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Statute of Limitations -- Bar to Suit Before Tort Occurs

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STATUTE OF LIMITATIONS—BAR TO SUIT BEFORE TORT OCCURS

A Connecticut statute[1] provides that no action for personal injury shall be brought after one year from date of act or omission complained of. In a suit for personal injury due to negligence in the manufacture of a rifle, defendant pleaded that the action accrued at the time of the manufacture and the action was barred by the Statute of Limitations. Plaintiff asserted that the action accrued at the time of the harm. *Held*, "Act or omission" applied to the original defective manufacture and operated to bar any action subsequent to one year after the date of the manufacture, regardless of the time when the injury occurred. *Dincher v. Marlin Firearms Co.*, 198 F.2d 821 (2d Cir. 1951).

There is no fixed rule as to when a cause of action accrues. The statute in each case must be considered[2] and the courts must look to the language of the statute to determine its meaning.[3] Some states hold that limitation statutes should be interpreted very liberally[4] while others maintain they should be strictly construed.[5] In construing the language of statutes apparently unambiguous, the courts have tended to avoid a literal interpretation where they believed that it would yield an inequitable result.[6] Generally, the test of when the statutory period begins to run is either when the defendant commits his wrong[7] or, when substantial harm matures.[8] If defendant's original conduct invades the plaintiff's rights, so that the suit could be maintained regardless of actual damage (as in the case of trespass), the statute commences upon the completion of the conduct. But if harm is deemed the gist of the action, the occurrence of the actual harm marks the beginning of the period.[9]

In at least one state it has been held that the limitation runs from the time of the negligent conduct, despite recognition of the fact that not even nominal damages are recoverable prior to the time harm is suffered. Thus, if the interval prior to the maturation of the harm exceeded the statutory period the cause of the action was barred.[10] The effect of this rule has frequently been to bar the plaintiff's action not only before he sustained any

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1. CONN. REV. GEN. STAT. § 8324 (Supp. 1949).
2. Pennsylvania Coal & Coke Corp. v. U.S., 70 F. Supp. 136 (Ct. Cl. 1947); Holton v. U.S., 65 F. Supp. 903 (Ct. Cl. 1946).
3. Boardman v. Burlingame, 123 Conn. 646, 197 Atl. 761 (1938).
4. Erskine v. Dykes, 158 Kan. 788, 150 P.2d 322 (1944).
5. Newby's Adm'r. v. Warren's Adm'r., 277 Ky. 338, 126 S.W.2d 436 (1939).
6. 63 HARV. L. REV. 1177 (1950).
7. E.g., Hooper v. Carver Lumber Co., 215 N.C. 308, 1 S.E.2d 818 (1939).
8. E.g., Theurer v. Condon, 209 P.2d 311 (Wash. 1949); White v. Schnoebelen, 91 N.H. 273, 18 A.2d 185 (1941).
9. See note 6 *supra*. See PROSSER, TORTS § 30 (1941). But see MCCORMICK, DAMAGES § 89 (1935).
10. E.g., Theurer v. Condon, 209 P.2d 311 (Wash. 1949) (period measured from time of fire, rather than from time of negligent installation of fuel tank).

perceptible harm, but before it was feasible for him to learn that the negligence had taken place.[11]

The contrary view is that no statute of limitation will run against a person until he is allowed by law to do the things to which the statute is directed.[12] A cause or right of action accrues, so as to start the statute running, when the right to institute and maintain a suit arises, and not before.[13] The accrual has been said to depend on the uniting of at least two elements—injury and damages.[14]

In the instant case the court construed the language of the statute[15] very strictly. The court felt the intention of the legislature was clearly manifested by the change of the language "injury or neglect" in a prior statute to "act or omission" in the revised statute.[16] The dissenting opinion expresses the belief that it is a legal "axiom" that a statute of limitation does not begin to run before a cause of action exists, *i.e.*, before a judicial remedy is available to the plaintiff.[17] Furthermore, it is asserted that the phrase "act or omission" is a synonym for "injury or neglect"; that the reason for the change of language in the revised statute was merely for uniformity of language between the various tort statutes; and therefore, the change was not significant.

It is a convenient rule that knowledge of a wrong is immaterial in most cases involving statutes of limitation where some harm would be apparent to one using ordinary care. Where the neglect is indeterminable before the injury (and surely in this case it was so) the inequities of depriving the plaintiff of an effective remedy should prevent a decision such as this.[18] Theoretically, an interpretation as in the instant case could open the door to fraud. A manufacturer or his retail outlet would only have to store any article for one year before sale to be completely absolved of liability. Surely this could not be the intent of the legislature.[19] The policy behind a limitations statute is to prevent one who "sleeps upon his rights" from bringing an action.[20] There can be no reason for penalizing one who "sleeps on a

11. Kennedy v. Johns-Manville Sales Corp., 135 Conn. 176, 62 A.2d 771 (1948); *cf.* Giambozi v. Peters, 127 Conn. 380, 16 A.2d 833 (1940). *Contra:* White v. Schnoebelen, 91 N.H. 273, 18 A.2d 185 (1941) (period commences when lightning causes damage, not when lightning rod negligently installed). *But see* Quinn v. Press, 135 Tex. 60, 140 S.W.2d 438 (1940).

12. Moore v. Montgomery Ward & Co., 171 Miss. 420, 156 So. 875, *aff'd*, 158 So. 148 (1934); *cf.* Carter v. Harlan Hospital Ass'n, 265 Ky. 452, 97 S.W.2d 9 (1936).

13. Eising v. Andrews, 66 Conn. 58, 33 Atl. 585 (1895); *accord*, Schemp v. Beardsley, 83 Conn. 34, 75 Atl. 141 (1910).

14. Montgomery v. Crum, 199 Ind. 660, 161 N.E. 251 (1938).

15. CONN. REV. GEN. STAT. § 8324 (Supp. 1949).

16. CONN. REV. GEN. STAT. § 6015 (Supp. 1930) ("from the date of the injury or neglect complained of"). CONN. REV. GEN. STAT. § 8324 (Supp. 1949) ("from the date of the act or omission complained of").

17. Dincher v. Marlin Firearms Co., 198 F.2d 821, 823 (2d Cir. 1951).

18. E.g., Aachen & Munich Fire Ins. Co. v. Morton, 156 Fed. 654 (6th Cir. 1907) *semble* (breach of contract).

19. 63 HARV. L. REV. 1177 (1950).

20. Consolidated Motor Lines, Inc. v. M. & M. Transportation Co., 128 Conn. 107, 20 A.2d 621 (1941).

right" he does not have, but this is the result of the decision in the instant case.

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STATUTE OF LIMITATIONS—DISABILITIES AS TOLLING LIMITATION PERIOD

A city ordinance provides that "no suit shall be maintained against the city . . . for any tort unless . . . written notice of such damage was, within thirty (30) days after receiving of the injury alleged given to the city attorney . . ."[1] In suit for personal injury caused by the negligence of a city employee, the city pleaded notice had not been given within the time allowed. Plaintiff requested permission to show that she was unconscious as a result of her injury for the full thirty day period, and could not fulfill the requirement as to notice. *Held*, one rendered unconscious by an act charged to have resulted from the negligence of the city, and who remains unconscious as a result of that act for the full period allowed for the giving of notice will not be precluded from recovery because of failure to comply with the statute. *City of Miami Beach v. Alexander*, 61 So. 2nd 917 (1952).

In many instances limitation statutes contain saving clauses or exceptions in favor of persons under physical or mental disability which toll the statute until the disability is removed.[2] In recent years the courts have loathed to interpose exceptions not expressly made by the legislature,[3] however reasonable or equitable such exceptions may seem.[4] The courts feel that such conduct would invade and obstruct the function and purpose of the legislative branch of government.[5] The result of this attitude is to bar a person from maintaining an action if he fails to give notice within the prescribed period regardless of his disability.[6]

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1. Miami Beach Code § 45 (1950).

2. Nesbit v. Topeka, 87 Kan. 394, 124 Pac. 166 (1912); Stoliker v. Boston, 204 Mass. 522, 90 N.E. 927 (1910); Ray v. St. Paul, 44 Minn. 340, 46 N.W. 675 (1890); Kunkel v St. Louis, 163 S.W.2d 1016 (Mo. 1942); Randolph v. City of Springfield, 302 Mo. 33, 257 S.W. 449 (1923); Chouteau v. Hoss, 118 Okla. 76, 246 Pac. 844 (1926); Gonyeau v. Milton, 48 Vt. 172 (1876); Born v. Spokane, 27 Wash. 719, 68 Pac. 386 (1902).

3. Barret v. Mobile, 129 Ala. 179, 30 So. 36 (1901); Williams v. Jacksonville, 118 Fla. 671, 160 So. 15 (1935); Buss v. Kemp Lumber Co., 23 N.M. 567, 170 Pac. 54 (1918); Rowray v. McCarthy, 48 Wyo. 108. 42 P.2d 54 (1935).

4. Bull v. United States, 295 U.S. 247 (1935); Williams v. Jacksonville, 118 Fla. 671, 160 So. 15 (1935); Butler v. Craig, 27 Miss. 628 (1854); Buss v. Kemp Lumber Co., 23 N.M. 567, 170 Pac. 54 (1918).

5. Williams v. Jacksonville, 118 Fla. 671, 160 So. 15 (1935); Federal Crude Oil Co. v. Yount-Lee Oil Co., 73 S.W.2d 969 (Tex. Civ. App. 1934), *cert. denied*, 295 U.S. 741 (1935); Pietsch v. Milbrath, 123 Wis. 647, 101 N.W. 388 (1904).

6. Johnson v. Fresno County, 64 Cal. App.2d 576, 149 P.2d 38 (1944); Reid v. Kansas City, 195 Mo. App. 457, 192 S.W. 1047 (1917); Haynes v. Seattle, 83 Wash. 51, 145 Pac. 73 (1914); Ransom v. South Bend, 76 Wash. 396, 136 Pac. 365 (1913).