
Legal Briefs

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Statute of limitations

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All states have statutes that require that lawsuits be brought within a certain period of time. These statutes, *limiting* the period of time in which one can bring suit, are referred to as “statutes of limitations.” Their purpose is to reduce the unfairness of defending actions after a substantial period of time has elapsed. With the passage of time, memories fade and documents are lost. A defendant will have greater difficulty defending a law suit 10 or 15 years after an event than within 2 or 3 years. Moreover, the law favors stability. The legal system seeks to avoid the disruption resulting from longstanding threats of legal action. While time periods differ from state to state, a 3-year time period for negligence actions is found in many states.

The law recognizes some special circumstances which would otherwise make the operation of the statute of limitations unfair. In some cases, the plaintiff may be under a disability making it impossible to bring suit within the required period of time. Children, those who are legally insane and those who are imprisoned, are denied use of the courts. Unless the law provided exceptions for these groups, the period in which suit can be brought might expire before the plaintiff was able to bring suit. In these circumstances, many states provide some additional period of time—such as one year, after the plaintiff becomes an adult, is judged competent, or is released from prison—in which to bring suit.

Another exception is provided for plaintiffs who are unaware of the damage caused by the defendant’s conduct. For example, the negligence of a title examiner would ordinarily not be discovered until the property was sold. In these cases, many states provide that the time periods provided in the statute of limitations begins to run when the injury is *discovered*, not when it happens. More difficult but similar questions arise in healthcare malpractice cases. Sometimes an injury may not be discovered for years. In addition, because most people do not have sufficient knowledge to evaluate a healthcare worker’s skill, a plaintiff may be aware there is an injury but may not know that it resulted from malpractice.

Cause of action

Unfortunately, once the courts recognize an exception there are those who try to take advantage of it. Because the statute of limitations does not expire until the plaintiff *knows* there is a cause of action, some plaintiff’s have argued that a plaintiff cannot “know” there was a cause of action until a jury rules. Courts have answered that while the statute of limitations does not run until the cause of action is discovered, the cause of action is discovered when a reasonably prudent person aware of the matters of which the plaintiff was aware should have discovered they had been harmed by the defendant’s conduct. (*Malapanis v Shirazi*, 21 Mass. App Ct. 378, 382-383, (1986)).

The policies behind statutes of limitation were illustrated by the case of *Segroves v Hartson* (776

F.Supp. 544, 1991 Dist. Ct. Oklahoma) involving an anesthesiologist. In May 1986, Gayle Segroves had a hysterectomy. Complications resulted causing Mrs. Segroves to fall into a semicomatose state within several days following the surgery. She never fully recovered. Mrs. Segroves brought suit against the anesthesiologist and received a jury verdict of \$2 million. After the trial, she settled with the anesthesiologist for \$1 million. As part of the settlement, a portion of the proceeds was used to create an annuity for the benefit of Mrs. Segroves' minor child, Wendy, who was 10 years old at the time of the surgery. Mrs. Segroves executed a release of any claims that she might have against the anesthesiologist.

In 1990, after Mrs. Segroves had settled with the anesthesiologist and given him a release of all her claims, the Oklahoma Supreme Court recognized a new cause of action. The cause was the "*loss of parental consortium*," a right of action by a minor child to recover for loss of the love, care, companionship, guidance, services, and society of a parent when the parent was negligently injured by a third party. Because Mrs. Segroves was confined to a wheelchair and suffered partial loss of memory, impairment of communication skills, as well as damage to her analytical and cognitive abilities, her daughter, Wendy, stayed with friends after the operation, then was placed with a foster family, and still later was placed in a children's home. Wendy did not return to live with her mother for 4 years.

After the Oklahoma Supreme Court's verdict, even though Mrs. Segroves had previously settled all of her rights against the anesthesiologist, Mrs. Segroves brought suit on behalf of Wendy for *loss of parental consortium* against the very same anesthesiologist whom she had already sued and with whom Mrs. Segroves had already settled. The anesthesiologist responded that not only did he have a release from Mrs. Segroves, but Wendy had been fully compensated because Wendy received an annuity. In *Segroves v Hartson*, the United States District Court for the Northern District of Oklahoma determined that notwithstanding the settlement and the release, Wendy Segroves was entitled to bring suit against and ultimately, if she proved her case, was entitled to recover from the anesthesiologist.

When a legislature makes law, it determines the date on which the law will first apply. The law can only become effective after it is passed by the legislature and signed by the governor. This gives citizens a chance to familiarize themselves with the new law and change their practices accordingly. Courts do not make law in the same way that a legislature does. Courts *interpret* the law. When a

court changes its interpretation, it is saying that its newest interpretation should have been and always was the law. Consequently, court decisions usually take effect retroactively. The Oklahoma Supreme Court had determined that under the principles of tort law, negligent conduct toward a parent may also cause damage to a child. Ironically, if Wendy had sued the anesthesiologist when Mrs. Segroves did, the court would have ruled against her because Oklahoma did not then recognize this cause of action.

Three factor test determines retroactive application

Courts are aware that when they overturn a decision they can sometimes cause hardship. Courts use a three factor test in determining whether particular decisions should have retroactive application. The factors considered are:

1. The holding must establish a new principle of law.
2. The merits of each case must be weighed by looking to the history of the rule in dispute, its purpose and effect, and whether retrospective application will promote or hinder the rule's operation.
3. Will retrospective application create the risk of producing substantially inequitable results?

Unless these factors otherwise indicate, decisions take effect retroactively. In applying these factors, the court determined that the first factor had clearly been met; the holding of the Oklahoma Supreme Court established a new principal of law. With regard to the second factor, the court determined that Oklahoma intended to allow an element of recovery that was not previously recoverable. Therefore, retroactive effect would further the purpose of the Oklahoma Supreme Court in creating the new cause of action.

The third factor was a question of basic fairness. The anesthesiologist argued, with some justification, that the parties had already considered the loss to Wendy by the manner in which the settlement was structured. The anesthesiologist argued that to allow recovery in this case was to allow double recovery. The court dismissed his concern by pointing out that the portion of the settlement set aside for Wendy was Mrs. Segroves' money and could have been structured in any way she directed. Insofar as the anesthesiologist's conduct was concerned, the court stated that the anesthesiologist was under a duty to use proper care or be answerable in damages. All the Oklahoma Supreme Court had done was to determine that the anesthesiologist was liable to a greater number of people for his

negligent actions. The court determined that this result would not be inequitable.

If Mrs. Segroves could have included a charge for Wendy's *loss of parental consortium* when she originally filed her suit, would she have been awarded more money? Some people argue that juries award a certain amount of money for a particular incident. Although in theory, recognizing additional persons who could be damaged by a particular negligent action would seem to increase the total amount a defendant pays. In fact, the jury seems to award a certain amount of money for the injury, and then allocates it among all of the different people who were injured. Obviously, the court did not agree with that argument. Moreover, the court ignored the fact that this had been a *settlement*. While there had been a larger jury award, the anesthesiologist agreed not to appeal it in ex-

change for the settlement. Would the anesthesiologist have settled if he knew Wendy was free to bring her own suit?

Finally, the anesthesiologist brought up the greatest unfairness of all, which was the very substantial period of time that had elapsed since the surgery. The surgery had occurred in May of 1986. Wendy's suit was not brought until nearly 5 years after the surgery had occurred. Wasn't this the very type of delay the statute of limitations was supposed to prevent? The court easily dismissed the anesthesiologist's complaints because the statute of limitations had an exception for children. When the injured party is a child, the claim must be brought within one year of the child's reaching majority age. Since Wendy was still a minor in 1991, the case was not barred by the statute of limitations.

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