined in s.13(4) of the 1996 Act.
- [274.](#) Carriage of Goods by Road Act 1965 Sch. art.32(2); see above, para.28–025; Vol.II, para.36–144.
- [275.](#) Appendix A (CIV) art.60(4); Appendix B (CIM) art.48(3); see above, para.28–024; Vol.II, paras 36–099, 36–117.
- [276.](#) *Microfine Minerals and Chemicals Ltd v Transferry Shipping Co Ltd* [1991] 2 Lloyd's Rep. 630.
- [277.](#) See above, para.12–031.
- [278.](#) Limitation Act 1980 s.38(1) "action"; *Re Karnos Property Co Ltd* [1989] B.C.L.C. 340; *Re Cases of Taffs Well Ltd* [1992] Ch. 179; *Re A Debtor* (No.50A-SD– 1995) [1997] Ch. 310.
- [279.](#) *Re General Rolling Stock Co* (1872) L.R. 7 Ch. App. 646, 649; *Re Cullwick* [1918] 1 K.B. 646, 653 (receiving orders). cf. *Re Benzoni* [1914] 2 Ch. 68.
- [280.](#) *Re General Rolling Stock Co* (1872) L.R. 7 Ch. App. 646; *Re Cases of Taffs Well Ltd* [1992] Ch. 179. See also *Re Art Reproduction Co Ltd* [1952] Ch. 89 (passing of resolution for voluntary winding up).
- [281.](#) *Re Maxwell Fleet and Facilities Management Ltd* [2001] 1 W.L.R. 323.

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Extensions

28-072

The Limitation Act 1980 contains a number of provisions, the effect of which will be to extend the time within which an action must be brought beyond that normally applicable. The Act affords such extensions in a number of differing ways.

28-073

It has already been pointed out that, in the case of actions for damages for personal injuries ²⁸² and by virtue of Pt I of the Consumer Protection Act 1987, ²⁸³ the applicable three-year period of limitation runs from the date on which the cause of action accrued or the date of the claimant's knowledge (if later) of certain facts relevant to his cause of action against the defendant. This "date of knowledge" principle may also serve, in effect, to extend the limitation period where such a cause of action survives for the benefit of the injured person's estate by virtue of s.1 of the Law Reform (Miscellaneous Provisions) Act 1934 ²⁸⁴ and where an action is brought under the Fatal Accidents Act 1976. ²⁸⁵ Again, by s.14A of the Limitation Act 1980, the limitation period for latent damage (other than personal injury) in the tort of negligence is extended to either six years from the date on which the cause of action accrued or three years from the date of the claimant's knowledge (if later). ²⁸⁶

28-074

Provision is, however, made in the Act for more general extensions in certain contingencies. These statutory extensions are dealt with in the paragraphs which follow, together with the extension of the limitation period by agreement of the parties.

¹. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

²⁸². See above, para.28-006.

²⁸³. See above, para.28-009.

²⁸⁴. Limitation Act 1980 ss.11(5), 11A(3), 14.

²⁸⁵. See above, para.28-007.

²⁸⁶. See above, paras 28-010—28-012.

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(a) - Disability

Disability

28-075

The Act allows a claimant further time in which to bring proceedings if he was, at the commencement of the limitation period, under a disability, i.e. was a minor or lacked capacity, within the meaning of the Mental Capacity Act 2005, to conduct legal proceedings. ²⁸⁷

Limitation Act 1980 s.28

28-076

If on the date when any right of action accrued for which a period of limitation is prescribed by the Act, ²⁸⁸ the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date on which he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired. ²⁸⁹ This does not apply to actions for which a period of limitation is prescribed by or under any other enactment. ²⁹⁰ It will be observed that the period allowed after the cesser of disability or death is (subject to the exceptions discussed below) ²⁹¹ six years, and this is so even though the action is on a specialty. The disability must exist when the cause of action accrued: subsequent disability is of no effect. ²⁹² There is therefore, no extension of time under this section if the right of action first accrues to some person not under a disability, even if that person is one through whom the person under a disability claims. ²⁹³

Successive disabilities

28-077

The wording of s.28 ("ceased to be under a disability") makes it clear that if the claimant is under successive disabilities with no interval of time between them, e.g. is a minor when the cause of action accrues and lacks capacity at the time of attaining his majority, he will have until the expiration of six years from the cesser of the latter disability in which to bring his action. ²⁹⁴ On the other hand, if a person under a disability dies and is succeeded by a person also under a disability, no further extension of time is allowed by reason of the disability of the second person. ²⁹⁵

Joint claimants

28-078

It was held under the Limitation Act 1623 that if there are a number of joint claimants or creditors, but not all of them under disability when the cause of action accrues, the running of time is not

postponed. ²⁹⁶

Shorter extensions

28-079

In the case of the special two-year time limit for claiming contribution under s.1 of the Civil Liability (Contribution) Act 1978, ²⁹⁷ only two years is allowed as an extension of time under s.28 of the 1980 Act ²⁹⁸; and in the case of the three-year periods prescribed for actions in respect of personal injuries, ²⁹⁹ for actions under Pt I of the Consumer Protection Act 1987 ³⁰⁰ and for actions under the Fatal Accidents Act 1976, ³⁰¹ only a three-year extension is allowed.

Limitation Act 1980 section 28A

28-080

Similar provision to that contained in s.28 is made in s.28A of the 1980 Act for negligence actions in respect of latent damage where the claimant or other relevant person was under a disability on the “starting date” for reckoning the extended period of limitation prescribed by s.14A(4)(b) of the Act. ³⁰² In this case, three years is allowed as an extension of time from the date when he ceased to be under a disability or died. ³⁰³

Long-stop periods

28-081

Section 28 does not apply to the 10-year long-stop period for actions under Pt I of the Consumer Protection Act 1987, ³⁰⁴ and no action to recover land or money charged on land can be brought by virtue of the section after the expiration of 30 years from the date on which the right of action accrued to the claimant or to some person through whom he claims. ³⁰⁵ Section 28A of the Act does not enable an action to be brought after the end of the 15-year long-stop period for negligence actions not involving personal injuries. ³⁰⁶

^{1.} See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

^{287.} s.38(2), as amended. cf. *Kirby v Leather* [1965] 2 Q.B. 367.

^{288.} But see below, para.28-081 for exceptions. Section 28 also does not apply to any cause of action under s.3 of the Latent Damage Act 1986: see s.3(3) of the 1986 Act.

^{289.} s.28(1). It was said in obiter dicta in *Toropdar v D* [2009] EWHC 567 (QB) that a person could be granted a negative declaration that he was not liable to the injured party even though the limitation period had not, and would not, run out (because the injured party had suffered permanent brain damage). For criticism of this reasoning, see Patten, “When is a Limitation Period not a Limitation Period?” [2010] C.J.Q. 284.

^{290.} s.39.

^{291.} Below, paras 28-079—28-080.

- [292.](#) *Purnell v Roche* [1927] 2 Ch. 142.
- [293.](#) s.28(2). See also s.38(5), (6).
- [294.](#) cf. *Borrows v Ellison* (1871) L.R. 6 Ex. 128 (decided on s.16 of the Real Property Limitation Act 1833).
- [295.](#) s.28(3).
- [296.](#) *Perry v Jackson* (1792) 4 T.R. 416.
- [297.](#) s.10; see above, para.28–014.
- [298.](#) s.28(5).
- [299.](#) ss.11, 28(6); see above, para.28–006. In *Byrne v Motor Insurers' Bureau* [2008] EWCA Civ 574 it was held that the Untraced Drivers' Agreement between the Motor Insurers' Bureau and the Secretary of State (by which the MIB agrees to compensate for an otherwise actionable death or personal injury caused by an untraced driver) infringes Directive 84/5 in imposing a three-year limitation period without any disability extension.
- [300.](#) ss.11(A), 28(7)(b) (inserted by s.6 of and Sch.1 to the Consumer Protection Act 1987); see above, para.28–009.
- [301.](#) ss.12(2), 28(6); see above, para.28–007.
- [302.](#) See above, paras 28–010—28–012. The s.28A extension applies only where s.28 does not apply to the action.
- [303.](#) s.28A(1).
- [304.](#) ss.11A(3), 12(1), 28(7)(a) (inserted by s.6 of and Sch.1 to the Consumer Protection Act 1987); see above, para.28–009.
- [305.](#) s.28(4).
- [306.](#) ss.14B, 28A(2) (inserted by ss.1, 2 of the Latent Damage Act 1986); see above, para.28–012.

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(b) - Fraud, Concealment or Mistake

Limitation Act 1980 s.32

28-082

Section 32 of the 1980 Act applies if the claimant's action is based on the fraud of the defendant or if a fact relevant to his right of action has been deliberately concealed from him by the defendant or if his action is for relief from the consequences of a mistake. The limitation period does not begin to run until the claimant discovers or with reasonable diligence could have discovered the fraud, concealment or mistake. The section does not, in its terms, extend the period of limitation, but postpones the commencement of the period, although its effect may be to enable an action to be brought more than six years after the date when the cause of action in fact accrued. ³⁰⁷

28-083

Where the claimant's action is based on the fraud of the defendant ³⁰⁸ or the action is for relief from the consequences of a mistake, ³⁰⁹ all the relevant circumstances must necessarily be in place when the cause of action accrues. It is therefore apt for s.32(1) to provide that the limitation period "shall not begin to run" until discovery or imputed discovery by the claimant of the fraud or mistake. The question, however, arises whether, once the limitation period has started to run, any deliberate subsequent concealment ³¹⁰ will suspend or interrupt its running, or extend the period. In *Sheldon v R.H.M. Outhwaite (Underwriting Agencies) Ltd* ³¹¹ Saville J. held that a deliberate concealment ³¹² which occurred after the claimant's cause of action accrued nevertheless produced the effect that the period of limitation would not begin to run until the claimant discovered, or could with reasonable diligence have discovered, the concealment. The decision of Saville J. was reversed by the Court of Appeal but, on appeal to the House of Lords, his interpretation of s.32 was, by a majority, confirmed. ³¹³ The consequence is that, in the case of a concealment taking place after the accrual of the cause of action, time will start running again and run for the full period from actual or imputed discovery of the concealment. Moreover, it seems that even concealment subsequent to the expiration of the original limitation period will produce this effect. The result seems to be an odd one which is unlikely to have been intended by the legislature.

Fraud

28-084

Section 32(1)(a) of the Limitation Act 1980 provides that where the action is based upon the fraud of the defendant, the period of limitation shall not begin to run until the claimant has discovered the fraud or could with reasonable diligence have discovered it. This provision is, however, of limited scope because it only covers cases where the cause of action requires the allegation and proof of fraud in the strict sense, e.g. as in actions for fraudulent misrepresentation or deceit. ³¹⁴ It is submitted that an action under s.2(1) of the Misrepresentation Act 1967, though equated for some purposes to an action based on fraud, ³¹⁵ would not fall within s.32(1)(a).

Concealment

28-085

Section 32(1)(b) of the Act provides that where any fact relevant to the claimant's right of action ³¹⁶ has been deliberately concealed from him by the defendant, the period of limitation shall not begin to run until the claimant has discovered the concealment or could with reasonable diligence have discovered it. It is further provided that a deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty. ³¹⁷ The use of the word "deliberate" indicates that an unwitting (even if negligent) concealment of a relevant fact or commission of a breach of duty is not enough. ³¹⁸ It also appears that no fraud or dishonesty on the part of the defendant need be proved. Where there is a deliberate commission of a breach of duty, e.g. a breach of contract, it is unnecessary to show that the defendant took active steps to conceal the breach: all that is required is that it is committed "in circumstances in which it is unlikely to be discovered for some time".


28-086

In *Brocklesby v Armitage and Guest* ³¹⁹ the Court of Appeal held that, for the purposes of the concealment provisions, it did not matter that the defendant did not know that he was committing a breach of duty provided that he was acting intentionally in what he was doing. So, for example, a defendant who gave negligent legal advice could be said to have deliberately concealed a fact relevant to the claimant's right of action because the advice was given intentionally. But in *Cave v Robinson Jarvis & Rolf* ³²⁰ that interpretation of s.32 was rejected by the House of Lords. It was held that the concealment provisions are triggered only where the defendant knew that he had committed or was committing a breach of duty; inadvertent want of care was insufficient. In the words of Lord Millett:

"... section 32 deprives a defendant of a limitation defence in two situations: (i) where he takes active steps to conceal his own breach of duty after he has become aware of it; and (ii) where he is guilty of deliberate wrongdoing and conceals or fails to disclose it in circumstances where it is unlikely to be discovered for some time. But it does not deprive a defendant of a limitation defence where he is charged with negligence if, being unaware of his error or that he has failed to take proper care, there has been nothing for him to disclose." ³²¹

28-087

❗ The provisions on concealment were intended to give effect to a recommendation of the Law Reform Committee ³²² that para.(b) of s.26 of the Limitation Act 1939 should be reformulated in a way "which reproduces in a more readily intelligible form the construction placed upon that paragraph by the courts". ³²³ It may therefore be that cases on the 1939 Act will be of some assistance in illustrating the operation of the 1980 Act provisions. Examples are: the furtive and surreptitious taking of coal underground from the claimant's land where the trespass would not be found out "for many a long day" ³²⁴; a husband's failure to disclose the true amount of his income, having contracted to pay a proportion of it to his wife under a maintenance agreement ³²⁵; a married man's representing himself as single for the purposes of a subsequent ceremony of marriage with the claimant or a subsequent failure to reveal that the second ceremony was bigamous ³²⁶; a reckless sale of bailed goods without communication with the bailor ³²⁷; a solicitor's failure to inform his client that an ex gratia payment had been offered by an alleged tortfeasor, which would have revealed the possibility of a cause of action on the part of the client against the solicitor in negligence ³²⁸; the failure of a builder to disclose the deliberate breach by him of a building contract by using defective bricks ³²⁹ or inadequate foundations ³³⁰; and the failure to warn the purchaser of a house of a known risk of subsidence due to the fact that the house had been constructed on unsuitable ground. ³³¹ Cases decided under s.32(1)(b) of the 1980 Act have mainly concerned bad work knowingly done by builders, which was subsequently

covered up so that the defects were unlikely to be discovered for some time,³³² and allegations in respect of professional negligence.³³³  The burden of proof rests upon the claimant.³³⁴

Fraud or concealment by agent

28-088

The fraud or concealment may be that of an agent of the defendant or of any person through whom the defendant claims or his agent.³³⁵ In the case of concealment, the word “agent” may include an independent contractor employed by the defendant.³³⁶ The defendant is to be treated as claiming “through” another person if he became entitled by, through, under or by the act of that other person to the right claimed.³³⁷ In the case of property, it has been held that a defendant claims property through another person if he derives his title to the property from that person.³³⁸ And an innocent volunteer claims through a person who fraudulently directs another’s money to him.³³⁹

Mistake

28-089

Section 32(1)(c) of the Act provides that where the action is for relief from the consequences of a mistake, the period of limitation shall not begin to run until the claimant has discovered the mistake or could with reasonable diligence have discovered it.³⁴⁰ A mistake of law is sufficient.³⁴¹ The corresponding paragraph in the Limitation Act 1939³⁴² received a narrow interpretation in *Phillips-Higgins v Harper*,³⁴³ where it was said that:

“... it applies only where the mistake is an essential ingredient of the cause of action, so that the statement of claim sets out, or should set out, the mistake and its consequences and pray for relief from those consequences.”³⁴⁴

In that case the defendant employer had underpaid the claimant, who had not realised what payments were due to her. Pearson J. held that only six years’ arrears were recoverable: the claimant’s action was to recover moneys due to her under a contract, and was not an action “for relief from the consequences of a mistake”. In contrast, if there is an overpayment by mistake, the person paying can claim the benefit of the provision. Although Pearson J.’s interpretation was criticised by some academics,³⁴⁵ his approach in *Phillips-Higgins v Harper* was affirmed, so that mistake must be an element of the cause of action, in *Test Claimants in the Franked Investment Group Litigation v Revenue and Customs Commissioners*.³⁴⁶ The approach was held to be correct taking into account not only the wording of s.32(1)(c) but also its history and the unsatisfactory consequences if a different interpretation were taken. It was therefore held necessary to distinguish between a restitutionary claim for mistake, to which s.32(1)(c) applies, and a restitutionary claim based on the principle in *Woolwich Equitable Building Society v Inland Revenue Commissioners*,³⁴⁷ to which s.32(1)(c) does not apply.

Reasonable diligence

28-090

In cases arising under s.32(1), time begins to run when the claimant discovers the fraud, concealment or mistake, or could with reasonable diligence have discovered it. What is “reasonable diligence” must vary with the particular context in which that expression is to be applied.³⁴⁸ It does not require the claimant to use all means of discovery available to him, but only to do that which an ordinary prudent person, having regard to all the circumstances, would do.³⁴⁹ The burden of proof rests upon the claimant.³⁵⁰

Purchaser for valuable consideration

28-091

Section 32(3) of the Act protects innocent purchasers for valuable consideration by enacting that nothing in s.32 shall enable any action to recover, or recover the value of, ³⁵¹ any property, or to enforce any charge against, or set aside any transaction affecting, any property, to be brought against the purchaser of the property or any person claiming through him ³⁵² in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment or (as the case may be) the transaction in which the mistake took place. A purchaser is an innocent third party for the purposes of the section:

(a)

in the case of fraud or concealment of any fact relevant to the claimant's right of action, if he was not a party to the fraud or concealment of that fact and did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place ³⁵³; and

(b)

in the case of mistake, if he did not at the time of the purchase know or have reason to believe that the mistake had been made.

Application of s.32

28-092

Fraud, concealment and mistake postpone the running of time only in the case of an action for which a period of limitation is prescribed by the Act ³⁵⁴ and do not apply (except to the extent expressly provided therein) to other limitation enactments. ³⁵⁵ The section also does not apply to an action under the Fatal Accidents Act 1976 ³⁵⁶ or to the 10-year long-stop period for actions under Pt I of the Consumer Protection Act 1987. ³⁵⁷ On the other hand, in the case of an action to which s.32(1)(b) (concealment) applies, neither the threeyear extension for negligence actions in respect of latent damage ³⁵⁸ nor the 15-year long-stop period for negligence actions not involving personal injuries ³⁵⁹ will come into operation. ³⁶⁰

1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.


^{307.} *Eddis v Chichester Constable* [1969] 2 Ch. 345, 362.

^{308.} s.32(1)(a); below, para.28–084.

^{309.} s.32(1)(c); below, para.28–089.

^{310.} s.32(1)(b); below, paras 28–085—28–087.

^{311.} *The Times*, December 8, 1993.

- [312.](#) Under s.32(1)(b).
- [313.](#) [1996] A.C. 102.
- [314.](#) *Beaman v A.R.T.S Ltd* [1949] 1 K.B. 550, 558, 567; *Clef Aquitaine SARL v Laporte Materials (Barrow) Ltd* [2000] 3 All E.R. 493; *Barnstaple Boat Co Ltd v Jones* [2007] EWCA Civ 727, [2008] 1 All E.R. 1124.
- [315.](#) *Royscot Trust Ltd v Rogerson* [1991] 2 Q.B. 297; see above, para.7-078.
- [316.](#) Defined in s.38(9). The recovery of interest by way of execution on a judgment is not a “right of action” within s.32(1)(b): *Lowsley v Forbes* [1999] 1 A.C. 329. Nor (semble) is the defendant’s concealment of himself or his assets a fact relevant to the claimant’s action.
- [317.](#) s.32(2). In *Giles v Rhind* [2008] EWCA Civ 118 it was held that a claim for the avoidance of a transaction under s.423 of the Insolvency Act 1986 involves an allegation of a “breach of duty” within s.32(2) of the 1980 Act; “breach of duty” in that subsection should not be narrowly construed as applying only to, for example, a tort, breach of contract, or breach of an equitable duty to the claimant.
- [318.](#) *Re Coole* [1920] Ch. 536; *King v Victor Parsons & Co* [1973] 1 W.L.R. 29, 33, 36; *Kaliszewska v Clague* [1984] C.I.L.L. 131; *Cave v Robinson, Jarvis & Rolf* [2002] UKHL 18, [2003] 1 A.C. 384.
- [319.](#) [2002] 1 W.L.R. 598n. This was applied in *Liverpool Roman Catholic Trustees Inc v Goldberg* [2001] 1 All E.R. 182.
- [320.](#) [2002] UKHL 18, [2003] 1 A.C. 384.
- [321.](#) *Cave v Robinson, Jarvis & Rolf* [2002] UKHL 18 at [25].
- [322.](#) Twenty-First Report, 1977, Cmnd.6923, paras 2.22–2.25, 2.35. But s.32(1)(b) differs in wording from the reformulation of the Committee.
- [323.](#) Twenty-First Report, 1977, Cmnd.6923, para.2.22.
- [324.](#) *Bulli Coal Mining Co v Osborne* [1899] A.C. 351.
- [325.](#) *Legh v Legh* (1930) 143 L.T. 451.
- [326.](#) *Beyers v Green* [1936] 1 All E.R. 613; *Shaw v Shaw* [1954] 2 Q.B. 429. But see now the Law Reform (Miscellaneous Provisions) Act 1970 ss.1, 6, 7(2) (cause of action abolished).
- [327.](#) *Beaman v A.R.T.S. Ltd* [1949] 1 K.B. 550.
- [328.](#) *Kitchen v R.A.F. Association* [1958] 1 W.L.R. 563.
- [329.](#) *Clark v Woor* [1965] 1 W.L.R. 650.
- [330.](#) *Applegate v Moss* [1971] 1 Q.B. 406.
- [331.](#) *King v Victor Parsons & Co* [1973] 1 W.L.R. 29.
- [332.](#) *Gray v T P Bennett & Son* (1987) 43 Build. L.R. 63; *Kijowski v New Capital Properties* (1990) 15 Con. L.R. 1.
- [333.](#)  *Tunbridge v Buss Murton & Co, The Times*, April 8, 1997; *Markes v Coodes* [1997] P.N.L.R. 252; *Cave v Robinson Jarvis & Rolf* [2002] UKHL 18, [2003] 1 A.C. 384; *Williams v Fanshaw Porter & Hazelhurst* [2004] EWCA Civ 157, [2004] 1 W.L.R. 3185. In *Williams v Lishman*

- Sidwell Campbell & Price Ltd* [2010] EWCA Civ 418, [2010] P.N.L.R. 25, it was suggested in obiter dicta that, where there are subsequent causes of action for professional negligence, concealment of facts relevant to the first cause of action can carry on through to constitute concealment of facts in relation to the second cause of action. The *Williams* and *Cave* decisions were applied in holding that there had been deliberate concealment of re-tests and their results in *AIC Ltd v ITS Testing Services (UK) Ltd, The Kriti Palm* [2006] EWCA Civ 1601, [2007] 1 Lloyd's Rep. 555 (in which one of the claims was for breach of contract). See also *Gresport Finance Ltd v Battaglia* [2016] EWHC 964 (Ch) (s.32(1)(b) was applied in the context of breach of contract and breach of fiduciary duty by the defendant who had concealed his lack of authority).
- [334.](#) *Tunbridge v Buss Murton & Co, The Times*, April 8, 1997 (pleading).
- [335.](#) s.32(1).
- [336.](#) *Applegate v Moss* [1971] 1 Q.B. 406; *King v Victor Parsons & Co* [1973] 1 W.L.R. 29 (but both of these cases were decided on s.26(b) of the Limitation Act 1939); *Ryles v Chaudry* [1999] Lloyd's Rep. P.N. 454.
- [337.](#) s.38(5).
- [338.](#) *Eddis v Chichester Constable* [1969] 2 Ch. 345, 356–357, 362–363.
- [339.](#) *G.L. Baker Ltd v Medway Building and Supplies Ltd* [1958] 1 W.L.R. 1216.
- [340.](#) *Peco Arts Inc v Hazlitt Gallery Ltd* [1983] 1 W.L.R. 1315.
- [341.](#) *Kleinwort Benson Ltd v Lincoln CC* [1999] 2 A.C. 349; *Deutsche Morgan Grenfell Plc v Inland Revenue Commissioners* [2006] UKHL 49, [2007] 1 A.C. 558.
- [342.](#) s.26(c).
- [343.](#) [1954] 1 Q.B. 411; affirmed [1954] 2 All E.R. 51n.
- [344.](#) [1954] 1 Q.B. 411, 419. cf. *Ministry of Health v Simpson* [1951] A.C. 251, 277; *Deutsche Morgan Grenfell Group Plc v Inland Revenue Commissioners* [2006] UKHL 49, [2007] 1 A.C. 558 at [146]–[147].
- [345.](#) See, e.g. Franks, *Limitation of Actions* (1959), pp.206–207 and Edelman, “Limitation Periods and the Theory of Unjust Enrichment” (2005) 68 M.L.R. 848.
- [346.](#) [2012] UKSC 19, [2012] 2 A.C. 337.
- [347.](#) [1993] A.C. 70.
- [348.](#) *Peco Arts Inc v Hazlitt Gallery Ltd* [1983] 1 W.L.R. 1315, 1322–3.
- [349.](#) [1983] 1 W.L.R. 1315, 1323. See also *Ecclesiastical Commissioners for England v N.E. Ry* (1877) 4 Ch. D. 845, 861; *Rawlins v Wickham* (1858) 3 De G.L.J. 304; *Chetham v Hoare* (1870) L.R. 9 Eq. 571; *Vane v Vane* (1873) L.R. 8 Ch. App. 383, 390n; *Willis v Howe* [1893] 2 Ch. 545; *Betjemann v Betjemann* [1895] 2 Ch. 474, 480; *Paragon Finance Plc v Thakerar & Co* [1999] 1 All E.R. 400, 418; *UCB Home Loans Corp v Carr* [2000] Lloyd's Rep. P.N. 754; *Clef Aquitaine SARL v Laporte Materials (Barrow) Ltd* [2000] 3 All E.R. 493, 504–505; *Ezekiel v Lehrer* [2002] EWCA Civ 16, [2002] Lloyd's Rep. P.N. 260.
- [350.](#) *Peco Arts Inc v Hazlitt Gallery Ltd* [1983] 1 W.L.R. 1315; *Paragon Finance Plc v Thakerar & Co* [1999] 1 All E.R. 400.
- [351.](#) See *Eddis v Chichester Constable* [1969] 2 Ch. 345, 357 (extension to conversion).

- [352.](#) Defined in s.38(5); see para.28–088 n.337, above.
- [353.](#) See *Eddis v Chichester Constable* [1969] 2 Ch. 345 (knowledge of agent attributed to principal).
- [354.](#) s.32(1).
- [355.](#) s.39.
- [356.](#) s.12(3).
- [357.](#) ss.11A(3), 32(4A), inserted by s.6 of and Sch.1 to the Consumer Protection Act 1987; see above, para.28–009.
- [358.](#) s.14A; see above, para.28–011.
- [359.](#) s.14B; see above, para.28–012.
- [360.](#) s.32(5), inserted by s.2(2) of the Latent Damage Act 1986.

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Volume I - General Principles

Part 8 - Remedies for Breach of Contract

Chapter 28 - Limitation of Actions ¹

Section 5. - Extension of the Period

(c) - Acknowledgment and Part Payment

Origin of the doctrine

28-093

The Jacobean statute of 1623 contained no provision that an acknowledgment of a debt or part payment thereof should extend the period of limitation. At least as early as 1699, however, the judges held that if the defendant made a fresh promise to pay the debt, time began to run anew from the date of the promise. ³⁶¹ From this it followed that an acknowledgment or part payment had the same effect if, but only if, a fresh promise to pay could thereby be inferred. ³⁶² This judicial process was described by Lord Sumner as “the task of decorously disregarding an Act of Parliament”. ³⁶³ The judge-made doctrine was recognised by two statutes, one of which required that the acknowledgment should be in writing and signed by the person chargeable, ³⁶⁴ while the other made the signature of his duly authorised agent sufficient. ³⁶⁵ For specialty debts the Civil Procedure Act 1833 abolished the requirement (productive of so much litigation) that there must be an implied promise to pay: but this requirement continued to exist for simple contract debts until 1940. All these statutes were repealed by the Limitation Act 1939.

Limitation Act 1980 s.29

28-094

The 1980 Act lays down a uniform rule for specialty and simple contract debts by providing that where any right of action has accrued to recover any debt or other liquidated pecuniary claim, ³⁶⁶ and the person liable therefor acknowledges the claim or makes any payment in respect of it, the right is to be treated as having accrued on and not before the date of the acknowledgment or payment. ³⁶⁷ A current period of limitation may be repeatedly extended under this rule by further acknowledgments or payments; but a right of action, once barred by the Act, cannot be revived by any subsequent acknowledgment or payment. ³⁶⁸ However, the Act goes on to provide that payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt. ³⁶⁹ The effect of this provision seems to be that part payment of an instalment of rent merely operates as an acknowledgment of the landlord's title, while part payment of an instalment of interest operates (for the purposes of limitation) as part payment of the principal sum. ³⁷⁰

Form of the acknowledgment

28-095

The acknowledgment must be in writing and signed by the person making it. ³⁷¹ But extrinsic evidence is admissible to identify the debt to which the acknowledgment refers, ³⁷² to ascertain the amount of the debt, ³⁷³ to show the date of the acknowledgement, ³⁷⁴ or to link one document with another (so

that when read together there is an acknowledgement).³⁷⁵ Extrinsic evidence has also been admitted as secondary evidence of a lost written acknowledgment.³⁷⁶ As to the requirement of writing, the following (inter alia) will qualify: correspondence,³⁷⁷ an account rendered,³⁷⁸ a recital in a deed,³⁷⁹ a company's balance sheet,³⁸⁰ an affidavit,³⁸¹ and a pleading.³⁸²

What constitutes acknowledgment

28-096

What amounts to an acknowledgment is a question of construction and there is a high authority for saying that decided cases are of little value as precedents.³⁸³ A decision on one debtor's words is not much help in construing another's. In reading cases decided under former Statutes of Limitation in regard to simple contracts, it must be remembered that the court was primarily concerned with the question whether a promise to pay could be implied, and not with the question whether there was an acknowledgment. Under the present law, all that is needed is an admission by the debtor that there is a debt or other liquidated pecuniary claim outstanding and of his legal liability to pay it. It is not necessary that the acknowledgment should specify the amount of the debt if it can be ascertained by other means.³⁸⁴ But it must acknowledge a claim, not merely that there may be a claim,³⁸⁵ and it must further acknowledge that the claim exists at the date of the acknowledgment or that it existed on a day which falls within the appropriate period of limitation next before action brought.³⁸⁶ A mere acknowledgment of certain facts which, if taken in isolation, would give rise to liability, but which are alleged by the person who is said to have given an acknowledgment not to give rise to a liability by reason of other surrounding circumstances, is not sufficient.³⁸⁷ Thus a "confession and avoidance" denying liability on the ground of an alleged set off or cross-claim does not constitute an acknowledgment.³⁸⁸ Nor does a "without prejudice" worksheet sent or shown to the other party as part of the negotiation process.³⁸⁹ The statement relied upon as an acknowledgment must be taken as a whole; the creditor is not entitled to pick out parts and ignore others.³⁹⁰

If the creditor stands in a fiduciary relationship to the debtor, he may be unable to rely on an acknowledgment made without independent advice, since he cannot derive any benefit from his position.³⁹¹

What constitutes part payment

28-097

Part payment is merely a species of acknowledgment. All that need (and must) be shown is that the part payment constitutes an admission that the balance of the debt remains due,³⁹² and not that an implied promise to pay the balance can be inferred. Many of the older cases are therefore no longer reliable guides.

28-098

Section 29(5) of the Limitation Act 1980 requires that the payment must be made "in respect of" the claim. A payment cannot acquire this character by any act of the creditor but only by the act of the debtor or his agent. Hence, if several distinct debts are due, and the debtor makes a part payment without appropriating it to any particular debt, an appropriation by the creditor towards satisfaction of one debt (whether it be statute-barred or not) cannot make the payment one "in respect of" the claim to that debt.³⁹³

28-099

The rule in *Clayton's Case*³⁹⁴ applies to all current accounts, not merely to banking accounts. So if goods are supplied over a period of time and paid for by lump sums bearing no exact relationship to the amount of the buyer's indebtedness at any particular moment, each new credit must prima facie be treated as discharging the earliest outstanding debit. This may be important in ascertaining how far the balance in the account is contributed to by statute-barred items. But it does not affect the true

nature of the debt itself, which is a single debt for the amount of the balance due for the time being. Hence a payment “generally on account” is a payment in respect of the whole balance due; it is not a payment in respect of particular items contributing to that balance. ³⁹⁵

28-100

The payment need not necessarily be in money, ³⁹⁶ though this is usually the case.

Parties to the acknowledgment or part payment

28-101

The acknowledgment or payment may be made by the agent of the person liable and must be made to the person or to the agent of the person whose claim is being acknowledged, or in respect of whose claim the payment is being made. ³⁹⁷ An acknowledgment or part payment made by a stranger who is not an agent of the debtor is of no effect. ³⁹⁸ It is clear, however, that the agent need not be expressly authorised to make an acknowledgment: it is sufficient if the making of the acknowledgment is within his general authority. ³⁹⁹ An acknowledgment or part payment made to a stranger who is not an agent of the creditor is likewise ineffective. ⁴⁰⁰ It has also been said that an acknowledgment must be either delivered to the creditor or his agent by or with the authority of the debtor or his agent or expressly or implicitly addressed to and actually received by the creditor or his agent. ⁴⁰¹ In any event, communication of the acknowledgment is required. ⁴⁰²

28-102

A statement in an Inland Revenue affidavit sworn by an executor in order to obtain probate was held to be a mere statement of facts and not an acknowledgment of anything to anybody. ⁴⁰³ On the other hand, statements in the balancesheet of a company (being implicitly addressed to those creditors whose debts are referred to in it) can amount to an acknowledgment if communicated to the creditor or his agent. ⁴⁰⁴ Thus, a balance-sheet presented to the shareholders at an annual general meeting, signed by chartered accountants as agents of the company and by two directors, was held to be an acknowledgment of a debt owed to a shareholder who was present at the meeting. ⁴⁰⁵ But a balance-sheet signed by directors showing debts in which they are beneficially interested, e.g. for directors' fees or loans to the company, is not a sufficient acknowledgment by the company ⁴⁰⁶ unless all the members of the company have agreed to the directors' acknowledgment of the debt. ⁴⁰⁷

28-103

A minor can make an effective acknowledgment or part payment during minority in respect of a contract which is binding on him, e.g. for necessities. ⁴⁰⁸

Effect of acknowledgment and part payment on other persons

28-104

The Act draws an important distinction between acknowledgment and part payment as regards their effect on persons other than the maker or payer. An acknowledgment of a debt or other liquidated pecuniary claim binds the acknowledger and his successors, but does not bind any other person. ⁴⁰⁹ By successors are meant the personal representatives of the acknowledger and any other person on whom the liability in respect of the debt or claim may devolve by reason of death or bankruptcy or otherwise. ⁴¹⁰ But a part payment binds all persons liable in respect of the debt or claim (e.g. other joint debtors or sureties). ⁴¹¹ The distinction may be illustrated by the case of joint debtors. If A and B are jointly indebted to C, and A acknowledges the debt, the acknowledgment binds only A and his successors and not B. But if A makes a part payment, this binds B also. The reason for this distinction is that since a part payment operates for the advantage of all the joint debtors, it is only fair that they should share the disadvantage too. ⁴¹²

Exclusions

28-105

The rules as to acknowledgment and part payment do not apply to an action to recover contribution under s.1 of the Civil Liability (Contribution) Act 1978 ⁴¹³ nor to an action under the Fatal Accidents Act 1976 ⁴¹⁴; nor do they apply to periods of limitation prescribed by or under any other enactment. ⁴¹⁵

Pleading

28-106

As a general rule, the acknowledgment or part payment should be pleaded in the particulars of claim and not in the reply. ⁴¹⁶

^{1.} See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

^{361.} *Hyleing v Hastings* (1699) 1 Ld. Raym. 389.

^{362.} *Tanner v Smart* (1827) 6 B. & C. 603.

^{363.} *Spencer v Hemmerde* [1922] 2 A.C. 507, 519.

^{364.} Statute of Frauds Amendment Act 1828 (Lord Tenterden's Act) s.1.

^{365.} Mercantile Law Amendment Act 1856 s.13.

^{366.} *Amantilla Ltd v Telefusion Plc* (1987) 9 Con. L.R. 139 (quantum meruit held to be liquidated pecuniary claim). cf. McLean [1989] C.L.J. 472, 477–479; *Phillips & Co v Bath Housing Co-operative Ltd* [2012] EWCA Civ 1591, [2013] 1 W.L.R. 1479 (a solicitor's bill of costs—i.e. a claim for remuneration for work done—was held to be a liquidated pecuniary claim).

^{367.} s.29(5).

^{368.} s.29(7). Contrast the position before the Limitation Amendment Act 1980, and see s.40(1) of and Sch.2 para.5 to the Limitation Act 1980.

^{369.} s.29(6).

^{370.} Franks, *Limitation of Actions* (1959), p.227.

^{371.} s.30(1). For the meaning of signature in this context, see *Good Challenger Navegante SA v Metalexportimport SA* [2003] EWHC 10, [2003] 1 Lloyd's Rep. 471, 487. In *Bradford and Bingley Plc v Rashid* [2006] UKHL 37, [2006] 1 W.L.R. 2066 letters were held to be admissible to prove an acknowledgement despite the “without prejudice” rule.

^{372.} *Read v Price* [1909] 2 K.B. 724, 737, 738; *Jones v Bellgrove Properties Ltd* [1949] 2 K.B. 700.

^{373.} *Bird v Gammon* (1837) 3 Bing. N.C. 883; *Cheslyn v Dalby* (1840) 4 Y. & C.Ex. 238, 241; *Jones v Bellgrove Properties Ltd* [1949] 2 K.B. 700; *Dungate v Dungate* [1965] 1 W.L.R. 1477; *Kamouh v Associated Electrical Industries International Ltd* [1980] Q.B. 199; *Re Overmark*

- Smith Warden Ltd* [1982] 1 W.L.R. 1195, 1204.
- [374.](#) *Edmunds v Downes* (1834) 1 Cr. & M. 459, 463; *Jayne v Hughes* (1854) 10 Exch. 430.
- [375.](#) *McGuffe v Burleigh* (1898) 78 L.T. 264.
- [376.](#) *Haydon v Williams* (1830) 7 Bing. 163; *Read v Price* [1909] 2 K.B. 724.
- [377.](#) But not if written “without prejudice”, *Re River Steamer Co* (1871) L.R. 6 Ch. App. 822, 831; *Cadle Co v Hearley* [2002] 1 Lloyd’s Rep. 143; *Ofulue v Bossert* [2009] UKHL 16, [2009] 3 All E.R. 93.
- [378.](#) *Hony v Hony* (1824) 1 Sim. & S. 568.
- [379.](#) *Howcutt v Bonser* (1849) 3 Ex. 491.
- [380.](#) *Re Gee & Co (Woolwich) Ltd* [1975] Ch. 52; see below, para.28–102.
- [381.](#) *Tristram v Harte* (1841) 3 Ir. Eq. R. 386. cf. *Bowring-Hanbury’s Trustee v Bowring-Hanbury* [1943] Ch. 104.
- [382.](#) *Goode v Job* (1858) 1 E. & E. 6; *Grindell v Bass* [1920] 2 Ch. 487; *Wright v Pepin* [1954] 1 W.L.R. 635, 642. cf. *Re Flynn (No.2)* [1969] 2 Ch. 403.
- [383.](#) *Spencer v Hemmerde* [1922] 2 A.C. 507, 519.
- [384.](#) *Jones v Bellgrove Properties Ltd* [1949] 2 K.B. 700; *Dungate v Dungate* [1965] 1 W.L.R. 1477; *Bradford and Bingley Plc v Rashid* [2006] UKHL 37, [2006] 1 W.L.R. 2066; *Habib Bank Ltd v Central Bank of Sudan* [2006] EWHC 1767 (Comm), [2007] 1 All E.R. (Comm) 53; *Phillips & Co v Bath Housing Co-operative Ltd* [2012] EWCA Civ 1591, [2013] 1 W.L.R. 1479.
- [385.](#) *Good v Parry* [1963] 2 Q.B. 418; *Kamouh v Associated Electrical Industries International Ltd* [1980] Q.B. 199.
- [386.](#) *Howcutt v Bonser* (1849) 3 Ex. 491; *Re Gee & Co (Woolwich) Ltd* [1975] Ch. 52; *Re Overmark Smith Warden Ltd* [1982] 1 W.L.R. 1195. Contrast *Consolidated Agencies Ltd v Bertram Ltd* [1965] A.C. 470 PC where it was held that an acknowledgment of past liability was ineffective.
- [387.](#) *Re Flynn (No.2)* [1969] 2 Ch. 403, 412.
- [388.](#) *Re Flynn (No.2)* [1969] 2 Ch. 403; *Surrendra Overseas Ltd v Sri Lanka Government* [1977] 1 W.L.R. 565. If the set off or cross-claim goes to only part of the debt, the statement may amount to an acknowledgment of indebtedness for the balance: at 575.
- [389.](#) *Lia Oil SA v ERG Petroli SpA* [2007] EWHC 505 (Comm), [2007] 2 Lloyd’s Rep. 509.
- [390.](#) *Surrendra Overseas Ltd v Sri Lanka Government* [1977] 1 W.L.R. 565, 575; *National Westminster Bank Plc v Powney* [1991] Ch. 339.
- [391.](#) *Lloyd v Coote and Ball* [1915] 1 K.B. 242.
- [392.](#) *Re Footman Bower & Co Ltd* [1961] Ch. 443; *Surrendra Overseas Ltd v Sri Lanka Government* [1977] 1 W.L.R. 565, 577; *Kleinwort Benson Ltd v South Tyneside Metropolitan BC* [1994] 4 All E.R. 972.
- [393.](#) *Re Footman Bower & Co Ltd* [1961] Ch. 443, 449. See also above, para.21–065.
- [394.](#) (1816) 1 Mer. 572. See above, para.21–068.
- [395.](#) *Re Footman Bower & Co Ltd* [1961] Ch. 443.

- [396.](#) *Hart v Nash* (1835) 2 Cr. M. & R. 337; *Hooper v Stephens* (1835) 4 A. & E. 71; *Bodger v Arch* (1854) 10 Ex. 333; *Re Wilson* [1937] Ch. 675.
- [397.](#) Limitation Act 1980 s.30(2).
- [398.](#) *Newbould v Smith* (1886) 33 Ch. D. 127; *Re Edwards* [1937] Ch. 553; *UCB Corporate Services Ltd v Kohli* [2004] EWHC 1126 (Ch), [2004] 2 All E.R. (Comm) 422.
- [399.](#) *Chinnery v Evans* (1864) 11 H.L.C. 115; *Wright v Pepin* [1954] 1 W.L.R. 635; distinguishing *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch. 104 (the solicitor's letter).
- [400.](#) *Batchelor v Middleton* (1848) 6 Hare 75, 83; *Stamford Banking Co v Smith* [1892] 1 Q.B. 765.
- [401.](#) *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch. 146.
- [402.](#) [1980] Ch. 146; see also *Re Beavan* [1912] 1 Ch. 196; *Lloyd v Coote* [1915] 1 K.B. 242.
- [403.](#) *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch. 104, which, however, was decided under the old law under which an implied promise to pay was necessary.
- [404.](#) *Re Atlantic and Pacific Fibre Importing Co Ltd* [1928] Ch. 836; decided under the Civil Procedure Act 1833, under which such communication was unnecessary; *Jones v Bellgrove Properties Ltd* [1949] 2 K.B. 700; *Re Gee & Co (Woolwich) Ltd* [1975] Ch. 52, not following *Consolidated Agencies Ltd v Bertram Ltd* [1965] A.C. 470 (decided under s.19 of the Indian Limitation Act 1908); *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch. 146; *Stage Club v Millers Hotels Pty* (1982) 150 C.L.R. 535. cf. *Re Overmark Smith Warden Ltd* [1982] 1 W.L.R. 1195 (statements of affairs made on appointment of receiver and on winding-up).
- [405.](#) *Jones v Bellgrove Properties Ltd* [1949] 2 K.B. 700.
- [406.](#) *Re Coliseum (Barrow) Ltd* [1930] 2 Ch. 44; *Re Transplanters (Holding Company) Ltd* [1958] 1 W.L.R. 822; contrast *Ledingham v Bermejo Estancia Co Ltd* [1947] 1 All E.R. 749.
- [407.](#) *Re Gee & Co (Woolwich) Ltd* [1975] Ch. 52.
- [408.](#) *Willins v Smith* (1854) 4 E. & B. 180.
- [409.](#) s.31(6).
- [410.](#) s.31(9).
- [411.](#) s.31(7). *UCB Corporate Services Ltd v Kohli* [2004] EWHC 1126 (Ch), [2004] 2 All E.R. (Comm) 422 (part payment by a principal debtor bound the surety).
- [412.](#) Law Revision Committee's Fifth Interim Report, p.28.
- [413.](#) s.10(5); see above, para.28-014.
- [414.](#) s.12(3).
- [415.](#) s.39.
- [416.](#) *Busch v Stevens* [1963] 1 Q.B. 1.

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Part 8 - Remedies for Breach of Contract
Chapter 28 - Limitation of Actions ¹
Section 5. - Extension of the Period
(d) - Agreement of the Parties

Agreement of the parties

28-107

It appears that the parties may by contract post-pone the commencement of the limitation period by agreeing that the cause of action shall not accrue until some act or event occurs, e.g. service of a written notice of claim.

Pleading the statute

28-108

A party is not bound to rely on limitation as a defence if he does not wish to do so. In general, the court will not raise the point suo officio even if it appears from the face of the pleading that the relevant period of limitation has expired. ⁴¹⁷ A defendant who wishes to rely on limitation must, in his defence, give details of the expiry of any relevant limitation period relied on. ⁴¹⁸ Even where the effect of the statute is to extinguish the claimant's title to land ⁴¹⁹ or goods, ⁴²⁰ it would not be sufficient simply to deny that title ⁴²¹ and the statute should be specifically pleaded. ⁴²² Where it is clear that there is a defence of limitation, the defendant can apply to strike out a statute-barred claim on the ground that the statement of case discloses no reasonable grounds for bringing the claim or that the statement of case is an abuse of the court's process. ⁴²³

Agreements not to plead the statute

28-109

An express or implied agreement not to plead the statute, whether made before or after the limitation period has expired, is valid if supported by consideration (or made by deed) and will be given effect to by the court. ⁴²⁴ The effect of such an agreement is, however, by no means certain. On one view, the agreement will be enforced by preventing the defendant from relying on the statute. ⁴²⁵ But on another view, the agreement merely enables the claimant to have a separate action (or counterclaim) for damages for breach of the agreement. ⁴²⁶ It is submitted that the former view is preferable. In any event, to constitute an enforceable agreement, there must (in the absence of a deed) be consideration for the defendant's promise not to plead limitation as a defence, and this may be found, for example, in mutual promises by each party that accounts between them should be settled without reference to the length of time they have been running ⁴²⁷ or in an express or implied forbearance on the part of the claimant to sue. ⁴²⁸

Estoppel

28-110

In certain cases it has been said that the defendant is estopped from pleading the statute.⁴²⁹ If the circumstances render it impossible to imply any forbearance to sue on behalf of the claimant, and there is no other consideration for the defendant's promise, this may be the only course available to the claimant to prevent the defendant from raising the defence. It is doubtful, however, whether the ordinary principles of estoppel by representation are applicable, since there is often no representation of existing or past fact. But the claimant might, in appropriate cases, be entitled to rely on estoppel by acquiescence⁴³⁰ or by convention⁴³¹ or upon the principle of equitable or promissory estoppel stated in *Hughes v Metropolitan Ry*⁴³². The question has been previously raised and discussed⁴³³ whether, under that principle, the promisee must have suffered some detriment in reliance on the promise or whether it is sufficient that he has in fact relied on it so that it would be inequitable for the promisor to go back on the promise. Where no express extension has been sought and obtained, a claimant may encounter difficulty in establishing that a sufficiently clear and unambiguous representation or promise has been made to him or that he has suffered a detriment or even acted in reliance on the representation or promise if made.⁴³⁴

Terms of agreement or promise

28-111

Further difficulties may arise in construing the terms of the agreement or promise, e.g. whether the defendant undertakes not to plead the statute or merely to suspend the running of time, whether the undertaking is conditional or unconditional and whether it is permanent in effect or merely temporary (the defendant being entitled on reasonable notice to resile from his undertaking or to start time running again), or is for a reasonable time only.⁴³⁵

Negotiations

28-112

The fact that the parties have entered into negotiations for the settlement of their dispute will not, without more, suspend or otherwise affect the running of time or prevent the defendant from relying on the statute, even though the limitation period may expire before the negotiations are concluded.⁴³⁶ But in *Wright v John Bagnall & Sons Ltd*,⁴³⁷ and again in *Lubovsky v Snelling*,⁴³⁸ the claimant had an action in tort against the defendant which was subject to a very short limitation period. Before the period had expired, negotiations took place between representatives of the parties in the course of which liability was admitted subject to the question of quantum. Soon after the period expired the claimant issued a writ and the defendant pleaded the statute. In both cases it was held that the action succeeded: in the former case because the defendant was estopped from pleading the statute, and in the latter case because there was an implied agreement not to plead the statute. Previously, the safest course for a claimant to pursue was to issue a writ within the period but not to serve it until the negotiations broke down. This practice may now be of limited utility, since a claim form must be served within four months, unless the court makes an order extending the period.⁴³⁹ But a claimant may commence legal proceedings to protect its position and then apply for a stay of proceedings to allow for settlement of the case.⁴⁴⁰

1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

^{417.} But the court will take the point on behalf of a person under a disability: *Re E.G. [1914] 1 Ch. 927*.

- [418.](#) CPR PD 16 para.13.
- [419.](#) Limitation Act 1980 s.17.
- [420.](#) s.3(2); see Vol.II, para.44-232.
- [421.](#) See also CPR r.16.5.
- [422.](#) Contrast Franks, *Limitation of Actions* (1959), p.265.
- [423.](#) CPR r.3.4. See *Ronex Properties Ltd v John Laing Construction Ltd* [1983] Q.B. 398, 405–406; *Leicester Wholesale Fruit Market Ltd v Grundy* [1990] 1 W.L.R. 107.
- [424.](#) *Lade v Trill* (1842) 11 L.J. Ch. 102; *Pearson v Dublin Corp* [1907] A.C. 351, 368; *Lubovsky v Snelling* [1944] K.B. 44.
- [425.](#) *Lade v Trill* (1842) 11 L.J. Ch. 102.
- [426.](#) *East India Co v Paul* (1850) 7 Moo.P.C. 85, 112.
- [427.](#) *Lade v Trill* (1842) 11 L.J. Ch. 102.
- [428.](#) *Lubovsky v Snelling* [1944] K.B. 44.
- [429.](#) *Wright v John Bagnall & Sons Ltd* [1900] 2 Q.B. 240; *Rendall v Hill's Dry Dock and Engineering Co Ltd* [1900] 2 Q.B. 245; *Kaliszewska v Clague* [1984] C.I.L.L. 131; *Commonwealth v Verwayen* (1990) 64 A.L.J.R. 540; *Cotterrell v Leeds Day* [2001] W.T.L.R. 435.
- [430.](#) cf. *K. Lokumal & Sons (London) Ltd v Lotte Shipping Co Pte Ltd* [1984] 1 Lloyd's Rep. 322, [1985] 2 Lloyd's Rep. 28.
- [431.](#) *K. Lokumal & Sons (London) Ltd v Lotte Shipping Co Pte Ltd* [1984] 1 Lloyd's Rep. 322. cf. *Hillingdon LBC v ARC Ltd (No.2)* [2000] 3 E.G.L.R.97; *Llanelec Precision Engineering Co Ltd v Neath Port Talbot CBC* [2000] 3 E.G.L.R. 158. See above, para.4-109.
- [432.](#) (1877) 2 App. Cas. 439; above, paras 4-086—4-108.
- [433.](#) Above, paras 4-094—4-095.
- [434.](#) *Alma Shipping Corp v Union of India* [1971] 2 Lloyd's Rep. 494, 502; *K. Lokumal & Sons (London) Ltd v Lotte Shipping Co Pte Ltd* [1985] 2 Lloyd's Rep. 28; *Kenya Rys v Antares Co Pte Ltd* [1986] 2 Lloyd's Rep. 633, [1987] 1 Lloyd's Rep. 424; *P.S. Chellaram & Co Ltd v China Ocean Shipping Co* [1991] 1 Lloyd's Rep. 493; *Blaenau Gwent BC v Robinson Jones Design Partnership Ltd* (1997) 53 Const. L.R. 31; *Rowan Companies Inc v Lambert Eggink Offshore Consultants VOF* [1999] 2 Lloyd's Rep. 443, 448–449; *Tameside MBC v Barlow Securities Group Services Ltd* [2001] EWCA Civ 1, [2001] Build. L.R. 113; *Seechurn v Ace Insurance SA-NV* [2002] EWCA Civ 67, [2002] 2 Lloyd's Rep. 390; *Super Chem Products Ltd v American Life and General Insurance Co Ltd* [2004] UKPC 2, [2004] 2 All E.R. 358.
- [435.](#) *Waters v Earl of Thanet* (1842) 2 Q.B. 757.
- [436.](#) *Hewlett v L.C.C.* (1908) 72 J.P. 136.
- [437.](#) [1900] 2 Q.B. 240; distinguished in *Rendall v Hill's Dry Dock and Engineering Co Ltd* [1900] 2 Q.B. 245.
- [438.](#) [1944] K.B. 44; distinguished (admittedly on narrow grounds) in *The Sauria and The Trent* [1957] 1 Lloyd's Rep. 396.
- [439.](#) See below, para.28-117.

[440.](#) See CPR rr.3.1(2)(f), 26.4.

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Volume I - General Principles

Part 8 - Remedies for Breach of Contract

Chapter 28 - Limitation of Actions ¹

Section 6. - Abridgement of the Period

Agreement of the parties

28-113

It is open to the parties to a contract to stipulate in the contract that legal or arbitral ⁴⁴¹ proceedings shall be commenced within a shorter period of time than that provided in the Limitation Act 1980. Such stipulations are not uncommon in commercial agreements ⁴⁴² and their effect may be (depending on the precise wording of the stipulation) to bar or extinguish any right of action, or to deprive a party of his right to have recourse to particular proceedings, e.g. arbitration, ⁴⁴³ after the expiration of the agreed time limit. It is also open to the parties to agree that one party shall be released from liability or the other party's claim shall be extinguished or become barred unless a claim has been presented within a stipulated period of time. ⁴⁴⁴

Exemption and other restrictive clauses

28-114

Clauses imposing a shorter time limit than that allowed by the 1980 Act may, even at common law, be regarded as exemption clauses, ⁴⁴⁵ so that, for example, they will be strictly construed ⁴⁴⁶ and be ineffective in the case of claims based on personal fraud. ⁴⁴⁷ In the case of contracts to which the Unfair Contract Terms Act 1977 applies, ⁴⁴⁸ to the extent that that Act prevents the exclusion or restriction of any liability, it also prevents: (i) making the enforcement of the liability subject to restrictive conditions ⁴⁴⁹; and (ii) excluding or restricting any right or remedy in respect of the liability. ⁴⁵⁰ Contract terms which abridge the limitation period may therefore be subject to the control of the 1977 Act. Similar considerations probably apply in respect of remedies for misrepresentation under s.3 of the Misrepresentation Act 1967. ⁴⁵¹ In addition to the statutes referred to above, a number of other statutes regulate exempting provisions ⁴⁵² and their wording may likewise extend to prevent abridgement of the limitation period.

Special limitation periods

28-115

The special limitation periods established by enactments ⁴⁵³ other than the 1980 Act are, in general, ⁴⁵⁴ mandatory and cannot be shortened by agreement of the parties.

Arbitration

28-116

By s.12 of the Arbitration Act 1996, where an arbitration agreement to refer future disputes to arbitration provides that a claim shall be barred, or the claimant's right extinguished, unless the

claimant takes within a time fixed by the agreement some step to begin proceedings, or to begin other dispute resolution procedures which must be exhausted before arbitral proceedings can be begun, the court may by order extend the time for taking the step. This section replaced s.27 of the Arbitration Act 1950, though the grounds on which the court may grant an extension of time are now more limited. ⁴⁵⁵ It is specifically provided that an order under s.12 “does not affect the operation of the Limitation Acts”. ⁴⁵⁶ A similar provision in s.27 of the 1950 Act was interpreted to mean that, where the one-year time bar contained in art.III r.6, of the Hague Rules was imported by the parties into their contract, the court had power to grant an extension of time under s.27, ⁴⁵⁷ but not where the time bar in art.III r.6, of the Hague-Visby Rules was rendered applicable by the Carriage of Goods Act 1971. ⁴⁵⁸ It is probable that the same result would be reached under the 1996 Act since “the Limitation Acts” are defined to mean, in England and Wales, the Limitation Act 1980, the Foreign Limitation Periods Act 1984 and any other enactment (whenever passed) relating to the limitation of actions. ⁴⁵⁹

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1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.
 - ^{441.} *Atlantic Shipping Co Ltd v Louis Dreyfus & Co* [1922] 2 A.C. 250; see below, para.28-116; Vol.II, para.32-075.
 - ^{442.} *Inframatrix Investments Ltd v Dean Construction Ltd* [2012] EWCA Civ 64.
 - ^{443.} See below, para.32-075.
 - ^{444.} See, e.g. *Metalimex Foreign Trade Corp v Eugenie Maritime Co Ltd* [1962] 1 Lloyd's Rep. 378; *Babanaft International Co SA v Avant Petroleum Inc* [1982] 1 W.L.R. 871; *Indian Oil Corp v Vanol Inc* [1991] 2 Lloyd's Rep. 634; *Crown Estate Commissioners v John Mowlem & Co* [1994] 10 Const. L.J. 311; Vol.II, para.32-079.
 - ^{445.} See above, Ch.15.
 - ^{446.} *Bunge SA v Deutsche Conti-Handelsgesellschaft mbH (No.2)* [1981] 1 Lloyd's Rep. 352, 358. See above, para.15-007.
 - ^{447.} See above, para.15-150.
 - ^{448.} See above, paras 15-066-15-125.
 - ^{449.} s.13(1)(a).
 - ^{450.} s.13(1)(b).
 - ^{451.} As amended by s.8 of the Unfair Contract Terms Act 1977; see above, para.15-130.
 - ^{452.} See above, para.15-132. In particular, the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083) which for contracts made on or after October 1, 2015 have been replaced by the Consumer Rights Act 2015, Pt 2; below, Vol.II, Ch.38.
 - ^{453.} See above, para.28-019.
 - ^{454.} But see, e.g. the Uniform Laws on International Sales Act 1967 Sch.1 art.3; and above, para.28-027.
 - ^{455.} See Vol.II, para.32-076.

- [456.](#) Arbitration Act 1996 s.12(5).
- [457.](#) *The Merak* [1965] P. 223; *Nea Agrex SA v Baltic Shipping Co Ltd* [1976] Q.B. 933; *Consolidated Investment & Contracting Co v Saponaria Shipping Co Ltd* [1978] 1 W.L.R. 986.
- [458.](#) *Kenya Rys v Antares Co Pte Ltd* [1987] 1 Lloyd's Rep. 424; see Vol.II, para.32-079.
- [459.](#) s.13(4).

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Section 7. - Commencement of Proceedings

Legal proceedings

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⚠ A cause of action will be barred unless legal proceedings ⁴⁶⁰ in respect of that cause of action are commenced by the claimant within the limitation period. Proceedings are started when the court issues a claim form at the claimant's request or on the day on which the form was received by the court office (if earlier). ⁴⁶¹ ⚠ The claim form must normally be served within four months ⁴⁶² after the date of its issue. ⁴⁶³ But the claimant may apply within that period for an order extending the period within which the form must be served. ⁴⁶⁴ The court has discretion whether or not to make the order. Under the old Rules of the Supreme Court, however, the court would not exercise its power to grant an extension if the relevant period of limitation had expired, unless good reason existed for doing so. ⁴⁶⁵ That approach can still be illuminating, albeit not binding, under the Civil Procedure Rules. ⁴⁶⁶ An application may even be made after the four month period has expired. But the court may then make an order only if the court has been unable to serve the claim form or the claimant has taken all reasonable steps to serve the form but has been unable to do so, and in either case the claimant has acted promptly in making the application. ⁴⁶⁷ If the claim form is served, but not within the four months or the extended period specified in the court order, the defendant should file an acknowledgment of service and make an application under Pt 11 of the Civil Procedure Rules. This must be done within the period for filing a defence. ⁴⁶⁸

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Proceedings must be commenced by a person properly entitled to bring them. ⁴⁶⁹ An equitable assignee may commence proceedings and so stop time from running even though the assignor has not been joined as a party to the action ⁴⁷⁰ and even though notice of the assignment has not been given to the defendant until after the claim form has been issued. ⁴⁷¹ A claim form issued within the limitation period but without the authority of the nominal claimant is not a nullity. The nominal claimant could subsequently ratify and adopt the claim notwithstanding the expiration of the period. ⁴⁷²

Amendments to statement of case after the end of the limitation period ⁴⁷³

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The Civil Procedure Rules ⁴⁷⁴ empower the court to allow a party to amend his statement of case in three specific cases where a period of limitation ⁴⁷⁵ has expired. These cases are as follows:

(1)

An amendment to correct a mistake as to the name of a party, but only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question. ⁴⁷⁶

(2)

An amendment to alter the capacity in which party claims if the new capacity is one which that party had when the proceedings started or has since acquired. ⁴⁷⁷

(3)

An amendment whose effect will be to add or substitute a new claim, ⁴⁷⁸ but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission to amend has already claimed a remedy in the proceedings. ⁴⁷⁹

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In addition, the Civil Procedure Rules ⁴⁸⁰ provide for a change of parties after the end of a period of limitation. ⁴⁸¹ The court may add or substitute a party only if the relevant limitation period was current when the proceedings were started, and the addition or substitution is necessary. The addition or substitution of a party is necessary only if the court is satisfied that the new party is to be substituted for a party who was named in the claim form in mistake for the new party, or the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant, or the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party. ⁴⁸²

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However, in a claim for personal injuries, the court may in addition add or substitute a party where it directs that s.11 or s.12 of the 1980 Act ⁴⁸³ shall not apply to the claim by or against the new party or where it directs that the issue of whether those sections apply is to be determined. ⁴⁸⁴

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The court has not otherwise any power to allow a new claim to be made in the course of any action after the expiry of any time limit under the Act which would affect a new action to enforce that claim. ⁴⁸⁵

Defence, set-off and counterclaim

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⚠ When a defendant is sued, he can raise any matter which is properly in the nature of a defence, without fear of being met by a plea of limitation. ⁴⁸⁶ But if he makes a cross-claim, either by way of set-off or counterclaim, he may be time-barred. Section 35 of the Limitation Act 1980 provides that, for the purposes of the Act, ⁴⁸⁷ any claim by way of set-off or counterclaim ⁴⁸⁸ is deemed to be a separate action and to have been commenced on the same date as the original action. ⁴⁸⁹ Thus a set-off or counterclaim can be made by an original defendant against an original claimant ⁴⁹⁰ notwithstanding the expiry of any time limit under the Act, provided that the time limit had not expired on the date of commencement of the original action. ⁴⁹¹ ⚠ However, the court has a discretion to order that it be dealt with separately from the claim of the claimant against the defendant ⁴⁹² and it may do so notwithstanding that any such action would be barred by limitation. ⁴⁹³

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A further difficulty which arises is that it is a matter of considerable refinement whether a particular cross-claim is to be treated as a defence or matter of set-off. ⁴⁹⁴ Section 53(1) of the Sale of Goods

Act 1979, for example, provides that the buyer may set up against the seller a breach of warranty in diminution or extinction of the price,⁴⁹⁵ and such a claim is therefore to be treated as a defence.⁴⁹⁶ Lord Denning M.R. has further put forward the view, in respect of the comparable provision in the Limitation Act 1939,⁴⁹⁷ that the word “set-off” meant only a set-off as permitted by the statutes of set-off, and did not apply to an “equitable set-off” pleaded in extinction or diminution of the claim.⁴⁹⁸ On this view, if a cross-claim arises out of the same transaction as the claim, or out of a transaction that is closely related to the claim,⁴⁹⁹ it is to be treated as an equitable defence⁵⁰⁰ and is time-barred only in equity.⁵⁰¹

Part 20 claims

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Section 35(1) of the Limitation Act 1980 provides that, for the purposes of the Act,⁵⁰² a new claim made in or by way of third-party proceedings is to be deemed to be a separate action and to have been commenced on the date on which those proceedings were commenced.⁵⁰³ The result may be (assuming that the situation is not one to which s.1 of the Civil Liability (Contribution) Act 1978 applies)⁵⁰⁴ that if a claimant starts proceedings against a defendant at a time when the defendant's cause of action against the third party is, or is on the point of becoming, time-barred, the defendant will have lost or may lose the opportunity of obtaining relief over against the third party. “Thirdparty proceedings” is defined to mean any proceedings brought in the course of any action against a person not previously a party to the action, other than proceedings brought by joining any such person as defendant to any claim already made in the original action by the party bringing the proceedings.⁵⁰⁵ The rule set out above thus applies to a larger range of proceedings than would usually be considered as “third-party proceedings”, and extends to other Pt 20 claims for example, a counterclaim by a defendant against an added party.


Arbitral proceedings

28-126

The Limitation Acts⁵⁰⁶ apply to arbitral proceedings as they apply to legal proceedings,⁵⁰⁷ and an arbitrator no less than a judge is bound to give effect to defences based thereon.⁵⁰⁸ The arbitration must therefore be commenced before the expiration of the relevant limitation period. The parties are free to agree when arbitral proceedings are to be regarded commenced for the purposes of the Limitation Acts.⁵⁰⁹ If there is no such agreement, the rules set out in s.14 of the Arbitration Act 1996 may apply. These are considered in the chapter on Arbitration Clauses later in this book.⁵¹⁰

1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.


460. By s.38(1) of the 1980 Act, “action” includes any proceedings in a court of law.

461.  CPR PD 7, para.5.1; *Barnes v St Helens MBC* [2006] EWCA Civ 1372, [2007] 1 W.L.R. 879. On the relevance, to the commencement of proceedings for limitation purposes, of the non-payment of the correct court fee, see *Page v Hewetts Solicitors* [2012] EWCA Civ 805; *Bhatti v Ashgar* [2016] EWHC 1049 (QB); *Glenluce Fishing Co Ltd v Watermota Ltd* [2016] EWHC 1807 (TCC). For commencement of arbitration proceedings, see Vol.II, para.32-081.

462. Where the claim form has been issued for service outside the jurisdiction, the period is six months: CPR r.7.5(2). See also *Saris v Westminster Transport SA* [1994] 1 Lloyd's Rep. 115.

- [463.](#) CPR r.7.5. Under the old rules, the date of issue of the writ was included in the computation of the four months: *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 Q.B. 899. If there was more than one defendant, the writ had to be served on the particular defendant within the four months: *Jones v Jones* [1970] 2 Q.B. 576; *Payabi v Armstel Shipping Corp* [1992] Q.B. 907.
- [464.](#) CPR r.7.6(1), (2).
- [465.](#) *Battersby v Anglo-American Oil Co Ltd* [1945] K.B. 23; *Heaven v Road and Rail Wagons Ltd* [1965] 2 Q.B. 355; *Chappell v Cooper* [1980] 1 W.L.R. 958; *Wilkinson v Ancliff (B.L.T.) Ltd* [1986] 1 W.L.R. 1352; *Kleinwort Benson Ltd v Barbrak Ltd* [1987] A.C. 597; *Waddon v Whitecroft Scovell Ltd* [1988] 1 W.L.R. 309 HL; *Goldenglow Nut Food Co v Commodin (Produce) Ltd* [1987] 2 Lloyd's Rep. 569; *Doble v Haymills (Contractors)*, *The Times*, July 5, 1988 CA; *Baly v Barrett*, *The Times*, May 19, 1989 HL; *The Vita* [1990] 1 Lloyd's Rep. 528; *De Pina v M.S. "Birka" Beutler Schiffahrts K.G.* [1996] 1 Lloyd's Rep. 31. The extension will be for no longer period than is shown to be justified: *Baly v Barrett*.
- [466.](#) *Bua International Ltd v Hai Hing Shipping Co Ltd* [2000] 1 Lloyd's Rep. 300, especially 306.
- [467.](#) CPR r.7.6(3).
- [468.](#) CPR r.15.4.
- [469.](#) But see below, para.28-119 (amendment).
- [470.](#) See above, para.19-040.
- [471.](#) *Weddell v J.A. Pearce & Major* [1988] Ch. 26. Contrast *Compania Columbiana de Seguros v Pacific Steam Navigation Co* [1965] 1 Q.B. 101, 127, 129.
- [472.](#) *Presentaciones Musicales SA v Secunda* [1994] Ch. 271.
- [473.](#) See s.35 of the Act and Twenty-First Report of the Law Reform Committee, 1977, Cmnd.6923, paras 5.12–5.29.
- [474.](#) CPR r.17.4.
- [475.](#) Defined to mean a period of limitation under the Limitation Act 1980, the Foreign Limitation Periods Act 1984 s.190 of the Merchant Shipping Act 1995, or any other statutory provision. See also s.39 of the 1980 Act. Contrast (Hague Rules) *Casillo Grani v Napier Shipping Co* [1984] 2 Lloyd's Rep. 481, 487; *Payabi v Armstel Shipping Corp* [1982] Q.B. 907; *Transworld Oil (USA) Inc v Minos Compania Naviera SA* [1992] 2 Lloyd's Rep. 48; but see *Empresa Cubana Importadora de Alimentos v Octavia Shipping Co SA* [1986] 1 Lloyd's Rep. 273; *Katzenstein Adleu Industries (1975) Ltd v The Borchard Lines Ltd* [1988] 2 Lloyd's Rep. 274. The 10-year-long stop period under the Consumer Protection Act 1987 (see above, para.28-009) has been held to be a "period of limitation" for the purposes of the rules: *Horne-Roberts v SmithKline Beecham Plc* [2001] EWCA Civ 2006, [2002] 1 W.L.R. 1662. For the ECJ's ruling on the need to apply s.35(3) in a way that is compatible with the 10-year long-stop dictated by the product liability directive, see *O'Byrne v Aventis Pasteur SA (C-358/08)* [2010] 1 W.L.R. 1375; and for the application of that ruling by the Supreme Court, see *O'Byrne v Aventis Pasteur MSD Ltd* [2010] UKSC 23, [2010] 1 W.L.R. 1412.
- [476.](#) CPR r.17.4(3), formerly RSC Ord.20 r.5(3). As to this, see *Rodriguez v Parker* [1967] 1 Q.B. 116; *Mitchell v Harris Engineering Co Ltd* [1967] 2 Q.B. 703; *Kamouh v A.E.I. International Ltd* [1980] Q.B. 199; *Evans Construction Co Ltd v Charrington & Co Ltd* [1983] Q.B. 810; *Birmingham City DC v C. Bryant & Son* (1987) 9 Con. L.R. 128; *Katzenstein Adler Industries (1975) Ltd v The Borchard Lines Ltd* [1988] 2 Lloyd's Rep. 274; *Thistle Hotels Ltd v Sir Robert McAlpine & Sons Ltd*, *The Times*, April 11, 1989; *The Sardinia Sulcis* [1991] 1 Lloyd's Rep. 201; *The Lu Shan* [1991] 2 Lloyd's Rep. 386; *Transworld Oil (USA) Inc v Minos Compania Naviera Inc* [1992] 2 Lloyd's Rep. 48; *International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India* [1996] 1 All E.R. 1017.

477. CPR r.17.4(4), formerly RSC Ord.20 r.5(4). See also s.35(7), (8) of the Act. See *Haq v Singh* [2001] EWCA Civ 957, [2001] 1 W.L.R. 1594. In *Roberts v Gill & Co* [2010] UKSC 22, [2010] 4 All E.R. 367 the Supreme Court, in refusing the amendment sought, held that, although it was necessary to join the administrator for a representative action to carry on, the action that had been brought was in the claimant's personal capacity and there was no need to join the administrator for that action to carry on.
478. cf. *The Jangmi* [1989] 2 Lloyd's Rep. 1 (change of date).
479. CPR r.17.4(2), formerly RSC Ord.20 r.5(5). See also s.35(2)(a), (5)(a), (8) of the Act; *Chatsworth Investments Ltd v Cussins (Contractors) Ltd* [1969] 1 W.L.R. 1; *Brickfield Properties Ltd v Newton* [1971] 1 W.L.R. 862; *Beck v Value Capital Ltd* [1976] 1 W.L.R. 572; *Empresa Cubana Importadora de Alimentos v Octavia Shipping Co SA* [1986] 1 Lloyd's Rep. 273; *S.S. Mutual Underwriting Association Ltd v Trollope & Colls Ltd* (1986) 33 B.L.R. 77; *Fannon v Backhouse*, *The Times*, August 22, 1987 CA; *Birmingham City DC v C. Bryant & Son* (1987) 9 Con. L.R. 128; *Kakkar v Szelke* [1988] F.S.R. 97; *Hancock Shipping Co Ltd v Kawasaki Heavy Industries Ltd* [1992] 1 W.L.R. 1025; *Arab Monetary Fund v Hashim* [1993] 1 Lloyd's Rep. 543, 593; reversed on other grounds [1996] 1 Lloyd's Rep. 589; *Sion v Hampstead Health Authority*, *The Times*, June 10, 1994 CA; *Clarke (E.) & Sons (Coaches) v Axtell Yates Hallett* (1994) 30 Const. L.R. 123; *Paragon Finance Plc v Thakerer & Co* [1999] 1 All E.R. 400; *Lloyds Bank Plc v Rogers* [1999] 3 E.G.L.R. 83; *Stewart v Engel* [2000] 1 W.L.R. 2268; *Shade v Compton Partnership* [2000] P.N.L.R. 218; *Savings and Investment Bank Ltd v Fincken* [2001] EWCA Civ 1639; *The Times*, November 15, 2002; *Goode v Martin* [2001] EWCA Civ 1899, [2002] 1 W.L.R. 1828; *Smith v Henniker-Major & Co* [2002] EWCA Civ 762, [2003] Ch. 182; *Laws v The Society of Lloyd's* [2003] EWCA Civ 1887, *The Times*, January 23, 2004; *Furini v Bajwa* [2004] EWCA Civ 412, [2004] 1 W.L.R. 1971; *Charles Church Developments Ltd v Stent Foundations Ltd* [2006] EWHC 3158 (TCC), [2007] 1 W.L.R. 1203; *Finlan v Eyton Morris Winfield* [2007] EWHC 914 (Ch), [2007] 4 All E.R. 143; *Law Society v Wemyss* [2008] EWHC 2515 (Ch), [2009] 1 All E.R. 752 (below, para.28-123, distinguishing *Goode v Martin* and *Charles Church Developments*); *Harland & Wolff Pension Trustees Ltd v Aon Consulting Financial Services Ltd* [2009] EWHC 1557 (Ch) (on the meaning of a "new claim" in this context); *Seele Austria GmbH & Co KG v Tokio Marine Europe Insurance Ltd* [2009] EWHC 2066 (TCC); *Berezovsky v Abramovich* [2011] EWCA Civ 153, [2011] 1 W.L.R. 2290.
480. CPR r.19.5. See also s.35(2)(b), (5)(b), (8) of the Act (cf. s.35(6)). In *Kenya Rys v Antares Co Pte Ltd* [1987] 1 Lloyd's Rep. 424, 432, 433, the Court of Appeal expressed the opinion that s.35 of the Act does not apply to arbitrations in respect of the addition or substitution of a new party.
481. Defined in the same way as in n.475, above.
482. CPR r.19.5. See *International Distillers and Vintners Ltd v J.F. Hillebrande*, *The Times*, January 25, 2000; *Horne-Roberts v SmithKline Beecham Plc* [2001] EWCA Civ 2006, [2002] 1 W.L.R. 1662. See also the previous RSC Ord.15 r.6(6); *Liff v Peasley* [1980] 1 W.L.R. 781 (joinder of defendant after claim against him statute-barred disallowed) and *Mitchell v Harris Engineering Co Ltd* [1967] 2 Q.B. 703, 717, 721; *Branff v Holland & Hannen and Cubitts (Southern) Ltd* [1969] 1 W.L.R. 1533; *Lucy v W.T. Henleys Telegraph Works Co Ltd* [1970] 1 Q.B. 393; *Marubeni Corp v Pearlstone Shipping Corp* [1978] 1 Lloyd's Rep. 38; *Gawthrop v Boulton* [1979] 1 W.L.R. 268; *Ketteman v Hansel Properties Ltd* [1987] A.C. 189; *Birmingham City DC v C. Bryant & Son* (1987) 9 Con. L.R. 128; *Hancock Shipping Co Ltd v Kawasaki Heavy Industries Ltd* [1992] 1 W.L.R. 1025; *Payabi v Armstel Shipping Corp* [1992] Q.B. 907; *Bank of America National Trust and Savings Association v Christmas* [1994] 1 All E.R. 401; *Bradstock Trustee Services Ltd v Nabarro Nathanson* [1995] 1 W.L.R. 1405; *Parsons v George* [2004] EWCA Civ 912, [2004] 1 W.L.R. 3264; *Adelson v Associated Newspapers Ltd* [2007] EWCA Civ 701, [2007] 4 All E.R. 330; *O'Byrne v Aventis Pasteur MSD Ltd* [2010] UKSC 23, [2010] 1 W.L.R. 1412; *Lockheed Martin Corp v Willis Group Ltd* [2010] EWCA Civ 927, [2010] P.N.L.R. 34; *Insight Group Ltd v Kingston Smith* [2012] EWHC 3644 (QB), [2013] 3 All E.R. 518.
483. See above, paras 28-006-28-007.
484. s.33; see above, para.28-008.

- [485.](#) *Kennett v Brown* [1988] 1 W.L.R. 582 was overruled in *Welsh Development Agency v Redpath Dorman Long Ltd* [1994] 1 W.L.R. 1409. But an order for the substitution of a party as claimant under the previous RSC Ord.15 r.7, did not involve the making of a “new claim”: *Yorkshire Regional Health Authority v Fairclough* [1996] 1 W.L.R. 210; *Industrie Chimiche Italia Centrale v Alexander G. Tsavlis & Sons Maritime Co* [1996] 1 W.L.R. 774.
- [486.](#) *Henriksens Rederi A/S v T.H.Z. Rolimpex* [1974] Q.B. 233.
- [487.](#) s.35 does not apply to any action or arbitration for which a period of limitation is prescribed by or under any other enactment: s.39. See (on the previous common law) *Walker v Clements* (1850) 15 Q.B. 1046 (set-off); *Lowe v Bentley* (1928) 44 T.L.R. 386 (counterclaim); and see s.40(1) Sch.2 paras 6, 8(2).
- [488.](#) s.35(2).
- [489.](#) s.35(1)(b).
- [490.](#) s.35(3) (“original set-off or counterclaim”); *JFS (UK) Ltd v DWR Cymru Cyf* [1999] 1 W.L.R. 231. In *Law Society v Wemyss* [2008] EWHC 2515 (Ch), [2009] 1 All E.R. 752, it was held that although the counterclaim fell within s.35(3) of the Limitation Act 1980 as an original counterclaim, the amendment to the claim form needed to bring that counterclaim should be refused under CPR 17.4(2).
- [491.](#)  *Al-Rawas v Hassan Khan and Co* [2017] EWCA Civ 42, [2017] P.N.L.R. 13.
- [492.](#) CPR r.20.9(1).
- [493.](#) *Ernst & Young v Butte Mining Plc* [1997] 1 W.L.R. 1485.
- [494.](#) See *Mondel v Steel* (1841) 8 M. & W. 858; *Henriksens Rederi A/S v T.H.Z. Rolimpex* [1974] Q.B. 233; *Aries Tanker Corp v Total Transport Ltd* [1977] 1 W.L.R. 185; *Axel Johnson Petroleum v MG Mineral Group AG, The Jo Lind* [1992] 2 All E.R. 163.
- [495.](#) See Vol.II, para.44-411.
- [496.](#) s.28.
- [497.](#) *Henriksens Rederi A/S v T.H.Z. Rolimpex* [1974] Q.B. 233, 246. But see Cairns and Roskill L.JJ., 254, 264. Lord Denning’s view was followed (obiter) by Hobhouse J. in *Kleinwort Benson Ltd v Sandwell B.C.* (1993) 91 L.G.R. 323, 386.
- [498.](#) See, e.g. *Morgan & Son v S. Martin Johnson & Co* [1949] 1 K.B. 107; *Hanak v Green* [1958] 2 Q.B. 9; *Federal Commerce & Navigation Co Ltd v Molena Alpha Inc* [1978] Q.B. 974; affirmed [1979] A.C. 757; *The Raven* [1980] 2 Lloyd’s Rep. 266; *British Anzani (Felixstowe) Ltd v International Marine Management (UK) Ltd* [1980] Q.B. 137; *Fuller v Happy Shopper Markets Ltd* [2001] 2 Lloyd’s Rep. 49; CPR r.16.6.
- [499.](#) See also *Mondel v Steel* (1841) 8 M. & W. 858.
- [500.](#) Supreme Court of Judicature Act 1873 s.24; Supreme Court of Judicature (Consolidation) Act 1925 ss.38, 41; now see the Senior Courts Act 1981 s.49.
- [501.](#) s.36(2); *Filross Securities Ltd v Midgeley* (1998) 43 E.G. 134. Contrast *Aries Tanker Corp v Total Transport Ltd* [1977] 1 W.L.R. 185 (Hague Rules) and, e.g. Carriage of Goods by Road Act 1965 Sch. art.32(4); *Impex Transport Aktieselskabet v AG Thames Holdings Ltd* [1981] 1 W.L.R. 1547; *Casillo Grani v Napier Shipping Co* [1984] 2 Lloyd’s Rep. 481.
- [502.](#) The subsection does not apply to any action or arbitration for which a period of limitation is prescribed by or under any other enactment (s.39) and enactments imposing special periods of limitation (see above, para.28-019) may grant an extension of time for third-party proceedings.

- [503.](#) s.35(1)(a).
- [504.](#) See above, para.28-014.
- [505.](#) s.35(2).
- [506.](#) Defined in s.13(4) of the Arbitration Act 1996.
- [507.](#) Arbitration Act 1996 s.13(1).
- [508.](#) *Board of Trade v Cayzer, Irvine & Co* [1927] A.C. 610, 614; *Naamlooze, etc. Vulcaan v A/S Ludwig Mowinckel Rederi* (1938) 43 Com. Cas. 252 HL; *Christian Salvesen (Properties) Ltd v Central Electricity Generating Board* (1984) 48 P. & C.R. 465; *Compagnie Europeenne de Cereals SA v Tradax Export SA* [1986] 2 Lloyd's Rep. 301.
- [509.](#) s.14(1). See *Transpetrol Ltd v Erkali Shipping Co Ltd* [1989] 1 Lloyd's Rep. 62.
- [510.](#) Vol.II, para.32-076. See also Carriage by Air Act 1961 s.5(3); Carriage of Goods by Road Act 1965 s.7(2)(a); Limitation Act 1980 s.40(2) and Sch.3 paras 5, 6.

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Section 8. - The Statute Bars the Remedy, not the Right

General

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Except for the provisions governing extinction of title in relation to land, ⁵¹¹ and goods, ⁵¹² and the 10-year long-stop period for actions under Pt I of the Consumer Protection Act 1987, ⁵¹³ the effect of limitation under the Limitation Act 1980 is merely to bar the claimant's remedy and not to extinguish his right. ⁵¹⁴ Limitation is a procedural matter, and not one of substance: the right continues to exist even though it cannot be enforced by action. In contrast, limitation provisions in certain other enactments, such as the Carriage by Air Act 1961 ⁵¹⁵ and the Carriage of Goods by Sea Act 1971, ⁵¹⁶ extinguish the right. Where special statutory periods of limitation are applied, regard must be had to the particular language and intent of the statute in each case. A procedural bar does not go to the jurisdiction of the court or of an arbitral tribunal. ⁵¹⁷

Obtaining payment in other ways

28-128

In those cases where the remedy only is barred by the 1980 Act, if a debtor pays a statute-barred debt, he cannot subsequently recover the money on the ground that it was not due. ⁵¹⁸ Further, though the creditor cannot recover a statute-barred debt by action, he can obtain satisfaction in a number of other ways.

Appropriation ⁵¹⁹

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If a debtor makes a payment without appropriating it to any particular debt, the creditor may at any time before the commencement of proceedings appropriate it to a statute-barred debt. ⁵²⁰ If neither party makes an appropriation, the court will presume that the payment was made in respect of debts which were not statute-barred. ⁵²¹ But if the debtor has no opportunity of exercising his right of appropriation, then the creditor cannot do so. Thus, he may not appropriate money of the debtor which happens to be in his hands to a statutebarred debt, ⁵²² for that would be not appropriation but set-off.

Account stated

28-130

The parties are at liberty to include a statute-barred debt in an account stated and thus render it enforceable by action. ⁵²³

Deduction from legacy, etc.

28-131

If a legatee owes money to his testator's estate, the personal representatives may deduct the debt from the legacy, even if the debt is statute-barred.⁵²⁴ The same principle applies to a debt owed by a person entitled on intestacy.⁵²⁵ But it does not apply to a debt owed by a specific legatee of chattels not represented by money in the hands of the personal representatives,⁵²⁶ nor where the legatee was not himself the debtor but only the personal representative of a deceased debtor.⁵²⁷

Executor's right of retainer

28-132

A personal representative may choose to pay a statute-barred debt,⁵²⁸ unless (perhaps) his fellow personal representative objects,⁵²⁹ and may therefore exercise his right of retainer in respect of such a debt due to himself.⁵³⁰ However, this is an anomalous principle which is not to be extended: it does not apply to a debt which has been judicially declared to be statute-barred, for in that case the executor would be failing to rely on the defence of *res judicata* as well as on that of limitation.⁵³¹ And the position is different if an order has been made in an administration action. Once such an order has been made, any beneficiary⁵³² or creditor⁵³³ may insist on the statute being pleaded, except against a creditor who obtained the order and did not have the statute pleaded against him at that earlier stage.⁵³⁴

Trustee's right to indemnity for expenses

28-133

On similar principles, a trustee has been held entitled to recoup himself out of the trust estate in respect of costs and expenses which he had paid, although they were statute-barred.⁵³⁵

Creditor's lien

28-134

A creditor who has a lien on goods belonging to the debtor which are in his possession may exercise it in respect of statute-barred debts.⁵³⁶

1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

^{511.} s.17.

^{512.} s.3(2); see Vol.II, para.44-232.

^{513.} s.11A(3); above, para.28-009.

^{514.} *Royal Norwegian Government v Constant & Constant and Calcutta Marine Engineering Co Ltd* [1960] 2 Lloyd's Rep. 431, 442.

- [515.](#) Sch.1 art.29; see above, para.28-024; Vol.II, paras 35-017, 35-074.
- [516.](#) Sch. art.3 r.6; *Kenya Rys v Antares Co Pte Ltd* [1987] 1 Lloyd's Rep. 424. See also (Hague Rules) *Goulandris Bros v Goldman* [1958] 1 Q.B. 74, 105, 106; *Aries Tanker Corp v Total Transport Ltd* [1977] 1 W.L.R. 185; *Casillo Grani v Napier Shipping Co* [1984] 2 Lloyd's Rep. 481, 487; *Payabi v Armstel Shipping Corp* [1992] Q.B. 907; *Bua International Ltd v Hai Hing Shipping Co Ltd* [2000] 1 Lloyd's Rep. 300, 310.
- [517.](#) *Leif Hoegh & Co A/S v Petrolsea Inc* [1992] 1 Lloyd's Rep. 45, 49.
- [518.](#) *Bize v Dickason* (1786) 1 T.R. 286, 287.
- [519.](#) See above, para.21-061.
- [520.](#) *Mills v Fowkes* (1839) 5 Bing. N.C. 455; *Nash v Hodgson* (1855) 6 De G.M. & G. 474, 480–481; *Friend v Young* [1897] 2 Ch. 421, 433, 437.
- [521.](#) *Nash v Hodgson* (1855) 6 De G.M. & G. 474.
- [522.](#) *Waller v Lacy* (1840) 1 M. & G. 54; *Coneys v Morris* [1922] 1 Ir.R. 81, 91–93; *Kleinwort Benson Ltd v Sandwell B.C.* [1994] 4 All E.R. 890, 943–945.
- [523.](#) *Ashby v James* (1843) 11 M. & W. 542.
- [524.](#) *Courtenay v Williams* (1844) 3 Hare 539; affirmed 15 L.J. Ch. 204; *Coates v Coates* (1864) 33 Beav. 249; *Gee v Liddell* (No.2) (1866) 35 Beav. 629; *Poole v Poole* (1871) L.R. 7 Ch. App. 17; *Re Rownson* (1885) 29 Ch. D. 358; *Re Akerman* [1891] 3 Ch. 212; *Re Taylor* [1894] 1 Ch. 671.
- [525.](#) *Re Cordwell's Estate* (1875) L.R. 20 Eq. 644.
- [526.](#) *Re Savage* [1918] 2 Ch. 146.
- [527.](#) *Re Bruce* [1908] 2 Ch. 682.
- [528.](#) *Stahlschmidt v Lett* (1853) 1 Sm. & G. 415; *Hill v Walker* (1858) 4 K. & J. 166; *Lowis v Rumney* (1867) L.R. 4 Eq. 451.
- [529.](#) See *Midgley v Midgley* [1893] 3 Ch. 282, 297; *Astbury v Astbury* [1898] 2 Ch. 111, 115. The point has never been decided.
- [530.](#) *Stahlschmidt v Lett* (1853) 1 Sm. & G. 415; *Hill v Walker* (1858) K. & J. 166.
- [531.](#) *Midgley v Midgley* [1893] 3 Ch. 282.
- [532.](#) *Shewen v Vanderhorst* (1831) 1 R. & M. 347; *Moodie v Bannister* (1859) 4 Drew. 432; cf. *Re Wenham* [1892] 3 Ch. 59, applying the same principle to an originating summons taken out by the executors.
- [533.](#) *Fuller v Redman* (No.2) (1859) 26 Beav. 614.
- [534.](#) *Briggs v Wilson* (1854) 5 De G.M. & G. 12; *Fuller v Redman* (No.2) (1859) 26 Beav. 614.
- [535.](#) *Budgett v Budgett* [1895] 1 Ch. 202.
- [536.](#) *Spears v Hartly* (1800) 3 Esp. 81; *Higgins v Scott* (1831) 2 B. & Ad. 413; *Curwin v Milburn* (1889) 42 Ch. D. 424; *Re Brockman* [1909] 2 Ch. 170.

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Volume I - General Principles

Part 8 - Remedies for Breach of Contract

Chapter 28 - Limitation of Actions ¹

Section 9. - Limitation in Equity ⁵³⁷

Introductory

28-135

The earliest Statutes of Limitation applied only to common law actions. However, where an equitable remedy was sought in the protection or enforcement of a legal right, a court of equity would act "in obedience" to the statutes, ⁵³⁸ and if an equitable claim was closely analogous to a claim which was covered by the Statutes, the court would apply the same period of limitation "by analogy". ⁵³⁹ But, in cases not covered by any statutory period, equity developed its own doctrines of laches and acquiescence, under which the claimant was barred from equitable relief if he had not shown reasonable diligence in prosecuting his claim or appeared to have waived his rights. ⁵⁴⁰ "Nothing can call forth this court into activity", said Lord Camden in 1767 ⁵⁴¹:

"... but conscience, good faith and reasonable diligence. Where these are wanting, the court is passive and does nothing. Laches and neglect are always discountenanced and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court."

These equitable doctrines rest on the same basis as the law of limitation, that stale demands should not be enforced: but with this difference, that while statute ordinarily prescribes a fixed time limit which applies in general irrespective of the conduct of the parties, the equitable doctrines look primarily at the conduct of the claimant and its effect on the defendant or on third parties, so that the length of time which will bar the claim varies greatly in accordance with the circumstances and the type of relief sought. The result is, as has been observed, ⁵⁴² that a certain vagueness is apt to surround the equitable doctrines of delay. From 1833 onwards the Statutes of Limitation tended more and more to encroach on the field in which the equitable doctrines were applied. The Limitation Act 1980 provides expressly for the limitation of certain claims in equity. ⁵⁴³ Nevertheless, the existence of the equitable doctrines continues to be recognised by the Act, since nothing in the Act is to affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise. ⁵⁴⁴ Further, the Act provides that neither the time limit under s.5 for actions founded on simple contract nor that under s.8 for actions on a specialty are to apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the court by analogy. ⁵⁴⁵ The effect of this "somewhat diffident" language is to limit the analogous application of ss.5 and 8 of the Act to claims of a kind for which no express provision is to be found elsewhere in the statute. ⁵⁴⁶

The statute applied by analogy

28-136

The statute may be applied to an equitable claim by analogy. ⁵⁴⁷ One important example in the modern law is afforded by claims for a final injunction to protect a legal right. So long as the right itself

is not barred (i.e. so long as the claimant could recover damages for its infringement), he retains his right to an injunction, ⁵⁴⁸ although delay or other circumstances may induce the court to withhold an injunction and award damages in lieu of an injunction. ⁵⁴⁹ (It is quite different if the claimant seeks an interim remedy. In that case the utmost promptitude is required and a delay of more than a month or two, unless explained, is usually fatal. ⁵⁵⁰) There is also some authority for saying that the statute will be applied by analogy to claims for rescission ⁵⁵¹ of a contract, with the result that the claimant's claim will be barred if his delay exceeds six years. ⁵⁵² But, in such a case, even if the statute is applied by analogy, a claim for rescission may be barred, short of the statutory period, on account of acquiescence, laches or affirmation. In *P & O Nedlloyd BV v Arab Metals Co, The UB Tiger* ⁵⁵³ it was held, in a careful judgment by Moore-Bick L.J., that the usual contractual limitation period of six years does not apply by analogy under s.36(1) to a claim for specific performance. ⁵⁵⁴ This is because there is no directly equivalent remedy at common law to specific performance and because specific performance does not even require there to be an existing breach of contract. ⁵⁵⁵ Laches can, however, apply. The view was also expressed that even if, contrary to the court's view, there were a statutory limitation period applicable to specific performance, laches comprising more than mere delay could still apply. ⁵⁵⁶

Acquiescence ⁵⁵⁷

28-137

"If a person having a right, and seeing another person about to commit, or in course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act." ⁵⁵⁸

In this sense of the term (which has been described as the only proper one) ⁵⁵⁹ acquiescence by the claimant amounts to the waiver of his rights and raises a species of estoppel preventing him from subsequently enforcing them. The conduct of the claimant need not necessarily bear any relation to lapse of time, because it may take place before or at the time when his rights are violated. Mere delay by the claimant in seeking relief does not amount to acquiescence. ⁵⁶⁰ The essential ingredients of the defence are, however, by no means clear. In *Willmott v Barber*, ⁵⁶¹ Fry J. laid down no less than five requirements, but it has been said ⁵⁶² that more recent cases indicate:

"... a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, ⁵⁶³ he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."

Laches

28-138

The term "laches" is sometimes used to denote acquiescence. But, in a narrower sense, the essence of the doctrine of laches is that if the claimant has not been reasonably diligent in seeking relief, and in consequence the position of the defendant has been prejudiced or it would now be unjust or unreasonable to grant the relief, the claimant will be debarred from pursuing his remedy on the ground of laches. What amounts to reasonable diligence and what circumstances will render it inequitable to grant the relief will vary with the type of relief sought and the facts of the particular case.

Statements of the doctrine

28-139

The most authoritative statement of the doctrine is that of Lord Selborne in *Lindsay Petroleum Co v Hurd* ⁵⁶⁴:

“Now the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might be fairly regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief which otherwise would be just, is founded on mere delay, that delay of course not amounting to a bar by any Statute of Limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

In *Erlanger v New Sombrero Phosphate Co* ⁵⁶⁵ Lord Blackburn, after quoting this statement with approval, went on to say:

“I have looked in vain for any authority which gives a more distinct and definite rule than this; and I think, from the nature of the inquiry, it must always be a question of more or less, depending on the degree of diligence which might reasonably be required, and the degree of change which has occurred, whether the balance of justice or injustice is in favour of granting the remedy or withholding it. The determination of such a question must largely depend on the turn of mind of those who have to decide, and must therefore be subject to uncertainty; but that, I think, is inherent in the nature of the inquiry.” ⁵⁶⁶

Delay where statute applies

28-140

Delay short of the statutory period is ordinarily no bar in cases where a statutory limitation provision is applicable either directly or by analogy. ⁵⁶⁷ In such cases the claimant is entitled to the full statutory period, though the court retains an equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise. ⁵⁶⁸ In contrast, laches, as well as acquiescence, is not precluded by a section in the Limitation Act (for example, s.21(1)) which lays down that there is no limitation period prescribed by the Act. ⁵⁶⁹

Awareness of facts

28-141

The claimant must be aware of the relevant facts ⁵⁷⁰ (though he need not know of the exact nature of his rights ⁵⁷¹) and therefore there is no question of laches while the claimant is under disability ⁵⁷² or undue influence. ⁵⁷³ The principle that ignorance negatives laches may account for the fact that delay will not count against the claimant where the existence of the material cause of action has been concealed from him by fraud or unconscionable behaviour on the part of the defendant ⁵⁷⁴ or where

he is under a mistake. ⁵⁷⁵ Alternatively it could be said that, in such circumstances, it would not be just or reasonable to deprive the claimant of the relief to which he would otherwise be entitled. ⁵⁷⁶

Prejudice to defendant

28-142

It is a relevant subject for inquiry whether the claimant's delay has prejudiced the defendant, e.g. if he has lost the evidence necessary to rebut the claim or has been spending money on the property to the knowledge of the claimant. ⁵⁷⁷ If the defendant has not been so prejudiced, and no third parties are involved, the court may well treat the claimant's delay as immaterial. ⁵⁷⁸ In *Nelson v Rye* ⁵⁷⁹ Laddie J. left open the question whether a defendant must prove a causal link between the delay and prejudice of which he complains.

Mere delay

28-143

Statements may be found suggesting that mere delay will not bar the claimant's claim if there is no evidence of acquiescence on his part or of prejudice to the defendant. Thus, in *Life Association of Scotland v Siddal* ⁵⁸⁰ Turner L.J. said:

"Length of time where it does not operate as a statutory or positive bar operates, as I apprehend, simply as evidence of assent or acquiescence. The two propositions of a bar by length of time and by acquiescence are not, as I conceive, distinct propositions. They constitute but one proposition, and that proposition, when applied to a question of this description, is that the cestui que trust assented to the breach of trust."

But in the same case Lord Campbell, while expressing his concurrence with Turner L.J.'s statement, was careful to add that:

"... although the rule be that the onus lies on the party relying on acquiescence to prove the facts from which the consent of the cestui que trust is to be inferred, it is easy to conceive cases in which from great lapse of time, such facts might and ought to be presumed." ⁵⁸¹

It is submitted that the question always is whether, in the circumstances, it would be inequitable to grant relief by reason of the delay, ⁵⁸² and it may be that if the claimant's delay is very great, his claim will be rejected as a stale demand without further inquiry. ⁵⁸³

Specific performance

28-144

A person asking for specific performance of a contract seeks a discretionary remedy and has an option whether to pursue it or claim damages: he must therefore exercise his option promptly and show himself to be "ready, desirous, prompt and eager". ⁵⁸⁴ Unexplained delay of more than a few months is usually fatal: and this is especially true if the property is speculative or precarious or liable to fluctuate in value, e.g. a mine, ⁵⁸⁵ a public-house, ⁵⁸⁶ or a short leasehold interest. ⁵⁸⁷ However, it will be a sufficient explanation of the delay if the purchaser has been let into possession and requires merely to clothe his enjoyment of the property with the legal estate. ⁵⁸⁸ But this doctrine does not apply if the claimant was in possession under some other title than that of the contract which he seeks to enforce: for instance, if a tenant for years claims to exercise an option to purchase the

freehold. ⁵⁸⁹

Rescission

28-145

A person seeking to rescind a contract which is voidable for misrepresentation or otherwise has an election either to affirm or rescind the contract. He must therefore act promptly if he wishes to rescind ⁵⁹⁰: for it is inequitable that he should be allowed to wait and see whether it pays him to rescind or not, for that would be gambling on a certainty at the other party's expense. This is especially true of contracts for the sale or allotment of shares in companies, where the utmost promptness is required. ⁵⁹¹ The allottee is not permitted to wait and see whether the company will prosper. Third persons may perhaps deal with the company on the faith of his being a member. Hence a delay of even a few weeks after discovery of the misrepresentation could be fatal. And it has been held that a buyer of goods could not rescind for innocent misrepresentation five years after the making of the contract, although he acted promptly as soon as he discovered the truth. ⁵⁹²

Setting aside voluntary settlements

28-146

A person seeking to set aside a gift or voluntary settlement on the ground of undue influence is in a different position from one who seeks to rescind a commercial contract in that he takes no benefit from the transaction, and is therefore in a less equivocal position. Consequently, he is allowed a longer time in which to exercise his rights after the influence has ceased to operate and he becomes aware of the facts. But a delay of several years will raise an inference of acquiescence sufficient to defeat the claim. ⁵⁹³ Thus, in *Allcard v Skinner* ⁵⁹⁴ gifts made under religious influence by an inmate of a convent to the lady superior for the benefit of the sisterhood could not be recalled six years after she left the convent, changed her religion, and received independent advice: for there was not only inactivity but positive evidence of conduct amounting to confirmation of the gift. On the other hand, in *Bullock v Lloyds Bank* ⁵⁹⁵ a settlement made under the undue influence of her father by a young lady just of age was successfully impeached four years after the influence ceased and she became aware of her rights, during which time she unsuccessfully tried to persuade the trustee to exercise its power of revocation under the settlement. A longer time may be allowed for setting aside gifts made by mistake. ⁵⁹⁶

Rectification

28-147

The rectification of deeds and contracts on the ground of mistake is subject to the doctrine of laches, but it seems that the claimant is allowed a longer time for claiming rectification than he is for setting aside a voluntary settlement or gift. ⁵⁹⁷ At any rate this is true if all parties have acted throughout on the claimant's version of what they really intended ⁵⁹⁸: for in that case no one is prejudiced by the delay. In *Paddico (267) Ltd v Kirklees Metropolitan Council* ⁵⁹⁹ it was held by the Supreme Court that, in deciding whether a claim to rectify the register of town or village greens under s.14 of the Commons Registration Act 1965 was barred by lapse of time, the most appropriate analogy was the equitable doctrine of laches (including acquiescence). What was required therefore was knowledge of the facts by the applicant and either acquiescence or detriment/prejudice.

1. See generally McGee, *Limitation of Actions*, 6th edn (2013); Prime and Scanlon, *The Modern Law of Limitation*, 2nd edn (2001); Merkin, Oughton and Lowry, *Limitation of Actions* (1998); Di Mambro, *Butterworth's Law of Limitation* (2000, looseleaf); Law Commission Report, *Limitation of Actions* (Law Com. No.270, 2001). For conflict of laws in relation to limitation of actions, see below, paras 30-348—30-349.

- [537.](#) See Brunyate, *Limitation of Actions in Equity* (1932).
- [538.](#) See *Beckford v Wade* (1805) 17 Ves. 87, 97; *Hovenden v Annesley* (1806) 2 Sch. & Lef. 607; *Cholmondeley v Clinton* (1821) 4 Bli. 1, 119; *Knox v Gye* (1872) L.R. 5 H.L. 656, 674; *Gibbs v Guild* (1882) 9 Q.B.D. 59, 74–75.
- [539.](#) See, e.g. *Re Robinson* [1911] 1 Ch. 502; *Re Mason* [1928] Ch. 385, [1929] 1 Ch. 1; *Re Blake* [1932] 1 Ch. 54 (action to recover money paid wrongly by trustee to recipient analogous to common law action for money had and received). But see now *Re Diplock* [1948] Ch. 465, 498, 501, 502, 515, 516.
- [540.](#) *Smith v Clay* (1767) 3 Bro. C.C. 639n.
- [541.](#) *Smith v Clay* (1767) 3 Bro. C.C. 639n.
- [542.](#) *Erlanger v New Sombrero Phosphate Co* (1878) 3 App. Cas. 1218, 1231.
- [543.](#) e.g. s.16 (claims to redeem mortgaged land), s.20 (claims to recover money secured by a mortgage or the proceeds of sale), s.21 (claims in respect of trust property or for breach of trust), s.22 (claims in respect of personal estate of a deceased person).
- [544.](#) s.36(2). But in *Re Pauling's Settlement Trusts* [1962] 1 W.L.R. 86, 115 Wilberforce J. said that laches, as distinct from acquiescence, cannot be invoked where there is a statutory limitation period; and this was approved by the Court of Appeal [1964] Ch. 303, 353. It was also approved in *Re Loftus* [2006] EWCA Civ 1124, [2007] 1 W.L.R. 1124 at [37]. See also *P & O Nedlloyd BV v Arab Metals Co, The UB Tiger* [2006] EWCA Civ 1717, [2007] W.L.R. 2288 (where the case was not one of laches by mere delay). See also below, para.28-140.
- [545.](#) s.36(1). This also applies to s.7 (arbitration awards), s.9 (statutory claims) and s.24 (actions on judgments). In *P & O Nedlloyd BV v Arab Metals Co, The UB Tiger* [2005] EWHC 1276, [2005] 1 W.L.R. 3733, Colman J. held that a declaration was not “equitable relief” within s.36(1). Rather it was statutory so that normal time limits within the Limitation Act 1980 apply.
- [546.](#) *Re Diplock* [1948] Ch. 465, 515. cf. *Poole Corp v Moody* [1945] K.B. 350.
- [547.](#) s.36(1). As regards breach of fiduciary duty, see, e.g. *Knox v Gye* (1872) L.R. 5 H.L. 656; *Paragon Finance Plc v Thakerar & Co* [1999] 1 All E.R. 400; *Coulthard v Disco Mix Club Ltd* [2000] 1 W.L.R. 707; *Cia de Seguros Imperio v Heath (REBX) Ltd* [2001] 1 W.L.R. 112; *Gwembe Valley Development Co Ltd v Koshy* [2003] EWCA Civ 1048. See also above, para.28-018.
- [548.](#) *Imperial Gas Light and Coke Co v Broadbent* (1859) 7 H.L.C. 600; *Fullwood v Fullwood* (1878) 9 Ch. D. 176; *Jamieson v Jamieson* (1898) 15 R.P.C. 169, 179. See below, para.28-140.
- [549.](#) *Shaw v Applegate* [1977] 1 W.L.R. 97.
- [550.](#) *G.W. Ry v Oxford, etc. Ry* (1853) 3 De G.M. & G. 341.
- [551.](#) *Molloy v Mutual Reserve Life Insurance Co* (1906) 94 L.T. 756; *Oelkers v Ellis* [1914] 2 K.B. 139; *Armstrong v Jackson* [1917] 2 K.B. 822.
- [552.](#) In *Kleinwort Benson Ltd v Sandwell BC* [1994] 4 All E.R. 890, 943, Hobhouse J. noted that it was common ground between the parties that, in so far as s.5 of the 1980 Act applied to an action for money had and received, the same limitation period by reason of s.36 would apply to the equitable remedy (after tracing) sought by the bank.
- [553.](#) [2006] EWCA Civ 1717, [2007] 1 W.L.R. 2288.
- [554.](#) See also *Williams v Greatrex* [1957] 1 W.L.R. 31. cf. Beatson, *Contemporary Issues in Commercial Law* (1997), pp.9–23.

- [555.](#) As shown in *Hasham v Zenab* [1960] A.C. 316.
- [556.](#) See below, para.28-140.
- [557.](#) See s.36(2).
- [558.](#) *De Bussche v Alt* (1878) 8 Ch. D. 286, 314. See also *Archbold v Scully* (1861) 9 H.L.C. 360, 383; *Shaw v Applegate* [1977] 1 W.L.R. 970.
- [559.](#) *Duke of Leeds v Earl of Amherst* (1846) 2 Ph. 117, 123. cf. *Life Association of Scotland v Siddall* (1861) 3 De G.F. & J. 58, 72.
- [560.](#) *Jones v Stones* [1999] 1 W.L.R. 1739.
- [561.](#) (1880) 15 Ch. D. 96, 105–106.
- [562.](#) *Taylor's Fashions Ltd v Liverpool Victoria Trustee Co Ltd* [1982] Q.B. 133n; *Amalgamated Investment & Property Co Ltd v Texas Commerce International Bank Ltd* [1982] Q.B. 84, 103; *Habib Bank Ltd v Habib Bank AG* [1981] 1 W.L.R. 1265, 1285; *Jones v Stones* [1999] 1 W.L.R. 1739. But contrast *The August P. Leonhardt* [1985] 2 Lloyd's Rep. 28; *Att-Gen of Hong Kong v Humphreys Estate (Queen's Gardens) Ltd* [1987] A.C. 114; *Matharu v Matharu*, *The Times*, May 13, 1994 CA; *Baird Textiles Holdings Ltd v Marks & Spencer Plc* [2002] 1 All E.R. (Comm) 737. See also above, para.4-140.
- [563.](#) cf. *Pauling's Settlement Trusts* [1964] Ch. 303 (where it was held that a claimant cannot be held to have acquiesced unless he knew, or ought to have known, what his rights were). See also *Re Howlett* [1949] 1 Ch. 767, 775. As regards laches, see below, para.28-141.
- [564.](#) (1874) L.R. 5 P.C. 221, 239 (wrongly attributed in the report to Sir Barnes Peacock).
- [565.](#) (1878) 3 App. Cas. 1218, 1279.
- [566.](#) These statements by Lord Selborne and Lord Blackburn have often been cited with approval: see, e.g. *Re Sharpe* [1892] 1 Ch. 154, 168; *Rochevauld v Boustead* [1897] 1 Ch. 196, 210–211; *Weld v Petre* [1929] 1 Ch. 33, 51–52, 63; *Agbeyegbe v Ikomi* [1953] 1 W.L.R. 263, 266–267; *Nwakobi v Nzekwu* [1964] 1 W.L.R. 1019, 1025; *Nelson v Rye* [1996] 1 W.L.R. 1378, 1392; *Frawley v Neill*, *The Times*, April 5, 1999.
- [567.](#) *Archbold v Scully* (1861) 9 H.L.C. 360, 383; *Knox v Gye* (1872) L.R. 5 H.L. 656; *Fullwood v Fullwood* (1878) 8 Ch. D. 176; *Re Baker* (1881) 20 Ch. D. 230; *Re Maddever* (1884) 27 Ch. D. 523; *Re Pauling's Settlement Trusts* [1964] Ch. 303, 353; *Re Loftus* [2006] EWCA Civ 591, [2007] 1 W.L.R. 1124 at [37]. See also *P & O Nedlloyd BV v Arab Metals Co*, *The UB Tiger* [2006] EWCA Civ 1717, [2007] 1 W.L.R. 2288 (where the case was not one of laches by mere delay). But if a limitation period applies by analogy to rescission, laches short of that may bar that remedy: see paras 28-136, 28-145.
- [568.](#) Limitation Act 1980 s.36(2).
- [569.](#) *Re Loftus* [2006] EWCA Civ 591, [2007] 1 W.L.R. 1124.
- [570.](#) *Life Association of Scotland v Siddall* (1861) 3 De G.F. & J. 58, 74; *Lindsay Petroleum Co v Hurd* (1874) L.R. 5 P.C. 221, 241; *Allcard v Skinner* (1887) 36 Ch. D. 145, 188; *Re Howlett* [1949] Ch. 767, 775. cf. *Nelson v Rye* [1996] 1 W.L.R. 1378.
- [571.](#) *Stafford v Stafford* (1857) 1 De G. & J. 193, 202; *Molloy v Mutual Reserve Life Insurance Co* (1906) 94 L.T. 756.
- [572.](#) *Duke of Leeds v Earl of Amherst* (1846) 2 Ph. 117.
- [573.](#) *Allcard v Skinner* (1887) 36 Ch. D. 145; *Bullock v Lloyds Bank Ltd* [1955] Ch. 317.

- [574.](#) *Booth v Earl of Warrington* (1714) 4 Bro. P.C. 163; *Gibbs v Guild* (1882) 9 Q.B.D. 59; *Molloy v Mutual Reserve Life Insurance Co* (1906) 94 L.T. 756; *Oelkers v Ellis* [1914] 2 K.B. 139; *Armstrong v Jackson* [1917] 2 K.B. 822. See also above, para.28-085.
- [575.](#) *Brooksbank v Smith* (1836) 2 Y. & C. Ex. 58; contrast *Denys v Shuckburgh* (1840) 4 Y. & C. Ex. 42, where the mistake could have been discovered with reasonable diligence. See also above, para.28-089.
- [576.](#) *Turner v General Motors (Australia) Pty Ltd* (1929) 42 C.L.R. 352, 370.
- [577.](#) *Turner v Collins* (1871) L.R. 7 Ch. 329; *Watts v Assets Co* [1905] A.C. 317, 333; cf. *Shaw v Applegate* [1977] 1 W.L.R. 970; *Nelson v Rye* [1996] 1 W.L.R. 1395, 1396.
- [578.](#) *Gresley v Mousley* (1859) 4 De G. & J. 78, 95; *Beauchamp v Winn* (1873) L.R. 6 H.L. 232; *Re Garnett* (1885) 31 Ch. D. 1; *Blake v Gale* (1886) 32 Ch. D. 571, 578; *Re Sharpe* [1892] 1 Ch. 154, 168; *Re Lacey* [1907] 1 Ch. 330, 350; *Weld v Petre* [1929] 1 Ch. 33.
- [579.](#) [1996] 1 W.L.R. 1378, 1396 (disapproved on other grounds in *Paragon Finance Plc v Thakerar & Co* [1999] 1 All E.R. 400, 415).
- [580.](#) (1861) 3 De G.F. & J. 58, 72–73.
- [581.](#) *Life Association of Scotland v Sidda* (1861) 3 De G.F. & J. 58, 77.
- [582.](#) *Parkin v Thorold* (1852) 16 Beav. 59, 73; *Clegg v Edmonson* (1857) 8 De G.M. & G. 787, 814; *Fitzgerald v Masters* (1956) 95 C.L.R. 420, 433; *Re Jarvis* [1958] 1 W.L.R. 815; *Lamshed v Lamshed* (1963) 109 C.L.R. 440, 453.
- [583.](#) Contrast *Brooks v Muckleston* [1909] 2 Ch. 519 (40 years' delay in foreclosing a mortgage of an advowson held to bar the claim) with *Weld v Petre* [1929] 1 Ch. 33 (18 years' delay in redeeming a mortgage of shares held not to bar the claim). In neither case was a statute of limitations applicable either expressly or by analogy. But see *Re Eustace* [1912] 1 Ch. 561.
- [584.](#) *Milward v Earl of Thanet* (1801) 5 Ves. 720n; *Eads v Williams* (1854) 4 D.M. & G. 674; *Oriental Inland Steam Co Ltd v Briggs* (1861) 4 De G.F. & J. 191, 194–195.
- [585.](#) *Eads v Williams* (1854) 4 D.M. & G. 674; cf. *Clegg v Edmondson* (1857) 8 De G.M. & G. 787.
- [586.](#) *Mills v Haywood* (1877) 6 Ch. D. 196.
- [587.](#) *Lehmann v McArthur* (1868) L.R. 3 Ch. App. 496.
- [588.](#) *Crofton v Ormsby* (1806) 2 Sch. & Lef. 583, 603; *Shepherd v Walker* (1875) L.R. 20 Eq. 659; *Williams v Greatrex* [1957] 1 W.L.R. 31 (where a delay of 10 years was held to be no bar).
- [589.](#) *Mills v Haywood* (1877) 6 Ch. D. 196.
- [590.](#) *Lindsay Petroleum Co v Hurd* (1874) L.R. 5 P.C. 221; *Erlanger v New Sombrero Phosphate Co* (1878) 2 App. Cas. 1218; *Molloy v Mutual Reserve Life Insurance Co* (1906) 94 L.T. 756. See above, para.7-127. But see *Peyman v Lanjani* [1985] Ch. 457 (knowledge of right to rescind required).
- [591.](#) *Taite's Case* (1867) L.R. 3 Eq. 795; *Sharpley v Louth and East Coast Ry* (1876) 2 Ch. D. 663; *Re Scottish Petroleum Co* (1883) 23 Ch. D. 413; *Aaron's Reefs Ltd v Twiss* [1896] A.C. 273, 294; *Taylor v Oil and Ozokerite Co* (1913) 29 T.L.R. 515; *First National Reinsurance Co Ltd v Greenfield* [1921] 2 K.B. 260; see above, para.7-136.
- [592.](#) *Leaf v International Galleries* [1950] 2 K.B. 86; see above, para.7-136.
- [593.](#) *Wright v Vanderplank* (1856) 8 De G.M. & G. 133 (10 years' delay a bar); *Turner v Collins*

(1871) *L.R. 7 Ch. App. 329* (nine years' delay a bar); *Allcard v Skinner* (1887) 36 *Ch. D. 145* (six years' delay a bar); contrast *Bullock v Lloyds Bank Ltd* [1955] *Ch. 317* (four years' delay not a bar).

[594.](#) (1887) 36 *Ch. D. 145*.

[595.](#) [1955] *Ch. 317*.

[596.](#) *Re Garnett* (1885) 31 *Ch. D. 1* (20 years).

[597.](#) *Wolterbeek v Barrow* (1857) 23 *Beav. 423* (rectification allowed 34 years after date of deed and four years after discovery of mistake); *Turner v Collins* (1871) *L.R. 7 Ch. App. 329* (rectification of voluntary settlement allowed though rescission barred).

[598.](#) *M'Cormack v M'Cormack* (1877) 1 *L.R. Ir. 119* (35 years' delay no bar); *Burroughes v Abbott* [1922] 1 *Ch. 86* (12 years' delay no bar).

[599.](#) [2014] *UKSC 7*, [2014] 2 *W.L.R. 300*.