A Brief History of Time Limits

Focus Column - By Daniel Lee Jacobson - Professor Daniel Jacobson explores the long, rich history of time bars, from Renaissance England to modern-day statutes of limitation and statutes of repose.

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By Daniel Lee Jacobson

"Time heals griefs and quarrels." Blaise Pascal, French philosopher 1623-62.

A Short History of Time Bars

Perhaps it is fitting that Pascal was born in 1623, the year of the enactment of England's first statute of limitations for *in personam* actions. That law, the Limitations Act of 1623, has been the unchallenged foundation of time limits on legal actions ever since. Thomas E. Atkinson, "Some Procedural Aspects of the Statute of Limitations," 27 Colum. L. Rev. 157 (1927); Andrea C. Rodgers, and John A. Parkins Jr., "Recent Development in Delaware Case Law: No Need to Revert to the Unfair Burdens of an Open-Ended Medical-Malpractice Statute of Limitations," 3 Del. L. Rev. 253 (2000); Mindy Olson, "The Statute of Limitations for Indemnification When No Charges Are Filed: How Soon Is a Director Required to Make a Claim," 31 J. Corp. L. 1035 (2006).

It is true that English law had time bars before 1623, but they were not widespread, and they did not apply to *in personam* actions. Limitations on penal actions date to at least 1540, when a statute was passed limiting the time for bringing an action for "embracery" (jury tampering). Some *in rem* actions were time-tied to royal events. For instance, under the 1235 Statute of Merton, certain probatelike cases could not be won without the claimant's proving that the litigant's decedent was living at the time that John returned to England from Ireland. Atkins. Also see Olson.

Under the Limitations Act of 1623, slander actions had to be brought within two years of the utterance of the pejorative, assault cases had to be filed within four years of the tort and actions in trespass (which included assumpsit actions) had to be brought within six years of the offending event. Jennifer Wriggins, "Domestic Violence Torts," 75 S. Cal. L. Rev. 121 (2001).

Competing Rationales

Why do legal actions have time limitations? The United States Supreme Court best answered this question in *Wood v. Carpenter,* 101 U.S. 135 (1879).

In that case, the court gave three reasons: "[1] [Statutes of limitations] promote repose by giving security and stability to human affairs. ... [2] They stimulate to activity and punish negligence. [3] While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary. Mere delay, extending to the limit prescribed, is itself a conclusive bar. The bane and antidote go together." If the second *Wood* rationale is allowed to include the judicial and prosecutional economy promoted by that rationale, then *Wood* can virtually always explain society's conceptual bases for statutes of limitations.

Some commentators have argued that the purposes of statutes of limitations are not readily apparent. Andrew C. Bernasconi, "Beyond Fingerprinting: Indicting DNA Threatens Defendants' Constitutional and Statutory Rights," 50 Am. U. L. Rev. 979. But a survey of

numerous law review articles shows this not to be true. *Wood* effectively answers the questions raised.

For instance, some scholars are said to have developed a "new" rationale for criminal law statutes of limitations, one positing that, although individual criminals care little about the remote future, society as a whole is deeply concerned with it. A thief may not care about being punished five years from now, but society will care about the money that it spends to punish him. Consequently, punishing a criminal in five years does little to deter him today and wastes society's future money. Yair Listokin, "Efficient Time Bars: A New Rationale for the Existence of Statutes of Limitations in Criminal Law," 31 J. Legal Stud. 99. But, although one might question the logic and societal benefits of such a theory, it is, at its core, little more than an iteration of prosecutorial economy, a justification that is grounded in *Wood*.

Sometimes, the Wood concepts are expressed in fewer than three reasons. See Elizabeth Tyler Bates, "Contemplating Lawsuits for the Recovery of Slave Property: The Case of Slave Art," 55 Ala. L. Rev. 1109 (2004). Sometimes, however, they are expressed in more.

The California Supreme Court stated five purposes for statutes of limitations in penal actions: (1) "reliability of evidence"; (2) "[t]he possibility of self-reformation" and a reduction in "society's impulse for retribution" after the passage of time; (3) "the swift and effective enforcement of the law"; (4) "limit[ing] the chance that the first offense will spawn blackmail of the offender by others threatening disclosure - crime breeding more crime"; and (5) "recognition that ... a never-ending threat of prosecution is more detrimental to the functioning of a civilized society than it is beneficial." *People v. Zamora,* 18 Cal.3d 538 (1976).

But, even Zamora's five purposes can fit into Wood's three. The reliability of evidence is the third stated reason in Wood, the possibility of self-reformation stems from the "repose" mentioned in Wood's first tenet, swift law enforcement is Wood's second stated reason, the diminution of crime-related blackmail tends to result from the "stability of human affairs" stated in Wood's first consideration, and the cessation of "a never-ending threat of prosecution" also results from that same "stability."

Limitations and Repose

Generically, "statutes of limitations" set a time limit on the bringing of an action. This generic definition can be broken into two categories: "statutes of limitations" and "statutes of repose."

The California Court of Appeal explained, "[A] statute of limitations normally sets the time within which proceedings must be commenced once a cause of action accrues; the statute of repose limits the time within which an action may be brought and is not related to accrual. Indeed, 'the injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations which begins running upon accrual of the claim, [the] period contained in a statute of repose begins when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted.' (54 C.J.S. Limitations of Actions Section 4 (1987).) A statute of repose thus is harsher than a statute of limitations in that it cuts off a right of action after a specified period of time, irrespective of accrual or even notice that a legal right has been invaded. (Ibid.)" *Giest v. Sequoia Ventures,* 83 Cal.App.4th 300 (2000).

Put simply, "a statute of repose begins when a specific event occurs, regardless of whether the cause of action has accrued. It cuts off a right of action even if the plaintiff lacks notice of the claim." *Crossman v. Daimler Chrysler Corp.,* 108 Cal.App.4th 370.

California Code of Civil Procedure Section 337.15 is an example of a statute of repose. Section 337.15 imposes a 10-year limit on bringing a cause of action for latent construction defects. A defining feature of that section's designation as a statute of repose is the fact that it begins to run on "substantial completion" of a development or an improvement to land rather than from a point of injury or from discovery of injury. *Inco Development Corp. v. Superior Court,* 131 Cal.App.4th 1014 (2005). But, see *Acosta v. Glenfed Development Corp.,* 128 Cal.App.4th 1278 (2005), for Section 337.15(f)'s "willful misconduct or fraudulent concealment" exception to the statute's general rule.

Sometimes, the date on which a statute of limitations begins to run coincides with the date that an action accrues, and sometimes it does not. The beginning of the running of the statute

and the date of accrual are conceptually separate, though they sometimes intertwine. See *Siegel v. Anderson Homes,* 118 Cal.App.4th 994 (2004).

Traditionally, statutes of limitation begin to run "upon the occurrence of the last element essential to the cause of action." *Neel v. Magana, Olney, Levy, Cathcart, & Gelfand,* 6 Cal.3d 176 (1971). The date of the "occurrence of the last element" is, by definition, also the date of accrual.

But many statutes of limitations embrace the discovery rule. "[T]he essence of the discovery rule [is] that a plaintiff need not file a cause of action before he or she has reason at least to suspect a factual basis for its elements." *Grisham v. Phillip Morris U.S.A.,* 40 Cal.4th 623 (2007). Under the discovery rule, the date of "the last element essential to the cause of action" (which would necessarily be the accrual date) may have long passed when the statute of limitations begins to run. And, as *Inco* shows, a statute of limitations may be tied to some event other than the occurrence of an element or the discovery of a fact underlying an element.

Statutes of limitations can be tolled (suspended) by a number of events. For instance, in California tolling can occur when a defendant is absent from the state (Code of Civil Procedure Section 351), during a defendant's insanity or minority (Code of Civil Procedure Section 352), during a defendant's imprisonment (Code of Civil Procedure Section 352.1) and during an injunction against the bringing of an action (Code of Civil Procedure Section 356.

In the right situation, equity can toll a statute when a plaintiff does not file suit because of a justifiable reliance on the defendant's promise. See *Lantzy v. Centex Homes,* 31 Cal.4th 363 (2003) (tolling not allowed).

The history, purposes, definition and applications of statutes of limitations demonstrate that society has for hundreds of years agreed at least to some degree with Blaise Pascal: Time does heal griefs and quarrels.

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