

7:10 Statute of Limitations—in General

A statute of limitations is a legal rule declaring that a certain kind of action cannot be initiated over the defendant's objection, once a certain time period has elapsed.

The statute of limitations on a "pure" cause of action for breach of the fiduciary duty of management is four years, under the "catchall provision" of C.C.P. Sec. 343. However, shorter statutes often apply.

The statute is usually postponed for delayed discovery, and the fiduciary may be estopped to plead the statute.

The statute is tolled under certain circumstances.

See Witkin, **Cal. Procedure 4th**, under "Actions", for a comprehensive discussion of statutes of limitation in general. What follows here is a very brief overview, and a discussion of those aspects of limitations that are special to fiduciary-duty litigation.

It seems clear that it would be difficult to live under a legal system which included no such time limits: ancient wrongs, committed when a defendant was young, might become the subject of litigation when he was old. There would never be an end to any matter, and no one could live in peace. Besides these substantive considerations, there are also technical problems with old cases: documents pertinent to the case might have disappeared, and witnesses' memories might have faded. For these reasons it is entirely rational for the state to decree time limits.

Although sometimes characterized as a "technical defense" allowing a defendant "to obtain an unconscionable advantage and enforce a forfeiture" (*Bollinger v. National Fire Ins. Co.* (1944) 25 Cal.2d 399, 411 [154 P.2d 399]), statutes of repose are in fact favored in the law, "designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." (*Telegraphers v. Ry. Express Agency* (1944) 321 U.S. 342, 348-349 [88 L.Ed. 788, 792, 64 S.Ct. 582, 586].)

Adams v.

Paul (1997) 11 Cal.4th 583, 593.

[Historical Note—Jewish and Roman Law.(1)]

Although it is eminently reasonable to have a *time limit*, it is more difficult to understand why we need a whole spectrum of *different time limits for different kinds of actions*; yet that is the case in California, as a cursory review of CCP Secs. 312 to 366.2 will reveal. The definition of statutes of limitations set forth in the RULE at the beginning of this Subsection points up the theoretical issues which must always be addressed in order to understand the application of the statute of limitations to a

particular case:

"A certain kind of action". In California, different time periods have been established for different kinds of actions: four years for actions on book accounts and on written contracts (CCP Sec. 337, 337a), three years for fraud and mistake (CCP Sec. 338(d)), two years for actions on an oral contract (CCP Sec. 339), and one year for torts in general (CCP Sec. 340). Certain other "special" statutes apply to fiduciaries: one-year/four-year statute for claims for legal malpractice (CCP Sec. 340.6); similar one-year/three-year statute for negligence claims against healthcare provider (CCP Sec. 340.5); three-year statute on action by beneficiary against trustee of express trust who has provided accounting (Prob. Code Sec. 16040); three-year statute on claims against corporate directors, shareholders, or members, to recover a penalty or forfeiture imposed or to enforce a liability created by law (CCP Sec. 359).

A "pure" cause of action for breach of fiduciary duty, being a hybrid between contract and tort, is not covered specifically by any of the aforementioned statutes, and instead comes under the four-year "catchall provision" of CCP Sec. 343. However, it is very hard to state a "pure" cause of action for breach of fiduciary duty: the claim is usually pleaded together with causes of action for fraud, for breach of contract, for legal malpractice, for breach of trust, or some other related action. The defendant is always entitled to raise the *shortest* statute of limitations which applies to the cause of action. So in *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 12 C.R. 2d 354, an attorney was retained to help the plaintiff purchase a ski resort area. He persuaded the plaintiff to purchase a ski resort in which he held an undisclosed financial interest. When plaintiff sued for breach of fiduciary duty (the duty of preference had been breached, and the case was basically one for "secret profits"), the lawyer demurred on the basis of the one-year statute of limitations of CCP Sec. 340.6. The trial court overruled the defense, believing that the one-year statute applied only to malpractice claims committed by a lawyer in his capacity as a lawyer, relying on *David Welch v. Erskine & Tulley* (1988) 203 Cal.App.3d 884, 250 C.R. 339. But the *Stoll* court disagreed, believing that the policy behind CCP Sec. 340.6 was to protect lawyers and reduce their malpractice premiums, so that all claims against lawyers, for all types of wrongs (except for fraud, which is expressly covered by CCP Sec. 338), should be brought within the shorter one-year period. — If a complaint states two causes of action, the plaintiff is entitled to proceed on the one with the longer limitations period. A contrary result was reached in *L.B. Laboratories v. Mitchell* (1952) 39 Cal.2d 546, 244 P.2d 385, where a CPA agreed to file a complete set of annual returns for his corporate client and failed to do so. *Held*: his failure was both negligence and a breach of contract, and the relevant statute of limitations was the four-year statute governing contracts, not the shorter two-year statute governing negligence.

"Over defendant's objection". The statute of limitations is created for the benefit of the defendant, and he may waive it. Failure to raise it is deemed a waiver. *Getz v. Wallace* (1965) 236 Cal.App.2d 212, 45 Cal.Rptr. 910.

"A certain time period". The time period must have a beginning and an end, but it is surprisingly difficult to fix either of these two points. See following Section 7:11.

Endnotes

1 (Popup - Popup)

Our modern statutes of limitation may be seen as the relatively sophisticated offspring of the provisions in the Old Testament regarding the Sabbath Day (every seventh day is a day of rest [*Exodus*, Chap. 20]) and the seven- and forty-nine-year cycles of the Jubilee (*Leviticus*, Chap. 25).

In particular, the law regarding the Jubilee proclaimed in the fiftieth year included the provision that "ye shall return every man unto his possession". According to *Deuteronomy* 15:1-6, in the seventh year every creditor had to release his debtor. This created a progressive disincentive to lend during the years leading up to the seventh year. Various devices were invented during the rabbinic period to circumvent this problem. The "prosbul" devised by Rabbi Hillel was that the lender should write out a document asserting his ownership of the property in the hands of the borrower: in this way, the "debt" was deemed to have been "repaid" before the seven-year deadline, and the creditor retained his right to recover it even after the seventh year.

Roman law during the rabbinic period did not include statutes of limitation either. It did distinguish between the *actiones temporales* and the *actiones perpetuae*: the first were allowed under specific pretorian decrees, and the right to bring them expired along with the term of the praetor who decreed them into existence. (It is for this reason that the notion of a statute of limitations is intimately associated with the plaintiff's remedy rather than with his cause of action.) But there was no elaborate apparatus providing for limitations periods.

It was in the 13th Century that Jewish law began to evolve the principle that the plaintiff's delay in bringing his cause of action cast doubt on the veracity of his evidence. By the 17th Century, Jewish jurists started to prescribe different periods of limitation for different kinds of claims: the claims based on documents, being inherently more credible, were assigned longer limitations periods; other kinds of claims were assigned shorter periods.

Of course, the big "paradigm shift" came with the departure from the notion of Jubilee years, which canceled all debts throughout the community, to a system of time periods associated with the specific transactions involved in the suit. Since law has always been viewed in Jewish thought as a fundamental aspect of the world—something decreed by God, and related to Him, and therefore inherently eternal and unchanging—rights and remedies were viewed as eternal and unchanging, too. But by the Middle Ages the requirements of commerce and the influence of other systems of legal thought eroded this attitude, and the desire to assure the reliability of the evidence took over.