CHAPTER 3

Limitation of Civil Actions

ARTICLE 1

General Provisions

**SECTION 15‑3‑20.** General rule as to time for commencement.

 (A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

 (B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing.

HISTORY: 1962 Code Section 10‑102; 1952 Code Section 10‑102; 1942 Code Section 356; 1932 Code Section 356; Civ. P. ‘22 Section 313; Civ. P. ‘12 Section 119; Civ. P. ‘02 Section 94; 1870 (14) 444 Section 97; 2002 Act No. 281, Section 1.

CROSS REFERENCES

Limitations of specific actions, see Sections 15‑3‑310 et seq.

Time limitation applicable to cause of action belonging to decedent which was not barred as of the date of his death, see Section 62‑3‑109.

Time limitation applicable to commencement of proceeding to determine whether decedent died testate or for commencing administration of his estate, see Section 62‑3‑108.

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Attorney General’s Opinions

No time limit exists on the collection of fines, fees and restitution imposed by the Court of General Sessions. 1994 Op Atty Gen, No. 94‑10, p. 29.

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1. In general

The statute of limitations affects remedies rather than rights of action. Gattis v. Chavez (D.C.S.C. 1976) 413 F.Supp. 33. Limitation Of Actions 165

The Supreme Court has held that the statute of limitations begins to run when the cause of action accrues and whenever there is a plaintiff who can sue and a defendant who can be sued. Macri v. Flaherty, 1953, 115 F.Supp. 739. Limitation Of Actions 43; Limitation Of Actions 70(1)

When the question arises as to whether an action is barred by the statute of limitations, then in view of this section [former Code 1962 Section 10‑102], the primary and practical inquiry is: When did the cause of action accrue? McCrady v. Jones (S.C. 1895) 44 S.C. 406, 22 S.E. 414.

Corporation was not estopped from claiming statute of limitations as defense to negligence claim under South Carolina law, although corporation’s counsel agreed to accept service, where parties never discussed applicable statute of limitations, and counsel did not agree to waive any statute of limitations defense. CSX Transp., Inc. v. Carolina Feed Mills, Inc. (C.A.4 (S.C.) 2002) 53 Fed.Appx. 676, 2002 WL 31819689, Unreported, certiorari denied 123 S.Ct. 2091, 538 U.S. 1034, 155 L.Ed.2d 1064. Limitation Of Actions 13

2. Applicability

Statute of limitations is not applicable to action for specific performance. Poston v Ingraham, 76 SC 167, 56 SE 780 (1907). Miller v Saxton, 75 SC 237, 55 SE 310 (1906).

In a diversity action in federal court, the statute of limitations of the forum state is to be applied. Gattis v. Chavez (D.C.S.C. 1976) 413 F.Supp. 33.

Current, rather than former, version of rule governing commencement of civil actions controlled in wrongful death and negligence action involving dispute as to statute of limitations, notwithstanding rule allowing for application of a former rule if court is of the opinion that application of a new rule to a pending action would not be feasible or would work an injustice, where action was not pending when rule governing commencement of actions changed. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Death 39; Limitation Of Actions 118(2)

In view of former Code 1962 Section 10‑150, this section [former Code 1962 Section 10‑102] is applicable to an action by the State suing in its sovereign capacity. State ex rel. State Highway Dept. v. Piedmont & N. Ry. Co. (S.C. 1938) 186 S.C. 49, 194 S.E. 631.

The section does not apply in favor of one in possession of land under permission of one holding the legal title. Shute v. Shute (S.C. 1909) 82 S.C. 264, 64 S.E. 145.

3. “Cause of action”

“The cause of action” is described as being a legal wrong threatened or committed against the complaining party. State ex rel. State Highway Dept. v. Piedmont & N. Ry. Co. (S.C. 1938) 186 S.C. 49, 194 S.E. 631.

4. Computation of statutory period

The day of the accrual of the cause of action is excluded in computing the statutory period under former Code 1962 Section 10‑2, construed in connection with the South Carolina statute of limitations. Macri v. Flaherty, 1953, 115 F.Supp. 739.

5. Tolling statute

Rule of civil procedure governing cases stricken from docket by agreement did not apply in lot owners’ action against land developer, which action was stricken due to developer’s bankruptcy filing, and thus owners were not required to comply with the rule’s tolling provisions in order to obtain restoration of their action after termination of bankruptcy stay; action was stricken due to bankruptcy, not pursuant to an agreement between the parties, owners filed their action within the applicable statute of limitations, so that there was nothing to toll, and the striking of a lawsuit due to bankruptcy was not equivalent to a dismissal, as required to implicate the rule’s statute of limitations requirements. Goodwin v. Landquest Development, LLC (S.C.App. 2015) 414 S.C. 623, 779 S.E.2d 826, rehearing granted, certiorari denied. Trial 14

Bankruptcy statute governing extension of time to commence or continue a nonbankruptcy action after termination of stay did not apply in lot owners’ action against land developer, which action was stricken due to developer’s bankruptcy filing, and thus owners were not required to comply with the statute’s tolling provisions to obtain restoration of their action after termination of bankruptcy stay, where owners originally commenced their action within the applicable statute of limitations and before the automatic stay took effect, so that the statute of limitations was no longer “applicable nonbankruptcy law” fixing “a period for commencing or continuing a civil action.” Goodwin v. Landquest Development, LLC (S.C.App. 2015) 414 S.C. 623, 779 S.E.2d 826, rehearing granted, certiorari denied. Bankruptcy 2157

Three‑year statute of limitations for negligence and wrongful death action against nursing home was not equitably tolled in case in which personal representative of deceased patient attempted service by sheriff on nursing home’s registered agent before making delayed personal service on administrator of entity that purchased nursing home and that was located at same address, where personal representative did not diligently investigate the relationship between nursing home and the purchasing entity soon after filing to see if personal service could be accomplished at site and, after determining that nursing home’s registered agent was not at the provided address, personal representative did not seek leave from the court to effect service by publication. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Death 39; Limitation Of Actions 104.5

Where plaintiff’s right of action depends upon some act to be performed by him preliminary to commencing suit, and he is under no restraint or disability in the performance of such act, he cannot suspend indefinitely the running of the statute of limitations by delaying the performance of the preliminary act, for it is not the policy of the law to put it within the power of a party to toll the statute of limitations. State ex rel. State Highway Dept. v. Piedmont & N. Ry. Co. (S.C. 1938) 186 S.C. 49, 194 S.E. 631.

6. Pleading statute

The statute cannot avail unless so pleaded. Jones v Boykin, 70 SC 309, 49 SE 877 (1904). Foggette v Gaffney, 33 SC 303, 12 SE 260 (1890).

Statute of limitations must be pleaded as an affirmative defense. Gattis v. Chavez (D.C.S.C. 1976) 413 F.Supp. 33.

Nursing home’s failure to maintain a registered agent’s current address with the Secretary of State after nursing home was sold was not conduct warranting application of equitable estoppel doctrine to preclude nursing home’s assertion of the statute of limitations as a defense in negligence and wrongful death action that personal representative brought on behalf of deceased patient, where nursing home’s failure to maintain a registered address was not intended to defraud or conceal facts from personal representative, nursing home had no knowledge personal representative would rely on the information to attempt service, and administrator of entity that purchased nursing home told personal representative’s investigator she was authorized to accept service for nursing home. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Death 39; Limitation Of Actions 13

For a defendant to be estopped from asserting statute of limitations defense on grounds that the delay that otherwise would give operation to the statute had been induced by the defendant’s conduct, the defendant’s conduct may involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to forbear exercising the right to sue. Kleckley v. Northwestern Nat. Cas. Co. (S.C. 2000) 338 S.C. 131, 526 S.E.2d 218. Limitation Of Actions 13

Corporation did not waive its statute of limitations defense to negligence claim under South Carolina law by failing to assert insufficiency of service of process in its answer. CSX Transp., Inc. v. Carolina Feed Mills, Inc. (C.A.4 (S.C.) 2002) 53 Fed.Appx. 676, 2002 WL 31819689, Unreported, certiorari denied 123 S.Ct. 2091, 538 U.S. 1034, 155 L.Ed.2d 1064. Federal Civil Procedure 755

7. Burden of proof

Under South Carolina law, the burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Limitation Of Actions 195(3); Limitation Of Actions 199(1)

Since the statute of limitations is one of grace, permitting avoidance of liability, the burden of establishing it is on defendant. Gattis v. Chavez (D.C.S.C. 1976) 413 F.Supp. 33. Limitation Of Actions 182(2); Limitation Of Actions 195(3)

Under this section [former Code 1962 Section 10‑102], where the sale of a decedent’s land, sold to pay debts, is set aside for want of proper notice, and the purchaser presents a note of decedent which the heirs claim is barred by limitations, the burden of proving that fact is on the heirs. Moore v. Smith (S.C. 1888) 29 S.C. 254, 7 S.E. 485.

8. Time of accrual in particular circumstances

In South Carolina, the important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer; if, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Limitation Of Actions 95(1)

In an action for medical malpractice, the statute of limitations commences to run when the plaintiff discovered, or with reasonable efforts should have discovered, the act of malpractice. Gattis v. Chavez (D.C.S.C. 1976) 413 F.Supp. 33. Limitation Of Actions 95(12)

In an action by the State Highway Department against a railroad company to recover 50 per cent of the cost of construction of a bridge over the company’s tracks, the court held the action was barred by the appropriate statute of limitations, for the cause of action arose when defendant company refused to pay its share, not from a later time when plaintiff sent the bill of cost to defendant. State ex rel. State Highway Dept. v. Piedmont & N. Ry. Co. (S.C. 1938) 186 S.C. 49, 194 S.E. 631. Limitation Of Actions 11(1)

Cause of action in favor of an endorser against a prior accommodation endorser for money paid in satisfaction of a note after default, accrues when the payment is made and not at the time his liability attaches. McCrady v. Jones (S.C. 1895) 44 S.C. 406, 22 S.E. 414. Limitation Of Actions 56(3)

9. Statutes of limitation

An action is commenced upon filing the summons and complaint, if service is made within the statute of limitations, and, if filing but not service is accomplished within the statute of limitations, then service must be made within 120 days of filing. Mims ex rel. Mims v. Babcock Center, Inc. (S.C. 2012) 399 S.C. 341, 732 S.E.2d 395. Action 64; Limitation of Actions 118(2); Limitation of Actions 119(3)

Service of amended complaint in disabled plaintiff’s personal injury action against treatment center and others was timely, even though plaintiff’s original complaint was filed nearly one year earlier but was never served, where service of amended complaint was completed within statute of limitations. Mims ex rel. Mims v. Babcock Center, Inc. (S.C. 2012) 399 S.C. 341, 732 S.E.2d 395. Limitation of Actions 119(3)

10. Laches

Determination of whether laches has been established is largely within the discretion of the trial court. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Common Interest Communities 77; Common Interest Communities 155

Party seeking to establish laches must show (1) delay; (2) unreasonable delay; and (3) prejudice. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Equity 84

Under the doctrine of “laches,” if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Equity 72(1)

“Laches” is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Equity 72(1)

**SECTION 15‑3‑30.** Exceptions where defendant is out of State.

 If when a cause of action shall accrue against any person he shall be out of the State, such action may be commenced within the terms in this chapter respectively limited after the return of such person into this State. And if, after such cause of action shall have accrued, such person shall depart from and reside out of this State or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

HISTORY: 1962 Code Section 10‑103; 1952 Code Section 10‑103; 1942 Code Section 358; 1932 Code Section 358; Civ. P. ‘22 Section 341; Civ. P. ‘12 Section 147; Civ. P. ‘02 Section 121; 1870 (14) 448 Section 123.

CROSS REFERENCES

Service by publication or out‑of‑state, see Sections 15‑9‑710 et seq.

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Limitations on the Tolling Statute: A Temporary Solution for a More Permanent Problem in South Carolina. 50 S.C. L. Rev. 861, Summer 1999.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

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Validity 1

1. Validity

Statute tolling limitations period for actions against nonresidents was not unconstitutional as impermissible burden on interstate commerce, as statute was inapplicable when nonresident defendant was amenable to personal service of process and defendant could be brought within personal jurisdiction of state courts. Alday v. Tecphy Div. Firminy, 1998, 10 F.Supp.2d 562, affirmed 182 F.3d 906. Commerce 80; Limitation Of Actions 4(2)

Statute providing for tolling of statute of limitations on claims against nonresident defendants does not violate commerce clause; statute has been appropriately limited by case which held that statute does not apply when nonresident defendant is amenable to personal service and can be brought within personal jurisdiction of South Carolina courts, and by case which held that statute applies only when plaintiff could not discover defendant’s whereabouts. Blyth v. Marcus (S.C. 1999) 335 S.C. 363, 517 S.E.2d 433. Commerce 80; Limitation Of Actions 4(2)

The equal protection clause of the Fourteenth Amendment is not violated by Section 15‑3‑30 because it treats nonresidents differently than residents. A rational distinction exists between resident and nonresident defendants, since a plaintiff who is unable to locate a resident defendant may obtain service by publication in order to satisfy the appropriate statute of limitations, but a plaintiff who cannot locate a nonresident defendant has no such recourse. Harris v. Dunlap (S.C. 1985) 285 S.C. 226, 328 S.E.2d 908.

2. In general

The provisions in this section [former Code 1962 Section 10‑103] pertaining to the absence of a person after the accrual of the cause of action shows that the legislature intended that a creditor should have the full period fixed by the particular statute of limitation applicable to the case, while his debtor is within reach of the process of the court, to bring his action, except where his temporary absence was for a period less than one year. Burrows v French, 34 SC 165, 13 SE 355 (1891). Latimer v Trowbridge, 52 SC 193, 29 SE 634 (1898).

Statute of repose contained in Section 15‑3‑545 was not tolled by Section 15‑3‑30 when defendant doctor moved from the state in 1984. Langley v. Pierce (C.A.4 (S.C.) 1994) 15 F.3d 312.

Limitations period for actions against nonresidents may be tolled when name and location of defendant is not known to plaintiff and is not able to be discovered by reasonable methods before statute of limitations runs. Alday v. Tecphy Div. Firminy, 1998, 10 F.Supp.2d 562, affirmed 182 F.3d 906. Limitation Of Actions 87(3)

Although defendant corporation was not a South Carolina corporation and had no registered agent in South Carolina, the statute of limitations was not tolled where plaintiff had no difficulty locating defendant before the expiration of the statute of limitations. Witt v. American Trucking Associations, Inc., 1994, 860 F.Supp. 295.

Pedestrian injured in automobile accident was not reasonably required to know defendant driver’s out‑of‑state address prior to expiration of three‑year statute of limitations, and thus, limitations period was tolled where driver moved out of state 12 days prior to expiration of the statute of limitations; although sheriff’s return of affidavit of no service of summons & complaint indicated an out‑of‑state address, there was no indication in the appendix as to the exact date on which the driver established residency there. Rafsanjoni v. Doe (S.C. 2002) 348 S.C. 251, 559 S.E.2d 841. Limitation Of Actions 85(2)

Statutory tolling provisions applicable to claims against defendant who is out of state are inapplicable when nonresident defendant is amenable to personal service and may be brought within jurisdiction of South Carolina courts; however, tolling does apply when defendant’s name and location are not known to plaintiff. Tiralango v. Balfry (S.C. 1999) 335 S.C. 359, 517 S.E.2d 430, rehearing denied. Limitation Of Actions 87(3)

“Known to the plaintiff,” for purposes of rule that statute of limitations is not tolled on claim against out‑of‑state defendant amenable to personal jurisdiction if defendant’s name and location is known to plaintiff, is objective knowledge requirement; thus, statute is tolled when plaintiff did not, and could not reasonably have known whereabouts of defendant. Tiralango v. Balfry (S.C. 1999) 335 S.C. 359, 517 S.E.2d 430, rehearing denied. Limitation Of Actions 87(3)

Statute of limitations on claim against non‑resident defendant arising from auto accident was not tolled, even though plaintiff did not know defendant’s address until one month after accident, when plaintiff requested and received accident report containing that address; address was at all times available to plaintiff. Tiralango v. Balfry (S.C. 1999) 335 S.C. 359, 517 S.E.2d 430, rehearing denied. Limitation Of Actions 87(3)

Rule 3(b), SCRCP does not impliedly repeal Section 15‑3‑30; Section 15‑3‑30 and Rule 3(b), SCRCP are reconcilable and there is no conflict in that the statute, when applicable, becomes operable prior to the commencement requirement of the rule. Blyth v. Marcus (S.C.App. 1996) 322 S.C. 150, 470 S.E.2d 389, rehearing denied, certiorari denied.

In an action for injuries sustained in an automobile collision, the statute of limitations was tolled under Section 15‑3‑30 from the date the defendant left the state of South Carolina and absented himself for a period in excess of one year, notwithstanding the fact that the defendant remained amenable to substitute service on the Chief Highway Commissioner as his statutory agent under Section 15‑9‑350, et seq. Cutino v. Ramsey (S.C. 1985) 285 S.C. 74, 328 S.E.2d 72. Limitation Of Actions 85(2)

If the jury finds that the defendant was absent from the State within the meaning of this section [former Code 1962 Section 10‑103], the plaintiff is then protected from the defendant’s plea of the statute of limitations. Latimer v. Trowbridge (S.C. 1898) 52 S.C. 193, 29 S.E. 634, 68 Am.St.Rep. 893.

The provisions of this section [former Code 1962 Section 10‑103] relate only to the absentee and have no reference whatever to any other person who may be liable to suit, even upon the same cause of action accruing at the same time. Arthur v. Screven (S.C. 1893) 39 S.C. 77, 17 S.E. 640.

3. Applicability

The tolling statute is inapplicable in cases in which the problem that the statute was meant to address is not present; tolling statute for out‑of‑state defendants is inapplicable to adverse possession claims, since South Carolina’s separate comprehensive statutory scheme for the recovery of real property obviates the need for a tolling statute against out‑of‑state defendants in adverse possession cases; specifically South Carolina Code Section 15‑67‑30 authorizes summons and service by publication on parties outside of the state in actions to determine adverse claims. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1992) 978 F.2d 1334, certiorari denied 113 S.Ct. 1415, 507 U.S. 972, 122 L.Ed.2d 785.

Statute tolling limitations period for actions against nonresidents did not toll running of limitations period for plaintiff, where plaintiffs’ attorney stated that he did not learn of existence and involvement of nonresident defendant until approximately 10 days before statute of limitations ran, plaintiffs filed complaint within limitations period, defendant was amenable to service of process under the Hague Convention, and plaintiffs simply failed to serve defendant on time. Alday v. Tecphy Div. Firminy, 1998, 10 F.Supp.2d 562, affirmed 182 F.3d 906. Limitation Of Actions 87(3)

The Supreme Court has held that this section [former Code 1962 Section 10‑103] applies not only to a resident of this State who has gone abroad temporarily and then returns, but also to one who has never been a resident, and this rule will be applied by a Federal court, although the plaintiff, under former Code 1962 Section 10‑431, could have had the summons and complaint served upon the Chief Highway Commissioner. Macri v. Flaherty, 1953, 115 F.Supp. 739.

Ten‑year time period in which judgment creditor had to execute on federal judgment was not tolled during the period of time that judgment debtor was out of South Carolina; statute that tolled limitations period for causes of action that accrued against people that were out of State did not apply to execution of an already obtained judgment. Home Port Rentals, Inc. v. Moore (S.C. 2006) 369 S.C. 493, 632 S.E.2d 862. Creditors’ Remedies 345

In an action arising from a personal injury, the plaintiff’s failure to commence the action before the 6‑year statute of limitations would have ordinarily run did not render his claim time‑barred where the defendant left South Carolina within 1 year of the accident and he continued residing outside the state, and Section 15‑3‑30 applied to toll the statute of limitations. Blyth v. Marcus (S.C.App. 1996) 322 S.C. 150, 470 S.E.2d 389, rehearing denied, certiorari denied.

Under this section [former Code 1962 Section 10‑103] a party who removed from the State after a cause of action had accrued in his favor was not entitled to deduct the time of his absence from the State from the time limited for the commencement of the action, since the statute affords no protection to a person in whose favor a cause of action has accrued. Maccaw v. Crawley (S.C. 1901) 59 S.C. 342, 37 S.E. 934.

This section [former Code 1962 Section 10‑103] applies to one who was a party to a suit and was absent from the State over one year prior to a proceeding to revive the decree therein. Morgan v. Morgan (S.C. 1895) 45 S.C. 323, 23 S.E. 64.

This section [former Code 1962 Section 10‑103] applies not only to a resident of the State who has gone abroad temporarily and then returns, but also to one who has never been a resident and who comes for the first time within its limits. Burrows v. French (S.C. 1891) 34 S.C. 165, 13 S.E. 355, 27 Am.St.Rep. 811.

4. Question of fact

The question whether or not a person is absent from the State, within the meaning of this section [former Code 1962 Section 10‑103], is a question of fact for the jury. Latimer v. Trowbridge (S.C. 1898) 52 S.C. 193, 29 S.E. 634, 68 Am.St.Rep. 893.

5. Multiple defendants

In an action to foreclose a mortgage, a defendant who claimed title through an execution sale could plead the bar of the statute of limitations, though the mortgagor was unable to do so by reason of absence from the State. Arthur v. Screven (S.C. 1893) 39 S.C. 77, 17 S.E. 640.

6. Foreign corporations

Section 15‑3‑30 does not apply to toll the statute of limitations when a foreign corporation has a registered agent in South Carolina. Dandy v. American Laundry Machinery Inc. (S.C. 1990) 301 S.C. 24, 389 S.E.2d 866.

7. Long‑arm statute

Under the express language of the tolling statute, Section 15‑3‑30, and in the absence of specified exceptions, the tolling statute is not rendered inapplicable by virtue of the fact that the defendant is amenable to personal service under the long‑arm statute, Section 36‑2‑803. Harris v. Dunlap (S.C. 1985) 285 S.C. 226, 328 S.E.2d 908.

**SECTION 15‑3‑40.** Exceptions as to persons under disability.

 If a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title, except for a penalty or forfeiture or against a sheriff or other officer for an escape, is at the time the cause of action accrued either:

 (1) within the age of eighteen years; or

 (2) insane;

the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended:

 (a) more than five years by any such disability, except infancy; nor

 (b) in any case longer than one year after the disability ceases.

HISTORY: 1962 Code Section 10‑104; 1952 Code Section 10‑104; 1942 Code Section 359; 1932 Code Section 359; Civ. P. ‘22 Section 342; Civ. P. ‘12 Section 148; Civ. P. ‘02 Section 122; 1870 (14) 448 Section 124; 1918 (30) 715; 1976 Act No. 695, Section 1; 1988 Act No. 352, Section 1; 1996 Act No. 234, Section 1.

CROSS REFERENCES

Application of this section to an action for damages which may be instituted under the Tort Claims Act, see Section 15‑78‑100.

Application of this section to the statute of limitations applicable to claims brought under the Tort Claims Act, see Section 15‑78‑110.

Inapplicability of this section to the tolling of medical malpractice actions by reason of minority, see Section 15‑3‑545.

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S.C. Jur. Limitation of Actions Section 67, Tacking of Disabilities.

S.C. Jur. Seduction Section 15, Statute of Limitations.

Treatises and Practice Aids

28 Causes of Action 2d 1, Cause of Action Against a Landlord for Lead Paint Poisoning.

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1. In general

The object of this section [former Code 1962 Section 10‑104] is to limit the extension allowed in cases of disability arising from insanity or imprisonment to a period of five years, while in cases of disability arising from infancy the extension might be for a much longer period; but at the same time to declare that the time should not be extended, in any case, for a longer period than one year after the disability ceases. Miller v. Dickert (S.C. 1972) 259 S.C. 1, 190 S.E.2d 459.

Action subject to limitations of former Code 1962 Section 10‑145. If an action subject to the limitations of former Code 1962 Section 10‑145 is commenced neither within two years after the accrual of the cause of action, nor within one year after the disability listed in this section [formerCode 1962 Section 10‑104] is removed, the plea of the statute of limitations should be sustained. Miller v. Dickert (S.C. 1972) 259 S.C. 1, 190 S.E.2d 459.

2. Construction

Tolling provision of statute providing exceptions to limitation of civil actions as to persons under disability does not apply to three‑year statute of limitations for medical malpractice actions. Sims v. Amisub of South Carolina, Inc. (S.C. 2015) 414 S.C. 109, 777 S.E.2d 379, rehearing denied. Limitation of Actions 70(1)

General provisions of limitations chapter setting forth exceptions as to persons under disability, including “insane” persons, did not apply to toll the statute of limitations for medical malpractice action of patient who had alleged mental incompetency; the only tolling allowed under medical malpractice statute of limitations was for minors. Sims v. Amisub of South Carolina, Inc. (S.C.App. 2014) 408 S.C. 202, 758 S.E.2d 187, rehearing denied, certiorari granted, affirmed 414 S.C. 109, 777 S.E.2d 379. Limitation of Actions 72(1); Limitation of Actions 74(1)

The express language of the disability tolling statute allows the time for commencement of an action to be “extended” by a maximum of five years; it does not set a five year limit for the commencement of tort actions against the state by a plaintiff who is laboring under a disability other than infancy. Harrison v. Bevilacqua (S.C. 2003) 354 S.C. 129, 580 S.E.2d 109. Limitation Of Actions 70(1)

The six‑year statute of limitations on wrongful death actions, as established by Section 15‑3‑530(6), was not tolled by the minority of the decedent’s daughter under Section 15‑3‑40, since Section 15‑3‑40 applies to any person “entitled to bring an action,” and the daughter, during her minority, was neither the administratrix nor the executrix of her father’s estate, and was therefore not a person entitled to maintain a wrongful death action under Section 15‑51‑20. Wyatt v. Spartan Mill Co. (S.C. 1985) 287 S.C. 334, 338 S.E.2d 341.

No extension after one year from time disability ceases. This section [Code 1962 Section 10‑104] does not provide for any extension of the time allowed after the lapse of one year from the time the disability ceases. Miller v. Dickert (S.C. 1972) 259 S.C. 1, 190 S.E.2d 459.

The word “action” in this section [former Code 1962 Section 10‑104] should not have such a narrow construction as to be held applicable only to a proceeding commenced by service of a summons. Lyerly v. Yeadon (S.C. 1937) 183 S.C. 256, 190 S.E. 737.

The clause near the end of the section, providing that in no case shall the time be extended for a longer period than one year after the disability ceases, applies to all the three classes of disability referred to in this section [former Code 1962 Section 10‑104]. Fricks v. Lewis (S.C. 1887) 26 S.C. 237, 1 S.E. 884.

The time of disability cannot be extended more than five years by disability arising from insanity or imprisonment. Fricks v. Lewis (S.C. 1887) 26 S.C. 237, 1 S.E. 884.

Sections 15‑3‑370 and 15‑3‑40 do not include Indians in legislatively defined class of disabled persons, and therefore, disability statutes do not bar tribe’s claim to tract of land. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1989) 865 F.2d 1444, certiorari denied 109 S.Ct. 3190, 491 U.S. 906, 105 L.Ed.2d 699.

3. Applicability

Section inapplicable to minor beneficiary under Wrongful Death Act. Under the South Carolina Wrongful Death Act, the action is solely vested in the executor or administrator of the deceased [former Code 1962 Section 10‑1952]. Therefore, as minor beneficiaries would not be “entitled to bring an action” this section [former Code 1962 Section 10‑104] would not apply. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243.

The clause in this section [former Code 1962 Section 10‑104] reading, “the time of such disability is not a part of the time limited for the commencement of the action,” applies to all the three classes of cases dealt with in this section [former Code 1962 Section 10‑104]. If the section had ended with the clause quoted above, the necessary result would be that, practically, the statute of limitations would not commence to run against a person laboring under either of these three classes of disability until such disability was removed. Fricks v. Lewis (S.C. 1887) 26 S.C. 237, 1 S.E. 884.

4. Infants

All persons, whether laboring under any disability or not, must be allowed the full period of limitation from the accrual of the cause of action, but in the case of infants the time allowed may be extended over a much longer period, but such extension cannot be for a longer period than one year after his disability ceases. Monteith v Harby, 193 SC 349, 8 SE2d 629 (1940). Fricks v Lewis, 26 SC 237, 1 SE 884 (1887).

Two‑year limitations period governing servicemember’s claim against city for negligent supervision arising out of sexual abuse that occurred while servicemember participated in event sponsored by city fire department, which abuse allegedly occurred while servicemember was minor, began to run when servicemember reached age 18. Doe v. City of Duncan (S.C.App. 2016) 417 S.C. 277, 789 S.E.2d 602, rehearing denied. Limitation of Actions 72(1)

The 1988 amendment of the 1986 Tort Claim Act, Sections 15‑78‑10 et seq., adding a tolling provision relating to minors, applies prospectively; consequently, the tolling provision only applies to actions arising on or after the date of the amendment, March 14, 1988. Green By and Through Green v. Lewis Truck Lines, Inc. (S.C. 1993) 315 S.C. 253, 433 S.E.2d 844, rehearing denied.

A son’s personal injury action against his parents, arising from alleged sexual abuse which took place more than 20 years before he brought his action, was barred by the 6‑year statute of limitations where the son, who had long since reached his majority, did not claim that he was unaware of the abuse, but merely stated that he had only recently been diagnosed with “delayed stress syndrome” and fully realized the extent of his injuries. Doe v. R.D. (S.C. 1992) 308 S.C. 139, 417 S.E.2d 541. Limitation Of Actions 95(4.1)

Section 15‑3‑40 did not toll,until the plaintiff reached the age of 18, the 2‑year period prescribed by Section 15‑78‑110 for the commencement of an action, were the plaintiff’s action accrued before the effective date of the statutes’ amendments which tolled the time for the bringing of an action under the Tort Claims Act by a person “within the age of 18 years” “at the time the cause of action accrued.” Searcy v. South Carolina Dept. of Educ., Transp. Div. (S.C.App. 1991) 303 S.C. 544, 402 S.E.2d 486, certiorari denied.

All persons, whether laboring under any disability or not, must be allowed the full period of the statute of limitations from the accrual of the cause of action, but in the case of infants the time allowed may be extended over a much longer period, but such extension cannot be for a longer period than one year after his disability ceases. Miller v. Dickert (S.C. 1972) 259 S.C. 1, 190 S.E.2d 459.

Under this section [former Code 1962 Section 10‑104] a beneficiary of a trust estate, who at the age of thirteen joined in the execution of a discharge of the trustee, cannot, five years after attaining her majority, maintain an action against the estate of the trustee for an alleged balance due from the trust estate, the limitation of such actions being six years. Anderson v. Simms (S.C. 1888) 29 S.C. 247, 7 S.E. 289, 13 Am.St.Rep. 711.

The contention was made that, in cases of infancy, the statute of limitations does not commence to run until after the infant attains his majority, but the court held that the section could not be so construed. Fricks v. Lewis (S.C. 1887) 26 S.C. 237, 1 S.E. 884.

5. Insanity

Confusion or disorientation suffered by a victim of an automobile accident did not constitute “insanity” under the tolling statute (Section 15‑3‑40) where she did not lose consciousness or sustain any type of head injury in the accident. Wiggins v. Edwards (S.C. 1994) 314 S.C. 126, 442 S.E.2d 169. Limitation Of Actions 74(1)

6. Physical disability

A physical disability allegedly suffered by a victim of an automobile accident did not toll the statute of limitations under Section 15‑3‑40; any amendment to the disabilities provided in the tolling statute is a matter for the legislature. Wiggins v. Edwards (S.C. 1994) 314 S.C. 126, 442 S.E.2d 169.

**SECTION 15‑3‑50.** Disability must exist when right accrued.

 No person shall avail himself of a disability unless it existed when his right of action accrued.

HISTORY: 1962 Code Section 10‑105; 1952 Code Section 10‑105; 1942 Code Section 364; 1932 Code Section 364; Civ. P. ‘22 Section 347; Civ. P. ‘12 Section 153; Civ. P. ‘02 Section 127; 1870 (14) 448 Section 129.

LIBRARY REFERENCES

Westlaw Key Number Searches: 241k70 to 241k78.

Limitation of Actions 70 to 78.

C.J.S. Limitations of Actions Sections 105 to 117, 119.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adverse Possession Section 39, Ten‑Year Statute of Limitation.

S.C. Jur. Limitation of Actions Section 65, Time of Onset of Disability.

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Limitation of Actions. 25 S.C. L. Rev. 437.

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The common‑law disability of coverture has been completely abolished in South Carolina. McCall v. Bangs (S.C. 1974) 262 S.C. 657, 207 S.E.2d 91. Marriage And Cohabitation 411

A statute of limitations is applicable between husband and wife during coverture. McCall v. Bangs (S.C. 1974) 262 S.C. 657, 207 S.E.2d 91. Limitation Of Actions 73(4)

Even if coverture constituted a disability, a wife’s claim against her husband’s estate for payment of an alleged debt based on a note signed by her husband and assigned to her before their marriage would still be barred by the statute of limitations because her right of action accrued before her coverture. McCall v. Bangs (S.C. 1974) 262 S.C. 657, 207 S.E.2d 91.

**SECTION 15‑3‑60.** Effect of two or more disabilities.

 When two or more disabilities shall coexist at the time the right of action accrues the limitation shall not attach until they all be removed.

HISTORY: 1962 Code Section 10‑106; 1952 Code Section 10‑106; 1942 Code Section 365; 1932 Code Section 365; Civ. P. ‘22 Section 348; Civ. P. ‘12 Section 154; Civ. P. ‘02 Section 128; 1870 (14) 448 Section 130.

LIBRARY REFERENCES

Westlaw Key Number Searches: 241k70 to 241k78.

Limitation of Actions 70 to 78.

C.J.S. Limitations of Actions Sections 105 to 117, 119.

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S.C. Jur. Limitation of Actions Section 66, Multiple Disabilities.

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**SECTION 15‑3‑80.** Suits by and against enemy aliens.

 When a person shall be an alien subject or citizen of a country at war with the United States the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

HISTORY: 1962 Code Section 10‑108; 1952 Code Section 10‑108; 1942 Code Section 361; 1932 Code Section 361; Civ. P. ‘22 Section 344; Civ. P. ‘12 Section 150; Civ. P. ‘02 Section 124; 1870 (14) 448 Section 126.

LIBRARY REFERENCES

Westlaw Key Number Searches: 24k16; 241k113.

Aliens 16.

Limitation of Actions 113.

C.J.S. Aliens Sections 47 to 52.

C.J.S. Limitations of Actions Section 127.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms War Section 1 , Introductory Comments.

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**SECTION 15‑3‑90.** Effect of reversal of judgment.

 If an action shall be commenced within the time prescribed therefor and a judgment therein be reversed on appeal the plaintiff or, if he die and the cause of action survive, his heirs or representative may commence a new action within one year after the reversal.

HISTORY: 1962 Code Section 10‑109; 1952 Code Section 10‑109; 1942 Code Section 362; 1932 Code Section 362; Civ. P. ‘22 Section 345; Civ. P. ‘12 Section 151; Civ. P. ‘02 Section 125; 1870 (14) 448 Section 127.

CROSS REFERENCES

Survival of right of action, see Section 15‑5‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k130.

Limitation of Actions 130.

C.J.S. Limitations of Actions Section 240.

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Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

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Where the trial court dismissed a medical malpractice action, and on appeal, the Court of Appeals affirmed the trial court’s order but modified it to dismissal without prejudice, Section 15‑3‑90 was not applicable because no judgment had been reversed on appeal. When an action is dismissed without prejudice, the statute of limitations will bar another suit if the statute has run in the interim. Davis v. Lunceford (S.C. 1985) 287 S.C. 242, 335 S.E.2d 798. Limitation Of Actions 130(12)

**SECTION 15‑3‑100.** Effect of stay of action by injunction or statutory prohibition.

 When the commencement of an action shall be stayed by injunction or statutory prohibition the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

HISTORY: 1962 Code Section 10‑110; 1952 Code Section 10‑110; 1942 Code Section 363; 1932 Code Section 363; Civ. P. ‘22 Section 346; Civ. P. ‘12 Section 152; Civ. P. ‘02 Section 126; 1870 (14) 448 Section 128.

CROSS REFERENCES

Proceedings below in appeals regarding injunctions, see Sections 14‑3‑330 and 14‑3‑450.

LIBRARY REFERENCES

Westlaw Key Number Searches: 241k104.5; 241k111.

Limitation of Actions 104.5, 111.

C.J.S. Limitations of Actions Sections 85 to 86, 121, 125.

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Where an order dated September 2, 1944, appointing a receiver for a corporation but not specifying any time in which claims were to be filed, enjoined creditors from prosecuting their claims by suit or otherwise except in that proceeding, and where the creditors complied with a later order requiring them to file their claims on or before September 1, 1948, the receiver could not plead that the statute of limitations barred the claim of such creditors. Willcox v. Riverview Memorial Park (S.C. 1949) 214 S.C. 527, 53 S.E.2d 648.

**SECTION 15‑3‑110.** Limitations are not applicable to bills, notes or other evidences of debt of moneyed corporations.

 This chapter shall not affect actions to enforce the payment of bills, notes or other evidences of debt issued by moneyed corporations or issued or put in circulation as money.

HISTORY: 1962 Code Section 10‑111; 1952 Code Section 10‑111; 1942 Code Section 366; 1932 Code Section 366; Civ. P. ‘22 Section 349; Civ. P. ‘12 Section 155; Civ. P. ‘02 Section 129; 1870 (14) 449 Section 131.

CROSS REFERENCES

Action against directors or stockholders of monied corporation or banking association, see Section 15‑3‑530.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k25.

Limitation of Actions 25.

C.J.S. Limitations of Actions Section 59.

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If a corporation makes it a business to lend money, to borrow money, to deal in negotiable paper, bonds, stocks and other securities, it is a moneyed corporation. Grice v Anderson, 109 SC 388, 96 SE 222 (1918). Platt v Wilmot, 193 US 602, 24 S Ct 542, 48 L Ed 809 (1904).

Word “moneyed” is used in generic sense. The word “moneyed” used in this section [former Code 1962 Section 10‑111] is not technical, and it is generic rather than specific. Grice v. Anderson (S.C. 1918) 109 S.C. 388, 96 S.E. 222.

“Money,” in its restricted sense, means a piece of metal stamped and issued by the State as a medium of exchange; in its wider sense, the word means “wealth.” Grice v. Anderson (S.C. 1918) 109 S.C. 388, 96 S.E. 222.

“Moneyed corporation” illustrated. A corporation organized with the intention to accumulate wealth is a “moneyed corporation.” Grice v. Anderson (S.C. 1918) 109 S.C. 388, 96 S.E. 222.

**SECTION 15‑3‑120.** Effect of new promises in writing or part payments.

 No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter unless it be contained in some writing signed by the party to be charged thereby. But payment of any part of principal or interest is equivalent to a promise in writing.

HISTORY: 1962 Code Section 10‑112; 1952 Code Section 10‑112; 1942 Code Section 368; 1932 Code Section 368; Civ. P. ‘22 Section 351; Civ. P. ‘12 Section 157; Civ. P. ‘02 Section 131; 1870 (14) 450 Section 133.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k25.

Limitation of Actions 25.

C.J.S. Limitations of Actions Section 59.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 17, Agreements to Waive Limitations Period.

S.C. Jur. Limitation of Actions Section 75, Written Acknowledgment.

S.C. Jur. Limitation of Actions Section 76, Part Payment.

Treatises and Practice Aids

Williston on Contracts Section 8:24, Subsequent Promise to Pay a Debt Barred by Statute of Limitations‑Voluntary Acknowledgment or Admission of the Debt as a Promise.

Williston on Contracts Section 8:26, Subsequent Promise to Pay a Debt Barred by Statute of Limitations‑Necessity of a Writing.

Williston on Contracts Section 8:28, Subsequent Promise to Pay a Debt Barred by Statute of Limitations‑Unqualified Acknowledgment or Admission.

Williston on Contracts Section 8:31, Subsequent Promise to Pay a Debt Barred by Statute of Limitations‑Acknowledgment by Giving Security, Making Part Payment, or Other Conduct.

Williston on Contracts Section 36:40, The Effect of a Limitations Defense; the Reaffirmance or Ackowledgement of the Obligation by One of Multiple Obligors.

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1. In general

It is clear that it was the intention of the legislature in adopting this section [former Code 1962 Section 10‑112] to declare in absolute terms that no verbal promise or acknowledgment shall revive or continue a contract otherwise subject to the statute of limitations. Park v Brooks, 38 SC 300, 17 SE 22 (1893). Hill v Perrin, 21 SC 356 (1884).

A promise by an administrator to pay decedent’s debt is said to bind only his personal estate. Divine v. Miller (S.C. 1904) 70 S.C. 225, 49 S.E. 479, 106 Am.St.Rep. 743.

2. Requisites of acknowledgments

The rule laid down in Lockhart v Eaves, Dud. (23 SCL) 321, and approved in Robbins v Farley, 2 Strob. (33 SCL) 348, is that acknowledgments or promises, to obviate the statute of limitations, are not sufficient unless they specify or plainly refer to some particular cause of action. Suber v Richards, 61 SC 393, 39 SE 540 (1901). Lockhart v Eaves, Dud. (23 SCL) 321. Robbins v Farley, 2 Strob. (33 SCL) 348.

General doctrine is that the writing, in order to constitute an acknowledgment, must recognize an existing debt. Manchester v Braedner, 107 NY 346, 14 NE 405. Suber v Richards, 61 SC 393, 39 SE 540 (1901).

The writing relied upon as an acknowledgment must contain nothing that is inconsistent with an intention on the part of the debtor to pay the debt. Manchester v Braedner, 107 NY 346, 14 NE 405. Suber v Richards, 61 SC 393, 39 SE 540 (1901).

It is indicated that this requirement applies only to a promise made under a discharge in bankruptcy, in which case, in order to sustain an action, the new promise must be “distinct, positive and unequivocal.” But it is said that this is not the rule in relation to promises to take a case out of the operation of the statute of limitations. Park v. Brooks (S.C. 1893) 38 S.C. 300, 17 S.E. 22.

In an action against a discharged bankrupt on a new promise to pay a debt contracted before the bankruptcy, a distinct, positive and unequivocal promise to pay must be shown to have been made by defendant after his discharge in bankruptcy; neither part payment nor an expression of an intention to pay amounts to such promise. Lanier & Co. v. Tolleson (S.C. 1883) 20 S.C. 57. Bankruptcy 3415.1

3. Parol evidence

Oral evidence is admissible to identify the debt and its amount, or to fix the date of the writing relied upon as an acknowledgment, when these circumstances are omitted. Suber v. Richards (S.C. 1901) 61 S.C. 393, 39 S.E. 540.

In an action by executors on a note barred by the statute of limitations on its face, evidence that a credit on the note was in the handwriting of the intestate was admissible as tending to show an understanding that payment should be credited on the note, thus tolling the statute. Hopper v. Hopper (S.C. 1901) 61 S.C. 124, 39 S.E. 366. Limitation Of Actions 196(3)

Under this section [former Code 1962 Section 10‑112] a parol promise not to plead the statute of limitations cannot operate as a waiver or as an agreement, nor can it serve as an estoppel. Hill v. Perrin (S.C. 1884) 21 S.C. 356. Limitation Of Actions 146(2)

4. Part payment

Under this section [former Code 1962 Section 10‑112] proof of a partial payment on a note is sufficient to toll the statute of limitations. Park v Brooks, 38 SC 300, 17 SE 22 (1893). Divine v Miller, 70 SC 225, 49 SE 479 (1904).

A payment by husband on joint note with wife will not toll statute as to both husband and wife, unless wife agreed that the husband would act for both. Wolfe v. Brannon (S.C. 1947) 211 S.C. 282, 44 S.E.2d 833.

An agreement between the payee and the maker of a note to apply as credit services for laundry done by maker for payee is sufficient for the purpose of interrupting the running of the statute of limitations. Wolfe v. Brannon (S.C. 1947) 211 S.C. 282, 44 S.E.2d 833.

Under this section [former Code 1962 Section 10‑112] a payment by the payee of a note to an assignee thereof, with knowledge of the assignment, renders the payee liable to pay the amount due on the note to such assignee as on a new promise. McBrayer v. Mills (S.C. 1901) 62 S.C. 36, 39 S.E. 788. Limitation Of Actions 154

Where a creditor holds several claims against a debtor who makes payments generally without any instructions as to application, the creditor may apply the payment to a debt already barred, thus tolling the statute. Hopper v. Hopper (S.C. 1901) 61 S.C. 124, 39 S.E. 366. Limitation Of Actions 157(4)

This section [former Code 1962 Section 10‑112] apparently does not apply, except by analogy, to the doctrine of presumption of payment arising from lapse of time. Latimer v. Trowbridge (S.C. 1898) 52 S.C. 193, 29 S.E. 634, 68 Am.St.Rep. 893.

The provision in this section [former Code 1962 Section 10‑112] as to payment of part of principal or interest being equivalent to a promise in writing, is to be construed as applicable for the purposes of the statute of limitations only and does not render such a payment a written promise under the statute of frauds. Millwee v. Jay (S.C. 1896) 47 S.C. 430, 25 S.E. 298. Frauds, Statute Of 129(1)

If part payment is made on the debt before the statutory period has expired, it is called a “legal” consideration of such promise to pay; but if made after the statutory period has expired, such payment is called a “moral” consideration for the promise to pay. Jacobs v. Gilreath (S.C. 1894) 41 S.C. 143, 19 S.E. 308.

5. Jury questions

The identity of the debt, which a debtor promises in writing to pay, with the debt sued for, is a matter properly left to the jury. Hill v. Hill (S.C. 1897) 51 S.C. 134, 28 S.E. 309.

6. Sufficiency of particular acknowledgments; letters of debtor—In general

In controversy involving question whether value of unclaimed insurance policies which matured in 1965 constituted abandoned property within meaning of Uniform Disposition of Unclaimed Property Act, insurer’s acknowledgments in form of including funds in liability accounts until 1968 and as part of total shown on insurer’s balance sheet, viewed in light of insurer’s officers’ statements that insurer would not refuse to pay policyholders and beneficiaries because of lapse of time, constituted waiver of defense of statute of limitations asserted by insurer against Tax Commission. South Carolina Tax Commission v. Metropolitan Life Ins. Co. (S.C. 1975) 266 S.C. 34, 221 S.E.2d 522.

Letters by a debtor, acknowledging that a note is due, but not expressing any intent not to pay it, are a sufficient written acknowledgment of a continuing contract, within the meaning of this section [former Code 1962 Section 10‑112], to remove the bar of the statute of limitations, though they express an expectation to pay from the proceeds of sale of certain property, but do not contain an unconditional promise to pay. Hill v. Hill (S.C. 1897) 51 S.C. 134, 28 S.E. 309. Limitation Of Actions 149(1)

Letters may constitute a written acknowledgment of a debt due an estate, though addressed to the administrators as individuals, or though addressed to only one of two administrators. Hill v. Hill (S.C. 1897) 51 S.C. 134, 28 S.E. 309. Limitation Of Actions 142

A statement in a letter by the maker of a note that “I hope we can agree on a settlement of the note soon,” does not constitute an acknowledgment or new promise within the provisions of the statute of limitations. Millwee v. Jay (S.C. 1896) 47 S.C. 430, 25 S.E. 298. Limitation Of Actions 150(1)

7. —— Endorsements on note, sufficiency of particular acknowledgments; letters of debtor

Under this section [former Code 1962 Section 10‑112] an endorsement on a sealed note of a payment, with a statement signed by the payor that he made the payment as heir of the maker of the note, arrests the running of the statute. Cook v Jennings, 40 SC 204, 18 SE 640 (1893). Walker v Cassels, 70 SC 271, 49 SE 862 (1904).

Endorsements of interest payments, made on a note given for a firm debt by one of the partners after the note had been filed in dissolution proceedings as a claim against the firm, transferring to the note entries of interest payments made on the firm ledger, are sufficient to toll the statute of limitations. Bulcken v. Rhode (S.C. 1908) 81 S.C. 503, 62 S.E. 786. Limitation Of Actions 163(5)

8. —— Miscellaneous, sufficiency of particular acknowledgments; letters of debtor

The entries of the bookkeeper upon a ledger, by the direction of the copartnership, cannot be construed as a writing signed by the party to be charged thereby. Bulcken v. Rhode (S.C. 1908) 81 S.C. 503, 62 S.E. 786.

A written acknowledgment of a firm debt by two of the partners made after action was brought to dissolve the firm, and presentation of the claim to a master, and objection made that it was barred by the statute of limitations, was insufficient to toll the statute under this section [former Code 1962 Section 10‑112]. Bulcken v. Rhode (S.C. 1908) 81 S.C. 503, 62 S.E. 786. Limitation Of Actions 151(3)

Where an administrator put upon his inventory of notes a due bill given by himself to his intestate twelve years before his death, it was held that such was not a new promise, and that the claim was barred by the statute of limitations. Black v. White (S.C. 1880) 13 S.C. 37.

9. Bankruptcy

Under South Carolina law, Chapter 13 debtor’s inclusion of stale debt in her bankruptcy schedules did not operate to reset the three‑year statute of limitations for actions to recover debts and revive the debt, even though debtor did not mark the debt as “disputed” in her initial schedules; notice provided by listing debt in schedules was notice to creditor that its debt would be paid along with debtor’s other debts, in accordance with filed proof of claim, claims objection process, and other bankruptcy provisions, and notice neither created a right to payment nor signified a promise to pay, despite debtor’s omission of term “disputed.” In re Vaughn (Bkrtcy.D.S.C. 2015) 536 B.R. 670. Bankruptcy 2324; Limitation of Actions 147

Even if South Carolina law were to revive a stale debt simply by its mention in lists and schedules filed in connection with a bankruptcy petition, federal interests would supplant the state law rule and would require disallowing the claim and denying revival of the debt; reviving a stale debt through its inclusion in a debtor’s schedules would be contrary to the Bankruptcy Code’s liberal policy regarding amendment of schedules, to the Code’s principle of honest and full disclosure, and to the Code’s definition of “claim” as including unliquidated, contingent, unmatured, or disputed debts, would undermine the balance made in the Code whereby honest debtors receive relief from debts and creditors of equal rank share in equal distribution of debtor’s assets, and would nullify the statutory right of debtors to raise the statute of limitations defense. In re Vaughn (Bkrtcy.D.S.C. 2015) 536 B.R. 670. Bankruptcy 2324; Bankruptcy 2825; Limitation of Actions 147

**SECTION 15‑3‑130.** Suits on causes saved from bar of statute by part payment or written acknowledgment.

 All actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations.

HISTORY: 1962 Code Section 10‑114; 1952 Code Section 10‑114; 1942 Code Section 370; 1932 Code Section 370; Civ. P. ‘22 Section 353; Civ. P. ‘12 Section 159; Civ. P. ‘02 Section 131b; 1900 (23) 345.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k25.

Limitation of Actions 25.

C.J.S. Limitations of Actions Section 59.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 75, Written Acknowledgment.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Disability of Landowner With Respect to the Acquisition of Adverse Rights by Another by Statutes of Limitations, Presumption of a Grant, and Prescriptive Right in South Carolina. 10 SC LQ 292.

Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

NOTES OF DECISIONS

In general 1

1. In general

The two cases of Fleming v Fleming, 33 SC 505, 12 SE 257 (1890), and Park v Brooks, 38 SC 300, 17 SE 22 (1893), decided prior to the enactment of this section [former Code 1962 Section 10‑114], settled the former rule in this State to be that, where payments of principal or interest on a debt are relied upon as promises to pay, to avoid the bar of the statute of limitations the promises must be complained upon as such. Jacobs v Gilreath, 41 SC 143, 19 SE 308, 310 (1894). Colvin v Phillips, 25 SC 228 (1886).

The object underlying this section [former Code 1962 Section 10‑114] is a change from the cumbersome practice of alleging the part payment or acknowledgment as a new promise, to the simpler form of an action upon the original instrument, leaving the fact of part payment or acknowledgment as evidence to prevent the bar of the statute. Butts v. Georgetown Mut. Building & Loan Ass’n (S.C. 1927) 142 S.C. 353, 140 S.E. 700.

The evidential value of the fact of part payment or acknowledgment, provided for in this section [former Code 1962 Section 10‑114], is not taken as evidence against one who has not produced such evidence. Butts v. Georgetown Mut. Building & Loan Ass’n (S.C. 1927) 142 S.C. 353, 140 S.E. 700.

Requirement of suing on original cause of action is mandatory. Kline v. Independent Order of Odd Fellows (S.C. 1926) 138 S.C. 221, 136 S.E. 216.

Allegation of payment on a day certain is allegation of a new promise. McBrayer v. Mills (S.C. 1901) 62 S.C. 36, 39 S.E. 788.

**SECTION 15‑3‑140.** Contract provision shortening statutory period.

 No clause, provision or agreement in any contract of whatsoever nature, verbal or written, whereby it is agreed that either party shall be barred from bringing suit upon any cause of action arising out of the contract if not brought within a period less than the time prescribed by the statute of limitations, for similar causes of action, shall bar such action, but the action may be brought notwithstanding such clause, provision or agreement if brought within the time prescribed by the statute of limitations in reference to like causes of action.

HISTORY: 1962 Code Section 10‑116; 1952 Code Section 10‑116; 1942 Code Section 395; 1932 Code Section 395; Civ. P. ‘22 Section 338; Civ. P. ‘12 Section 144; 1911 (27) 130.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k23.

Limitation of Actions 23.

C.J.S. Limitations of Actions Section 59.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Contracts Section 70, Limitations and Laches.

S.C. Jur. Limitation of Actions Section 16, Agreements to Alter Limitations Period.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law Section 12:23, Duration of Performance Bond Obligation.

NOTES OF DECISIONS

In general 1

Interpretation with other statutes 2

1. In general

A provision in an employment contract that reduced the statute of limitations was void, notwithstanding that the contract mandated that Tennessee law govern disputes. Because South Carolina had a materially greater interest in the contract, South Carolina’s policy, as expressed in $ 15‑3‑140, controlled. Scott v. Guardsmark Sec., 1995, 874 F.Supp. 117.

Provision in contractor’s bond, in effect limiting time for filing claims and governing bringing of actions thereon, contravened this section [Code 1962 Section 10‑116] and was therefore ineffective. Barringer v. Fidelity & Deposit Co. of Maryland (S.C. 1931) 161 S.C. 4, 159 S.E. 373. Limitation Of Actions 14

Under this section [former Code 1962 Section 10‑116] an action brought against a surety company on a bond within the period of limitations cannot be dismissed, though it was brought after the date stated in the bond as the latest date on which suit thereunder could be instituted. City of Sumter v. U.S. Fidelity & Guaranty Co. (S.C. 1921) 116 S.C. 29, 106 S.E. 778.

Under this section [former Code 1962 Section 10‑116] suit may be brought against a surety after the expiration of the six‑month period within which the bond, upon which action is brought, required it should be brought. State Agricultural & Mechanical Soc. of South Carolina v. Taylor (S.C. 1916) 104 S.C. 167, 88 S.E. 372.

2. Interpretation with other statutes

Federal Crop Insurance Act (FCIA) did not preempt state statute invalidating suit limitations clauses for periods shorter than the statute of limitations; state law was consistent with the FCIA and its statute of limitations barring a suit unless brought within twelve months after denial of the claim. Lyerly v. American Nat. Fire Ins. Co. (S.C.App. 2000) 343 S.C. 401, 540 S.E.2d 469, rehearing denied. Insurance 1110; States 18.41

Suit limitations clause barring action on crop insurance policy unless brought within twelve months of the occurrence was unenforceable in light of state statute invalidating suit limitations clauses for periods shorter than the statute of limitations; the Federal Crop Insurance Act (FCIA) did not preempt that statute and provided a statute of limitations barring a suit unless brought within twelve months after denial of the claim. Lyerly v. American Nat. Fire Ins. Co. (S.C.App. 2000) 343 S.C. 401, 540 S.E.2d 469, rehearing denied. Insurance 1110; Insurance 3564(4); States 18.41

**SECTION 15‑3‑150.** No civil action for criminal conversation permitted.

 No civil action may be brought in this State for the tort of criminal conversation.

HISTORY: 1988 Act No. 391, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 205k341.

Husband and Wife 341.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adultery and Fornication Section 7, Civil Adultery Distinguished.

S.C. Jur. Criminal Conversation Section 3, Modern Status.

S.C. Jur. Criminal Conversation Section 4, Alienation of Affection Distinguished.

S.C. Jur. Damages Section 30, Marital or Relational Torts.

S.C. Jur. Seduction Section 6, Seduction Distinguished from Alienation of Affection and Criminal Conversation.

S.C. Jur. Seduction Section 7, Seduction Distinguished from Breach of Promise to Marry.

NOTES OF DECISIONS

In general 1

1. In general

The Supreme Court’s judicial abolition of the “heart balm” tort of alienation of affection was consistent with public policy, since the legislature had already dispensed with the cause of action for criminal conversation. Russo v. Sutton (S.C. 1992) 310 S.C. 200, 422 S.E.2d 750.

ARTICLE 2

Year 2000 Commerce Protection Act

**SECTION 15‑3‑210.** Short title.

 This article may be cited as the “Year 2000 Commerce Protection Act”.

HISTORY: 1999 Act No. 120, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 382k862.1.

Trade Regulation 862.1.

**SECTION 15‑3‑220.** Legislative intent.

 It is the intent of the South Carolina General Assembly that this article provide persons engaged in commerce in South Carolina, who suffer economic loss as a result of a Year 2000 problem, the opportunity to recover and be made whole for that economic loss while providing persons responsible for the Year 2000 problem a safe harbor from unlimited liability. This article is intended to be in addition to and supplement those protections offered by the federal Year 2000 Information and Readiness Disclosure Act.

HISTORY: 1999 Act No. 120, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 382k862.1.

Trade Regulation 862.1.

**SECTION 15‑3‑230.** Definitions.

 As used in this article:

 (1) “Claim” means any cause of action in state courts, federal court, or arbitration related to a Year 2000 problem.

 (2) “Contract” means any agreement for the delivery of goods or services in South Carolina, any agreement entered into in South Carolina for the delivery of goods or services, or any other agreement governed by the South Carolina Uniform Commercial Code.

 (3) “Economic loss” means any damage for breach of contract or breach of warranty recognized under South Carolina law.

 (4) “Person” means any individual, corporation, partnership, or other private entity capable under South Carolina law of entering into a contract as defined in item (2) of this section.

 (5) “Year 2000 problem” means any computing, physical, enterprise, or distribution system complication, corruption or failure that has occurred or may occur as a result of computer hardware systems, software programs, semiconductors or other digitally operated systems inability to process properly the change of the year from 1999 to 2000 or the leap year change. This complication, corruption, or failure may result from, but is not limited to, the common computer programming practice of using a two‑digit field to represent a year, which can result in erroneous date calculations; an ambiguous interpretation of the term or field “00”; the failure to recognize 2000 as a leap year; algorithms that use “99” or “00” to activate another function; or the use of any other applications, software, or hardware that are date‑sensitive.

HISTORY: 1999 Act No. 120, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 382k862.1.

Trade Regulation 862.1.

**SECTION 15‑3‑240.** Who may recover losses; recovery limited to economic loss and attorney’s fees; exceptions; frivolous claims.

 (A) A person in privity of contract with another person may recover only economic loss as well as reasonable attorney’s fees and costs on any claims against the other as a result of a Year 2000 problem, except that recovery based upon any of the following claims is not subject to this limitation:

 (1) the claim is for personal injury to an individual; or

 (2) the person defending the claim has acted with fraudulent intent or reckless disregard for the truth in the formation of the contract; or

 (3) a fiduciary duty recognized by law is owed by the person defending the claim to the person bringing the claim.

 (B) No claim may be made under Title 39, Chapter 5, South Carolina Unfair Trade Practices Act.

 (C) Any person who successfully defends a claim based on a Year 2000 problem is entitled to recover reasonable costs and attorney’s fees from the person bringing the claim if the court determines that the claim is frivolous. In determining whether or not a claim is frivolous, the court shall rely on the standards of the federal courts for the imposition of those sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure as those sanctions exist as of the date of the enactment of this article.

HISTORY: 1999 Act No. 120, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 382k862.1.

Trade Regulation 862.1.

**SECTION 15‑3‑250.** Claims pending prior to approval of this article.

 This article does not affect nor apply to any claim pending before approval of the act by the Governor.

HISTORY: 1999 Act No. 120, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 382k862.1.

Trade Regulation 862.1.

**SECTION 15‑3‑255.** Contract provisions.

 This article may not be construed to affect, abrogate, amend, or alter any enumerated rights, limitation of remedies, exclusion of damages, or any other provision of a contract.

HISTORY: 1999 Act No. 120, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 382k862.1.

Trade Regulation 862.1.

**SECTION 15‑3‑260.** Severability of provisions of this article.

 If any section or portion of any section of this article is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the remaining sections or portion thereof shall not be affected by that action.

HISTORY: 1999 Act No. 120, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 361k64(2).

Statutes 64(2).

C.J.S. Statutes Sections 87, 89 to 90, 94 to 97, 99, 102 to 104, 107.

ARTICLE 3

Actions for Recovery of Real Property

**SECTION 15‑3‑310.** Action by State.

 The State will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the State to the same unless:

 (1) Such right or title shall have accrued within twenty years before any action or other proceeding for the same shall be commenced; or

 (2) The State or those from whom it claims shall have received the rents and profits of such real property or of some part thereof within the space of twenty years.

HISTORY: 1962 Code Section 10‑121; 1952 Code Section 10‑121; 1942 Code Section 371; 1932 Code Section 371; Civ. P. ‘22 Section 314; Civ. P. ‘12 Section 120; Civ. P. ‘02 Section 95; 1870 (14) Section 98; 1873 (15) 496.

CROSS REFERENCES

Action for forfeiture of property to state, see Section 15‑77‑40.

Provisions regarding forcible entry and detainer, not affecting persons holding by force for three years, see Section 15‑67‑450.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k11(1).

Limitation of Actions 11(1).

C.J.S. Limitations of Actions Section 17.

RESEARCH REFERENCES

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S.C. Jur. Adverse Possession Section 2, Definition and Nature.

S.C. Jur. Limitation of Actions Section 24, Actions by State or Related to State Grants or Patents.

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Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

NOTES OF DECISIONS

In general 1

Action to quiet title 3

Adverse claims 2

Easements 4

1. In general

Prior to the adoption of this section [former Code 1962 Section 10‑121] in 1870, the doctrine of nullum tempus prevailed in this State. State v Pacific Guano Co., 22 SC 50 (1884). Glover v Floyd, 76 SC 292, 57 SE 25 (1907). State v Pinckney, 22 SC 484 (1885). State v Pacific Guano Co., 22 SC 50 (1884).

This section [Code 1962 Section 10‑121] does not constitute an “abandonment statute.” City of Myrtle Beach v. Parker (S.C. 1973) 260 S.C. 475, 197 S.E.2d 290.

There is no such thing as “land,” in contemplation of law, apart from the title to it. All the provisions of this Title touching suits about land devolve about the title to the land. Gibbs v. Hunter (S.C. 1914) 99 S.C. 410, 83 S.E. 606.

2. Adverse claims

Where adverse possessors relied on statutes barring any action for the recovery of real property unless title or right had accrued within 20 years, or 40 years respectively, they could not assert their possession to defeat the right of action of the state, where title by virtue of certain grants was not a valid conveyance of the tidelands area to their predecessors. State v. Yelsen Land Co., Inc. (S.C. 1975) 265 S.C. 78, 216 S.E.2d 876.

Where a city holds and enjoys the use of real estate actually belonging to the State, the State may sue to recover such property and in such action the municipal corporation cannot defend on the ground that the plaintiff’s action has not accrued within the last 20 years. Trustees of University of South Carolina v. City of Columbia (S.C. 1917) 108 S.C. 244, 93 S.E. 934.

3. Action to quiet title

Quiet title action by State to extinguish cloud on claimed title to certain tidelands, assuming statute is applicable, is not barred where defendants’ grants did not convey the disputed land. State v. Fain (S.C. 1979) 273 S.C. 748, 259 S.E.2d 606. Water Law 2679

4. Easements

Statute requiring the State to bring an action to settle title to real estate within 20 years of the action accruing did not bar action by Department of Transportation (DOT) against landowners for declaratory judgment regarding DOT’s rights to an easement, as landowners never received title to the easement because it remained with DOT. South Carolina Dept. of Transp. v. Horry County (S.C. 2011) 391 S.C. 76, 705 S.E.2d 21, rehearing denied. Declaratory Judgment 255; States 201

**SECTION 15‑3‑320.** Action by grantee from State.

 No action shall be brought for or in respect to real property by any person claiming by virtue of letters patent or grants from the State unless such action might have been commenced by the State as specified in this article in case such patent or grant had not been issued or made.

HISTORY: 1962 Code Section 10‑122; 1952 Code Section 10‑122; 1942 Code Section 372; 1932 Code Section 372; Civ. P. ‘22 Section 315; Civ. P. ‘12 Section 121; Civ. P. ‘02 Section 96; 1870 (14) 445 Section 99.

CROSS REFERENCES

Confirmation of certain titles granted by state, see Sections 27‑11‑10 et seq.

Estates of John Lord Carteret and the lords proprietors, see Section 27‑11‑50.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k19(1).

Limitation of Actions 19(1).

C.J.S. Limitations of Actions Sections 40, 43.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 24, Actions by State or Related to State Grants or Patents.

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Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

**SECTION 15‑3‑330.** Action after State grants or patents have been declared void.

 When letters patent or grants of real property shall have been issued or made by the State and such letters patent or grants shall be declared void by the determination of a competent court rendered upon an allegation of a fraudulent suggestion, concealment, forfeiture, mistake, ignorance of a material fact, wrongful detaining or defective title an action for the recovery of the premises so conveyed may be brought either by the State or by any subsequent patentee or grantee of the premises, his heirs or assigns, within ten years after such determination was made but not after that period.

HISTORY: 1962 Code Section 10‑123; 1952 Code Section 10‑123; 1942 Code Section 373; 1932 Code Section 373; Civ. P. ‘22 Section 316; Civ. P. ‘12 Section 122; Civ. P. ‘02 Section 97; 1870 (14) 445 Section 100; 1873 (15) 496.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k19(1).

Limitation of Actions 19(1).

C.J.S. Limitations of Actions Sections 40, 43.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 24, Actions by State or Related to State Grants or Patents.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Disability of Landowner With Respect to the Acquisition of Adverse Rights by Another by Statutes of Limitations, Presumption of a Grant, and Prescriptive Right in South Carolina. 10 SC LQ 292.

Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

**SECTION 15‑3‑340.** Action by individual for recovery of real property.

 No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.

HISTORY: 1962 Code Section 10‑124; 1952 Code Sections 10‑124, 10‑125; 1942 Code Section 374; 1932 Code Section 374; Civ. P. ‘22 Section 317; Civ. P. ‘12 Section 123; Civ. P. ‘02 Section 98; 1879 (22) 76; 1913 (27) 36; 1960 (51) 1737; 1988 Act No. 553, Section 1.

CROSS REFERENCES

Possession and adverse possession, see Sections 15‑67‑210 et seq.

State being defendant in action affecting title to real estate, see Section 15‑77‑30.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k19(1).

Limitation of Actions 19(1).

C.J.S. Limitations of Actions Sections 40, 43.

RESEARCH REFERENCES

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Encyclopedias

S.C. Jur. Adverse Possession Section 19, “Tacking” of Periods of Possession.

S.C. Jur. Adverse Possession Section 51, Oral Contracts of Sale.

S.C. Jur. Cotenancies Section 50, Statutes of Limitations.

S.C. Jur. Limitation of Actions Section 25, Action for Recovery of Real Property by Individual.

NOTES OF DECISIONS

In general 1

Action for recovery of real property 2

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Running of statute against mortgagor 7

Running of statute against remaindermen 6

Statute not tolled by death 3

Tacking, title conferred by adverse possession 5

Title conferred by adverse possession 4‑5

In general 4

Tacking 5

1. In general

In an action for rescission of a sales contract for real property based on defects in title, the trial court erred in finding that the seller had acquired by adverse possession the title to the portion of the property which allegedly encroached on a railroad’s right‑of‑way where the railroad had not been joined in the action, and was not otherwise before the court. Gibbs v. G.K.H., Inc. (S.C.App. 1993) 311 S.C. 103, 427 S.E.2d 701.

Occasional use of property by owner for hunting purposes was sufficient to constitute possession because recreational use of disputed parcel was consistent with uses to which property could be put. Butler v. Lindsey (S.C.App. 1987) 293 S.C. 466, 361 S.E.2d 621.

An action for a specific performance of an oral contract to convey land is not barred by the 10 year statute of limitations. Parr v. Parr (S.C. 1977) 268 S.C. 58, 231 S.E.2d 695.

A statute allowing a second action for recovery of real estate (as Section 15‑3‑340 did prior to 1988) changes the common law and limits the number of actions a party may bring for recovery of real property; it does not grant the right to bring two actions. Winn v. Grantham (S.C. 1974) 263 S.C. 368, 210 S.E.2d 602.

This section [former Code 1962 Section 10‑124] applies only to actions for the recovery of real property, and a plea filed hereunder will not serve as a plea of the statute of limitations in an action other than for the recovery of real property. Williams v. Halford (S.C. 1905) 73 S.C. 119, 53 S.E. 88.

2. Action for recovery of real property

The character of the action is to be determined by the plaintiff’s complaint. Emore v Davis, 49 SC 1, 26 SE 898 (1897). Southern Cotton Oil Co. v Shelton, 220 F 247 (1914). Hall v Boatwright, 58 SC 544, 36 SE 1001 (1900). Walsh v Evans, 112 SC 131, 99 SE 546 (1919), wherein the defendant’s answer tendered the issue.

The word “action” is used in this section [former Code 1962 Section 10‑124] in the sense that it is defined in former Code 1962 Sections 10‑8 and 10‑9, namely, an “ordinary proceeding, by which a party prosecutes another party for the enforcement of a right.” Walsh v Evans, 112 SC 131, 99 SE 546 (1919). Columbia Water‑Power Co. v Columbia Land & Invest. Co., 47 SC 117, 25 SE 48 (1896).

Where the gravamen of the cause of action stated in the complaint was cancellation of deeds on the ground of forgery, the action was not one for the recovery of real property within the contemplation of this section [former Code 1962 Section 10‑124], but was governed by subd. (7) of former Code 1962 Section 10‑143. McKinnon v. Summers (S.C. 1953) 224 S.C. 331, 79 S.E.2d 146.

The determination of the question whether a particular proceeding is an action for the recovery of real property, within the meaning of this section [former Code 1962 Section 10‑124], is fixed by the events which the pleaders have recited, to one to enforce a right and the other to resist such enforcement or to set up another right. It makes no difference what terminology the pleaders may chance to give to the proceeding. The issues that arise out of the pleadings are controlling. Walsh v. Evans (S.C. 1919) 112 S.C. 131, 99 S.E. 546.

3. Statute not tolled by death

It is held that the death of a person against whom the ten‑year limitation in this section [former Code 1962 Section 10‑124] had been running for almost eight years did not toll the statute, though title passed to a person under disability in Frady v. Ivester (S.C. 1924) 129 S.C. 536, 125 S.E. 134. Limitation Of Actions 76(1)

4. Title conferred by adverse possession—In general

Adverse possession for ten years confers good title which may be asserted affirmatively. Duren v Kee, 50 SC 444, 27 SE 875 (1897). Columbia, N & L R Co. v Laurens Cotton Mills, 82 SC 24, 61 SE 1089, 62 SE 1119 (1908). Southern Ry., Carolina Div. v Howell, 79 SC 281, 60 SE 677 (1908). Southern Ry. v Gossett, 79 SC 372, 60 SE 956 (1908). Williams v Halford, 73 SC 119, 53 SE 88 (1905); Harman v Southern Ry., 72 SC 228, 51 SE 689 (1905). Epperson v Stansill, 64 SC 485, 42 SE 426 (1902). Kolb v Jones, 62 SC 193, 40 SE 168 (1901). Cave v Anderson, 50 SC 293, 27 SE 693 (1897). Busby v Florida Cent. & P. R. Co., 45 SC 312, 23 SE 50 (1895). Harrelson v Sarvis, 39 SC 14, 17 SE 368 (1893).

Tolling statute, Section 15‑3‑30, is inapplicable in cases in which problem which the statute was meant to address is not present; thus, in adverse possession action brought by Indian tribe against landowners for claim and title, Section 15‑3‑30 was inapplicable since the problem that Section 15‑3‑30 was meant to address, namely difficulty in locating out‑of‑state defendant before expiration of statute of limitations under Section 15‑3‑340, was not present by virtue of fact that separate statute, Section 15‑67‑30, authorizes summons and service by publication on out‑of‑state parties in actions to determine adverse claim, thereby obviating the need to locate out‑of‑state defendants in adverse possession cases. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1992) 978 F.2d 1334, certiorari denied 113 S.Ct. 1415, 507 U.S. 972, 122 L.Ed.2d 785.

5. —— Tacking, title conferred by adverse possession

This section [former Code 1962 Section 10‑124] has been so construed that possession hereunder, to be adverse, must have been continued by the same person for 10 years, and the possession of one cannot be united or tacked to that of those under whom he claims. Garrett v. Weinberg (S.C. 1896) 48 S.C. 28, 26 S.E. 3.

6. Running of statute against remaindermen

The law is well settled in this State that the statute of limitations does not commence to run against a remainderman until the death of the life tenant; and neither a conveyance by the life tenant purporting to be in fee, nor a proceeding in court to which the remainderman is not a party, can affect the rights of the remainderman. Bolt v Sullivan, 173 SC 24, 174 SE 491 (1934). Rice v Bamberg, 59 SC 498, 38 SE 209 (1901).

Adverse possession does not run against a remainderman until the death of the life tenant. Curtis v. DesChamps (S.C.App. 1986) 290 S.C. 315, 350 S.E.2d 201. Remainders 17(2)

The statute of limitations does not commence to run against a remainderman until the death of the life tenant. Stamper v. Avant (S.C. 1958) 233 S.C. 359, 104 S.E.2d 565.

Possession adverse to title of remaindermen cannot begin until the death of the life tenant. Crotwell v. Whitney (S.C. 1956) 229 S.C. 213, 92 S.E.2d 473.

7. Running of statute against mortgagor

A foundation may be laid by a mortgagee in possession for the operation of the statute of limitations or for the acquisition of title by adverse possession where there is a disavowal of the mortgagee relationship and notice of an adverse holding is brought home to the mortgagor, but neither this statute nor any other statute of limitations will commence to run until notice of adverse possession is brought home to the mortgagor. Knight v. Hilton (S.C. 1954) 224 S.C. 452, 79 S.E.2d 871.

8. Laches

Homeowner’s delay of approximately two months in formally responding to homeowners’ association’s foreclosure action after receiving notice was not unreasonable, and therefore, homeowner’s equitable relief from the foreclosure, notice of which was improperly served by publication, was not precluded by doctrine of laches. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Equity 67

Laches barred quiet title action brought by grantor’s alleged heirs, where alleged heirs waited almost 60 years after grantor conveyed title by deed before challenging conveyance, and title to property had been transferred several times since conveyance. Robinson v. Estate of Harris (S.C. 2011) 391 S.C. 114, 705 S.E.2d 41. Quieting Title 29

Laches prohibited record owner of lot from prevailing in quiet title action against residents, who claimed adverse possession under color of title, where record owner did not visit lot for 17 years even though he lived in the same county, residents had invested a substantial amount of time and money into the lot while record owner had invested practically nothing, residents purchased lot in good faith and had no knowledge of record owner’s potential claim of ownership. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Quieting Title 29

In an action by holders of legal title to recover land to which defendants could base their claim only on adverse possession, defendants could not invoke the equitable defense of laches since the rights of the parties were determinable under the time limitations prescribed by this section [former Code 1962 Section 10‑124] and former Code 1962 Section 10‑2421, and laches within the period of the statute of limitations is no defense at law. Crotwell v. Whitney (S.C. 1956) 229 S.C. 213, 92 S.E.2d 473. Ejectment 39

**SECTION 15‑3‑350.** Action founded on title or for rents or services.

 No cause of action or defense to an action founded upon a title to real property or to rents or services out of the same shall be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within ten years before the committing of the act in respect to which such action is prosecuted or defense made.

HISTORY: 1962 Code Section 10‑126; 1952 Code Section 10‑126; 1942 Code Section 375; 1932 Code Section 375; Civ. P. ‘22 Section 318; Civ. P. ‘12 Section 124; Civ. P. ‘02 Section 99; 1870 (14) 445 Section 102; 1873 (15) 496.

CROSS REFERENCES

Collection of rent by distraint, see Sections 27‑39‑210 et seq.

Presumption of possession, see Section 15‑67‑210.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k19.

Limitation of Actions 19.

C.J.S. Limitations of Actions Section 40.

RESEARCH REFERENCES

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15 ALR 6th 241 , Assumption of Mortgage on Real Property as Consideration for Conveyance that is Attacked as Fraudulent.

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S.C. Jur. Limitation of Actions Section 26, Action or Defense Founded on Title or for Rents or Services.

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Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

NOTES OF DECISIONS

In general 1

1. In general

Three‑year statute of limitations for actions upon a contract applied to action to collect rent due under a commercial lease, rather than 10‑year statute of limitations for actions founded upon a title to real property or rents of the same; although lessor titled its action as one for distraint, its claim for rent arose out of the lease, not its title to real property. Palmetto Co. v. McMahon (S.C.App. 2011) 395 S.C. 1, 716 S.E.2d 329. Landlord And Tenant 1549; Landlord And Tenant 1684

Action brought by remaindermen for possession of tobacco allotment sold by life tenant was action pertaining to interest in land and, thus, was subject to ten‑year statute of limitations. Jenkins v. Brown (S.C.App. 2000) 340 S.C. 557, 532 S.E.2d 302. Remainders 17(3)

Action brought by remainderman for possession of tobacco allotment sold by life tenant accrued at death of life tenant. Jenkins v. Brown (S.C.App. 2000) 340 S.C. 557, 532 S.E.2d 302. Remainders 17(3)

The statute of limitations does not commence to run against a remainderman until the death of the life tenant. Stamper v. Avant (S.C. 1958) 233 S.C. 359, 104 S.E.2d 565.

**SECTION 15‑3‑360.** Action after entry or accrual of right of entry.

 No entry upon real estate shall be deemed sufficient or valid as a claim unless an action be commenced thereupon within one year after the making of such entry and within ten years from the time when the right to make such entry descended or accrued.

HISTORY: 1962 Code Section 10‑127; 1952 Code Section 10‑127; 1942 Code Section 376; 1932 Code Section 376; Civ. P. ‘22 Section 319; Civ. P. ‘12 Section 125; Civ. P. ‘02 Section 100; 1870 (14) 445 Section 103; 1873 (15) 496.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k19(1).

Limitation of Actions 19(1).

C.J.S. Limitations of Actions Sections 40, 43.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Disability of Landowner With Respect to the Acquisition of Adverse Rights by Another by Statutes of Limitations, Presumption of a Grant, and Prescriptive Right in South Carolina. 10 SC LQ 292.

Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

**SECTION 15‑3‑370.** Persons under disability.

 If a person entitled to commence any action for the recovery of real property, or make an entry or defense founded on the title to real property or to rents or services out of the same is, at the time the title shall first descend or accrue, either:

 (1) within the age of eighteen years; or

 (2) insane;

 the time during which the disability shall continue shall not be considered any portion of the time in this article limited for the commencement of the action or the making of the entry or defense, but the action may be commenced or entry or defense made after the period of ten years and within ten years after the disability shall cease or after the death of the person entitled who shall die under the disability. But the action shall not be commenced or entry or defense made after that period.

HISTORY: 1962 Code Section 10‑128; 1952 Code Section 10‑128; 1942 Code Section 384; 1932 Code Section 384; Civ. P. ‘22 Section 327; Civ. P. ‘12 Section 133; Civ. P. ‘02 Section 108; 1870 (14) 446 Section 111; 1873 (15) 496; 1976 Act No 695, Section 1; 1996 Act No. 234, Section 2.

CROSS REFERENCES

Service of process on confined persons, see Section 15‑9‑510 and SCRCP, Rule 4.

LIBRARY REFERENCES

Westlaw Key Number Searches: 241k70 to 241k78.

Limitation of Actions 70 to 78.

C.J.S. Limitations of Actions Sections 105 to 117, 119.

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73 ALR, Federal 2nd Series 221 , Construction and Application of Non‑Intercourse Act, Codified at 25 U.S.C.A. S177, and Predecessor Enactments Barring Conveyances of Tribal Land to Non‑Indians Unless Made or Ratified by...

Encyclopedias

S.C. Jur. Adverse Possession Section 39, Ten‑Year Statute of Limitation.

S.C. Jur. Limitation of Actions Section 63, Statutory Framework.

S.C. Jur. Limitation of Actions Section 67, Tacking of Disabilities.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Disability of Landowner With Respect to the Acquisition of Adverse Rights by Another by Statutes of Limitations, Presumption of a Grant, and Prescriptive Right in South Carolina. 10 SC LQ 292.

Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

NOTES OF DECISIONS

In general 1

Infancy 2

1. In general

For additional related cases, see Brucke v Hubbard, 74 SC 144, 54 SE 249 (1906). Cheatham v Evans, 160 F 802 (1908). Cheatham v Edgefield Mfg. Co., 131 F 118 (1904).

Sections 15‑3‑370 and 15‑3‑40 do not include Indians in legislatively defined class of disabled persons, and therefore, disability statutes do not bar tribe’s claim to tract of land. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1989) 865 F.2d 1444, certiorari denied 109 S.Ct. 3190, 491 U.S. 906, 105 L.Ed.2d 699.

Where a proceeding was directed to fraud alleged to have taken place at the time of the sale of property, and in nowise was the decree of the court directing a sale and declaring the interest of the various parties to the suit in and to the proceeds of the sale of the land attacked, it was held that if it should be determined that the sale of the land should be set aside by reason of fraud, the judgment and decree ordering the sale of the land would still stand intact, and therefore it could not be considered an action for the recovery of land and the provisions of this section [former Code 1962 Section 10‑128] did not apply. Lyerly v. Yeadon (S.C. 1937) 183 S.C. 256, 190 S.E. 737.

Under this section [former Code 1962 Section 10‑128] it is error to charge that limitations will commence to run against a minor remainderman from the time of the alienation of the property by the life tenant. As a further reason for its ruling the court held that limitations do not commence to run against a remainderman until the death of the life tenant. Rice v. Bamberg (S.C. 1901) 59 S.C. 498, 38 S.E. 209. Limitation Of Actions 72(3)

This section [former Code 1962 Section 10‑128] does not protect a person from the operation of the statute of limitations after the expiration of the ten‑year period following the removal of disability. Maccaw v. Crawley (S.C. 1901) 59 S.C. 342, 37 S.E. 934.

2. Infancy

Infancy of one cotenant delays running of statute against all. See Adams v. Adams (S.C. 1951) 220 S.C. 131, 66 S.E.2d 809.

To prevent or arrest the running of the statute, the person entitled to commence an action to recover land must show a disability, such as infancy, “at the time such title shall first descend or accrue.” Satcher v. Grice (S.C. 1898) 53 S.C. 126, 31 S.E. 3.

Under this section [former Code 1962 Section 10‑128] the fact that plaintiff is a minor when the action is commenced does not arrest the statute where it has already commenced to run against the one under whom the minor claims. Satcher v. Grice (S.C. 1898) 53 S.C. 126, 31 S.E. 3.

**SECTION 15‑3‑380.** Effect of forty‑year lapse.

 No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

HISTORY: 1962 Code Section 10‑129; 1952 Code Section 10‑129; 1942 Code Section 385; 1932 Code Section 385; Civ. P. ‘22 Section 328; Civ. P. ‘12 Section 134; Civ. P. ‘02 Section 109; 1873 (15) 496.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k19.

Limitation of Actions 19.

C.J.S. Limitations of Actions Section 40.

RESEARCH REFERENCES

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S.C. Jur. Adverse Possession Section 2, Definition and Nature.

S.C. Jur. Adverse Possession Section 19, “Tacking” of Periods of Possession.

S.C. Jur. Adverse Possession Section 41, Forty‑Year Statute of Limitation.

S.C. Jur. Limitation of Actions Section 27, Effect of Forty‑Year Lapse.

LAW REVIEW AND JOURNAL COMMENTARIES

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The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

NOTES OF DECISIONS

In general 1

Burden of proof 5

“Possession valid against the world” 6

Remaindermen 3

Tacking 2

Term of possession 4

1. In general

Genuine issue of material fact as to whether parish had adversely possessed property in excess of 40 years precluded summary judgment in favor of descendants of trustees and against diocese and national church, which claimed real property was owned by parish subject to canons of diocese and national church, in action to determine ownership of property. All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina (S.C.App. 2004) 358 S.C. 209, 595 S.E.2d 253, rehearing denied, certiorari denied, on subsequent appeal 385 S.C. 428, 685 S.E.2d 163, certiorari dismissed 130 S.Ct. 2088, 176 L.Ed.2d 580. Judgment 181(15.1); Judgment 181(34)

Where adverse possessors relied on statutes barring any action for the recovery of real property unless title or right had accrued within 20 years, or 40 years respectively, they could not assert their possession to defeat the right of action of the state where title by virtue of certain grants was not a valid conveyance of the tidelands area to their predecessors. State v. Yelsen Land Co., Inc. (S.C. 1975) 265 S.C. 78, 216 S.E.2d 876.

This section [former Code 1962, Section 10‑129] may be divided into two parts. The first relates to the commencement of the action and shows under what circumstances the plaintiff will be barred of his right to recover the land. The second has reference to the rights of the defendant and practically confers upon him a title in fee after he has held possession of the land under the circumstances and for the length of time therein mentioned. Sutton v. Clark (S.C. 1901) 59 S.C. 440, 38 S.E. 150, 82 Am.St.Rep. 848.

Objection that an action was not instituted within the time presented by this section [former Code 1962 Section 10‑129] should be taken by answer. Sutton v. Clark (S.C. 1901) 59 S.C. 440, 38 S.E. 150, 82 Am.St.Rep. 848.

Where the right of a minor heir to real property accrued in 1880, and the minor became of age in 1885 but did not assert her claim to the property until 1899, this section [former Code 1962 Section 10‑129] had no application, since sufficient time had elapsed to bar her claim after the disability of infancy was removed. Maccaw v. Crawley (S.C. 1901) 59 S.C. 342, 37 S.E. 934.

2. Tacking

This section [former Code 1962 Section 10‑129] permits the tacking of the time a party has been in possession with the time during which those under whom he claims held possession, so as to complete the statutory terms of adverse possession; and an instruction to this effect is sound. Sutton v Clark, 59 SC 440, 38 SE 150 (1901). Mitchell v Cleveland, 76 SC 432, 57 SE 33 (1907).

3. Remaindermen

The 40 year statutory period does not run against a remainderman until the death of the life tenant. Curtis v. DesChamps (S.C.App. 1986) 290 S.C. 315, 350 S.E.2d 201. Remainders 17(2)

The statute of limitations does not commence to run against a remainderman until the death of the life tenant. Stamper v. Avant (S.C. 1958) 233 S.C. 359, 104 S.E.2d 565.

4. Term of possession

This section [former Code 1962 Section 10‑129] does not apply unless the defendant has been in possession forty years after the accrual of the cause of action. Holding that the cause of action of remaindermen to recover possession from those claiming under an execution sale of the life estate does not accrue until the death of the life tenant. Rowell v. Hyatt (S.C. 1917) 108 S.C. 300, 94 S.E. 113.

5. Burden of proof

In order to defeat the plaintiff’s right to recovery, the defendant is compelled to prove every fact that would have to be established to show that he had become the owner of the title by virtue of this section [former Code 1962 Section 10‑129]. Sutton v. Clark (S.C. 1901) 59 S.C. 440, 38 S.E. 150, 82 Am.St.Rep. 848.

6. “Possession valid against the world”

A possession which “shall be deemed valid against the world” is tantamount to the fee, otherwise the last sentence in this section [former Code 1962 Section 10‑129] would be meaningless. Sutton v. Clark (S.C. 1901) 59 S.C. 440, 38 S.E. 150, 82 Am.St.Rep. 848.

ARTICLE 5

Actions Other Than for Recovery of Real Property

**SECTION 15‑3‑510.** General rule.

 The periods for the commencement of actions other than for the recovery of real property shall be as prescribed in the following sections.

HISTORY: 1962 Code Section 10‑141; 1952 Code Section 10‑141; 1942 Code Section 386; 1932 Code Section 386; Civ. P. ‘22 Section 329; Civ. P. ‘12 Section 135; Civ. P. ‘02 Section 110; 1870 (14) 447 Section 112.

CROSS REFERENCES

Limitation of action after workmen’s compensation claim erroneously made, see Section 42‑1‑650.

Limitations on actions against railroad for injuries from violation of rules, see Section 58‑17‑3960.

Limitation on recovery of penalties and damages for prohibited acts, see Section 58‑17‑4000.

Statute of limitations in claims by employees against railroad, see Section 58‑17‑3770.

Time for commencement of an action mentioned in this article when the plaintiff is under disability, see Section 15‑3‑40.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k3(1).

Limitation of Actions 3(1).

C.J.S. Limitations of Actions Section 5.

RESEARCH REFERENCES

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The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

NOTES OF DECISIONS

In general 1

Burden of establishing bar of limitations 2

1. In general

Under discovery rule, statute of limitations begins to run when cause of action reasonably ought to have been discovered. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Limitation Of Actions 95(1)

Date on which discovery of cause of action should have been made is objective, rather than subjective, question. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Limitation Of Actions 95(1)

If there is any doubt as to which of two statutes of limitations applies, that doubt must be resolved in favor of the longest period, according to the great weight of authority. State v. Life Ins. Co. of Georgia (S.C. 1970) 254 S.C. 286, 175 S.E.2d 203. Limitation Of Actions 16

2. Burden of establishing bar of limitations

Under South Carolina law, the burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Limitation Of Actions 195(3); Limitation Of Actions 199(1)

The burden of establishing the bar of the statute of limitations is the responsibility of one interposing that defense, and where the testimony is conflicting presents a jury question; where there is no conflict of fact, the question is for the court. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243. Limitation Of Actions 199(1)

**SECTION 15‑3‑520.** Within twenty years.

 Within twenty years:

 (a) an action upon a bond or other contract in writing secured by a mortgage of real property;

 (b) an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15‑3‑530, except that a sealed contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36‑2‑725.

HISTORY: 1962 Code Section 10‑142; 1952 Code Section 10‑142; 1942 Code Section 387; 1932 Code Section 387; Civ. P. ‘22 Section 330; Civ. P. ‘12 Section 136; Civ. P. ‘02 Section 111; 1870 (14) 447 Section 113; 1880 (17) 415; 1946 (44) 1436; 1988 Act No. 494, Section 8(1).

CROSS REFERENCES

Applicability of chapter to actions to enforce bills, notes, etc., issued by moneyed corporations or as money, see Section 15‑3‑110.

Status of liens on real estate after 20 years, see Section 29‑1‑10.

What are considered sealed instruments, see Section 19‑1‑160.

LIBRARY REFERENCES

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Limitation of Actions 22.

C.J.S. Limitations of Actions Section 54.

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S.C. Jur. Covenants Section 54, Statute of Limitations.

S.C. Jur. Limitation of Actions Section 21, Actions on Bonds, Realty Secured Contracts and Sealed Instruments.

S.C. Jur. Limitation of Actions Section 35, Actions to Which Statutes of Limitation Apply.

Attorney General’s Opinions

Sureties of clerks of court can be sued within twenty years after the cause of action has accrued. 1964‑65 Op Atty Gen, No 1897, p 181.

NOTES OF DECISIONS

In general 1

Action to recover tax execution fees 8

Bonds 5

Endorsers of note 7

Mortgages 2

New promise or acknowledgment 6

Principals and sureties 3

Sealed instrument 4

1. In general

An action by the executrixes of an estate for the purpose of foreclosing on two notes secured by mortgages was not barred by the statute of limitations, where the action was commenced within the 20 year period provided for in Section 15‑3‑520(1), and where defendant was precluded from raising the statute as a defense by her failure to plead it in her answer as required by Section 15‑13‑360. Suttles v. Wood (S.C.App. 1984) 280 S.C. 272, 312 S.E.2d 574.

2. Mortgages

A mortgage which is invalid as a legal mortgage through insufficient attestation, but enforceable as an equitable mortgage is more than “a sealed note or personal bond for the payment of money only.” It is a sealed instrument importing an obligation to pay money and a lien as between the obligor and obligee upon the land to secure payment. This being so, in a controversy between the obligor and obligee, the action falls under subd. (2) of this section [Code 1962 Section 10‑142]. Stelts v. Martin (S.C. 1911) 90 S.C. 14, 72 S.E. 550.

A party cannot derive any benefit from subrogation to rights of mortgagee in a mortgage barred by the statute of limitations. Coleman v. Coleman (S.C. 1906) 74 S.C. 567, 54 S.E. 758.

The court had under consideration former Code 1962 Section 45‑1, which among other things provides that the lien of a mortgage shall be ineffective after the lapse of 20 years from its maturity. The court, in order to leave this section [former Code 1962 Section 10‑142] in full force and effect, construed that section so that under it the lien of a mortgage is good for 20 years after the note secured thereby becomes due, though the mortgage itself is more than 20 years old from the date of its execution. Lyles v. Lyles (S.C. 1905) 71 S.C. 391, 51 S.E. 113.

This section [formen Code 1962 Section 10‑142] applies to foreclosure of mortgage. Jennings v. Peay (S.C. 1898) 51 S.C. 327, 28 S.E. 949.

This section [former Code 1962 Section 10‑142] does not apply to a case where the legal holder of a bond secured by a real estate mortgage cancels and satisfies the mortgage of record, and leaves nothing but the bond, which is one for the payment of money only. The limitation in such case is expressly provided for in former Code 1962 Section 10‑143. Gable v. Rauch (S.C. 1897) 50 S.C. 95, 27 S.E. 555.

An instrument with all the requisites of a mortgage, except a seal, is not a mortgage within the meaning of this section [former Code 1962 Section 10‑142]. Arthur v. Screven (S.C. 1893) 39 S.C. 77, 17 S.E. 640. Mortgages And Deeds Of Trust 1308

3. Principals and sureties

Under this section [former Code 1962 Section 10‑142] an action for damages for breach of administrator’s bond may be maintained against his surety any time within 20 years after breach, though bond is more than 20 years old. Beatty v National Surety Co., 132 SC 45, 128 SE 40 (1925). Fouche v Royal Indemnity Co. of NY, 212 SC 194, 47 SE2d 209 (1948).

This section [former Code 1962 Section 10‑142] applies to all of the obligors on bonds and instruments falling within its purview, principals as well as the sureties. Strain v. Babb (S.C. 1889) 30 S.C. 342, 9 S.E. 271, 14 Am.St.Rep. 905.

4. Sealed instrument

Twenty‑year statute of limitations for action upon sealed instrument, as opposed to three‑year statute of limitations for most contract actions, applied to action brought by purchasers of residential lot against title insurance company for breach of contract and bad faith failure to pay insurance claim, following company’s denial of claim, after purchasers became aware of easement for federal government and no‑build resolution on lot; presence of seal on face of policy, next to president’s signature, evidenced intent to create sealed instrument. Lyons v. Fidelity Nat. Title Ins. Co (S.C.App. 2015) 415 S.C. 115, 781 S.E.2d 126, rehearing denied, vacated pursuant to settlement, certiorari dismissed. Insurance 3560

Under statute governing sealed instruments, commercial lease was not “sealed,” and thus, general three‑year statute of limitations for contract actions, not 20‑year statute of limitations for sealed instruments, applied to tenant’s counterclaim for breach of contract against subtenant, although lease had attestation clause reading “in witness whereof, the parties have hereunto set their hands and seals”; lease did not contain actual seal, letters “L.S.,” referring to the place where a seal would be affixed, or such a phrase as “signed, sealed, and delivered.” Carolina Marine Handling, Inc. v. Lasch (S.C.App. 2005) 363 S.C. 169, 609 S.E.2d 548, rehearing denied. Limitation Of Actions 22(2)

Under statute governing sealed instruments, if it appears from a non‑sealed instrument that the parties intended for the contract to be sealed, it will be deemed sealed. Carolina Marine Handling, Inc. v. Lasch (S.C.App. 2005) 363 S.C. 169, 609 S.E.2d 548, rehearing denied. Seals 5

A non‑sealed instrument may include provisions and indicia that evidence an intent that the contract be construed as a sealed instrument. Carolina Marine Handling, Inc. v. Lasch (S.C.App. 2005) 363 S.C. 169, 609 S.E.2d 548, rehearing denied. Seals 5

Statutory requirement that engineer place its professional engineer seal and endorsement on bridge plans did not render plans a “sealed instrument” to which 20‑year statute of limitations applied, and thus three‑year statute of limitations applied to contractor’s action against engineer for breach of implied warranty based on allegedly defective plans; statute requiring engineer’s seal and endorsement contained no language from which inference could be made that its purpose was to extend the time in which an action could be brought concerning a document on which those items appeared, and nothing in engineer’s plans suggested that engineer affixed its seal and endorsement for any other purpose than to comply with applicable licensing statutes. Republic Contracting Corp. v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1998) 332 S.C. 197, 503 S.E.2d 761, rehearing denied. Limitation Of Actions 22(2)

Separation agreement which was incorporated into 1974 Haitian divorce and which stated that parties have set their respective hands and seals in quadruplicate was sealed instrument, and thus, action by wife to enforce provision of agreement in which husband agreed to pay college expenses of children was governed by 20‑year statute of limitations. Treadaway v. Smith (S.C.App. 1996) 325 S.C. 367, 479 S.E.2d 849, rehearing denied, certiorari denied. Limitation Of Actions 22(2)

Contracts between the Department of Social Services and defendant nursing home whereby defendant was to furnish skilled nursing care to persons entitled thereto on certain terms and conditions were sealed instruments and, therefore, the action to recover overpayments occurring in 1972 and 1973 was well within the 20 year limitations period applicable to sealed contracts. South Carolina Dept. of Social Services v. Winyah Nursing Homes, Inc. (S.C.App. 1984) 282 S.C. 556, 320 S.E.2d 464.

5. Bonds

One‑year statute of limitations specifically provided for in state statute governing contractors’ bonds for Department of Transportation (DOT) construction projects, rather than 20‑year statute of limitations for sealed instruments, applied to subcontractor’s action against surety of general contractor’s payment bond to recover payment for pass through claims and unpaid retainage it was allegedly entitled to from final settlement issued to general contractor by DOT for bridge construction project. S and S Const., Inc. of Anderson v. Reliance Ins. Co., 1998, 42 F.Supp.2d 622. Public Contracts 229; States 101

A bond may be such that the breach thereof sounds in money damages and the penalty may be for a specific amount, and yet the bond may not be for the payment of money in the sense that the term is used in this section [former Code 1962 Section 10‑142]. Strain v. Babb (S.C. 1889) 30 S.C. 342, 9 S.E. 271, 14 Am.St.Rep. 905.

A bond which is in the nature of a covenant—a contract under seal—by which the obligors thereto bind themselves under a specified penalty to answer for the neglect of duty, if any, on the part of the clerk of the court to the extent of such injury as any party might sustain by such neglect, not to exceed the penalty, is a bond other then for the payment of money, in the sense of this section [former Code 1962 Section 10‑142]. Strain v. Babb (S.C. 1889) 30 S.C. 342, 9 S.E. 271, 14 Am.St.Rep. 905.

6. New promise or acknowledgment

The debtor may acknowledge the existence of a debt and thus infuse new life into the instrument evidencing the debt, and when this is done the twenty‑year period must begin from that time. McSween v. Windham (S.C. 1916) 104 S.C. 508, 89 S.E. 500.

7. Endorsers of note

When the endorser or endorsers execute a note with knowledge that it is secured by a mortgage of real property, the twenty‑year limitation, rather than the six‑year limitation, is applicable. Scovill v. Johnson (S.C. 1939) 190 S.C. 457, 3 S.E.2d 543.

8. Action to recover tax execution fees

An action by a county treasurer to recover tax execution fees collected and received by the county was an action upon an obligation or liability, express or implied, and did not come within the provisions of this section [former Code 1962 Section 10‑142]. Gillespie v. Pickens County (S.C. 1941) 197 S.C. 217, 14 S.E.2d 900. Limitation Of Actions 28(1)

**SECTION 15‑3‑530.** Three years.

 Within three years:

 (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15‑3‑520;

 (2) an action upon a liability created by statute other than a penalty or forfeiture;

 (3) an action for trespass upon or damage to real property;

 (4) an action for taking, detaining, or injuring any goods or chattels including an action for the specific recovery of personal property;

 (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15‑3‑545;

 (6) an action under Sections 15‑51‑10 to 15‑51‑60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought;

 (7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

 (8) an action on any policy of insurance, either fire or life, whereby any person or property, resident or situate in this State, may be or may have been insured, or for or on account of any loss arising under the policy, any clause, condition, or limitation contained in the policy to the contrary notwithstanding; and

 (9) an action against directors or stockholders of a monied corporation or a banking association to recover a penalty or forfeiture imposed or to enforce a liability created by law, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created, unless otherwise provided in the law under which the corporation is organized.

HISTORY: 1962 Code Section 10‑143; 1952 Code Section 10‑143; 1942 Code Sections 367, 388, 413; 1932 Code Sections 367, 388, 413; Civ. P. ‘22 Sections 331, 350, 369; Civ. C. ‘12 Section 3957; Civ. P. ‘12 Sections 137, 156; Civ. C. ‘02 Section 2853; Civ. P. ‘02 Sections 112, 130; 1870 (14) 447 Section 114, 450 Section 132; 1891 (20) 1042; 1903 (24) 96; 1977 Act No. 182, Section 1; 1988 Act No. 391, Section 2; 1988 Act No. 432, Section 1; 2001 Act No. 102, Section 1.

Editor’s Note

The limitations period was reduced from 6 to 3 years in 1988.

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Cases involving direct contest of allegedly fraudulent will, see Section 62‑3‑108.

Fraud perpetrated in connection with probate proceedings, see Section 62‑1‑106.

Limitations being inapplicable to bills, notes or other evidences of debt of moneyed corporations, see Section 15‑3‑110.

Necessity of instituting suit on original cause of action, see Section 15‑3‑130.

New promises and acknowledgments or part payment taking case from operation of statute of limitations, see Section 15‑3‑120.

Recovery of personal property, see Sections 15‑69‑10 et seq.

Summary ejectment of trespassers, see Sections 15‑67‑610 et seq.

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C.J.S. Bills and Notes.

C.J.S. Letters of Credit Section 258.

C.J.S. Employer‑Employee Relationship Section 87.

C.J.S. Limitations of Actions Sections 31 to 80.

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33 ALR 5th 1 , Modern Status of the Application of “Discovery Rule” to Postpone Running of Limitations Against Actions Relating to Breach of Building and Construction Contracts.

67 ALR 5th 587 , When Statute of Limitations Begins to Run Upon Action Against Attorney for Legal Malpractice‑Deliberate Wrongful Acts or Omissions.

49 ALR 5th 1 , Causes of Action Governed by Limitations Period in UCC Section 2‑725.

12 ALR 3rd 1265 , When Does Cause of Action Accrue, for Purposes of Statute of Limitations, Against Action Based Upon Encroachment of Building or Other Structure Upon Land of Another.

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S.C. Jur. Attorney and Client Section 69, Statute of Limitations.

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S.C. Jur. Constitutional Law Section 106, Laws Impairing Obligations of Contract.

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S.C. Jur. Covenants Section 15, Limitations; Accrual of Cause of Action.

S.C. Jur. Covenants Section 54, Statute of Limitations.

S.C. Jur. Criminal Conversation Section 6, Defenses.

S.C. Jur. Eminent Domain Section 35, Statute of Limitations.

S.C. Jur. Estoppel and Waiver Section 4, Equitable Estoppel or Estoppel in Pais.

S.C. Jur. Fraud Section 24, Limitations.

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S.C. Jur. Implied Contracts Section 22, Statute of Limitations.

S.C. Jur. Limitation of Actions Section 12, Amendment, Repeal or Suspension of Statute.

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S.C. Jur. Seduction Section 15, Statute of Limitations.

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Limitations, CERCLA’s preemption of state statutes of limitation does not apply to statutes of repose, see CTS Corp. v. Waldburger, 2014, 134 S.Ct. 2175, 189 L.Ed.2d 62, rehearing denied 135 S.Ct. 23, 189 L.Ed.2d 874. Limitation of Actions 4(1); States 18.15

Attorney General’s Opinions

In light of the fact that doctors and physicians are professional persons with a higher obligation to their patients than the ordinary employees of a medical facility, there is a strong factual basis for their exemption from the limitations of [1977] Act No. 182; the classification of the Act is not suspect, is not outside the scope of the legislature to regulate sovereign/charitable immunity, and therefore is not unconstitutional. 1978 Op Atty Gen, No 78‑67, p 94.

Inasmuch as the language of the recent amendments does not appear to suggest a legislative intent to repeal Section 38‑71‑340(11) or expand the scope of Section 15‑3‑530 to include actions upon accident and health insurance policies, a court would most probably conclude that the six‑year statute of limitations provided by Section 38‑71‑340(11) (as last amended by Act 394 of 1988) continues in force and effect for actions upon accident and health insurance policies. 1989 Op Atty Gen, No. 89‑91, p 243.

Courts decision in Marchant v Hamilton, (1983, App) 279 SC 497, 309 SE2d 781, holding that employees of State or political subdivision are entitled to full civilian pay while undergoing military training, is to be applied retroactively as well as prospectively. Applicability of any statute of limitations for claims for backpay should be made on case‑by‑case basis. 1984 Op Atty Gen, No. 84‑137, p. 332.

Clerks of court may be sued for breaches of duty within six years after the cause of action accrued. 1964‑65 Op Atty Gen, No 1897, p 181.

NOTES OF DECISIONS

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1. In general

This section [former Code 1962 Section 10‑143] applies only to actions at law and has no application to suits in equity. Parrott v Dickson, 151 SC 114, 148 SE 704 (1929). Fanning v Bogacki, 111 SC 376, 98 SE 137 (1919). Du Pont v Du Bos, 52 SC 244, 29 SE 665 (1898). McKinnon v Summers, 224 SC 331, 79 SE2d 146 (1953).

Applied as to note executed prior to statute, but maturing after the passage of the section, in Stoddard v Owings, 42 SC 88, 20 SE 25 (1894); Jennings v Peay, 51 SC 327, 28 SE 949 (1898); McCrady v Jones, 44 SC 406, 22 SE 414 (1895).

Cause of action for black listing, of common law origin and existing independently from elements of conspiracy or defamation, is controlled by 6‑year limitation period to extent it is not merely outgrowth of slander action. Austin v. Torrington Co. (D.C.S.C. 1985) 611 F.Supp. 191, reversed 810 F.2d 416, certiorari denied 108 S.Ct. 489, 484 U.S. 977, 98 L.Ed.2d 487.

Client’s cause of action for legal malpractice against attorneys which stemmed from attorneys’ representation of her in medical malpractice action for death of her child, accrued, and statute of limitations period began to run, on date she was terminated as child’s guardian. Kelly v. Logan, Jolley, & Smith, L.L.P. (S.C.App. 2009) 383 S.C. 626, 682 S.E.2d 1. Limitation Of Actions 95(11)

Account statements put since‑deceased account co‑holder and the personal representative of her estate, who was the widow of account holder’s nephew, on notice of potential injury more than three years before personal representative brought negligence claim against bank based on alleged embezzlement from the accounts such that statute of limitations barred negligence claim; statements showed a depletion of money market and checking accounts totaling $47,661.82, and reasonable diligence at that time required call to other co‑owner to eliminate any question as to whether she was responsible for any of the withdrawals or call to bank for additional clarification. Gibson v. Bank of America, N.A. (S.C.App. 2009) 383 S.C. 399, 680 S.E.2d 778. Limitation Of Actions 95(7)

A statute of limitations reduces the interval between the accrual and commencement of a right of action to a fixed period, thereby putting to rest claims after the passage of time, and operates as a defense to limit the remedy available from an existing cause of action; unless an action is commenced before expiration of the limitations period, the plaintiff’s claim is normally barred. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Limitation Of Actions 1; Limitation Of Actions 165

Three‑year limitations period governing former patient’s suit against physician for sexual abuse allegedly committed when patient was 14 or 15 years‑old began to run when patient reached age of majority. Doe v. Crooks (S.C. 2005) 364 S.C. 349, 613 S.E.2d 536. Limitation Of Actions 72(1)

Actions concerning administration of trust accounts fall within Probate Code statute of limitations rather than general statute of limitations. Mayer v. M.S. Bailey & Son (S.C.App. 2001) 347 S.C. 353, 555 S.E.2d 406.

Suit to set aside condition, reserved in deed and determined to be void under rule against perpetuities, cannot be barred as untimely. Webb v. Reames (S.C.App. 1997) 326 S.C. 444, 485 S.E.2d 384, rehearing denied. Limitation Of Actions 36(1)

Repeal by implication is disfavored, and is found only when 2 statutes are incapable of any reasonable reconcilement; Sections 36‑2‑725 and 15‑3‑530(1) are not in conflict, and thus actions arising under Article 2 of the UCC are governed by Section 36‑2‑725’s statute of limitations as opposed to the later‑enacted Section 15‑3‑530(1). Atlas Food Systems and Services, Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp. (S.C. 1995) 319 S.C. 556, 462 S.E.2d 858.

Section 15‑3‑530 must be affirmatively pled. Kolb v. Cook (S.C.App. 1985) 284 S.C. 598, 327 S.E.2d 379.

Action to establish child support obligation on part of alleged father of illegitimate child not barred by 6‑year statute of limitations in South Carolina Code Section 10‑143 (1962) [Section 15‑3‑530 (1976)] where child was born more than 6 years prior to action, since new causes of action arise over years with each instance of putative father’s failure to support child. South Carolina Dept. of Social Services v. Lowman (S.C. 1977) 269 S.C. 41, 236 S.E.2d 194.

An action for a specific performance of an oral contract to convey land is not barred by the 6 year statute of limitations because such action is in equity. Parr v. Parr (S.C. 1977) 268 S.C. 58, 231 S.E.2d 695. Frauds, Statute Of 129(3)

Action to declare interest in land was not time‑barred by Code 1962 Section 10‑143 [Code 1976 Section 15‑5‑530], as such statute does not apply to actions for recovery of land. Cooper v. Tindall (S.C. 1976) 267 S.C. 196, 226 S.E.2d 888. Limitation Of Actions 21(1)

Statutes of limitations are applicable between husband and wife during the continuance of the marital status. McCall v. Bangs (S.C. 1974) 262 S.C. 657, 207 S.E.2d 91. Limitation Of Actions 73(4)

This section [former Code 1962 Section 10‑143] commences to run only from the time that the cause of action accrues. Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781.

The fundamental test in determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it. A cause of action accrues at the moment when the plaintiff has a legal right to sue on it. Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781.

The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide. Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781.

A cause or right of action accrues so as to start the running of the statute of limitations, as soon as the right to institute and maintain the action arises. Walter J. Klein Co. v. Kneece (S.C. 1962) 239 S.C. 478, 123 S.E.2d 870. Limitation Of Actions 43

The statute of limitations is a statute of repose and affects the remedy and not the right. Webb v. Greenwood County (S.C. 1956) 229 S.C. 267, 92 S.E.2d 688. Limitation Of Actions 1; Limitation Of Actions 165

The statute of limitations does not apply to a proceeding in mandamus, but where there is an unreasonable delay the court in the exercise of its discretion will refuse to issue the writ. Godwin v. Carrigan (S.C. 1955) 227 S.C. 216, 87 S.E.2d 471.

If there is any doubt as to which of two statutes of limitations applies, that doubt must be resolved in favor of the longer period. Scovill v. Johnson (S.C. 1939) 190 S.C. 457, 3 S.E.2d 543. Limitation Of Actions 16

The six‑year statute of limitation does not apply to the entering of a final judgment on the book of abstracts and indices. Harvey v. Gibson (S.C. 1939) 190 S.C. 98, 2 S.E.2d 385.

Before this section [former Code 1962 Section 10‑143] could run against right to compel purchaser of land sold under order of court in partition action, even if the statute of limitations were applicable to such a case, the purchaser should notify clerk of court of his refusal to comply with terms of his bid. Parrott v. Dickson (S.C. 1929) 151 S.C. 114, 148 S.E. 704, 63 A.L.R. 965.

This section [former Code 1962 Section 10‑143] applies to and governs limitations as to tort actions. Newman v. Lemmon (S.C. 1929) 149 S.C. 417, 147 S.E. 439.

Agreement changing period of limitation is void. State Agricultural & Mechanical Soc. of South Carolina v. Taylor (S.C. 1916) 104 S.C. 167, 88 S.E. 372.

The statute of limitations does not purport to destroy or extinguish a cause of action, but simply to close the doors of the courts to a suitor who undertakes to bring his suit upon such cause of action after the lapse of the prescribed period. Jackson v. Plyler (S.C. 1893) 38 S.C. 496, 17 S.E. 255, 37 Am.St.Rep. 782.

This section [former Code 1962 Section 10‑143] confers no rights except simply that of immunity from suit, and therefore, until some action is brought against one who seeks to avail himself of the benefits of the statute, there is no room for its application. Amaker v. New (S.C. 1890) 33 S.C. 28, 11 S.E. 386.

The plea of the statute is not directed to the plaintiff’s cause of action, but is interposed as a protection against an attack made by the plaintiff upon the defense set up by defendants. Amaker v. New (S.C. 1890) 33 S.C. 28, 11 S.E. 386.

The statute of limitations is inert and inoperative until a right of action arises. Suber v. Chandler (S.C. 1883) 18 S.C. 526. Limitation Of Actions 43

It has been held that while a holder of a note may have lost his right of action for the breach of the contract evidenced by the note by reason of the lapse of the prescribed time, yet if he can obtain payment in any other way than by resort to an action on such contract, he has the right so to do. Wilson v. Kelly (S.C. 1881) 16 S.C. 216.

Under South Carolina law, employer’s nomination of employee for award and offer to give him dinner and gift did not constitute rejection of employee’s request for monetary compensation for his invention, and thus did not commence limitations period for employee to bring action for breach of contract, quasi‑contract, and conversion. Farley v. CSX Transp., Inc (C.A.4 (S.C.) 2005) 144 Fed.Appx. 962, 2005 WL 1971569, Unreported. Limitation Of Actions 95(7); Limitation Of Actions 95(9)

1.5. Constitutional issues

CERCLA’s discovery rule, under which statutes of limitations in actions brought under state law for personal injury or property damage arising from the release of a hazardous substance, pollutant, or contaminant into the environment begin to run when a plaintiff discovers, or reasonably should have discovered, that the harm in question was caused by the contaminant, preempts only state statutes of limitations that are in conflict with its terms, and it does not preempt state statutes of repose; abrogating McDonald v. Sun Oil Co., 548 F.3d 774. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Section 309, 42 U.S.C.A. CTS Corp. v. Waldburger, 2014, 134 S.Ct. 2175, 189 L.Ed.2d 62, rehearing denied 135 S.Ct. 23, 189 L.Ed.2d 874. Limitation of Actions 4(1); States 18.15

CERCLA’s discovery rule, under which statutes of limitations in actions brought under state law for personal injury or property damage arising from the release of a hazardous substance, pollutant, or contaminant into the environment begin to run when a plaintiff discovers, or reasonably should have discovered, that the harm in question was caused by the contaminant, did not impliedly preempt state statutes of repose; statutes of repose did not pose an unacceptable obstacle to the attainment of purposes of CERCLA, which did not provide a complete remedial framework, but instead left untouched States’ judgments about causes of action, the scope of liability, the duration of the period provided by statutes of limitations, burdens of proof, rules of evidence, and other important rules governing civil actions. CTS Corp. v. Waldburger, 2014, 134 S.Ct. 2175, 189 L.Ed.2d 62, rehearing denied 135 S.Ct. 23, 189 L.Ed.2d 874. Limitation of Actions 4(1); States 18.15

2. Contract, obligation or liability

This section [former Code 1962 Section 10‑143] does not apply to actions arising under former Code 1962 Section 32‑950.23, which provides for liability of estate of deceased patient or trainee for State care. South Carolina Mental Health Comm. v May, 226 SC 108, 83 SE2d 713 (1954). South Carolina Mental Health Comm. v Smith, 226 SC 175, 84 SE2d 375 (1954).

Subsection (1) cited in Johnson v Broome, 175 SC 385, 179 SE 315 (1935). Blackwood v Spartanburg Commandery No. 3, 185 SC 56, 193 SE 195 (1937). Wallace v Timmons, 232 SC 311, 101 SE2d 844 (1958). Galphin v Wells, 236 SC 606, 115 SE2d 288 (1960).

This subsection applies to the case where the legal titleholder of a bond secured by a mortgage cancels and satisfies the mortgage of record and leaves nothing but the bond, which is one for the payment of money only, and an action thereon is barred within 6 years. Newell v Neal, 50 SC 68, 27 SE 560 (1897). Gable v Rauch, 50 SC 95, 27 SE 555 (1897).

Part payment removes bar of statute. Partial payment on a note within the six‑year period immediately preceding the bringing of an action therein will remove the bar of the statute. Zaks v. Elliott, 1939, 106 F.2d 425. Limitation Of Actions 163(1)

Application to the debt by the creditor of the proceeds from the sale of collateral deposited with a note will not toll the statute of limitations, and payment by one joint obligor does not deprive the other of the protection of the statute of limitations. Zaks v. Elliott, 1939, 106 F.2d 425. Limitation Of Actions 157(5)

A breach of contract action generally accrues under South Carolina law at the time the contract is breached or broken. Richland‑Lexington Airport Dist. v. American Airlines, Inc., 2002, 306 F.Supp.2d 548, affirmed 61 Fed.Appx. 67, 2003 WL 1521910. Limitation Of Actions 46(6)

A cause of action for a breach of contract accompanied by a fraudulent act is governed by the limitations period for contract actions. Wilson Group, Inc. v. Quorum Health Resources, Inc., 1995, 880 F.Supp. 416.

The statute of limitations for an action based upon an implied contractual obligation began to run when the employee knew that a commission allegedly promised him would not be paid. It was not required that he be on notice of all false representations concerning compensation. Witt v. American Trucking Associations, Inc., 1994, 860 F.Supp. 295.

Six‑year statute of limitations in Article 2 of Uniform Commercial Code (UCC), rather than general three‑year statute of limitations, applied to breach of contract action brought by assignee of automobile financing contract against borrower to collect debt after assignee repossessed and sold automobile; even though assignee exercised its right to repossess under UCC Article 9, assignee had right to sue borrower for breach of contract, and assignee was entitled to exercise rights under both Article 2 and Article 9 simultaneously, so long as it did not obtain double recovery. Coastal Federal Credit Union v. Brown (S.C.App. 2016) 417 S.C. 544, 790 S.E.2d 417, rehearing denied. Sales 516; Secured Transactions 240

Statutory changes that removed state tax exemptions on state retirement benefits did not amount to a continuing breach that would start a new limitations period each year, in taxpayer’s impairment of contract action challenging the statutory changes; the cause of action arose with the enactment of the changes. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Limitation Of Actions 58(6)

State department of revenue did not waive statute of limitations defense to taxpayer’s impairment of contract claim by failing to assert the defense in taxpayer’s prior action, which action was dismissed without prejudice, where the prior dismissal allowed the department opportunity to assert any available defenses, including a limitations defense, when the action was re‑filed. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Limitation Of Actions 180(6)

Limitations period for actions pursuant to contract or statute begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Limitation Of Actions 95(3); Limitation Of Actions 95(9)

Genuine issue of material fact as to when corporation discovered or should have discovered, through the exercise of reasonable diligence, alleged breach of contract for administrative and management services, precluded summary judgment in favor of corporation on issue of accrual of the statute of limitations, in corporation’s breach of contract action against affiliate. RWE NUKEM Corp. v. ENSR Corp. (S.C. 2007) 373 S.C. 190, 644 S.E.2d 730. Judgment 181(7)

Under statute governing sealed instruments, commercial lease was not “sealed,” and thus, general three‑year statute of limitations for contract actions, not 20‑year statute of limitations for sealed instruments, applied to tenant’s counterclaim for breach of contract against subtenant, although lease had attestation clause reading “in witness whereof, the parties have hereunto set their hands and seals”; lease did not contain actual seal, letters “L.S.,” referring to the place where a seal would be affixed, or such a phrase as “signed, sealed, and delivered.” Carolina Marine Handling, Inc. v. Lasch (S.C.App. 2005) 363 S.C. 169, 609 S.E.2d 548, rehearing denied. Limitation Of Actions 22(2)

Mother’s claim that deed which conveyed real property to son was invalid due to lack of consideration because son failed to fulfill obligations under lifetime agreement in which he agreed to take care of mother was brought within three years of time in which mother discovered incidents and facts supporting claim that son failed to provide for her as required by lifetime care agreement, and thus mother’s claim was timely under discovery rule even though lifetime agreement was signed more than three years before mother brought claim. Dixon v. Dixon (S.C. 2005) 362 S.C. 388, 608 S.E.2d 849. Limitation Of Actions 95(8)

Three‑year statute of limitations for negligence actions began to run on homeowner’s negligence claim against rigging contractor when he discovered his newly purchased modular home was damaged during a delivery accident. Cline v. J.E. Faulkner Homes, Inc. (S.C.App. 2004) 359 S.C. 367, 597 S.E.2d 27. Limitation Of Actions 95(7)

Genuine issues of material fact as to when contractor’s breach of contract claim against Department of Highways and Public Transportation accrued precluded summary judgment on limitations grounds for Department, where date of substantial completion of bridge project fell within three‑year limitations period, grievances filed by contractor pursuant to contract were still pending pursuant to contract procedure, contractor did not receive formal rejection of grievance, Department did not assess liquidated damages against contractor until after completion of project, and final payment on contract was made less than one year before lawsuit was filed. Republic Contracting Corp. v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1998) 332 S.C. 197, 503 S.E.2d 761, rehearing denied. Judgment 181(7)

Action for breach of contract must be brought within three years from the date the action accrues. Maher v. Tietex Corp. (S.C.App. 1998) 331 S.C. 371, 500 S.E.2d 204, rehearing denied. Limitation Of Actions 46(1)

Employer’s failure to pay former employee yearly bonus after it unilaterally abrogated bonus plan was not a continuing wrong that extended into limitations period for employee’s breach of contract claim, but rather was a single wrong with continuing effects. Maher v. Tietex Corp. (S.C.App. 1998) 331 S.C. 371, 500 S.E.2d 204, rehearing denied. Limitation Of Actions 46(7)

For purposes of determining when statute of limitations began to run on employee’s breach of contract claim, date employee should have discovered the breach could be vastly different from the date when he received actual notice of the breach from the employer. Maher v. Tietex Corp. (S.C.App. 1998) 331 S.C. 371, 500 S.E.2d 204, rehearing denied. Limitation Of Actions 95(14)

Case or controversy regarding validity of right of first refusal contained in deed executed some 40 years earlier did not arise until right was asserted and, thus, declaratory judgment action seeking determination of right as void was timely when commenced within six years of right being asserted. Webb v. Reames (S.C.App. 1997) 326 S.C. 444, 485 S.E.2d 384, rehearing denied. Limitation Of Actions 47(2)

The plaintiff served its complaint for breach of contract within the statute of limitations where, applying the discovery rule, the service was made within three years of when the plaintiff could have known that the fire on which the action was based resulted from the breach of contract. Graniteville Co., Inc. v. IH Services, Inc. (S.C.App. 1994) 316 S.C. 146, 447 S.E.2d 226, rehearing denied, certiorari denied.

The applicable 6‑year statute of limitations for breach of contract, Section 15‑3‑530, rather than laches applies to all legal claims against an estate. Edens v. Edens (S.C. 1993) 312 S.C. 488, 435 S.E.2d 851, rehearing denied.

The “discovery rule” is applicable to contract actions governed by Section 15‑3‑530(1). Santee Portland Cement Co. v. Daniel Intern. Corp. (S.C. 1989) 299 S.C. 269, 384 S.E.2d 693.

Where, more than 12 years after the indebtedness was finally due, a wife brought an action against her husband’s estate to enforce payment of an alleged debt based on a note signed by her husband and assigned to her before their marriage, even if coverture constituted a disability, the wife’s claim would still be barred by this section [former Code 1962 Section 10‑143] because her right of action accrued before her coverture. McCall v. Bangs (S.C. 1974) 262 S.C. 657, 207 S.E.2d 91.

This subsection applies to claims for services to a decedent which were rendered without agreement that payment should be made at death or by will, and in an action to recover on an implied promise to pay for such services, no recovery may be had for services performed more than six years prior to the death of decedent. McConnell v. Crocker (S.C. 1950) 217 S.C. 334, 60 S.E.2d 673.

Payment by husband on joint note with wife does not toll the statute as to both makers, unless the wife agreed that husband act for both. Wolfe v. Brannon (S.C. 1947) 211 S.C. 282, 44 S.E.2d 833.

An action on a promissory note is barred unless brought within six years from its maturity. Wolfe v. Brannon (S.C. 1947) 211 S.C. 282, 44 S.E.2d 833.

A promissory note payable on demand, with or without interest, is due immediately, and the statute of limitations runs in favor of the maker from the date of the execution of the instrument. Coleman v. Page’s Estate (S.C. 1943) 202 S.C. 486, 25 S.E.2d 559. Bills And Notes 129(3); Limitation Of Actions 48(2); Limitation Of Actions 66(12)

An action resting on breach of contract generally accrues at the time the contract is broken, although substantial damages from the breach are not sustained until afterward. Nominal damages at least can be recovered immediately upon the happening of the breach, and the statute of limitations then begins to run; its operation is not delayed until substantial or consequential damages accrue. Livingston v. Sims (S.C. 1941) 197 S.C. 458, 15 S.E.2d 770. Limitation Of Actions 46(6)

A cause of action against a bank in the capacity of a broker, to recover damages because of the bank’s breach of contract in failing to transfer shares of stock on its books from plaintiff’s name to the name of the purchaser, accrued when the bank, as broker, breached its alleged contract with plaintiff by its failure to transfer the stock on the books of the bank, and this section [former Code 1962 Section 10‑143] commenced to run from that date. Livingston v. Sims (S.C. 1941) 197 S.C. 458, 15 S.E.2d 770.

This subsection was applied to an action against the receiver of a bank, in its capacity as a broker, to recover the damage suffered by plaintiff because of the bank’s breach of contract in failing to transfer shares of stock on its books from his name to the name of the purchaser. Livingston v. Sims (S.C. 1941) 197 S.C. 458, 15 S.E.2d 770.

An action by a county treasurer to recover tax execution fees collected and received by the county was subject to the six‑year statute of limitations because it was an action upon an obligation or liability, express or implied. Gillespie v. Pickens County (S.C. 1941) 197 S.C. 217, 14 S.E.2d 900. Limitation Of Actions 28(1)

Subsection (1) applied in Scott v. Anderson County (S.C. 1940) 195 S.C. 92, 10 S.E.2d 359.

When the endorser or endorsers execute a note with knowledge that it is secured by a mortgage of real property, the twenty‑year limitation, rather than the six‑year limitation, is applicable. Scovill v. Johnson (S.C. 1939) 190 S.C. 457, 3 S.E.2d 543.

In an action for breach of covenant of general warranty brought by assignee or covenantee, the statute of limitations did not run from the time of the conveyance, but since warranty was not personal, the statute of limitations ran from the time that right of possession in the land was destroyed. Morris v. Lain (S.C. 1935) 176 S.C. 310, 180 S.E. 206, 100 A.L.R. 1189.

If a nonresident corporation, as payee of a note, cannot sue thereon in this State by reason of the fact that such note is barred by the statute of limitations where it was executed, then a resident trustee to whom the note was assigned for the purposes of collection cannot sue. Hodges v. Lake Summit Co. (S.C. 1930) 155 S.C. 436, 152 S.E. 658.

Part payments do not toll statute as to endorsers. Under subd. (1) of this section [former Code 1962 Section 10‑143] payments before or after maturity of a note by the maker do not toll the statute as to the endorsers. Butts v. Georgetown Mut. Building & Loan Ass’n (S.C. 1927) 142 S.C. 353, 140 S.E. 700.

Under subd. (1) of this section [former Code 1962 Section 10‑143] a counterclaim for the conversion of property is barred where the tort is waived and a recovery is sought on an implied contract which shows that the cause of action had accrued more than six years prior to the institution of the action. Lenhardt v. French (S.C. 1900) 57 S.C. 493, 35 S.E. 761. Limitation Of Actions 28(1)

An action based upon a note which, after becoming barred by limitations, was given new life by part payment, is an action upon a “contract” which is “implied” from such payment within the meaning of subd. (1) of this section [former Code 1962 Section 10‑143]. Park v. Brooks (S.C. 1893) 38 S.C. 300, 17 S.E. 22.

Action founded on an agreement in compromise settlement of note is within subsection. McMakin v. Gowan (S.C. 1883) 18 S.C. 502.

Issue of when employer rejected employee’s request for monetary compensation for his invention involved fact question that could not be resolved on motion to dismiss employee’s action against employer for breach of contract, quasi‑contract, and conversion on limitations grounds. Farley v. CSX Transp., Inc (C.A.4 (S.C.) 2005) 144 Fed.Appx. 962, 2005 WL 1971569, Unreported. Federal Civil Procedure 1831

3. Liability created by statute

Under South Carolina law, six‑year statute of limitations set forth in Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) for actions brought by Resolution Trust Corporation (RTC) in its capacity as conservator was not personal to RTC, so it, rather than three‑year South Carolina statute of limitations, was applicable to assignee of note from RTC. National Enterprises, Inc. v. Barnes (C.A.4 (S.C.) 2000) 201 F.3d 331. Building And Loan Associations 42(16)

Three‑year statute of limitations period set forth in state law governed former employee’s Sections 1981 claims against former employer. Woodward v. United Parcel Service, Inc., 2004, 306 F.Supp.2d 567. Civil Rights 1383; Federal Courts 3034(5)

In products liability action brought by plaintiff worker injured on machine manufactured by defendant, applicable statute of limitations was 6‑year period specified in Section 15‑3‑530(2); however, Rules 3 and 6 of South Carolina Rules of Civil Procedure applied to this section to extend the limitations period such that action was timely filed where plaintiff delivered summons and complaint to sheriff on Monday following the Saturday on which limitations period expired, and sheriff served process on defendant within 2 days of receipt. Creech v. N.D.T. Industries, Inc., 1993, 815 F.Supp. 165.

In South Carolina the statute of limitations applicable to actions brought under 42 USCA Section 1983 is the six‑year period specified in Section 15‑3‑530(1). Gantlin v. Westvaco Corp. (D.C.S.C. 1981) 526 F.Supp. 1356, affirmed 734 F.2d 980. Civil Rights 1530

In South Carolina, statute of limitations applicable to actions under 42 USCA Section 1983 is 6‑year period specified in South Carolina Code Section 15‑3‑530. Gantlin v. Westvaco Corp. (D.C.S.C. 1981) 526 F.Supp. 1356, affirmed 734 F.2d 980. Civil Rights 1530

The appropriate limitation period for a suit brought under 42 USCA Section 1983 for employment discrimination is 6 years pursuant to Section 15‑3‑530. Simmons v. South Carolina State Ports Authority (D.C.S.C. 1980) 495 F.Supp. 1239, affirmed 694 F.2d 63.

An employee’s claim for military leave payments was time barred where the employee alleged that his employer failed to make military leave payments in 1980 and 1981, the employee had the legal right to sue on these claims in 1980 and 1981, and the employee did not bring his action until January 22, 1988; Section 15‑3‑530 provides a 6‑year statute of limitations for a liability created by statute, and the right to military leave payments arises under Section 8‑7‑90. Matthews v. City of Greenwood (S.C.App. 1991) 305 S.C. 267, 407 S.E.2d 668.

In an action to recover overcharges paid to a telephone company for the use of certain switchboard devices, the unnecessary charges constituted a debt governed by Section 15‑3‑530. Tunstall v. United Telephone Co., Inc. (S.C. 1985) 283 S.C. 588, 325 S.E.2d 61.

Duty of father to support illegitimate child is liability created by statute; therefore South Carolina Code Section 10‑143 (1962) [Section 15‑3‑530 (1976)] is applicable. South Carolina Dept. of Social Services v. Lowman (S.C. 1977) 269 S.C. 41, 236 S.E.2d 194. Limitation Of Actions 34(1)

In the absence of a specified applicable limitation, the ordinary period of limitation applicable to “an action upon a liability created by statute” under this section [former Code 1962 Section 10‑143] applies to an action for the collection of taxes and assessments, but where there is an applicable specific limitation, such ordinary limitation does not apply. State v. Life Ins. Co. of Georgia (S.C. 1970) 254 S.C. 286, 175 S.E.2d 203. Limitation Of Actions 34(7)

A municipal tax is a liability created by statute and falls within subd. (2) of this section [Code 1962 Section 10‑143]. Milster v. City of Spartanburg (S.C. 1903) 68 S.C. 26, 46 S.E. 539.

3.4. Accrual of action

Causes of action for misappropriation of trade secrets, fraud, breach of fiduciary duty, and unfair trade practices accrued, and three‑year statutes of limitations under South Carolina law began to run, under discovery rule, when employer knew or should have known, by exercise of reasonable diligence, that its former employee used its confidential documents while working for competitor, deleted files from employer’s computer, and received monthly payments from competitor while he worked for employer. Abrasives‑South, Inc. v. Korte, 2016, 226 F.Supp.3d 584. Limitation Of Actions 95(1)

When client appeals adverse decision in underlying suit, legal malpractice claim that is predicated on an injury or damage caused by the failure of the underlying suit due to an attorney’s alleged malpractice accrues under discovery rule, and three‑year statute of limitations begins to run, upon resolution of appeal against client in underlying suit; overruling Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816, abrogating Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 760 S.E.2d 399, Kelly v. Logan, Jolley & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d 1. Stokes‑Craven Holding Corp. v. Robinson (S.C. 2016) 416 S.C. 517, 787 S.E.2d 485, on remand 2017 WL 1372244. Limitation of Actions 95(11)

Under the discovery rule, the statutory period of limitations for a legal malpractice claim begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. Stokes‑Craven Holding Corp. v. Robinson (S.C. 2016) 416 S.C. 517, 787 S.E.2d 485, on remand 2017 WL 1372244. Limitation of Actions 95(11)

A personal injury cause of action cannot accrue until there is an injury. McAlhany v. Carter (S.C.App. 2015) 415 S.C. 54, 781 S.E.2d 105, rehearing denied, certiorari granted. Limitation of Actions 55(4)

Three‑year statute of limitations applicable to client’s legal malpractice claim against attorneys and law firm that handled her federal antitrust claims began to run on date she was openly critical of her attorneys’ performance in a pro se filing in federal district court, a time at which it was apparent client, who was also an attorney, should have known, and clearly did know, that she had a potential legal malpractice claim. Holmes v. Haynsworth, Sinkler & Boyd, P.A. (S.C. 2014) 408 S.C. 620, 760 S.E.2d 399, rehearing denied. Limitation of Actions 95(11)

Cause of action by association of property owners against vendor and corporate parent of vendor for breach of fiduciary duty based on defects in the construction of a condominium project accrued, and the applicable statute of limitations began to run, when the corporate parent turned over control of the association to the property owners; at the time of transfer of control, corporate parent had a duty to provide the association with the funds necessary to bring the substandard common areas to a standard of reasonably good repair. Magnolia North Property Owners’ Ass’n, Inc. v. Heritage Communities, Inc. (S.C.App. 2012) 397 S.C. 348, 725 S.E.2d 112, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 198, 777 S.E.2d 831. Limitation of Actions 99(1)

3.5. Discovery rule

Under discovery rule, company’s fraudulent conveyance claim against corporation under South Carolina’s Statute of Elizabeth did not accrue, and applicable three year statute of limitations did not begin to run, until corporation produced documents during discovery put company on notice that corporation may have made distributions to shareholders with the knowledge that it was potentially liable for remediation of environmental contamination. PCS Nitrogen, Inc. v. Ross Development Corp., 2015, 127 F.Supp.3d 568. Limitation of Actions 100(12)

Three‑year statute of limitations for legal malpractice lawsuits runs from date injured party either knows or should have known by exercise of reasonable diligence that a cause of action arises from the wrongful conduct; the “exercise of reasonable diligence” means simply that an injured party must act with some promptness where facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist, and fact that injured party may not comprehend full extent of damage is immaterial. Holmes v. Haynsworth, Sinkler & Boyd, P.A. (S.C. 2014) 408 S.C. 620, 760 S.E.2d 399, rehearing denied. Limitation of Actions 95(11)

Discovery rule applies to breach of contract actions. CoastalStates Bank v. Hanover Homes of South Carolina, LLC (S.C.App. 2014) 408 S.C. 510, 759 S.E.2d 152. Limitation of Actions 95(9)

Pursuant to discovery rule, breach of contract action accrues not on date of the breach, but rather on date aggrieved party either discovered breach, or could or should have discovered breach through exercise of reasonable diligence. CoastalStates Bank v. Hanover Homes of South Carolina, LLC (S.C.App. 2014) 408 S.C. 510, 759 S.E.2d 152. Limitation of Actions 95(9)

Lender’s breach of contract action against guarantor accrued under discovery rule, and three‑year statute of limitations began to run, when obligation under guaranties matured and borrower defaulted, rather than when guaranties were made; guaranties had specific maturity date and were not demand notes. CoastalStates Bank v. Hanover Homes of South Carolina, LLC (S.C.App. 2014) 408 S.C. 510, 759 S.E.2d 152. Limitation of Actions 95(9)

Taxpayer knew or had reason to know of his professional negligence and breach of fiduciary claims stemming from tax preparer’s failure to apply payment towards his outstanding tax liability, triggering the three‑year limitations period, when he received invoice from tax preparer which indicated that the payment had instead been applied towards “services rendered.” Graham v. Welch, Roberts and Amburn, LLP (S.C.App. 2013) 404 S.C. 235, 743 S.E.2d 860. Limitation of Actions 95(10.1); Limitation of Actions 100(12)

Three‑year statute of limitations applicable to former client’s legal malpractice claim began to run when client was informed attorney had made a significant error in settling a third‑party claim without notice, that client was not receiving workers’ compensation benefits because of attorney’s error, and that client was suffering financial and emotional damages due to the error, pursuant to the discovery rule, rather than on the date an adverse judgment was reached in the underlying action. Kimmer v. Wright (S.C.App. 2011) 396 S.C. 53, 719 S.E.2d 265, rehearing denied, vacated, certiorari dismissed 2013 WL 8207447. Limitation of Actions 95(11)

4. Trespass or damage to real property

It is settled law that this section [former Code 1962 Section 10‑143] is a statute of repose, affects the remedy not the right, and may operate to bar recovery by a neighboring landowner who has suffered injury from the maintenance of a dam. Hilton v. Duke Power Co. (C.A.4 (S.C.) 1958) 254 F.2d 118, rehearing denied 255 F.2d 840. Limitation Of Actions 32(2); Limitation Of Actions 165

The State rule is that there is a taking within the meaning of the Constitution, and consequently an accrual of a right of action, when neighboring real estate belonging to a private owner is actually invaded by superinduced additions of water, earth, sand or other material. Hilton v. Duke Power Co. (C.A.4 (S.C.) 1958) 254 F.2d 118, rehearing denied 255 F.2d 840. Eminent Domain 2.1; Eminent Domain 2.17(5); Limitation Of Actions 58(3)

If injury to neighboring lands is caused by negligence, or if the cause is abatable, then there arises a continuing cause of action, and while limitations begin to run at the occurrence of the first actual damage, the landowner may at any time recover for injury to his land which occurred within the statutory period. Hilton v. Duke Power Co. (C.A.4 (S.C.) 1958) 254 F.2d 118, rehearing denied 255 F.2d 840. Limitation Of Actions 55(6)

Suit for additional injuries which are foreseeable and estimable. If an actual injury amounting to a taking occurs, suit must be brought within the period of limitations by the property owner not only for the actual injury that has occurred but also for any additional injuries which were foreseeable and estimable when the taking occurred, and recovery may subsequently be had for additional injuries which were not foreseeable and estimable when the taking occurred if suit is brought within the period of limitations after such injuries have been realized. Hilton v. Duke Power Co. (C.A.4 (S.C.) 1958) 254 F.2d 118, rehearing denied 255 F.2d 840. Limitation Of Actions 55(6)

The “discovery” rule in Section 15‑3‑535 applies to actions for property damage brought under Sections 15‑3‑530(3) and (4). Campus Sweater and Sportswear Co. v. M. B. Kahn Const. Co. (D.C.S.C. 1979) 515 F.Supp. 64, affirmed 644 F.2d 877.

Under South Carolina law, application of three‑year statute of limitations for trespass varies depending upon whether the trespass is permanent or continuous: if the trespass is of a character so “permanent” that the entire damage occurs in the first instance, the statute of limitations bars the action if it is not brought within the statutory period after discovery of the first actionable injury; on the other hand, if the trespass is “continuing,” meaning it is intermittent or periodical, the expiration of the limitations period does not completely bar a claim and a landowner may at any time recover for an injury to his land which occurred within the statutory period. Melton ex rel. Dutton v. Carolina Power & Light Co., 2012, 283 F.R.D. 280. Limitation of Actions 55(6); Limitation of Actions 95(7)

Under the discovery rule, the three‑year statute of limitations for an action for trespass upon or damage to real property runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. McAlhany v. Carter (S.C.App. 2015) 415 S.C. 54, 781 S.E.2d 105, rehearing denied, certiorari granted. Limitation of Actions 95(7)

According to the discovery rule, the three‑year statute of limitations for an action for trespass upon or damage to real property begins to run when the underlying cause of action reasonably ought to have been discovered. McAlhany v. Carter (S.C.App. 2015) 415 S.C. 54, 781 S.E.2d 105, rehearing denied, certiorari granted. Limitation of Actions 95(7)

Where nuisance is deemed to be continuing and abatable, statute of limitations does not run merely from original intrusion on property, and cannot be complete bar; rather, new statute of limitations begins to run after each separate invasion of property. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Limitation Of Actions 55(5); Limitation Of Actions 55(6)

Statute of limitations on landowners’ actions against development corporation, as vendor of landowners’ home, and against city, as development corporation’s predecessor in interest, began to run on date termite inspectors advised landowners of excessive moisture under landowners’ home, and not on date when contractor hired to repair the home informed landowners of the severity of damage. Barr v. City of Rock Hill (S.C.App. 1998) 330 S.C. 640, 500 S.E.2d 157, rehearing denied. Limitation Of Actions 95(7); Limitation Of Actions 95(9)

A cause of action for trespass upon or damage to real property which arises or accrues prior to April 5, 1988, must be commenced within 6 years. Dean v. Ruscon Corp. (S.C. 1996) 321 S.C. 360, 468 S.E.2d 645, rehearing denied. Limitation Of Actions 95(7)

An action arising from damage to a building was barred by the statute of limitation where the owner of the building noticed a crack in the building more than 6 years before the action was brought; subsequent signs of damage to the building did not represent a harm to the building separate and distinct from the originally noticed crack. Dean v. Ruscon Corp. (S.C. 1996) 321 S.C. 360, 468 S.E.2d 645, rehearing denied.

A landowner had constructive notice, at the time of its land purchase, of a state‑owned pipe which drained water from the highway onto its property and thus its suit for inverse condemnation brought more than 6 years later was barred by the statute of limitations, where a deed in the landowner’s chain of title had been filed in the office of the state Department of Highways and Public Transportation which granted the department a right‑of‑way, and incorporated the department’s construction plans—complete with drainage pipe—by reference. Fuller‑Ahrens Partnership v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1993) 311 S.C. 177, 427 S.E.2d 920, rehearing denied, certiorari denied.

If an injury is of a permanent character,then the plaintiff has a single cause of action which cannot be split. However, where the cause of the injury is abatable, each injury gives rise to a new cause of action which may be commenced within the applicable limitations period. Thus, an inverse condemnation action, arising from flood damage to the plaintiff’s house allegedly caused by an improperly constructed cement culvert, was timely commenced within the 6‑year statute of limitations, even though the plaintiff’s yard was flooded by rainwater on several occasions during the 1970’s, where the plaintiff’s expert testified that the size of the pipe in the culvert was inadequate and, therefore, the injuries complained of were not permanent in nature since the problem could have been readily corrected by installation of additional pipes or one large pipe. Cutchin v. South Carolina Dept. of Highways and Public Transp. (S.C. 1990) 301 S.C. 35, 389 S.E.2d 646.

Section 15‑3‑530 establishes 6 year limitations period in actions for trespass to real property, and statute commences running at occurrence of first actual damage, but where trespass is continuing one landowner may at any time recover for injury which occurred within statutory period. Butler v. Lindsey (S.C.App. 1987) 293 S.C. 466, 361 S.E.2d 621.

Continuing cause of action. As to the operation of this section [Code 1962 Section 10‑143] in an action to recover damages to property, upon the theory that the damages amount to a taking of private property without just compensation, within the meaning of SC Const, Art 1, Section 17 (now Art 1, Section 13), if the injury to neighboring lands is caused by negligence, or if the cause is abatable, then there arises a continuing cause of action, and while limitations begin to run at the occurrence of the first actual damage, the landowner may at any time recover for injury to his land which occurred within the statutory period. McCurley v. South Carolina State Highway Dept. (S.C. 1971) 256 S.C. 332, 182 S.E.2d 299.

Where the cause of the injury to plaintiff’s land was clearly abatable, and the damages for which recovery was sought occurred within six years of the bringing of the action, the action was not barred by the statute of limitations. McCurley v. South Carolina State Highway Dept. (S.C. 1971) 256 S.C. 332, 182 S.E.2d 299.

This section [former Code 1962 Section 10‑143] may run against a single cause of action for permanent taking of private property under SC Const, Art I, Section 17 (now Art 1, Section 13), without impairing the constitutional grant. Webb v. Greenwood County (S.C. 1956) 229 S.C. 267, 92 S.E.2d 688.

The statute of limitations on an action for compensation for permanent taking of property through consequential damages under the Constitution, begins to run from the time of the first injury or damage. Webb v. Greenwood County (S.C. 1956) 229 S.C. 267, 92 S.E.2d 688. Limitation Of Actions 32(2)

If a nuisance is of a character so permanent that it may be fairly said that the entire damage accrues in the first instance, the statute of limitations begins to run from that time; but, if the nuisance may be said to continue from day to day and create a fresh injury each day, there may still be a right of action for the injuries created within the last six years, though the original right of action has been lost. Conestee Mills v. City of Greenville (S.C. 1931) 160 S.C. 10, 158 S.E. 113, 75 A.L.R. 519.

5. Goods, chattels and recovery of personal property

South Carolina’s six‑year statute of limitations for actions to recover personal property, applicable to action brought by executor of deceased author’s estate to recover documents that had been delivered to author’s literary executrix following author’s death, commenced to run upon death of literary executrix; executor knew that literary executrix had some of author’s documents at her home when she died, but did not ask to review the documents or request their return, despite understanding that they were his responsibility. Sundeman v. Seajay Society, Inc. (C.A.4 (S.C.) 1998) 142 F.3d 194, 46 U.S.P.Q.2d 1521. Limitation Of Actions 95(8)

Civil conspiracy claim under South Carolina law is governed by six‑year statute of limitations for injuries not arising on contract, thus company was not entitled to amend 10‑year‑old complaint to state civil conspiracy claim under South Carolina law since statute of limitations had expired. Omni Outdoor Advertising, Inc. v. Columbia Outdoor Advertising, Inc. (C.A.4 (S.C.) 1992) 974 F.2d 502.

The “discovery” rule in Section 15‑3‑535 applies to actions for property damage brought under Sections 15‑3‑530(3) and (4). Campus Sweater and Sportswear Co. v. M. B. Kahn Const. Co. (D.C.S.C. 1979) 515 F.Supp. 64, affirmed 644 F.2d 877.

When an individual is rightfully in possession of goods as a bailee, the statute of limitations does not begin to run until the bailee wrongfully refuses to return the bailed goods. Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc. (S.C. 1979) 272 S.C. 293, 251 S.E.2d 741. Limitation Of Actions 66(8)

When a conversion takes place and when a right of action accrues therefor depends upon the conditions and surrounding circumstances under which the property involved came into possession of the person charged with the wrongful act. Roberts v. James (S.C. 1931) 160 S.C. 291, 158 S.E. 689. Conversion And Civil Theft 153

Where owner stored cotton in warehouse to be redelivered on surrender of certificate, no cause of action for conversion accrued, as regards the statute of limitations, until the owner demanded redelivery. Roberts v. James (S.C. 1931) 160 S.C. 291, 158 S.E. 689. Limitation Of Actions 66(8)

This subsection was applied in an action to recover houses on land that was sold to the plaintiff by party in possession, the houses in this case being regarded as personalty. Dominick v. Farr (S.C. 1885) 22 S.C. 585.

6. Injuries not arising on contract

In a civil rights action brought by eight employees against the South Carolina Ports Authority involving an alleged discriminatory denial of pension credit, the claims, brought under 42 USCA Sections 1981 and 1983, would be subject to the six year South Carolina statutes of limitations, pursuant to Section 15‑3‑530(1), (5). Simmons v. South Carolina State Ports Authority (C.A.4 (S.C.) 1982) 694 F.2d 63.

Wrongful death action by widow of person who died due to exposure to asbestos containing products must be dismissed, as decedent was informed in 1971 that he was suffering from asbestosis and 6 year statute of limitations under SC Code Anno. Section 15‑3‑530(5) expired prior to decedent’s death in 1984, such that widow’s action, instituted in 1986, would have been barred by statute of limitations had such action been commenced by decedent. Quattlebaum v. Carey Canada, Inc., 1988, 685 F.Supp. 939.

Federal suits brought under 42 USCA Section 1981 and Section 1983 are governed by the 6‑year statute of limitations for injuries not arising on contract. Therefore, a federal suit by black employees of the South Carolina State Ports Authority charging discrimination in retirement benefits resulting from discriminatory classification of employees prior to July, 1969, was barred by the statute of limitations since the discriminatory practices ended in 1969 and the action was not commenced until December, 1976. Simmons v. South Carolina State Ports Authority (D.C.S.C. 1980) 495 F.Supp. 1239, affirmed 694 F.2d 63.

Under South Carolina law, three‑year limitations period governed claims of intentional infliction of emotional distress (IIED) and invasion of privacy. Parkman v. University of South Carolina (C.A.4 (S.C.) 2002) 44 Fed.Appx. 606, 2002 WL 1792098, Unreported, certiorari denied 123 S.Ct. 1570, 538 U.S. 922, 155 L.Ed.2d 311. Limitation Of Actions 31; Torts 413

An action against a blood collection agency for negligent collection and processing of blood was governed by the general statute of limitations for negligence actions, Section 15‑3‑530(5), rather than by the 3‑year statute of limitations and repose for medical malpractice actions, Section 15‑3‑545. Swanigan v. American Nat. Red Cross (S.C. 1993) 313 S.C. 416, 438 S.E.2d 251. Products Liability 231; Products Liability 305

The statute of limitations for a wrongful discharge claim was not tolled during the period that compulsory arbitration of the dispute, pursuant to the employee’s union contract, was taking place. Nowlin v. General Telephone Co. (S.C.App. 1992) 310 S.C. 183, 426 S.E.2d 114, rehearing denied, certiorari granted, affirmed 314 S.C. 352, 444 S.E.2d 508. Limitation Of Actions 108

A son’s personal injury action against his parents, arising from alleged sexual abuse which took place more than 20 years before he brought his action, was barred by the 6‑year statute of limitations where the son, who had long since reached his majority, did not claim that he was unaware of the abuse, but merely stated that he had only recently been diagnosed with “delayed stress syndrome” and fully realized the extent of his injuries. Doe v. R.D. (S.C. 1992) 308 S.C. 139, 417 S.E.2d 541. Limitation Of Actions 95(4.1)

In a medical malpractice action, the applicable statute of limitations was six years under Section 15‑3‑530. Davis v. Lunceford (S.C. 1985) 287 S.C. 242, 335 S.E.2d 798.

The husband’s right to sue for loss of the services, society and companionship of the wife accrues when the loss of the services, society and companionship of the wife has actually occurred. Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781. Limitation Of Actions 55(1)

Under the provisions of this section [former Code 1962 Section 10‑143], an action by the husband for loss of consortium of the wife and expenses incurred for her care and medical treatment, caused by the wrongful or negligent acts of a third party, is barred unless brought within six years from the date of the accrual of the cause of action. Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781.

7. Death by wrongful act

In a wrongful death action under former Code 1962 Section 10‑1951, the plaintiff was denied permission to qualify as administrator more than six years after the alleged wrongful death, and to proceed under the “relation back” doctrine which sanctions a retroactive impact in order to defeat the application of a statute of limitations. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025. Death 39

Failure of the fiduciary, authorized by statute to bring a wrongful death action, to bring the suit within the time allowed was fatal to the very right to pursue the matter under the State laws of the State of South Carolina, because there is no remedy available after the six‑year period. The right is not extinguished but there is no way to enforce the right after the six years, absent a showing of fraud. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243.

Under the South Carolina statute of limitations pertaining to wrongful death actions, the meaning of the statute is clear that the cause of action accrues at the time of plaintiff’s intestate’s death rather than at the time of the appointment of his administrator. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243. Death 39

Delay in procuring appointment of personal representative will not toll the time limit for bringing an action for wrongful death. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243. Death 39

Widow’s cause of action for wrongful death accrued, and three‑year statute of limitations began to run, at time of husband’s death from prescription drug overdose, not at time widow became aware of husband’s drug abuse and addiction. Weaver v. Lentz (S.C.App. 2002) 348 S.C. 672, 561 S.E.2d 360. Death 39

The six‑year statute of limitations on wrongful death actions, as established by Section 15‑3‑530(6), was not tolled by the minority of the decedent’s daughter under Section 15‑3‑40, since Section 15‑3‑40 applies to any person “entitled to bring an action,” and the daughter, during her minority, was neither the administratrix nor the executrix of her father’s estate, and was therefore not a person entitled to maintain a wrongful death action under Section 15‑51‑20. Wyatt v. Spartan Mill Co. (S.C. 1985) 287 S.C. 334, 338 S.E.2d 341.

The limitation provided for in this section [former Code 1962 Section 10‑143] was not tolled by former Code 1962 Section 19‑554, providing that no action shall be commenced against an executor or administrator for his intestate’s death until twelve months (now six months) after such death, since a cause of action for wrongful death is not a “debt” within the meaning of that section. Newman v. Lemmon (S.C. 1929) 149 S.C. 417, 147 S.E. 439.

This subsection should be interpreted, not so much as a statute of limitations in that it extinguishes the remedy under former Code 1962 Section 10‑1951, but as the limit of the action in that it extinguishes the right, and a showing that an action is within its limit is a condition precedent to the right of action. Dennis v. Atlantic Coast Line R. R. (S.C. 1904) 70 S.C. 254, 49 S.E. 869, 106 Am.St.Rep. 746.

8. Fraud

Under this subsection the six‑year period begins to run at the time of the acquisition of knowledge of such facts that are sufficient to put the party on inquiry which, if developed, will disclose the alleged fraud. Tucker v Weathersbee, 98 SC 402, 82 SE 638 (1914). Smith v Linder, 77 SC 535, 58 SE 610 (1907). Toole v Johnson, 61 SC 34, 39 SE 254 (1901). Harrell v Kea, 37 SC 369, 16 SE 42 (1892). McSween v McCown, 23 SC 342 (1885). McKinnon v Summers, 224 SC 331, 79 SE2d 146 (1953). W. J. Klein Co., Inc. v Kneece, 239 SC 478, 123 SE2d 870 (1962).

In an action brought to cancel a forged deed, the court said: “At law fraud must be taken advantage of within six years of its discovery. Where, however, an equitable action must be brought, by analogy a court of equity will follow the period fixed in law cases by statute.” Du Pont v Du Bos, 52 SC 244, 29 SE 665 (1898). McKinnon v Summers, 224 SC 331, 79 SE2d 146 (1953).

Only a suspicion that there is something wrong is not sufficient to place party on inquiry. Beattie v Pool, 13 SC 379 (1880). Hunt v Smith, 202 SC 129, 24 SE2d 164 (1943).

The Supreme Court held that a suit in equity to set aside conveyances in fraud of creditors was a suit within the meaning of this subsection, in Smith v Linder, 77 SC 535, 58 SE 610 (1907). Tucker v Weathersbee, 98 SC 402, 82 SE 638 (1914).

Under this subsection, it is essential, in an action for equitable relief on the ground of fraud, brought more than six years after the occurrence, to allege that fraud was not discovered until within the six‑year period. Grayson v Fidelity Life Ins. Co., 114 SC 130, 103 SE 477 (1920). Smith v Linder, 77 SC 535, 58 SE 610 (1907).

Sufficiency of notice. See Beattie v Pool, 13 SC 379 (1880). Harrell v Kea, 37 SC 369, 16 SE 42 (1892).

This subsection does not have the effect of converting a fraudulent deed into a valid deed by reason of the lapse of the prescribed time, but it simply forbids the right of action for relief on the ground of fraud; and hence, if the question as to the fraudulency of the deed arises in any other way than in such an action, there is nothing in this section [former Code 1962 Section 10‑143] which forbids its being assailed for fraud. Jackson v Plyler, 38 SC 496, 17 SE 255 (1893). Amaker v New, 33 SC 28, 11 SE 386 (1890).

The burden is on the defendant to show that the plaintiff had knowledge of the fraud or of such facts as would have led to knowledge if pursued with reasonable diligence. Grayson v Fidelity Life Ins. Co., 114 SC 130, 103 SE 477 (1920). Means v Feaster, 4 SC 249 (1873). Richardson v Mounce, 19 SC 477 (1883).

A holding that the conveyance of the land by the mortgagor prior to the mortgage which defendant claims paramount title was fraudulent does not violate the provisions of this subsection for the reason that the action is not to set aside the deed for fraud, but to recover land of which the questioned deed is a link in the chain of title. Amaker v New, 33 SC 28, 11 SE 386 (1890). Wilson v Kelly, 16 SC 216 (1881).

Recordation of a deed will not, by itself, be sufficient notice to put a party on inquiry as to the existence of a fraudulent conveyance. Tucker v Weathersbee, 98 SC 402, 82 SE 638 (1914). Means v Feaster, 4 SC 249 (1873).

A suit for cancellation of a deed, as executed under duress, comes clearly within the provision “solely cognizable by the court of chancery.” Furthermore, it is an action for relief on the ground of fraud within the meaning of the term in equity jurisprudence. National Bank of Savannah v. All, 1919, 260 F. 370, 171 C.C.A. 236. Limitation Of Actions 37(4); Limitation Of Actions 100(10)

A cause of action for a breach of contract accompanied by a fraudulent act is governed by the limitations period for contract actions. Wilson Group, Inc. v. Quorum Health Resources, Inc., 1995, 880 F.Supp. 416.

Under South Carolina law, recording of conveyance of debtor’s property to related corporate entity, for stated consideration of three dollars and other entity’s assumption of mortgage debt, did not serve as constructive notice to existing trade creditor with small claim in amount of $266.72 that property had been fraudulently transferred, of kind sufficient to start three‑year statute of limitations on creditor’s fraudulent conveyance claims under the Statute of Elizabeth. In re J.R. Deans Co., Inc. (Bkrtcy.D.S.C. 2000) 249 B.R. 121. Limitation Of Actions 100(13)

Pursuant to discovery rule, elderly father’s causes of action against daughter and son‑in‑law for breach of fiduciary duty and fraud in connection with sale of real property accrued, and three‑year statute of limitations began to run, when father first had suspicions that he no longer owned the property, in light of evidence that daughter handled father’s personal affairs. Moore v. Benson (S.C.App. 2010) 390 S.C. 153, 700 S.E.2d 273. Limitation of Actions 100(12)

Statute of limitations which applied to actions for fraud and those actions formerly considered fraud by a court of chancery did not apply to mother’s claim that son unduly influenced her to convey real property to son, as undue influence claim was an action in equity. Dixon v. Dixon (S.C. 2005) 362 S.C. 388, 608 S.E.2d 849. Limitation Of Actions 36(3)

Annuitants’ fraud action against insurance company, for concealing annuitants’ entitlement to accrued dividends, accrued, and six‑year limitations period began to run, when plan administrator, who was also an annuitant and who handled all contact with insurance company, received letter from insurance company informing him that there was a dispute regarding who should receive the dividends; circumstances would have put a person of common knowledge and experience on notice that a claim might exist. Rumpf v. Massachusetts Mut. Life Ins. Co. (S.C.App. 2004) 357 S.C. 386, 593 S.E.2d 183. Limitation Of Actions 100(13)

Annuitants’ fraud action against personal representative of pension plan administrator’s estate, for failing to secure ownership of accrued dividends for estate, was derivative of plan administrator’s fraud claim against insurance company, which had already expired at time of administrator’s death, and thus derivative claim was barred by statute of limitations. Rumpf v. Massachusetts Mut. Life Ins. Co. (S.C.App. 2004) 357 S.C. 386, 593 S.E.2d 183. Limitation Of Actions 170; Limitation Of Actions 174(2)

A claim for fraud is barred if not filed by the proper party within 6 years of the time from which pertinent facts were actually known or could have been known through the exercise of reasonable diligence. Either actual or constructive knowledge of facts or circumstances, indicative of fraud, trigger a duty on the part of the aggrieved party to exercise reasonable diligence in investigating and, ultimately, in pursuing a claim arising therefrom. Burgess v. American Cancer Soc., South Carolina Div., Inc. (S.C.App. 1989) 300 S.C. 182, 386 S.E.2d 798.

An action to set aside a conveyance of lands made contrary to former Code 1962 Section 57‑301, must be instituted within six years and the cause of action in such case is not deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud. Walter J. Klein Co. v. Kneece (S.C. 1962) 239 S.C. 478, 123 S.E.2d 870. Limitation Of Actions 37(4); Limitation Of Actions 100(10)

A man has six years from the discovery of fraud to attack a deed for fraud; that is, six years from the time he knows or has sufficient information to put him on inquiry as to the facts which constitute the fraud. McKinnon v. Summers (S.C. 1953) 224 S.C. 331, 79 S.E.2d 146.

In an action to have deeds declared void on the basis of alleged forgery of signature of grantor, this section [former Code 1962 Section 10‑143] and not former Code 1962 Section 10‑124 was the applicable statute of limitations. McKinnon v. Summers (S.C. 1953) 224 S.C. 331, 79 S.E.2d 146.

Where the gravamen of the cause of action stated in the complaint was cancellation of deeds on the ground of forgery, such cause of action was barred by the six‑year limitation in this section [former Code 1962 Section 10‑143] governing actions for relief on the ground of fraud. McKinnon v. Summers (S.C. 1953) 224 S.C. 331, 79 S.E.2d 146.

After a party is possessed of facts sufficient to place him on inquiry, he must exercise reasonable diligence to ascertain the existence of the alleged fraud. Tucker v. Weathersbee (S.C. 1914) 98 S.C. 402, 82 S.E. 638.

Where certain alleged fraudulent conveyances were made in 1894 and 1896 and valuable improvements were placed on the property by the vendee and the making of the conveyances could have been immediately ascertained by the exercise of the slightest diligence, creditors of the husband of the grantee were barred by laches from maintaining a suit instituted in 1910 to have the conveyances set aside. Tucker v. Weathersbee (S.C. 1914) 98 S.C. 402, 82 S.E. 638.

This subsection is not limited to the application of the provision to secret frauds, applying the provision to a transaction, (chilling the bidding) at a public sale. Toole v. Johnson (S.C. 1901) 61 S.C. 34, 39 S.E. 254.

This subsection does not apply to a counterclaim for the conversion of property and the concealment thereof when the tort is waived and a recovery is sought on an implied contract, as it is not based on fraud and was not formerly solely cognizable in the court of chancery. Lenhardt v. French (S.C. 1900) 57 S.C. 493, 35 S.E. 761.

An action by heirs to set aside a deed of their ancestor as obtained by fraud will not lie unless commenced within six years after the ancestor had sufficient information to put him on inquiry as to the way in which the deed was obtained. Brown v. Brown (S.C. 1895) 44 S.C. 378, 22 S.E. 412. Cancellation Of Instruments 34(2)

This subsection does not prevent a mortgagee, in a forclosure suit, from showing that the conveyance of the land by the mortgagor prior to the mortgage under which defendant claims paramount title was fraudulent, though such attack was not made within the period of limitation. Jackson v. Plyler (S.C. 1893) 38 S.C. 496, 17 S.E. 255, 37 Am.St.Rep. 782.

The fact that plaintiff knew his daughter‑in‑law was living on the land, and that she told him the property had been conveyed to her, was not sufficient notice of fraud to require plaintiff to bring an action to set aside the deed within six years. Harrell v. Kea (S.C. 1892) 37 S.C. 369, 16 S.E. 42.

This subsection runs from the discovery of fraud only when a right of action also then exists. Suber v. Chandler (S.C. 1883) 18 S.C. 526. Limitation Of Actions 100(1)

Actual or constructive knowledge of the fraud is sufficient. Kibler v. McIlwain (S.C. 1882) 16 S.C. 550.

9. Insurance policies

Subsection (8) applied in Hungerpiller v Acacia Mut. Life Ins. Co., 194 SC 264, 9 SE2d 553 (1940). Woodward v National Council Junior Order United American Mechanics, 206 SC 282, 33 SE2d 625 (1945).

Subsection (8) cited in Sample v London & Lancashire Fire Ins. Co., 46 SC 491, 24 SE 334 (1896). Price v Life Insurance Co. of Va., 173 SC 407, 176 SE 312 (1934). Smith v Volunteer State Life Ins. Co., 201 SC 291, 22 SE2d 885 (1942).

Twenty‑year statute of limitations for action upon sealed instrument, as opposed to three‑year statute of limitations for most contract actions, applied to action brought by purchasers of residential lot against title insurance company for breach of contract and bad faith failure to pay insurance claim, following company’s denial of claim, after purchasers became aware of easement for federal government and no‑build resolution on lot; presence of seal on face of policy, next to president’s signature, evidenced intent to create sealed instrument. Lyons v. Fidelity Nat. Title Ins. Co (S.C.App. 2015) 415 S.C. 115, 781 S.E.2d 126, rehearing denied, vacated pursuant to settlement, certiorari dismissed. Insurance 3560

In the insurance context, the general rule is that the renewal of a policy of insurance for a fixed term is in effect a new contract and must contain all the essential elements of a valid contract; this is true even though the parties’ renewal contract continues to enforce the terms of the expiring contract and no new policy of insurance is issued. Estate of Livingston v. Livingston (S.C.App. 2013) 404 S.C. 137, 744 S.E.2d 203, certiorari granted, certiorari dismissed as improvidently granted 412 S.C. 610, 773 S.E.2d 579. Insurance 1904

Beneficiary’s action against life insurer for wrongful termination of policy accrued, and three‑year statute of limitations began to run, on date beneficiary, as policy owner, received notice from insurer that policy had lapsed, rather than on date of insured’s death, because, since only owner had the right to change the beneficiary, he had a vested interest in policy as a beneficiary while the insured was still alive. Prince v. Liberty Life Ins. Co. (S.C.App. 2010) 390 S.C. 166, 700 S.E.2d 280. Limitation of Actions 46(6)

Three‑year statute of limitations applicable to insured’s causes of action to challenge amount of subrogation paid to health maintenance organization (HMO) and its assignee from tort recovery began to run when the insured paid assignee and received a release of right to subrogation; the insured knew the facts and circumstances surrounding the subrogation lien whether or not she knew or should have known of alleged practice of collecting more in subrogation than paid on insured’s behalf. Martin v. Companion Healthcare Corp. (S.C.App. 2004) 357 S.C. 570, 593 S.E.2d 624, rehearing denied, certiorari denied. Limitation Of Actions 95(3)

Insurer’s cause of action for reimbursement of claims paid to insured after two separate fires occurred at his house, accrued when insured’s adult son confessed that he had started the fires, which was the earliest date that insurer could have discovered that the fires were the result of arson; insurer had conducted thorough investigations after the previous two fires, both investigations had resulted in insurer being unable to determine that the fires had been intentionally set, and insured’s son had previously denied involvement in either fire. South Carolina Farm Bureau Mut. Ins. Co. v. Kelly (S.C.App. 2001) 345 S.C. 232, 547 S.E.2d 871, rehearing denied, certiorari granted. Limitation Of Actions 95(9)

Premises owner’s insurer was equitably estopped from asserting statute of limitations defense to slip and fall victim’s claim for benefits, where victim inquired about insurance coverage within the limitations period and insurer did not inform her about the appropriate procedure for filing claim within the limitations period. Kleckley v. Northwestern Nat. Cas. Co. (S.C. 2000) 338 S.C. 131, 526 S.E.2d 218. Limitation Of Actions 13

Statute prohibiting action for uninsured motorist (UM) benefits unless copies of pleadings in underlying action establishing liability are served upon UM insurer “in the manner provided by law” does not establish limitations period requiring that insurer be served within three years as if it were party defendant. Franklin v. Devore (S.C.App. 1997) 327 S.C. 418, 489 S.E.2d 651, rehearing denied, certiorari denied. Insurance 2791; Insurance 3560

Life insurance company’s acknowledgment that it would not refuse to make payments to policyholders and beneficiaries because of time lapse constituted waiver of insurer’s statute of limitations defense in action by Tax Commission seeking payment by insurer of value of abandoned life insurance policies pursuant to Uniform Disposition of Unclaimed Property Act, Code 1962 Sections 57‑240.1 et seq. [Code 1976 Sections 27‑17‑10 et seq.], because Commission’s rights under Act are derivative and insurer may not waive its contractual rights against policyholders and enforce same rights against Commission. South Carolina Tax Commission v. Metropolitan Life Ins. Co. (S.C. 1975) 266 S.C. 34, 221 S.E.2d 522.

The purpose of this subsection is to protect the rights of both parties. Bennett v. New York Life Ins. Co. (S.C. 1941) 197 S.C. 498, 15 S.E.2d 743.

Where by a contract of insurance defendant contracted to pay plaintiff an annual sum and to waive all further payment of premiums if he gave to the company due notice and proof that he had become totally disabled, plaintiff’s cause of action accrued and the statute of limitations began to run on the date the company refused to pay the claim made by plaintiff for disability benefits. Bennett v. New York Life Ins. Co. (S.C. 1941) 197 S.C. 498, 15 S.E.2d 743.

A constitutional provision of a mutual benefit order that no action shall be brought after six months from disallowance of a claim does not bar an action until after six years. Sternheimer v. Order of United Commercial Travelers of America (S.C. 1917) 107 S.C. 291, 93 S.E. 8. Insurance 3560

9.4. Disability benefits

Insured’s ERISA claim for long term disability (LTD) benefits was time‑barred under applicable three‑year South Carolina statute of limitations, where he waited over six years after receiving notice of denial of benefits before he brought suit therefor. Cherochak v. Unum Life Ins. Co. of America, 2008, 586 F.Supp.2d 522. Labor And Employment 679

9.5. Taxes

Taxpayer’s cause of action challenging statutory changes removing state tax exemptions on state retirement benefits accrued, and three‑year limitations period began to run, when the statute changed, and not when the taxpayer began receiving retirement benefits as state employee; taxpayer had a vested interest in his retirement plan prior to the statutory changes. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Limitation Of Actions 58(6)

10. Directors or stockholders of moneyed corporations

This subsection manifestly must be construed with SC Const, Art 9, Section 18 (see now Art 9, Section 2), since they both relate to the same subject matter. Grice v. Anderson (S.C. 1918) 109 S.C. 388, 96 S.E. 222.

It is apparent that this subsection was enacted primarily to preserve to creditors of corporations their actions against stockholders of all corporations, wherein a liability of stockholders was created by law, until the discovery by the creditor of the facts upon which the liability was created. Grice v. Anderson (S.C. 1918) 109 S.C. 388, 96 S.E. 222.

The qualifying words are not so much “moneyed corporations,” but first, corporations where the stockholder was made liable by law to creditors of the corporation, and second, such corporations of a moneyed character as distinguished from those corporations not organized for profit. Grice v. Anderson (S.C. 1918) 109 S.C. 388, 96 S.E. 222.

This subsection seems to govern the period of limitation within which the liability of stockholders of an insolvent bank may be enforced by creditors. Parker v. Carolina Sav. Bank (S.C. 1898) 53 S.C. 583, 31 S.E. 673, 69 Am.St.Rep. 888.

11. Notice and discovery

Under “discovery rule”, statutory period of limitation begins to run from date injury resulting from wrongful conduct is discovered or may be discovered by exercise of reasonable diligence; on date of injury, if injured plaintiff knows or should know that he has some claim against someone else, statute of limitations begins to run for all claims based upon that injury against all potential defendants, even though plaintiff discovers identity of another alleged wrongdoer at some later date; thus in action brought against employer and manufacturer of machine, injured employee could not assert claim against employer’s insurer based on theory that insurer’s negligence led to employee’s injuries, where claim was made in amended complaint filed 3 years after the date of injury, and was therefore beyond the applicable statute of limitations, even though insurer’s identity was unknown to injured employee until later. Tollison v. B & J Machinery Co., Inc., 1993, 812 F.Supp. 618.

In pursuing claim for declaratory judgment as to customer’s remaining contractual obligations to Chapter 7 debtor and debtor’s obligations to subcontractors, as well as claim to recover on civil conspiracy theory for customer’s alleged participation in scheme to defeat subcontractors’ mechanics’ liens while transferring debtor’s goodwill to entity that would continue in same business unhampered by any preexisting debt, Chapter 7 trustee was standing in debtor’s shoes and acquired only such rights as debtor had, subject to same defenses; accordingly, in assessing whether trustee’s claims were timely asserted within three‑year limitations period, court had to consider when debtor, and not trustee, acquired sufficient knowledge to put it on notice of claims. In re Stotz Fredenhagen Industries, Inc. (Bkrtcy.D.S.C. 2016) 554 B.R. 777. Bankruptcy 2154.1; Bankruptcy 2157

Issue of when residents owners association discovered problems with development’s common area, for statute of limitations purposes, was for jury in negligence and breach of warranty action against developers, although association knew of certain problems, including a pool leak, a drainage issue, and termite bonding, well before they brought action; association’s secretary testified that earlier drainage problems had been corrected and that current problems were different than the earlier problems, and expert testified that majority of damage to property could be attributed to more recent conditions. Holly Woods Ass’n of Residence Owners v. Hiller (S.C.App. 2011) 392 S.C. 172, 708 S.E.2d 787, certiorari denied. Limitation of Actions 95(9)

The limitations period for a tort action begins to run when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. Turner v. Milliman (S.C.App. 2009) 381 S.C. 101, 671 S.E.2d 636, rehearing denied, affirmed in part, reversed in part 392 S.C. 116, 708 S.E.2d 766. Limitation Of Actions 95(3)

A genuine issue of material fact existed as to when insured was placed on notice that insurance agent’s prior representations as to the increases in the cost of insurance premiums were inconsistent with the increases actually imposed, precluding summary judgment on limitations grounds in insured’s action against agent and others for fraud and negligent misrepresentation. Turner v. Milliman (S.C.App. 2009) 381 S.C. 101, 671 S.E.2d 636, rehearing denied, affirmed in part, reversed in part 392 S.C. 116, 708 S.E.2d 766. Judgment 181(7)

Accrual of statute of limitations for negligence claim is not delayed under discovery rule until the injured party seeks advice of counsel or develops a full‑blown theory of recovery; instead, reasonable diligence requires a plaintiff to act with some promptness. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Limitation Of Actions 95(3)

According to the “discovery rule,” the statute of limitations on a negligence claim accrues at the time of the negligence or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Limitation Of Actions 95(3)

Even if letter by purchaser’s attorney to pest control corporation indicating that post‑closing inspection of house disclosed damage not reported at closing did not place purchaser on notice that potential claims against vendor and corporation for negligent misrepresentation and fraud might exist based on failure to disclose moisture damage, purchaser knew of possible existence of claims, thus triggering applicable three‑year limitations period, when his own inspector informed him of moisture damage. Watters v. Terminix Service, Inc. (S.C.App. 2008) 376 S.C. 632, 658 S.E.2d 110. Limitation Of Actions 100(12)

Letter written by purchaser’s attorney to pest control corporation indicating that post‑closing inspection of house disclosed damage not reported at closing placed purchaser on notice that potential claim against vendor and corporation for negligent misrepresentation and fraud might exist, thus triggering running of three‑year limitations period governing those claims. Watters v. Terminix Service, Inc. (S.C.App. 2008) 376 S.C. 632, 658 S.E.2d 110. Limitation Of Actions 100(12)

Cause of action that testator’s second wife brought against first wife, seeking surviving spouse benefits (SSB) under testator’s ERISA retirement plan on theories of breach of contract and conversion, accrued, for limitations purposes, when federal district court dismissed second wife’s prior action against testator’s employer seeking a finding that SSB should have been paid to second wife and not to first wife; dismissal should have put second wife on notice, and would have put any person of common knowledge and experience on notice, that she individually and on behalf of testator’s estate had a cause of action against first wife. Walsh v. Woods (S.C.App. 2004) 358 S.C. 259, 594 S.E.2d 548, rehearing denied, certiorari granted, opinion after remand from supreme court 371 S.C. 319, 638 S.E.2d 85, modified on denial of reconsideration en banc, certiorari denied 128 S.Ct. 2425, 553 U.S. 1035, 171 L.Ed.2d 234. Limitation Of Actions 95(7); Limitation Of Actions 95(9)

According to the “discovery rule,” the three‑year statute of limitations begins to run when the underlying cause of action reasonably ought to have been discovered; the clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Martin v. Companion Healthcare Corp. (S.C.App. 2004) 357 S.C. 570, 593 S.E.2d 624, rehearing denied, certiorari denied. Limitation Of Actions 95(1)

Under the discovery rule, whether the particular plaintiff actually knew he had a claim is not the test; rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. Rumpf v. Massachusetts Mut. Life Ins. Co. (S.C.App. 2004) 357 S.C. 386, 593 S.E.2d 183. Limitation Of Actions 95(1)

Under the discovery rule, a cause of action accrues for purposes of the statute of limitations when a plaintiff has notice that he might have a remedy for a harm. Rumpf v. Massachusetts Mut. Life Ins. Co. (S.C.App. 2004) 357 S.C. 386, 593 S.E.2d 183. Limitation Of Actions 95(1)

Under discovery rule, statute of limitations begins to run when cause of action reasonably ought to have been discovered. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Limitation Of Actions 95(1)

Date on which discovery of cause of action should have been made is objective, rather than subjective, question. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Limitation Of Actions 95(1)

Residents knew or reasonably should have known that they had claim for environmental contamination of their property, commencing statute of limitations, by virtue of widespread publicity and awareness of alleged contamination. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Limitation Of Actions 95(7)

The three‑year statute of limitations for action on a fire insurance policy on account of a loss is subject to the discovery rule and runs not from the date of injury but rather from the date the injured party knew or should have known a cause of action existed. South Carolina Farm Bureau Mut. Ins. Co. v. Kelly (S.C.App. 2001) 345 S.C. 232, 547 S.E.2d 871, rehearing denied, certiorari granted. Limitation Of Actions 95(9)

The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of the wrongdoer. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 95(1)

Under the discovery rule, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 95(1)

Judgment creditor’s action for legal malpractice, based on her attorney’s failure to make sure that confession of judgment was properly indexed, accrued on date that she commenced an action to foreclose on judgment, at which time she knew that an error had been committed in the indexing of her judgment and that an order had been issued dismissing her action against judgment creditor, and thus her action against attorney, filed more than three years after accrual date, was barred by statute of limitations. Peterson v. Richland County (S.C.App. 1999) 335 S.C. 135, 515 S.E.2d 553. Limitation Of Actions 95(11)

Cause of action against engineer for breach of implied warranty in design of bridge hinge accrued when contractor took over work on bridge from subcontractor and steel manufacturer and experienced difficulties completing work on hinge, at which time it had sufficient information to put it on inquiry notice of allegedly defective hinge design, rather than when engineer later admitted to design problems. Republic Contracting Corp. v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1998) 332 S.C. 197, 503 S.E.2d 761, rehearing denied. Limitation Of Actions 95(9)

Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence. Maher v. Tietex Corp. (S.C.App. 1998) 331 S.C. 371, 500 S.E.2d 204, rehearing denied. Limitation Of Actions 95(9)

Party has constructive notice, and statute of limitation begins to run, when party knows of facts and circumstances of injury that would put person of common knowledge and experience on notice that some right has been invaded or that some claim against another party might exist; failure of injured party to comprehend full extent of damages, however, is immaterial. Barr v. City of Rock Hill (S.C.App. 1998) 330 S.C. 640, 500 S.E.2d 157, rehearing denied. Limitation Of Actions 95(1); Limitation Of Actions 95(1.5)

Date on which discovery should have been made, and, therefore, date when statute of limitations began to run is an objective, not subjective, question. Barr v. City of Rock Hill (S.C.App. 1998) 330 S.C. 640, 500 S.E.2d 157, rehearing denied. Limitation Of Actions 95(1)

Town residents had inquiry or constructive notice of alleged malpractice on part of attorneys who had acted as bond and corporate counsel for town in connection with issuance of bonds, and statute of limitations began to run on legal malpractice action, when bond documents were publicly filed with clerk of court; claim was that damages flowed from manner of passage, and monetary harm caused by economic burden, details relating to both of which were set forth in bond documents. Berry v. McLeod (S.C.App. 1997) 328 S.C. 435, 492 S.E.2d 794, rehearing denied, certiorari denied. Limitation Of Actions 95(11)

Under “discovery rule,” statute of limitations begins to run from date injured party either knows or should know, by exercise of reasonable diligence, that cause of action exists for wrongful conduct causing injury. True v. Monteith (S.C. 1997) 327 S.C. 116, 489 S.E.2d 615, 67 A.L.R.5th 775. Limitation Of Actions 95(1)

“Exercise of reasonable diligence” by injured party in seeking to discover existence of cause of action, as must be present for discovery rule to be applicable, means that injured party must act with some promptness where facts and circumstances of injury place reasonable person of common knowledge and experience on notice that claim against another party might exist. True v. Monteith (S.C. 1997) 327 S.C. 116, 489 S.E.2d 615, 67 A.L.R.5th 775. Limitation Of Actions 95(2)

Knowledge of injury on part of client, standing alone, does not a fortiori give rise to suspicion of any impropriety by client’s attorney, as will result in accrual of legal malpractice action for limitations purposes. True v. Monteith (S.C. 1997) 327 S.C. 116, 489 S.E.2d 615, 67 A.L.R.5th 775. Limitation Of Actions 95(11)

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered; the discovery rule is applicable to actions brought under Section 15‑3‑530. Dean v. Ruscon Corp. (S.C. 1996) 321 S.C. 360, 468 S.E.2d 645, rehearing denied. Limitation Of Actions 95(1)

12. Estoppel

Vendor, general contractor, and corporate parent of vendor and general contractor were equitably estopped from asserting a three‑year statute of limitations as a defense in an action against them by association of property owners for negligence, breach of warranties, and breach of fiduciary duty based on defects in the construction of a condominium project; board of association was controlled by the defendants’ officers until control was turned over to property owners, the defendants assured the property owners before the turnover that the defects would be repaired, the property owners were justified in relying on those assurances, and a reasonable owner could have believed that it would have been counterproductive to file suit before giving the defendants an opportunity to honor their representations, especially given the defendants’ efforts to make some repairs. Magnolia North Property Owners’ Ass’n, Inc. v. Heritage Communities, Inc. (S.C.App. 2012) 397 S.C. 348, 725 S.E.2d 112, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 198, 777 S.E.2d 831. Limitation of Actions 13

Nursing home’s failure to maintain a registered agent’s current address with the Secretary of State after nursing home was sold was not conduct warranting application of equitable estoppel doctrine to preclude nursing home’s assertion of the statute of limitations as a defense in negligence and wrongful death action that personal representative brought on behalf of deceased patient, where nursing home’s failure to maintain a registered address was not intended to defraud or conceal facts from personal representative, nursing home had no knowledge personal representative would rely on the information to attempt service, and administrator of entity that purchased nursing home told personal representative’s investigator she was authorized to accept service for nursing home. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Death 39; Limitation Of Actions 13

Defendant may be estopped from claiming statute of limitations as defense if some conduct or representation by defendant has induced plaintiff to delay in filing suit. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Limitation Of Actions 13

Inducement for delay in filing suit, as may estop defendant from claiming statute of limitations defense, may consist of either express representation that claim will be settled without litigation, or other conduct that suggests lawsuit is not necessary. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Limitation Of Actions 13

Silence, when it is intended or has effect of misleading party, may operate as equitable estoppel. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Estoppel 95

Summary judgment on issue whether defendant may be estopped from claiming statute of limitations defense is proper where there is no evidence of conduct on defendant’s part warranting estoppel. Hedgepath v. American Tel. & Tel. Co. (S.C.App. 2001) 348 S.C. 340, 559 S.E.2d 327, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 256, 588 S.E.2d 598. Judgment 185.3(2)

For a defendant to be estopped from asserting statute of limitations defense on grounds that the delay that otherwise would give operation to the statute had been induced by the defendant’s conduct, the defendant’s conduct may involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to forbear exercising the right to sue. Kleckley v. Northwestern Nat. Cas. Co. (S.C. 2000) 338 S.C. 131, 526 S.E.2d 218. Limitation Of Actions 13

Employer’s failure to notify employee of termination of bonus plan until six years after plan was terminated did not equitably estop it from asserting that employee’s action for breach of contract for unilateral abrogation of bonus plan was barred by statute of limitations, where employee was dissatisfied with employer’s equivocal answers about the status of the bonus plan several years prior to being notified of plan termination, and thus either had knowledge of or means to determine status of plan at that time. Maher v. Tietex Corp. (S.C.App. 1998) 331 S.C. 371, 500 S.E.2d 204, rehearing denied. Limitation Of Actions 13

In an action by a school district against various contractors for negligence, breach of warranty, and strict liability in connection with a faulty roof on a school building, evidence that certain contractors visited the school, conducted meetings, made numerous attempts to repair the roof, and assured the school district that its problems with the roof would be corrected and that litigation would not be required, created a jury question as to whether those contractors should be equitably estopped to assert the statute of limitations in bar to the school district’s claim. Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc. (S.C.App. 1985) 286 S.C. 207, 332 S.E.2d 555, certiorari granted 287 S.C. 234, 337 S.E.2d 697, certiorari dismissed 288 S.C. 468, 343 S.E.2d 613. Judgment 185.3(2)

Lending bank was estopped from claiming a statute of limitations defense to borrower’s breach of contract and other claims, since borrower was led to believe by bank that particular city was proper location for acceptance of service. Henrikson v. First Union Nat. Bank (C.A.4 (S.C.) 2005) 120 Fed.Appx. 949, 2005 WL 83860, Unreported. Limitation Of Actions 13

13. Consolidation

Fact that suit brought by owner of motel and restaurant against trucking company whose driver had lost control of vehicle, causing damage to motel and restaurant, had been consolidated with separate action that was timely brought by owner’s insurer against trucking company, did not preclude grant of summary judgment dismissing owner’s suit as barred by South Carolina’s statute of limitations. Intown Properties Management, Inc. v. Wheaton Van Lines, Inc. (C.A.4 (S.C.) 2001) 271 F.3d 164. Federal Civil Procedure 8

14. Tolling of limitations

Material issues of fact existed as to when consumer, who allegedly developed tardive dyskinesia due to his use of metoclopramide, knew or should have known, by exercise of reasonable diligence, that he had cause of action against manufacturer of generic metoclopramide, and as to whether tolling provision of South Carolina statute that required plaintiffs to file notice of intent to file suit prior to initiating civil action asserting medical malpractice claim applied in action, precluding summary judgment for manufacturer on consumer’s claims against it for, inter alia, products liability, fraud, and breach of warranty on grounds that they were barred by South Carolina’s three‑year statute of limitations. Fisher v. Pelstring, 2011, 817 F.Supp.2d 791, on reconsideration in part. Federal Civil Procedure 2510; Federal Civil Procedure 2515

Former Code 1962 Section 10‑104 inapplicable to minor beneficiaries under Wrongful Death Act. Under the South Carolina Wrongful Death Act, the action is solely vested in the executor or administrator of the deceased [former Code 1962 Section 10‑1952]. Therefore, as minor beneficiaries would not be “entitled to bring an action” the tolling statute [former Code 1962 Section 10‑104] would not apply. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243.

Chapter 7 debtor’s failure to schedule receivables owed to it by customer for which it had performed work prepetition and purported delay in producing documentation relevant to alleged civil conspiracy to separate debtor’s valuable assets from its liabilities was insufficient to support application of equitable tolling to extend time for trustee to bring civil conspiracy claim or cause of action for declaratory judgment regarding customer’s remaining contractual obligations to debtor; trustee’s vague evidence of lack of cooperation from debtor was insufficient to show that extraordinary circumstances beyond trustee’s control were responsible for trustee’s considerable delay in filing complaint. In re Stotz Fredenhagen Industries, Inc. (Bkrtcy.D.S.C. 2016) 554 B.R. 777. Bankruptcy 2157

Client’s filing of her legal malpractice complaint against attorneys and law firm that handled her federal antitrust claims did not toll three‑year statute of limitations applicable to her claim, even though she filed claim before three‑year limitations period had run, where she did not deliver summons and complaint to sheriff’s department for service until more than three years after limitations period began to run. Holmes v. Haynsworth, Sinkler & Boyd, P.A. (S.C. 2014) 408 S.C. 620, 760 S.E.2d 399, rehearing denied. Limitation of Actions 119(2)

Three‑year statute of limitations applicable to legal malpractice claim against attorneys and law firm that handled client’s federal antitrust claims was not tolled on basis that defendants appeared and subjected themselves to personal jurisdiction of court by responding to the legal malpractice complaint and participating in a motion to dismiss for lack of jurisdiction and a motion to transfer venue. Holmes v. Haynsworth, Sinkler & Boyd, P.A. (S.C. 2014) 408 S.C. 620, 760 S.E.2d 399, rehearing denied. Limitation of Actions 118(1)

Trial court could equitably toll the three‑year statute of limitations for association of property owners to bring claims for negligence, breach of warranties, and breach of fiduciary duty against vendor, general contractor, and corporate parent of vendor and general contractor based on defects in the construction of a condominium project; board of association was controlled by the defendants’ officers until control was turned over to property owners, and property owners exercised due diligence by filing the action approximately eight months after they gained control of association. Magnolia North Property Owners’ Ass’n, Inc. v. Heritage Communities, Inc. (S.C.App. 2012) 397 S.C. 348, 725 S.E.2d 112, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 198, 777 S.E.2d 831. Limitation of Actions 104.5

Three‑year statute of limitations applicable to former client’s legal malpractice action was not equitably tolled, even though attorney entered into a tolling agreement a year after he contended the statute of limitations ran, where agreement specifically provided it would not be deemed to revive any claim that was already barred, and where client could have requested a tolling agreement earlier, or requested a stay of the malpractice agreement during the appeal of the underlying workers’ compensation action. Kimmer v. Wright (S.C.App. 2011) 396 S.C. 53, 719 S.E.2d 265, rehearing denied, vacated, certiorari dismissed 2013 WL 8207447. Limitation of Actions 14; Limitation of Actions 104.5

Issue of when former client became aware of, or should have become aware of, deed of trust relating to property that was used as collateral in third party loan between property owner and former client, for purpose of determining when three‑year statute of limitations period applicable to legal malpractice claims began to run, was for jury in former client’s legal malpractice action against law firm that represented former client in loan transaction. Manios v. Nelson, Mullins, Riley & Scarborough, LLP (S.C.App. 2010) 389 S.C. 126, 697 S.E.2d 644, rehearing denied, certiorari denied. Limitation of Actions 199(1)

Statute of limitations in action to determine whether city or electric cooperative had right to provide electric service to store that was being constructed on property annexed by the city did not begin to run until cooperative began providing service to completed store; city’s exclusive right to provide electricity to the annexed premises was not invaded until cooperative exceeded it statutory grant of authority and began serving the premises. City of Newberry v. Newberry Elec. Co‑op., Inc. (S.C. 2010) 387 S.C. 254, 692 S.E.2d 510, rehearing denied. Limitation Of Actions 58(1)

Three‑year statute of limitations for negligence and wrongful death action against nursing home was not equitably tolled in case in which personal representative of deceased patient attempted service by sheriff on nursing home’s registered agent before making delayed personal service on administrator of entity that purchased nursing home and that was located at same address, where personal representative did not diligently investigate the relationship between nursing home and the purchasing entity soon after filing to see if personal service could be accomplished at site and, after determining that nursing home’s registered agent was not at the provided address, personal representative did not seek leave from the court to effect service by publication. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Death 39; Limitation Of Actions 104.5

Purchaser was not entitled to equitable tolling of three‑year limitations period governing claims of negligent misrepresentation and fraud against vendor and pest control company based on alleged failure to disclose moisture damage, where delay in filing action was not attributable to any alleged misconduct by defendants. Watters v. Terminix Service, Inc. (S.C.App. 2008) 376 S.C. 632, 658 S.E.2d 110. Limitation Of Actions 104.5

Statute tolling statute of limitations on cause of action belonging to decedent for eight months after decedent’s death did not apply to claim for underinsured motorist (UIM) benefits brought by conservator for permanently comatose insured. Medlin v. South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1997) 325 S.C. 195, 480 S.E.2d 739. Limitation Of Actions 80

Since creditor had no right of action against administratrix during 6‑month period following testator’s death, that period should be added to the applicable 6 year statute of limitations in order to determine the period within which suit could be instituted. South Carolina Dept. of Mental Health v. Glass (S.C. 1977) 269 S.C. 91, 236 S.E.2d 412.

South Carolina’s ten‑year statute of limitations for executions of final judgments was equitably tolled, with respect to entry of the confession of judgment by guarantor of commercial loan, during 18‑year period in which guarantor’s alter ego entity held the confessed judgment, thereby thwarting all efforts by the rightful judgment creditors to take possession. Orlando Residence, Ltd. v. Nelson (C.A.4 (S.C.) 2014) 565 Fed.Appx. 212, 2014 WL 1345975. Limitation of Actions 104.5

Forfeiture statute’s limitations period was not equitably tolled during pendency of government’s administrative forfeiture proceeding in which, due to the government’s own mistake, it failed to serve the property owner with notice of the forfeiture and the property owner received no actual notice of the proceeding. U.S. v. Babb (C.A.4 (S.C.) 2003) 54 Fed.Appx. 772, 2003 WL 23424, Unreported. Limitation Of Actions 104.5

15. Child support

Out‑of‑wedlock child’s mental disability, causing her to have mental capacity of a six‑year‑old, prevented the child from becoming emancipated, such that father’s child support obligation did not terminate when child reached the age of majority, and thus general statute of limitations did not bar mother from first bringing child support action against father when child was 34 years old. Smith v. Doe (S.C. 2005) 366 S.C. 469, 623 S.E.2d 370. Child Support 177; Child Support 390; Child Support 399

16. Bail bond

Three‑year limitations period governing State’s bail bond forfeiture action against surety began to run 30 days after issuance of bench warrant for defendant’s failure to appear. State v. McClinton (S.C. 2006) 369 S.C. 167, 631 S.E.2d 895. Bail 77(1)

Three‑year limitations period applicable to contract actions governed State’s action against bond surety for forfeiture of bond after defendant failed to appear in court. State v. McClinton (S.C. 2006) 369 S.C. 167, 631 S.E.2d 895. Bail 77(1)

17. Action to collect rent

Three‑year statute of limitations for actions upon a contract applied to action to collect rent due under a commercial lease, rather than 10‑year statute of limitations for actions founded upon a title to real property or rents of the same; although lessor titled its action as one for distraint, its claim for rent arose out of the lease, not its title to real property. Palmetto Co. v. McMahon (S.C.App. 2011) 395 S.C. 1, 716 S.E.2d 329. Landlord And Tenant 1549; Landlord And Tenant 1684

18. Contract, accrual of action

Chapter 7 debtor, as participant in alleged civil conspiracy to defeat its subcontractors’ mechanics’ liens while transferring its goodwill to entity that would continue to provide services to customer unhampered by any preexisting debt, had knowledge of relevant facts from day one, such that, absent application of equitable tolling, limitations period on trustee’s civil conspiracy claim against customer began to run from that date or, at very latest, from completion of conspirators’ actions at least by petition date. In re Stotz Fredenhagen Industries, Inc. (Bkrtcy.D.S.C. 2016) 554 B.R. 777. Bankruptcy 2157

Three‑year statute of limitations upon Chapter 7 trustee’s cause of action for declaratory judgment regarding customer’s remaining contractual obligations to debtor and debtor’s obligations to subcontractors began to run when such obligations arose or, at very latest, when bankruptcy case was filed, absent application of equitable tolling. In re Stotz Fredenhagen Industries, Inc. (Bkrtcy.D.S.C. 2016) 554 B.R. 777. Bankruptcy 2157

Three‑year statute of limitations on contract actions did not run merely from the time of original contract between testator’s heir and the United States Department of Agriculture (USDA) for farm subsidies, and thus, the three‑year statute of limitations was not a complete bar on estate representative’s action to recover benefits paid to testator’s son; each application with the USDA was for a fixed duration, and required a separate renewal each year, with the benefit contingent upon an offer and acceptance by the USDA. Estate of Livingston v. Livingston (S.C.App. 2013) 404 S.C. 137, 744 S.E.2d 203, certiorari granted, certiorari dismissed as improvidently granted 412 S.C. 610, 773 S.E.2d 579. Limitation of Actions 46(6)

Landlord had reason to believe he had a cause of action against commercial tenant’s president for breach of contract, triggering three‑year limitations period, when rental payments to landlord ceased, although landlord had received rent checks from several different entities, where every rent check was signed by tenant’s president, minority shareholder, or registered agent, landlord did not consent to assignments of the lease, and thus any assignments were void and did not impact president’s guaranty of performance, and president never gave written notice he was terminating lease. Sapp v. Wheeler (S.C.App. 2013) 402 S.C. 502, 741 S.E.2d 565. Limitation of Actions 95(9)

19. Waiver

Denial of attorneys’ motion for partial summary judgment on legal malpractice claim based on non‑service could not be construed as a waiver of attorneys’ right to assert statute of limitations as a defense, where order denying motion for partial summary judgment made no mention of a waiver. Holmes v. Haynsworth, Sinkler & Boyd, P.A. (S.C. 2014) 408 S.C. 620, 760 S.E.2d 399, rehearing denied. Judgment 190

20. Bankruptcy

Under South Carolina law, Chapter 13 debtor’s inclusion of stale debt in her bankruptcy schedules did not operate to reset the three‑year statute of limitations for actions to recover debts and revive the debt, even though debtor did not mark the debt as “disputed” in her initial schedules; notice provided by listing debt in schedules was notice to creditor that its debt would be paid along with debtor’s other debts, in accordance with filed proof of claim, claims objection process, and other bankruptcy provisions, and notice neither created a right to payment nor signified a promise to pay, despite debtor’s omission of term “disputed.” In re Vaughn (Bkrtcy.D.S.C. 2015) 536 B.R. 670. Bankruptcy 2324; Limitation of Actions 147

Even if South Carolina law were to revive a stale debt simply by its mention in lists and schedules filed in connection with a bankruptcy petition, federal interests would supplant the state law rule and would require disallowing the claim and denying revival of the debt; reviving a stale debt through its inclusion in a debtor’s schedules would be contrary to the Bankruptcy Code’s liberal policy regarding amendment of schedules, to the Code’s principle of honest and full disclosure, and to the Code’s definition of “claim” as including unliquidated, contingent, unmatured, or disputed debts, would undermine the balance made in the Code whereby honest debtors receive relief from debts and creditors of equal rank share in equal distribution of debtor’s assets, and would nullify the statutory right of debtors to raise the statute of limitations defense. In re Vaughn (Bkrtcy.D.S.C. 2015) 536 B.R. 670. Bankruptcy 2324; Bankruptcy 2825; Limitation of Actions 147

Affidavit from Chapter 13 debtors, that they had not made any payments or promises to pay in relation to alleged contractual debts for at least ten years prior to filing of bankruptcy case, which was well in excess of three year statute of limitations on actions to recover such contractual debts, provided sufficient basis for concluding that creditor’s contract claims were unenforceable and for disallowing proofs of claim filed by creditor, absent any additional evidence from creditor to substantiate validity of its claims. In re Mazyck (Bkrtcy.D.S.C. 2014) 521 B.R. 726. Bankruptcy 2927

Fact that South Carolina statute of limitations on cause of action to recover on contractual obligations of Chapter 13 debtor had run prior to commencement of debtor’s Chapter 13 case could serve as proper ground to disallow creditor’s contract‑based claims, as “unenforceable against the debtor and property of the debtor” under any “applicable law.” In re Mazyck (Bkrtcy.D.S.C. 2014) 521 B.R. 726. Bankruptcy 2825

Rule of civil procedure governing cases stricken from docket by agreement did not apply in lot owners’ action against land developer, which action was stricken due to developer’s bankruptcy filing, and thus owners were not required to comply with the rule’s tolling provisions in order to obtain restoration of their action after termination of bankruptcy stay; action was stricken due to bankruptcy, not pursuant to an agreement between the parties, owners filed their action within the applicable statute of limitations, so that there was nothing to toll, and the striking of a lawsuit due to bankruptcy was not equivalent to a dismissal, as required to implicate the rule’s statute of limitations requirements. Goodwin v. Landquest Development, LLC (S.C.App. 2015) 414 S.C. 623, 779 S.E.2d 826, rehearing granted, certiorari denied. Trial 14

Bankruptcy statute governing extension of time to commence or continue a nonbankruptcy action after termination of stay did not apply in lot owners’ action against land developer, which action was stricken due to developer’s bankruptcy filing, and thus owners were not required to comply with the statute’s tolling provisions to obtain restoration of their action after termination of bankruptcy stay, where owners originally commenced their action within the applicable statute of limitations and before the automatic stay took effect, so that the statute of limitations was no longer “applicable nonbankruptcy law” fixing “a period for commencing or continuing a civil action.” Goodwin v. Landquest Development, LLC (S.C.App. 2015) 414 S.C. 623, 779 S.E.2d 826, rehearing granted, certiorari denied. Bankruptcy 2157

21. Laches

Corporation was not entitled to defense of laches on company’s fraudulent conveyance claim under South Carolina’s Statute of Elizabeth, where company filed its claim within applicable limitations period, did not fail to perform a legal duty, and did not commit a negligent act that would cause prejudice to corporation. PCS Nitrogen, Inc. v. Ross Development Corp., 2015, 127 F.Supp.3d 568. Corporations and Business Organizations 2881

22. Summary judgment

Genuine issues of material fact existed as to when homeowner first discovered mold within the home, precluding summary judgment on the issue of when the three‑year statute of limitations for his property damage claim accrued under the discovery rule in negligent misrepresentation action against former owner and negligence action against pest control company. McAlhany v. Carter (S.C.App. 2015) 415 S.C. 54, 781 S.E.2d 105, rehearing denied, certiorari granted. Judgment 181(7)

**SECTION 15‑3‑535.** Limitation on actions commenced under Section 15‑3‑530(5).

 Except as to actions initiated under Section 15‑3‑545, all actions initiated under Section 15‑3‑530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.

HISTORY: 1977 Act No. 182, Section 5; 1988 Act No. 432, Section 2.

Editor’s Note

The limitations period was reduced from 6 to 3 years in 1988.

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14 ALR 6th 1 , When Statute of Limitations Begins to Run on Action Against Attorney for Malpractice Based Upon Negligence‑View that Statute Begins to Run from Time Client Discovers, or Should Have Discovered, Negligent Act or...

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51 Causes of Action 2d 1, Cause of Action Against Church or Religious Organization for Negligent Hiring, Retention, or Supervision of Clergyperson Based on Sexual Abuse.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Practice and Procedure. 38 S.C. L. Rev. 155 (Autumn 1986).

Litigating Nightmares: Repressed Memories of Childhood Sexual Abuse. 51 S.C. L. Rev. 939 (Summer 2000).

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Attorney General’s Opinions

In light of the fact that doctors and physicians are professional persons with a higher obligation to their patients than the ordinary employees of a medical facility, there is a strong factual basis for their exemption from the limitations of [1977] Act No. 182; the classification of the Act is not suspect, is not outside the scope of the legislature to regulate sovereign/charitable immunity, and therefore is not unconstitutional. 1978 Op Atty Gen, No 78‑67, p 94.

NOTES OF DECISIONS

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1. In general

Under South Carolina law, directed verdict that employee was not acting within scope of employment and employer and its owner were not liable on claims against employee tolled three‑year statute of limitations until appellate court reversed the directed verdict, and, thus, that period did not count in suit by assignees of employee’s claims against employer to recover for civil conspiracy and intentional interference with contractual relationship under policy providing liability coverage for actions within scope of employment; it would be fundamentally unfair for a statute of limitations to be running on a claim where a fundamental underlying basis of that claim was held to be invalid by a court of law. Murphy v. Jefferson Pilot Communications Co., 2008, 657 F.Supp.2d 683. Limitation Of Actions 106

Under South Carolina law, three‑year statute of limitations applicable to suit by assignees of insured employee’s claims against employer to recover for civil conspiracy and intentional interference with contractual relationship with liability insurer began to run when employee knew or should have known the basis of any possible claims no later than denial of coverage, not when assignees discovered the facts about alleged intimidation of insured; assignment of the claim could not reset the statute of limitations. Murphy v. Jefferson Pilot Communications Co., 2008, 657 F.Supp.2d 683. Limitation Of Actions 95(7)

Under South Carolina case law, after a plaintiff has discovered or should have discovered his injury, his claims arising out of that injury have accrued and the three‑year statute of limitations begins running, even if he does not know the full extent of his injuries. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Limitation Of Actions 95(1.5)

The “discovery” rule in Section 15‑3‑535 applies to actions for property damage brought under Sections 15‑3‑530(3) and (4). Campus Sweater and Sportswear Co. v. M. B. Kahn Const. Co. (D.C.S.C. 1979) 515 F.Supp. 64, affirmed 644 F.2d 877.

The statute of limitations governing actions other than those involving real property is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown (S.C. 2005) 363 S.C. 372, 610 S.E.2d 816. Limitation Of Actions 95(1)

The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of the wrongdoer. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 95(1)

Under the discovery rule, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 95(1)

Genuine issues of material fact existed regarding when ink user, who was diagnosed with acute transient narcosis secondary to toxic solvent exposure, should have reasonably associated his exposure to ink with a serious or permanent physical condition, precluding summary judgment on limitations grounds under discovery rule, in ink user’s action against ink supplier for negligence per se, strict liability, and failure to warn. Grillo v. Speedrite Products, Inc. (S.C.App. 2000) 340 S.C. 498, 532 S.E.2d 1, rehearing denied, certiorari denied. Judgment 181(7)

Knowledge of the injury alone does not, a fortiori, give rise to suspicion of impropriety by an attorney, as will result in accrual of legal malpractice action for limitations purposes; rather, the limitations period is triggered by knowledge of facts, diligently acquired, sufficient to put an injured person on notice that a cause of action may exist against another. Peterson v. Richland County (S.C.App. 1999) 335 S.C. 135, 515 S.E.2d 553. Limitation Of Actions 95(11)

Under discovery rule, the statutory limitations period begins to run on negligence actions when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a full‑blown theory of recovery is developed. Holy Loch Distributors, Inc. v. Hitchcock (S.C.App. 1998) 332 S.C. 247, 503 S.E.2d 787, rehearing denied, reversed 340 S.C. 20, 531 S.E.2d 282. Limitation Of Actions 95(3)

Under “discovery rule,” statute of limitations begins to run from date injured party either knows or should know, by exercise of reasonable diligence, that cause of action exists for wrongful conduct causing injury. True v. Monteith (S.C. 1997) 327 S.C. 116, 489 S.E.2d 615, 67 A.L.R.5th 775. Limitation Of Actions 95(1)

Negligence action must be commenced within three years after person knew or by exercise of reasonable diligence should have known that he had cause of action, not three years after full‑blown theory of recovery has been developed. Brown v. Pearson (S.C.App. 1997) 326 S.C. 409, 483 S.E.2d 477. Limitation Of Actions 95(3)

Under Section 15‑3‑535, the standard as to when the limitations period begins to run is objective rather than subjective and, therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. Burgess v. American Cancer Soc., South Carolina Div., Inc. (S.C.App. 1989) 300 S.C. 182, 386 S.E.2d 798.

In an action brought by a homeowner against an exterminating company for damages allegedly caused to his residence, the trial judge did not err in charging the jury that, under the discovery rule and Section 15‑3‑535, one must know not only that he has been injured but also what or who proximately caused that injury. Rogers v. Efird’s Exterminating Co., Inc. (S.C. 1985) 284 S.C. 377, 325 S.E.2d 541.

1.5. Construction and application

Discovery rule did not apply to nonclaim statute, which set time limitations on presentation of claims against decedent’s estate, and because creditor filed her statements of claim more than nine months after the first publication of notice, her claims were barred by nonclaim statute, which held that creditors who were not given actual notice had to present their claims within eight months after the date of the first publication. Phillips v. Quick (S.C.App. 2012) 399 S.C. 226, 731 S.E.2d 327. Executors and Administrators 225(1)

2. “Exercise of reasonable diligence”

Material issues of fact existed as to when consumer, who allegedly developed tardive dyskinesia due to his use of metoclopramide, knew or should have known, by exercise of reasonable diligence, that he had cause of action against manufacturer of generic metoclopramide, and as to whether tolling provision of South Carolina statute that required plaintiffs to file notice of intent to file suit prior to initiating civil action asserting medical malpractice claim applied in action, precluding summary judgment for manufacturer on consumer’s claims against it for, inter alia, products liability, fraud, and breach of warranty on grounds that they were barred by South Carolina’s three‑year statute of limitations. Fisher v. Pelstring, 2011, 817 F.Supp.2d 791, on reconsideration in part. Federal Civil Procedure 2510; Federal Civil Procedure 2515

Under South Carolina statute providing that personal injury action accrues on date that person knew or by exercise of reasonable diligence should have known that he had cause of action, “exercise of reasonable diligence” means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. Fisher v. Pelstring, 2011, 817 F.Supp.2d 791, on reconsideration in part. Limitation Of Actions 95(4.1)

Client knew or should have known, for purposes of discovery rule which delays commencement of limitations period, that he had claims against attorney for breach of contract and personal injuries, relating to attorney’s representation of client in criminal appeal and in other post‑trial matters, on last day attorney represented client; at such time, client was dissatisfied with attorney’s performance, he knew Supreme Court had affirmed his convictions, he believed $7,500 fee he had paid attorney to meet once with Attorney General to discuss new trial motion was excessive, and he felt he had been “scammed” out of another $5,000 fee for attorney’s attempt to obtain stay of sentencing while client completed treatment for cancer. Majstorich v. Gardner (S.C.App. 2004) 361 S.C. 513, 604 S.E.2d 728. Limitation Of Actions 95(11)

Date on which injured party, by exercise of reasonable diligence, should have known that he had cause of action, for purposes of discovery rule which delays commencement of limitations period, is an objective, not subjective, question. Majstorich v. Gardner (S.C.App. 2004) 361 S.C. 513, 604 S.E.2d 728. Limitation Of Actions 95(1)

“Reasonable diligence,” within meaning of discovery rule under which limitations period does not begin to run until the injured party knew or by exercise of reasonable diligence should have known that he had cause of action, means the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Majstorich v. Gardner (S.C.App. 2004) 361 S.C. 513, 604 S.E.2d 728. Limitation Of Actions 95(2)

Under discovery rule, the exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist; the statute of limitations begins to run from this point and not when advice of counsel is sought or a full‑blown theory of recovery developed. Peterson v. Richland County (S.C.App. 1999) 335 S.C. 135, 515 S.E.2d 553. Limitation Of Actions 95(2)

“Exercise of reasonable diligence” by injured party in seeking to discover existence of cause of action, as must be present for discovery rule to be applicable, means that injured party must act with some promptness where facts and circumstances of injury place reasonable person of common knowledge and experience on notice that claim against another party might exist. True v. Monteith (S.C. 1997) 327 S.C. 116, 489 S.E.2d 615, 67 A.L.R.5th 775. Limitation Of Actions 95(2)

Exercise of reasonable diligence means that injured party must act with some promptness where facts and circumstances of injury would put person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist; statute of limitations begins to run from this point and not when advice of counsel is sought or full‑blown theory of recovery is developed. Snell v. Columbia Gun Exchange, Inc. (S.C. 1981) 276 S.C. 301, 278 S.E.2d 333.

3. Contracts

Discovery rule applies to determine running of limitations period for contract actions. Holy Loch Distributors, Inc. v. Hitchcock (S.C.App. 1998) 332 S.C. 247, 503 S.E.2d 787, rehearing denied, reversed 340 S.C. 20, 531 S.E.2d 282. Limitation Of Actions 95(9)

In an action by a school district against various contractors for negligence, breach of warranty, and strict liability in connection with a faulty roof on a school building, the statute of limitations began to run at the time when the school district either discovered or reasonably should have discovered that it had a serious roof problem and not when it learned that it needed a new roof. The fact that the school district did not appreciate the full extent of the damage until later is immaterial. Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc. (S.C.App. 1985) 286 S.C. 207, 332 S.E.2d 555, certiorari granted 287 S.C. 234, 337 S.E.2d 697, certiorari dismissed 288 S.C. 468, 343 S.E.2d 613.

4. Automobile accidents

The statute of limitations on a claim for injuries sustained in an automobile accident (Section 15‑3‑535) began to run on the date of the accident since the injured party should have been aware of a potential claim at that time. Wiggins v. Edwards (S.C. 1994) 314 S.C. 126, 442 S.E.2d 169. Limitation Of Actions 55(4)

Confusion or disorientation suffered by a victim of an automobile accident did not constitute “insanity” under the tolling statute (Section 15‑3‑40) where she did not lose consciousness or sustain any type of head injury in the accident. Wiggins v. Edwards (S.C. 1994) 314 S.C. 126, 442 S.E.2d 169. Limitation Of Actions 74(1)

A physical disability allegedly suffered by a victim of an automobile accident did not toll the statute of limitations under Section 15‑3‑40; any amendment to the disabilities provided in the tolling statute is a matter for the legislature. Wiggins v. Edwards (S.C. 1994) 314 S.C. 126, 442 S.E.2d 169.

5. Real estate transactions

Home purchasers should have known by closing date, through exercise of reasonable diligence, that home’s ground floor was below base flood elevation, and thus, three year statute of limitations on their action against their real estate agent and vendors began to run at least by closing date; plaintiffs viewed house several times before closing, they brought in professionals to inspect house, they received flood elevation certificate that clearly indicated addition was below base flood elevation, and their attorney received letter from vendors’ attorney indicating potential problem with addition. Dorman v. Campbell (S.C.App. 1998) 331 S.C. 179, 500 S.E.2d 786. Limitation Of Actions 95(7)

Knowledge of information in vendors’ attorney’s letter to purchasers’ attorney, which indicated potential problem with lower level addition of house, was imputed to purchasers for purposes of determining commencement date of statute of limitations on their action against their real estate agent and vendors for, inter alia, unfair trade practices. Dorman v. Campbell (S.C.App. 1998) 331 S.C. 179, 500 S.E.2d 786. Limitation Of Actions 95(7)

6. Attorney malpractice

Under the discovery rule, the statutory period of limitations for a legal malpractice claim begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. Stokes‑Craven Holding Corp. v. Robinson (S.C. 2016) 416 S.C. 517, 787 S.E.2d 485, on remand 2017 WL 1372244. Limitation of Actions 95(11)

Attorneys’ alleged representations to client that she would be able to recover in underlying medical malpractice action for the death of her child did not estop them from asserting statute of limitations as defense in legal malpractice action; client knew or should have known she would not be entitled to recover in malpractice action when she signed a letter waiving her right to pursue a cause of action against the child’s hospital, attended the hearing where she was substituted as guardian ad litem, was present when the court denied request to add her as an individual party‑plaintiff to the medical malpractice suit, received court order indicating she was not an individual party plaintiff, and then denied she was aware of attorneys’ misrepresentations. Kelly v. Logan, Jolley, & Smith, L.L.P. (S.C.App. 2009) 383 S.C. 626, 682 S.E.2d 1. Limitation Of Actions 13

Client’s cause of action for legal malpractice against attorneys which stemmed from attorneys’ representation of her in medical malpractice action for death of her child, accrued, and statute of limitations period began to run, on date she was terminated as child’s guardian. Kelly v. Logan, Jolley, & Smith, L.L.P. (S.C.App. 2009) 383 S.C. 626, 682 S.E.2d 1. Limitation Of Actions 95(11)

Three‑year limitations period governing surgeon’s legal malpractice claim against attorney who represented him in underlying wrongful death and survival action began to run on date adverse verdict was entered against surgeon, and not when request for certiorari review of order affirming verdicts was denied. Epstein v. Brown (S.C. 2005) 363 S.C. 372, 610 S.E.2d 816. Limitation Of Actions 55(3)

Client knew or should have known, for purposes of discovery rule which delays commencement of limitations period, that he had claims against attorney for breach of contract and personal injuries, relating to attorney’s representation of client in criminal appeal and in other post‑trial matters, on last day attorney represented client; at such time, client was dissatisfied with attorney’s performance, he knew Supreme Court had affirmed his convictions, he believed $7,500 fee he had paid attorney to meet once with Attorney General to discuss new trial motion was excessive, and he felt he had been “scammed” out of another $5,000 fee for attorney’s attempt to obtain stay of sentencing while client completed treatment for cancer. Majstorich v. Gardner (S.C.App. 2004) 361 S.C. 513, 604 S.E.2d 728. Limitation Of Actions 95(11)

The three‑year statute of limitations period on former clients’ malpractice action against attorney for attorney’s alleged failure to disclose flood easement on clients’ floodplain property began to run on closing date for purchase of property, and thus, malpractice action filed more than three years after closing date was barred by statute of limitations; client admitted that he received attorney’s letter advising him about easement nearly six months prior to closing, and at closing, clients signed release indicating they had actual knowledge that their property was in a floodplain, but elected not to purchase flood insurance. Binkley v. Burry (S.C.App. 2002) 352 S.C. 286, 573 S.E.2d 838, rehearing denied, certiorari denied. Limitation Of Actions 95(11)

Judgment creditor’s action for legal malpractice, based on her attorney’s failure to make sure that confession of judgment was properly indexed, accrued on date that she commenced an action to foreclose on judgment, at which time she knew that an error had been committed in the indexing of her judgment and that an order had been issued dismissing her action against judgment creditor, and thus her action against attorney, filed more than three years after accrual date, was barred by statute of limitations. Peterson v. Richland County (S.C.App. 1999) 335 S.C. 135, 515 S.E.2d 553. Limitation Of Actions 95(11)

Town residents had inquiry or constructive notice of alleged malpractice on part of attorneys who had acted as bond and corporate counsel for town in connection with issuance of bonds, and statute of limitations began to run on legal malpractice action, when bond documents were publicly filed with clerk of court; claim was that damages flowed from manner of passage, and monetary harm caused by economic burden, details relating to both of which were set forth in bond documents. Berry v. McLeod (S.C.App. 1997) 328 S.C. 435, 492 S.E.2d 794, rehearing denied, certiorari denied. Limitation Of Actions 95(11)

Genuine issue of material fact as to when former client should have had notice of potential legal malpractice claim based on failure of attorney, who represented her in connection with commercial lease agreement, to disclose that he had conflict of interest due to his dual representation of second party to lease, precluded summary judgment based on statute of limitations in client’s legal malpractice action, even though client had long been aware of lease’s lack of cost‑of‑living clause, which was injury allegedly resulting from malpractice. True v. Monteith (S.C. 1997) 327 S.C. 116, 489 S.E.2d 615, 67 A.L.R.5th 775. Judgment 181(16)

Knowledge of injury on part of client, standing alone, does not a fortiori give rise to suspicion of any impropriety by client’s attorney, as will result in accrual of legal malpractice action for limitations purposes. True v. Monteith (S.C. 1997) 327 S.C. 116, 489 S.E.2d 615, 67 A.L.R.5th 775. Limitation Of Actions 95(11)

Statute of limitations barred client’s legal malpractice claim based on alleged negligence in failing to obtain title insurance, as client knew he did not have title insurance and thus was on inquiry notice of potential claim more than six years prior to bringing suit. Christensen v. Mikell (S.C. 1996) 324 S.C. 70, 476 S.E.2d 692, rehearing denied. Limitation Of Actions 95(11)

7. Asbestos

Statute of limitations began to run on date plaintiff’s lung scarring was definitely determined to have been caused by asbestos exposure and plaintiff, by exercise of reasonable diligence, should have been aware of his cause of action at that time; to assert that he needed to be informed of definitive diagnosis is contrary to law of South Carolina. Hinson v. Owens‑Illinois, Inc., 1987, 677 F.Supp. 406.

8. Products liability

Genuine issue of material fact existed under delayed discovery rule as to whether particular chest x‑ray of smoker would have put person of common knowledge and experience on notice that some right of smoker’s had been invaded, or that some claim against another party might have existed, on tobacco companies’ contention that South Carolina’s three‑year statute of limitations barred smoker’s claims, precluding summary judgment, in product liability action. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Federal Civil Procedure 2515

Under “discovery rule”, statutory period of limitation begins to run from date injury resulting from wrongful conduct is discovered or may be discovered by exercise of reasonable diligence; on date of injury, if injured plaintiff knows or should know that he has some claim against someone else, statute of limitations begins to run for all claims based upon that injury against all potential defendants, even though plaintiff discovers identity of another alleged wrongdoer at some later date; thus in action brought against employer and manufacturer of machine, injured employee could not assert claim against employer’s insurer based on theory that insurer’s negligence led to employee’s injuries, where claim was made in amended complaint filed 3 years after the date of injury, and was therefore beyond the applicable statute of limitations, even though insurer’s identity was unknown to injured employee until later. Tollison v. B & J Machinery Co., Inc., 1993, 812 F.Supp. 618.

9. Insurance

Excess liability insurer’s causes of action against primary liability insurer for negligence, bad faith, and equitable subrogation, for its tender of its policy limits to insured’s employee in underlying case, rather than to excess insurer, accrued when excess insurer drafted file memorandum outlining its causes of action; file memorandum demonstrated that excess insurer had developed full‑blown theory of recovery and there was no evidence to suggest that over next three years that excess insurer made any additional discoveries with respect to its claims. Royal Ins. Co. of America v. Reliance Ins. Co., 2001, 140 F.Supp.2d 609. Limitation Of Actions 55(2); Limitation Of Actions 60(11)

10. Sexual abuse

The statute of limitations for a claim based on sexual abuse began to run when plaintiff formed an impression and conviction of having been abused as a child, rather than when she perceived her images as memories. There is no exception to the objective standard for repressed memory cases. Roe v. Doe (C.A.4 (S.C.) 1994) 28 F.3d 404.

Plaintiffs’ claims against diocese arising out of alleged sexual abuse by priest, which claims were based upon theory of negligent supervision, were not barred by three‑year statute of limitations, where plaintiffs alleged diocese’s systematic practice of secrecy and concealment of knowledge of sexual abuse by priests, including priest who allegedly committed abuse at issue. Doe v. Bishop of Charleston (S.C. 2014) 407 S.C. 128, 754 S.E.2d 494, rehearing denied. Limitation of Actions 104(2)

Three‑year statute of limitations applicable to actions arising out of sexual abuse or incest began to run, with respect to action against diocese for negligent supervision of priests alleged to have committed sexual abuse, on date plaintiffs knew or by the exercise of reasonable diligence should have known that negligent supervision had occurred. Doe v. Bishop of Charleston (S.C. 2014) 407 S.C. 128, 754 S.E.2d 494, rehearing denied. Limitation of Actions 95(4.1)

Three‑year limitations period governing former patient’s suit against physician for sexual abuse allegedly committed when patient was 14 or 15 years‑old began to run when patient reached age of majority. Doe v. Crooks (S.C. 2005) 364 S.C. 349, 613 S.E.2d 536. Limitation Of Actions 72(1)

Whether statute of limitations governing sexual abuse actions retroactively applied to former patient’s claim that he was abused by physician when he was 14 or 15 years‑old was irrelevant in determining whether action against physician was time‑barred, where limitations period under previous statute had already expired at time patient filed suit. Doe v. Crooks (S.C. 2005) 364 S.C. 349, 613 S.E.2d 536. Limitation Of Actions 6(1)

The discovery rule may toll the statute of limitations during the period a victim psychologically represses her memory of sexual abuse. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 95(4.1)

Expert testimony is required to prove both the abuse and the repressed memory where the plaintiff asserts the discovery rule in a case involving repressed memories of sexual abuse. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 197(2)

There is no distinction between the use of direct or circumstantial evidence in determining the applicability of the discovery rule in a case involving repressed memories of sexual abuse. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 197(2)

The application of the discovery rule and the existence of corroborating evidence are questions of fact for the jury when the parties present conflicting evidence in a case involving repressed memories of sexual abuse. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 199(1)

An objective standard is applied when a plaintiff asserts the discovery rule in a case involving repressed memories of sexual abuse; thus, the question is not whether the plaintiff herself was on notice by a certain date, but whether a reasonable person in her circumstances would have been on notice by a certain date. Moriarty v. Garden Sanctuary Church of God (S.C. 2000) 341 S.C. 320, 534 S.E.2d 672. Limitation Of Actions 95(4.1)

A son’s personal injury action against his parents, arising from alleged sexual abuse which took place more than 20 years before he brought his action, was barred by the 6‑year statute of limitations where the son, who had long since reached his majority, did not claim that he was unaware of the abuse, but merely stated that he had only recently been diagnosed with “delayed stress syndrome” and fully realized the extent of his injuries. Doe v. R.D. (S.C. 1992) 308 S.C. 139, 417 S.E.2d 541. Limitation Of Actions 95(4.1)

11. Medical malpractice

Under South Carolina statute of limitations applicable to federal prisoner’s civil rights action against Bureau of Prisons and prison personnel, alleging that personnel caused him to contract hepatitis C and failed to provide medication to treat the disease, in violation of his Eighth Amendment rights, three‑year limitations period began to run on date that prisoner was informed that he had been diagnosed with hepatitis C. Hoffman v. Tuten, 2006, 446 F.Supp.2d 455. Limitation Of Actions 95(15)

12. Fraud

Pursuant to discovery rule, elderly father’s causes of action against daughter and son‑in‑law for breach of fiduciary duty and fraud in connection with sale of real property accrued, and three‑year statute of limitations began to run, when father first had suspicions that he no longer owned the property, in light of evidence that daughter handled father’s personal affairs. Moore v. Benson (S.C.App. 2010) 390 S.C. 153, 700 S.E.2d 273. Limitation of Actions 100(12)

13. Professional negligence

Taxpayer knew or had reason to know of his professional negligence and breach of fiduciary claims stemming from tax preparer’s failure to apply payment towards his outstanding tax liability, triggering the three‑year limitations period, when he received invoice from tax preparer which indicated that the payment had instead been applied towards “services rendered.” Graham v. Welch, Roberts and Amburn, LLP (S.C.App. 2013) 404 S.C. 235, 743 S.E.2d 860. Limitation of Actions 95(10.1); Limitation of Actions 100(12)

**SECTION 15‑3‑540.** Three years.

 Within three years:

 (1) An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office or by the omission of an official duty, including the nonpayment of money collected upon an execution, subject to the provisions of Section 15‑3‑560; and

 (2) An action upon a statute for a penalty or forfeiture when the action is given to the party aggrieved or to such party and the State, except when the statute imposing it prescribes a different limitation.

HISTORY: 1962 Code Section 10‑144; 1952 Code Section 10‑144; 1942 Code Section 389; 1932 Code Section 389; Civ. P. ‘22 Section 332; Civ. P. ‘12 Section 138; Civ. P. ‘02 Section 113; 1870 (14) 447 Section 115.

CROSS REFERENCES

Constables, see Sections 22‑9‑10 et seq.; Sections 23‑7‑10 et seq.

Coroners, see Sections 17‑5‑10 et seq.

General powers and duties of sheriffs and deputy sheriffs, see Sections 23‑15‑20 et seq.

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The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

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1. In general

Section 15‑3‑540 must be affirmatively pled. Kolb v. Cook (S.C.App. 1985) 284 S.C. 598, 327 S.E.2d 379.

Where the surety of a county treasurer sought to collect tax penalties arising from treasurer’s delay in cashing checks he had received for taxes and defendants relied upon this section [former Code 1962 Section 10‑144] and former Code 1962 Section 10‑145 to defeat the action, it was held that the surety was subrogated to the rights of the State and came under former Code 1962 Section 65‑2707, which allows ten years for the bringing of an action for collection of taxes. American Sur. Co. v. Hamrick Mills (S.C. 1939) 191 S.C. 362, 4 S.E.2d 308, 124 A.L.R. 1147.

Different limitation may be fixed by implication. It seems that the statute imposing the penalty need not expressly provide a different limitation so as to make this section [former Code 1962 Section 10‑144] inapplicable. It is sufficient if the statute, by plain implication, provides a different limitation. Earle v. Owings (S.C. 1905) 72 S.C. 362, 51 S.E. 980.

2. Constables

The term “constable” in Section 15‑3‑540(1) includes all peace and law enforcement officers, and the three‑year limitations period provided by this section is activated by the type of official conduct engaged in rather than the mere title of the public official involved. Accordingly, in a civil rights action brought by a mother for the fatal wounding of her son by a county deputy sheriff, deputy sheriffs and their agents who allegedly engaged in certain unlawful conduct as law enforcement officers, and a city detective, were included within the meaning of “constable.” Allen v. Fidelity and Deposit Co. of Maryland (D.C.S.C. 1981) 515 F.Supp. 1185, affirmed 694 F.2d 716.

3. Action upon statute

In determining what is “an action upon a statute” within the meaning of this section [former Code 1962 Section 10‑144], the inquiry is whether a penalty or a cause of action for a penalty exists irrespective of the statute. If the action is allowed only by virtue of the statute then it is “an action upon a statute.” Sauls‑Baker Co. v. Atlantic Coast Line R. Co. (S.C. 1918) 109 S.C. 285, 96 S.E. 118.

An action to recover the penalty provided by former Code 1962 Section 58‑594 for failure of a common carrier to pay a claim for loss in transit within a specified period, is an action upon a statute within the meaning of the instant section, and since former Code 1962 Section 58‑594 provides no limitation, an action for the recovery of the penalty must be brought within the three‑year limitation in this section [former Code 1962 Section 10‑144]. Sauls‑Baker Co. v. Atlantic Coast Line R. Co. (S.C. 1918) 109 S.C. 285, 96 S.E. 118.

A proceeding to estreat a recognizance is not an action upon a statute for a forfeiture or penalty so as to make this section [former Code 1962 Section 10‑144] applicable. State v. Cornell (S.C. 1905) 70 S.C. 409, 50 S.E. 22.

4. Penalty for charging usurious interest

Debtor’s action seeking relief for secured creditor’s alleged failure to comply with Uniform Commercial Code’s (UCC) notice requirements in connection with sale of repossessed truck was subject to one or three‑year limitations period applicable to actions upon statutes for a penalty, not the six‑year limitations period applicable to actions for breach of contract for a sale of goods; debtor never alleged a breach of contract, and the relief requested by debtor, a finance charge and 10% of the principal amount of the obligation, was a mandatory, pre‑determined amount of “damages” that a debtor could obtain if a secured party failed to comply with the UCC’s notice requirements and thus constituted a statutory penalty. Delaney v. First Financial of Charleston, Inc. (S.C.App. 2016) 418 S.C. 209, 791 S.E.2d 546, rehearing denied. Penalties 1

Former Code 1962 Section 8‑5, imposing the penalty for usury and providing the recovery thereof by counterclaim, by plain implication indicates that the counterclaim is available and is effective as long as the right of action exists on the principal sum. In other words, the counterclaim follows the main contract, and it is not barred within the three years under this section [former Code 1962 Section 10‑144]. Earle v. Owings (S.C. 1905) 72 S.C. 362, 51 S.E. 980.

The action for the recovery of the penalty for charging usurious interest accrues when the usurious interest is paid. Land Mortg. Co. v. Gillam (S.C. 1897) 49 S.C. 345, 29 S.E. 203.

5. Consumer credit sales

Three‑year statute of limitations, applicable to buyers’ class action lawsuit against seller for violating notice of attorney and insurance preference provisions under Consumer Protection Code, began to run from each payment made on underlying consumer credit sale. Tilley v. Pacesetter Corp. (S.C. 1998) 333 S.C. 33, 508 S.E.2d 16, rehearing denied, on subsequent appeal 2003 WL 21910620. Limitation Of Actions 58(1)

6. Forfeitures

Forfeiture statute’s limitations period was not equitably tolled during pendency of government’s administrative forfeiture proceeding in which, due to the government’s own mistake, it failed to serve the property owner with notice of the forfeiture and the property owner received no actual notice of the proceeding. U.S. v. Babb (C.A.4 (S.C.) 2003) 54 Fed.Appx. 772, 2003 WL 23424, Unreported. Limitation Of Actions 104.5

7. Liquidated damages under Fair Labor Standards Act

This section [former Code 1962 Section 10‑144] is inapplicable to claims for liquidated damages under the Fair Labor Standards Act. Rockton & Rion Ry. v. Davis, 1946, 159 F.2d 291.

The liquidated damages for failure to pay the minimum wages under the provisions of the Fair Labor Standards Act are compensation and not a penalty or punishment by the government. Davis v. Rockton & R.R.R., 1946, 65 F.Supp. 67. Labor And Employment 2390(2)

8. ERISA

Three‑year limitations period applied to ERISA notice violation penalty claim in South Carolina for failure to respond to request for information. Pressley v. Tupperware Long Term Disability Plan (C.A.4 (S.C.) 2009) 553 F.3d 334. Labor And Employment 648

9. Accrual of claim

Even if three‑year, rather than one‑year, statute of limitations applied to debtor’s action seeking statutory penalty for secured creditor’s alleged failure to comply with Uniform Commercial Code’s (UCC) notice requirements in connection with sale of repossessed truck, debtor’s action accrued, and the applicable limitations period began to run, when debtor received the allegedly deficient notice of sale, not when the truck was sold; although the three‑year statute was silent as to accrual, under the UCC, debtors could ask the court to restrain disposition of collateral upon recipe of deficient notice and a secured party could elect not to dispose of the property after giving notice, thus suggesting that the sale date was not the accrual date. Delaney v. First Financial of Charleston, Inc. (S.C.App. 2016) 418 S.C. 209, 791 S.E.2d 546, rehearing denied. Limitation of Actions 95(9)

**SECTION 15‑3‑545.** Actions for medical malpractice.

 (A) In any action, other than actions controlled by subsection (B), to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Chapter 79, Title 38 acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

 (B) When the action is for damages arising out of the placement and inadvertent, accidental, or unintentional leaving of a foreign object in the body or person of any one or the negligent placement of any appliance or apparatus in or upon any such person by any licensed health care provider acting within the scope of his profession by reason of any medical, surgical, or dental treatment or operation, the action must be commenced within two years from date of discovery or when it reasonably ought to have been discovered; provided, that, in no event shall there be a limitation on the commencement of the action less than three years after the placement or leaving of the appliance or apparatus.

 (C) The provisions of this section apply only to causes of action which arise after June 10, 1977, and, as to causes of action which arise prior to June 10, 1977, the statute of limitations existing prior to June 10, 1977, applies.

 (D) Notwithstanding the provisions of Section 15‑3‑40, if a person entitled to bring an action against a licensed health care provider acting within the scope of his profession is under the age of majority at the date of the treatment, omission, or operation giving rise to the cause of action, the time period or periods limiting filing of the action are not tolled for a period of more than seven years on account of minority, and in any case more than one year after the disability ceases. Such time limitation is tolled for minors for any period during which parent or guardian and defendant’s insurer or health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

HISTORY: 1962 Code Section 10‑145.1; 1977 Act No. 182, Section 2; 1988 Act No. 432, Section 3.

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23 ALR 6th 697 , When is Person, Other Than One Claiming Posttraumatic Stress Syndrome or Memory Repression, Within Coverage of Statutory Provision Tolling Running of Limitations Period on Basis of Mental Disability.

5 ALR 6th 133 , Validity of Medical Malpractice Statutes of Repose.

14 ALR 6th 301 , Timeliness of Action Under Medical Malpractice Statute of Repose, Aside from Effect of Fraudulent Concealment of Patient’s Cause of Action.

19 ALR 6th 475 , Effect of Fraudulent or Negligent Concealment of Patient’s Cause of Action on Timeliness of Action Under Medical Malpractice Statute of Repose.

71 ALR 5th 307 , Medical Malpractice Statutes of Limitation Minority Provisions.

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S.C. Jur. Limitation of Actions Section 54, General Rule.

S.C. Jur. Limitation of Actions Section 56, Ignorance of Cause of Action.

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72 Causes of Action 2d 243, Cause of Action Against Cryobanks, Fertility Clinics, or Other Health Care Providers for Negligent Infliction of Emotional Distress Arising from Negligence Related to Frozen Embryos.

75 Causes of Action 2d 551, Cause of Action to Enforce Contractual Right to Indemnification Respecting Personal Injury Claim.

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The continuous treatment rule: ameliorating the harsh result of the statute of limitations in medical malpractice cases. 52 S.C. L. Rev. 955 (Summer 2001).

South Carolina Tort Law: For Whom the Statute of Limitations Tolls—The Epstein Court’s Rejection of the Continuous Representation Rule, 57 S.C. L. Rev. 643 (Spring 2006).

Attorney General’s Opinions

In light of the fact that doctors and physicians are professional persons with a higher obligation to their patients than the ordinary employees of a medical facility, there is a strong factual basis for their exemption from the limitations of [1977] Act No. 182; the classification of the Act is not suspect, is not outside the scope of the legislature to regulate sovereign/charitable immunity, and therefore is not unconstitutional. 1978 Op Atty Gen, No 78‑67, p 94.

There is no constitutional barrier for the proposed medical malpractice legislation to place a statute of limitations upon minors. 1976‑77 Op Atty Gen, No 77‑85, p. 78.

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1. Validity

Continuous treatment doctrine could not apply to toll statute of repose for medical malpractice action while patient was under the care of defendant physician. Shadwell v. Craigie (S.C.App. 2004) 361 S.C. 492, 605 S.E.2d 567, rehearing denied, certiorari granted. Limitation Of Actions 55(3)

The 2‑year “foreign object” limitations period of the pre‑1988 version of Section 15‑3‑545, which created 2 classes of medical malpractice plaintiffs, satisfied the requirements of equal protection since a rational basis existed for distinguishing between “foreign object” plaintiffs and other medical malpractice plaintiffs; the direct causal connection between a foreign object and its attendant negligent conduct justified exempting such negligence from any “repose” limitation while, on the other hand, reducing the period in which to bring suit once the object is discovered. Jenkins v. Meares (S.C. 1990) 302 S.C. 142, 394 S.E.2d 317.

The 6‑year repose provision of Section 15‑3‑545 for medical malpractice actions does not violate equal protection and due process guarantees. The statute does not deny equal protection because it applies in the same manner to medical malpractice plaintiffs, whether their injuries are latent or readily apparent. Moreover, it bears a rational relationship to a legitimate legislative objective—reduction of liability exposure and, thereby, fostering the delivery of quality health care services. Finally, the statute does not violate due process by barring a potential claim before a plaintiff has knowledge, directly or by exercise of due care, that an injury has been inflicted since a 6‑year outer limit within which to file a complaint for medical malpractice, regardless of discovery of the malpractice, is not unreasonable. Hoffman v. Powell (S.C. 1989) 298 S.C. 338, 380 S.E.2d 821. Constitutional Law 3454; Limitation Of Actions 4(2)

Section 15‑3‑545, establishing statutory limitation period for medical malpractice actions, is constitutional as classification of persons which legislature sought to protect is reasonable and bears rational relationship to legitimate legislative purpose of reducing health care providers’ exposure to liability and continued delivery of reasonable health services, all members of protected class are treated alike under similar circumstances and conditions, and classification rests on rational basis; parents who consulted with attorneys on several occasions concerning malpractice action against doctor following stillborn birth of child indicates parents had discovered or reasonably ought to have discovered potential medical malpractice action at that time, such that action filed more than 3 years from that time was time barred; Section 15‑3‑545 specifically covers any action to recover damages for injury to persons arising out of any medical treatment, and thus includes contract actions resulting from alleged malpractice. Smith v. Smith (S.C. 1987) 291 S.C. 420, 354 S.E.2d 36.

2. In general

Since proviso of Code 1976 Section 15‑3‑545 limits application of lowered statute of limitations to causes of action arising after effective date of act, court could not dismiss cause of action arising prior to June 10, 1977, even though complaint was filed over 4 years from date of treatment giving rise to cause of action and over 4 years from date of discovery. Peters v. McCalla (D.C.S.C. 1978) 461 F.Supp. 14. Limitation Of Actions 6(1)

The medical malpractice statute of repose begins to run at the time of a medical professional’s alleged negligent act or omission for which the plaintiff seeks to impose liability without regard to when the course of treatment ended. Marshall v. Dodds (S.C.App. 2016) 417 S.C. 196, 789 S.E.2d 88, rehearing denied. Limitation of Actions 55(3)

The six‑year statute of repose for patient’s medical malpractice claims, based on her treating physicians’ alleged failure to diagnose her blood cancer, started to run each time the physicians failed to diagnose the cancer, not only when they first failed to do so. Marshall v. Dodds (S.C.App. 2016) 417 S.C. 196, 789 S.E.2d 88, rehearing denied. Limitation of Actions 55(3)

When a plaintiff alleges a misdiagnosis or failure to diagnose a condition within the six‑year period of the statute of repose, which an expert witness opines to be a breach of the physician’s duty of care, the statute of repose does not bar the cause of action merely because the physician previously misdiagnosed the condition outside the repose period. Marshall v. Dodds (S.C.App. 2016) 417 S.C. 196, 789 S.E.2d 88, rehearing denied. Limitation of Actions 55(3)

The six‑year statute of repose for medical malpractice claims begins to run at the time of an alleged negligent act or omission by a medical professional upon which a plaintiff seeks to impose liability in a cause of action for malpractice. Marshall v. Dodds (S.C.App. 2016) 417 S.C. 196, 789 S.E.2d 88, rehearing denied. Limitation of Actions 55(3)

The term “occurrence” for purposes of the six‑year statute of repose for medical malpractice claims means the time of an alleged negligent treatment, omission, or operation by a medical professional. Marshall v. Dodds (S.C.App. 2016) 417 S.C. 196, 789 S.E.2d 88, rehearing denied. Limitation of Actions 55(3)

The six‑year statute of repose for medical malpractice action constitutes an outer limit beyond which a medical malpractice claim is barred, regardless of whether it has or should have been discovered. Marshall v. Dodds (S.C.App. 2016) 417 S.C. 196, 789 S.E.2d 88, rehearing denied. Limitation of Actions 55(3); Limitation of Actions 95(12)

Hospital’s equitable indemnification action against physician and insurer after settling medical malpractice action was an action to recover damages for injury to the person and, therefore, was subject to six‑year statute of repose; hospital needed to show physician’s liability for patient’s damages. Columbia/CSA‑HS Greater Columbia Healthcare System, LP v. South Carolina Medical Malpractice Liability Joint Underwriting Ass’n (S.C. 2015) 411 S.C. 557, 769 S.E.2d 847, rehearing denied. Indemnity 96; Insurance 3560

Patient filed medical expert affidavit in support of medical malpractice claims within 45 days of notice of intent to file suit (NOI), and thus, NOI tolled three‑year limitations period governing suit against plastic surgeon, surgeon’s professional association, and hospital. Wilkinson v. East Cooper Community Hosp., Inc. (S.C. 2014) 410 S.C. 163, 763 S.E.2d 426, rehearing denied. Limitation of Actions 105(1)

Patient who filed notice of intent to file suit (NOI) for medical malpractice against plastic surgeon, surgeon’s professional association, and hospital, which tolled running of three‑year limitations period, and who complied with statutorily mandated pre‑litigation mediation, had 60 days to file complaint after mediator determined that mediation had failed. Wilkinson v. East Cooper Community Hosp., Inc. (S.C. 2014) 410 S.C. 163, 763 S.E.2d 426, rehearing denied. Alternative Dispute Resolution 444

The six year statute of repose for medical malpractice claims barred estate of patient’s claims against public hospital, a government entity, which alleged hospital pathologist misdiagnosed patient’s excised mole as benign. Kerr v. Richland Memorial Hosp. (S.C. 2009) 383 S.C. 146, 678 S.E.2d 809. Death 37

The statute of repose imposes an outer limit for filing a medical malpractice action, regardless of when it is discovered. Dunbar v. Carlson (S.C.App. 2000) 341 S.C. 261, 533 S.E.2d 913, rehearing denied. Limitation Of Actions 95(12)

Date on which discovery of facts giving notice of medical malpractice claim should have been made is objective, not subjective, question. Arant v. Kressler (S.C. 1997) 327 S.C. 225, 489 S.E.2d 206. Limitation Of Actions 95(12)

An action against a blood collection agency for negligent collection and processing of blood was governed by the general statute of limitations for negligence actions, Section 15‑3‑530(5), rather than by the 3‑year statute of limitations and repose for medical malpractice actions, Section 15‑3‑545. Swanigan v. American Nat. Red Cross (S.C. 1993) 313 S.C. 416, 438 S.E.2d 251. Products Liability 231; Products Liability 305

The entire 1988 Tort Reform Act,including the amendment to Section 15‑3‑545, which, among other things, amended the limitations period in “foreign object” cases, is to be applied prospectively. Thus, a plaintiff’s action alleging that a gauze pad was negligently left in her abdomen following surgery, did not receive the benefit of the more liberal limitations period under the amended Section 15‑3‑545 where the action accrued prior to the effective date of the amended statutes. Jenkins v. Meares (S.C. 1990) 302 S.C. 142, 394 S.E.2d 317.

2.5. Construction with other laws

Tolling provision of statute providing exceptions to limitation of civil actions as to persons under disability does not apply to three‑year statute of limitations for medical malpractice actions. Sims v. Amisub of South Carolina, Inc. (S.C. 2015) 414 S.C. 109, 777 S.E.2d 379, rehearing denied. Limitation of Actions 70(1)

General provisions of limitations chapter setting forth exceptions as to persons under disability, including “insane” persons, did not apply to toll the statute of limitations for medical malpractice action of patient who had alleged mental incompetency; the only tolling allowed under medical malpractice statute of limitations was for minors. Sims v. Amisub of South Carolina, Inc. (S.C.App. 2014) 408 S.C. 202, 758 S.E.2d 187, rehearing denied, certiorari granted, affirmed 414 S.C. 109, 777 S.E.2d 379. Limitation of Actions 72(1); Limitation of Actions 74(1)

3. Pleading limitations as bar to action

The physician who delivered the plaintiff’s daughter was not equitably estopped from asserting the statute of limitations in an action arising from the death of the daughter from seizures where the action was brought more than 3 years after the mother requested documents which indicated that the daughter’s condition could have resulted from lack of oxygen during delivery. Brayboy v. Ewing (S.C.App. 1993) 311 S.C. 272, 428 S.E.2d 731. Limitation Of Actions 13

4. Discovery of cause of action

Issue of whether South Carolina would apply the “discovery rule” in interpreting its statute of limitations in medical malpractice cases is one of first impression. Gattis v. Chavez (D.C.S.C. 1976) 413 F.Supp. 33.

In an action for medical malpractice, the statute of limitations commences to run when the plaintiff discovered, or with reasonable efforts should have discovered, the act of malpractice. Gattis v. Chavez (D.C.S.C. 1976) 413 F.Supp. 33. Limitation Of Actions 95(12)

Psychiatrist’s knowledge regarding cause of patient’s amphetamine‑induced psychosis was immaterial in determining when patient’s medical malpractice cause of action for alleged overprescription of amphetamines accrued under the discovery rule because only the patient’s knowledge that a claim might exist and when he knew it was material. McMaster v. Dewitt (S.C.App. 2014) 411 S.C. 138, 767 S.E.2d 451, certiorari denied. Limitation of Actions 95(12)

Patient’s medical malpractice claim alleging that psychiatrist overprescribed amphetamines accrued under the discovery rule when patient’s injury, his first hospitalization for amphetamine‑induced psychosis, occurred, where psychiatrist told patient before patient’s discharge that amphetamines were the cause of his psychosis and patient’s medical records indicated that his illness was likely substance‑induced from prescription pills and due to overutilization of the prescribed amphetamines, even if the discharge summary did not mention medication as the cause of psychosis. McMaster v. Dewitt (S.C.App. 2014) 411 S.C. 138, 767 S.E.2d 451, certiorari denied. Limitation of Actions 95(12)

A court applies the discovery rule looking to the date the claim was discovered or reasonably ought to have been discovered, to determine when an action for medical malpractice accrues. McMaster v. Dewitt (S.C.App. 2014) 411 S.C. 138, 767 S.E.2d 451, certiorari denied. Limitation of Actions 95(12)

Under the discovery rule, the statute of limitations for a medical malpractice claim begins to run when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. McMaster v. Dewitt (S.C.App. 2014) 411 S.C. 138, 767 S.E.2d 451, certiorari denied. Limitation of Actions 95(12)

Under the discovery rule, the event that commences the running of the statute of limitations for medical malpractice action is the injury, if the facts and circumstances are such that a reasonable person would inquire into whether the injury gives rise to a claim against the defendant. McMaster v. Dewitt (S.C.App. 2014) 411 S.C. 138, 767 S.E.2d 451, certiorari denied. Limitation of Actions 95(12)

The three‑year statute of limitations applicable to patient’s medical malpractice claim began to run on the date an x‑ray revealed that patient had suffered a collapsed lung, the date on which patient was put on notice that some right of hers had been invaded or that some claim against the physician might exist, rather than the date physician performed a needle core breast biopsy on patient. Ranucci v. Crain (S.C. 2014) 409 S.C. 493, 763 S.E.2d 189, rehearing denied. Limitation of Actions 95(12)

Six‑year statute of repose for medical malpractice action based on consulting physician’s failure to inform patient of laboratory test results showing that she had an elevated creatinine level began to run when physician should have informed patient of the results, which was, at the latest, during an appointment in the month following the tests, regardless of when patient discovered the omission. Shadwell v. Craigie (S.C.App. 2004) 361 S.C. 492, 605 S.E.2d 567, rehearing denied, certiorari granted. Limitation Of Actions 55(3); Limitation Of Actions 95(12)

The three‑year statute of limitations governing medical malpractice actions begins to run when the facts and circumstances of the injury would put a person of common knowledge and experience on notice that some right of hers has been invaded or that some claim against a party might exist. Dunbar v. Carlson (S.C.App. 2000) 341 S.C. 261, 533 S.E.2d 913, rehearing denied. Limitation Of Actions 95(12)

Statute of limitations for medical malpractice begins to run where facts and circumstances of injury would put person of common knowledge and experience on notice that some right of hers has been invaded or that some claim against party might exist. Arant v. Kressler (S.C. 1997) 327 S.C. 225, 489 S.E.2d 206. Limitation Of Actions 95(12)

Patient’s medical malpractice claim against obstetrician arising from delivery of child was time barred, as another physician told her more than three years before commencement of action that reason patient was bleeding was because obstetrician had not removed all of the placenta; that information was sufficient to put patient on notice of claim against obstetrician. Arant v. Kressler (S.C. 1997) 327 S.C. 225, 489 S.E.2d 206. Limitation Of Actions 95(12)

Statute of limitations applicable to patient’s medical malpractice action claiming that he had become addicted to drug as result of physician’s negligence began to run on date that patient had knowledge of his addiction. Preer v. Mims (S.C. 1996) 323 S.C. 516, 476 S.E.2d 472. Limitation Of Actions 95(12)

In a medical malpractice action based upon care following surgery, the statute of limitations began to run at the time the follow up care ceased, since the cause of the injury was readily discoverable by a person of common knowledge through reasonable diligence at that time; thus, the discovery rule did not delay the running of the statute of limitations until the plaintiff’s attorney reviewed the medical records. Strong v. University of South Carolina School of Medicine (S.C. 1994) 316 S.C. 189, 447 S.E.2d 850.

Under the discovery rule, an action accrues when the injury is discovered or “reasonably ought to have been discovered”; the “reasonably ought to have been discovered” requirement is the “reasonable diligence” requirement. Strong v. University of South Carolina School of Medicine (S.C. 1994) 316 S.C. 189, 447 S.E.2d 850. Limitation Of Actions 95(1)

A patient alleging medical malpractice against her physician knew or should have known that her claim existed no later than the date on which she continued to have problems with her knees and sought legal advice regarding a claim against her physician. Johnston v. Bowen (S.C. 1993) 313 S.C. 61, 437 S.E.2d 45. Limitation Of Actions 95(12)

A plaintiff was chargeable with discovery of the defendant’s alleged negligence as of April 8, 1981, such that the plaintiff’s medical malpractice action alleging that the defendant was negligent in using the drug Valium to treat him for chronic anxiety and depression, which was filed and served on October 2, 1984, was barred by Section 15‑3‑545 where, no later than April 8, 1981, the plaintiff was told by another physician that he should not be taking Valium but instead should be taking an antidepressant. Wilson v. Shannon (S.C.App. 1989) 299 S.C. 512, 386 S.E.2d 257.

Action alleging medical malpractice commenced within 3 years from date hospital forwarded deceased husband’s medical records but more than 3 years after death of husband was not timely where wife was present at time of death and witnessed events leading up to death, as such events were more than sufficient to put person of common knowledge and experience on notice that some claim against another party might exist. Austin v. Conway Hosp., Inc. (S.C.App. 1987) 292 S.C. 334, 356 S.E.2d 153. Limitation Of Actions 95(12)

Mother’s cause of action for medical malpractice, on her minor’s behalf, accrued under discovery rule two weeks and one day after child’s delivery; doctor stated “Oops, I hurt his arm” immediately after he delivered child, and, on next day, doctor checked on mother and commented that injuries like child’s usually healed fully in about two weeks. Bennett v. Lexington County Health Services Dist., Inc. (S.C.App. 2015) 2015 WL 3884262, Unreported. Limitation of Actions 95(12)

Mother’s knowledge could be imputed to child to determine date cause of action for medical malpractice accrued under discovery rule. Bennett v. Lexington County Health Services Dist., Inc. (S.C.App. 2015) 2015 WL 3884262, Unreported. Limitation of Actions 95(12)

5. Physician moving from state

Statute of repose contained in Section 15‑3‑545 was not tolled by Section 15‑3‑30 when defendant doctor moved from the state in 1984. Langley v. Pierce (C.A.4 (S.C.) 1994) 15 F.3d 312.

In a medical malpractice action, the statute of repose contained in Section 15‑3‑545 was not tolled when the defendant physician moved from South Carolina, since the general tolling statute (Section 15‑3‑30) is not applicable to medical malpractice claims. Langley v. Pierce (S.C. 1993) 313 S.C. 401, 438 S.E.2d 242, answer to certified question conformed to 15 F.3d 312. Limitation Of Actions 85(2)

6. Damages

Medicaid payments to defendant physician for medical services provided to patient were a wholly independent collateral source, and thus, patient’s damages in medical malpractice action against physician were not limited by the amounts paid by Medicaid. Haselden v. Davis (S.C. 2003) 353 S.C. 481, 579 S.E.2d 293. Damages 64

7. Wrongful death

In a wrongful death action based upon alleged medical malpractice, the trial court improperly granted the defendants’ motion for summary judgment on statute of limitations grounds where, although the plaintiff was unhappy with the decedent’s nursing care prior to her death, there was no evidence conclusively showing that the plaintiff should have suspected negligence on the part of her physicians during the period the decedent was hospitalized. Garner v. Houck (S.C. 1993) 312 S.C. 481, 435 S.E.2d 847, rehearing denied. Limitation Of Actions 199(1)

Wrongful death actions are actions to recover damages for injury to the person, and therefore, in a wrongful death action based on medical malpractice, the health care provider statute of limitations, Section 15‑3‑545, is applicable. Garner v. Houck (S.C. 1993) 312 S.C. 481, 435 S.E.2d 847, rehearing denied. Death 37

8. Equitable indemnification

Hospital’s action against physician and medical malpractice insurer was for equitable indemnification to recover damages for patient’s injury, and, thus, medical malpractice statute of repose applied, even if action sought settlement costs; settlement costs were recoverable only if they were reasonable, the $350,000 that hospital paid for a release from patient’s action was directly related to and arose from patient’s damages, action rested upon hospital’s obligation to pay damages because of negligence imputed to it as the result physician’s allegedly tortious acts, and plain language of statute indicated that it applied to any action that sought to recover damages arising out of medical malpractice. Columbia/CSA‑HS Greater Columbia Healthcare System v. South Carolina Medical Malpractice Liability Joint Underwriting Ass’n (S.C.App. 2011) 394 S.C. 68, 713 S.E.2d 639, rehearing denied, affirmed 411 S.C. 557, 769 S.E.2d 847. Indemnity 96; Insurance 3560

9. Summary judgment

Patient’s affidavit claiming that he did not know at the time of his first hospitalization that he suffered amphetamine‑induced psychosis was a sham affidavit, and thus was properly disregarded by trial court in ruling on psychiatrist’s limitations‑based summary judgment motion in medical malpractice action alleging overprescription of amphetamines, where patient’s deposition contradicted his affidavit three times and expressed no doubt about the facts as he stated them, patient did not offer any explanation for his contradictory statements, and patient submitted the affidavit at the last minute before the summary judgment hearing. McMaster v. Dewitt (S.C.App. 2014) 411 S.C. 138, 767 S.E.2d 451, certiorari denied. Judgment 185.2(8)

**SECTION 15‑3‑550.** Two years.

 Within two years:

 (1) an action for libel, slander, or false imprisonment; and

 (2) an action upon a statute for a forfeiture or penalty to the State.

HISTORY: 1962 Code Section 10‑145; 1952 Code Section 10‑145; 1942 Code Section 390; 1932 Code Section 390; Civ. P. ‘22 Section 333; Civ. P. ‘12 Section 139; Civ. P. ‘02 Section 114; 1870 (14) 448, Section 116; 1988 Act No. 391, Section 3; 2001 Act No. 102, Section 2.

CROSS REFERENCES

Action for forfeiture of property to state, see Section 15‑77‑40.

LIBRARY REFERENCES

Westlaw Key Number Searches: 237k76; 241k35.

Libel and Slander 76.

Limitation of Actions 35.

C.J.S. Libel and Slander.

C.J.S. Injurious Falsehood Section 122.

C.J.S. Limitations of Actions Section 77.

RESEARCH REFERENCES

ALR Library

35 ALR 4th 1002 , Limitation of Actions: Time of Discovery of Defamation as Determining Accrual of Action.

Encyclopedias

91 Am. Jur. Trials 151, When Clergy Fail Their Flock: Litigating the Clergy Sexual Abuse Case.

S.C. Jur. Alienation of Affection Section 13, Statute of Limitations.

S.C. Jur. Assault and Battery Section 55, Statute of Limitations.

S.C. Jur. False Imprisonment Section 17, Statute of Limitations.

S.C. Jur. Forfeitures Section 9, Statutes of Limitation.

S.C. Jur. Limitation of Actions Section 31, Intentional Torts.

S.C. Jur. Limitation of Actions Section 38, General Provisions.

Forms

Am. Jur. Pl. & Pr. Forms Libel and Slander Section 1 , Introductory Comments.

Treatises and Practice Aids

51 Causes of Action 2d 1, Cause of Action Against Church or Religious Organization for Negligent Hiring, Retention, or Supervision of Clergyperson Based on Sexual Abuse.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Disability of Landowner With Respect to the Acquisition of Adverse Rights by Another by Statutes of Limitations, Presumption of a Grant, and Prescriptive Right in South Carolina. 10 SC LQ 292.

Libel. 39 S.C. L. Rev. 200, Autumn 1987.

Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

NOTES OF DECISIONS

In general 1

Amendment of complaint 2

Fraudulent concealment 3

Penalties 5

Pleading defamation 4

1. In general

Two year statute of limitations does not apply to tort of intentional affliction of mental distress. Ford v. Hutson (S.C. 1981) 276 S.C. 157, 276 S.E.2d 776. Limitation Of Actions 31

A cause of action ex contractu is not barred by the two‑year statute of limitations applicable to actions for defamation. Hill v. American Exp. Co. (S.C. 1971) 257 S.C. 86, 184 S.E.2d 115, 46 A.L.R.3d 1380.

Where the surety of a county treasurer sought to collect tax penalties arising from the treasurer’s delay in cashing checks he had received for taxes and defendants relied upon this section [former Code 1962 Section 10‑145] and former Code 1962 Section 10‑144 to defeat the action, it was held that the surety was subrogated to the rights of the State and came under former Code 1962 Section 65‑2707, which allows ten years for the bringing of an action for collection of taxes. American Sur. Co. v. Hamrick Mills (S.C. 1939) 191 S.C. 362, 4 S.E.2d 308, 124 A.L.R. 1147.

2. Amendment of complaint

The trial court properly permitted the plaintiff in a libel action to amend his complaint after the two year statute of limitations had elapsed where the amendment did not change the nature of the cause of action, but amplified and made more definite and certain the original general allegation of malice. Scott v. McCain (S.C. 1978) 272 S.C. 198, 250 S.E.2d 118.

3. Fraudulent concealment

Statute of limitation governing causes of action for slander and libel requires said action be commenced within 2 years from date it accrues; fraudulent concealment of defamatory statement tolls running of statute of limitations; to toll statute, fraudulent concealment must be by party raising statute of limitations and party must fail to discover facts which are basis of cause of action, despite exercise of due diligence on his part; although traditional slander case accrues at time of utterance, discovery rule applies for cases of surreptitious slander which results in harm, although unknown to injured party. Austin v. Torrington Co. (D.C.S.C. 1985) 611 F.Supp. 191, reversed 810 F.2d 416, certiorari denied 108 S.Ct. 489, 484 U.S. 977, 98 L.Ed.2d 487.

4. Pleading defamation

In an action for defamation of character one must allege and prove that a statement was made which, either on its face or by reason of extrinsic facts, tends to impeach the reputation of the plaintiff; that the statement was published to a third person, other than the plaintiff; and that a result of the statement the plaintiff suffered either special or general damages. Hampton v. Conso Products, Inc., 1992, 808 F.Supp. 1227. Libel And Slander 100(7)

Limitations period for former employee’s defamation claims against his former employer, to the extent they were based on employer’s statements that occurred prior to his termination, were not tolled while employee’s prior action, in which he also asserted a defamation claim against employer, was pending in federal court; employee admitted that the first action was not based on the statements on which his second action was based, and while the complaint in the first action did not identify the specific statements on which the defamation claim was based, it did allege that the defamatory statements had been made since employee’s termination. Harris v. Tietex International Ltd. (S.C.App. 2016) 417 S.C. 533, 790 S.E.2d 411, rehearing denied. Limitation of Actions 105(2)

5. Penalties

The two‑year limitation on an action upon a statute for a penalty to the State was held applicable to action for a penalty imposed by a statute relating to the business of foreign corporations in the State, though the title of the statute provided for penalties while the body thereof referred to a fine, in State v. Liggett & Myers Tobacco Co. (S.C. 1933) 171 S.C. 511, 172 S.E. 857, appeal dismissed 54 S.Ct. 564, 291 U.S. 652, 78 L.Ed. 1046. Limitation Of Actions 35(1)

A proceeding to estreat a recognizance is not an action upon a statute for a penalty to the State within the meaning of this section [former Code 1962 Section 10‑145]. State v. Cornell (S.C. 1905) 70 S.C. 409, 50 S.E. 22.

An amount stated as a forfeiture for each year of the unexpired term of an escaped convict is not a technical penalty, but is stipulated damages, and an action therefor is not barred in two years. Lipscomb v. Seegers (S.C. 1883) 19 S.C. 425. Damages 79(2)

**SECTION 15‑3‑555.** Statute of limitations for action based on sexual abuse or incest.

 (A) An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty‑one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.

 (B) Parental immunity is not a defense against claims based on sexual abuse or incest that occurred before, on, or after this section’s effective date.

HISTORY: 2001 Act No. 102, Section 3.

LIBRARY REFERENCES

Westlaw Key Number Searches: 241k31; 285k7(8).

Limitation of Actions 31.

Parent and Child 7(8).

C.J.S. Limitations of Actions Sections 68 to 70.

C.J.S. Parent and Child Section 334.

NOTES OF DECISIONS

In general 1

1. In general

South Carolina Tort Claims Act was exclusive remedy for claim against city for negligent supervision, based on military servicemember’s allegation that he was sexually abused while participating in activity sponsored by city’s fire department, and thus, suit was governed by two‑year limitations period for claims brought under Act, and not six‑year limitations period governing claims for acts of sexual abuse or incest. Doe v. City of Duncan (S.C.App. 2016) 417 S.C. 277, 789 S.E.2d 602, rehearing denied. Municipal Corporations 747(3)

Whether statute of limitations governing sexual abuse actions retroactively applied to former patient’s claim that he was abused by physician when he was 14 or 15 years‑old was irrelevant in determining whether action against physician was time‑barred, where limitations period under previous statute had already expired at time patient filed suit. Doe v. Crooks (S.C. 2005) 364 S.C. 349, 613 S.E.2d 536. Limitation Of Actions 6(1)

**SECTION 15‑3‑560.** One year.

 Within one year:

 (1) An action concerning or in any manner relating to wages claimed under a Federal statute or regulation;

 (2) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process; and

 (3) An action against any county of this State having a population as shown by the United States official census of 1930 or any subsequent United States official census in excess of eighty‑five thousand brought by any former, present or future officer, including county auditors and county treasurers, employee or agent thereof on account of any claim for salary, wages, fees, costs or other emolument or claim alleged to be due him on account of services rendered or performed, or brought upon any such claim by an assignee or personal representative thereof.

HISTORY: 1962 Code Section 10‑146; 1952 Code Section 10‑146; 1942 Code Sections 391, 396‑1; 1932 Code Section 391; Civ. P. ‘22 Section 334; Civ. P. ‘12 Section 140; Civ. P. ‘02 Section 115; 1870 (14) 448 Section 117; 1938 (40) 1631; 1945 (44) 337.

CROSS REFERENCES

Claims against counties, see Section 4‑13‑10 et seq.

Liabilities of sheriffs and deputy sheriffs, see Section 23‑17‑10 et seq.

No action being brought to enforce a lien for care, etc., in a State mental health facility more than one year after death of patient or trainee, see Section 44‑23‑1140.

LIBRARY REFERENCES

Westlaw Key Number Searches: 241k21(3); 241k33.

Limitation of Actions 21(3), 33.

C.J.S. Employer‑Employee Relationship Section 87.

C.J.S. Limitations of Actions Sections 33, 52.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 25, Public Employment Wages and Benefits.

S.C. Jur. Limitation of Actions Section 23, Certain Actions for Wages and Similar Claims.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Disability of Landowner With Respect to the Acquisition of Adverse Rights by Another by Statutes of Limitations, Presumption of a Grant, and Prescriptive Right in South Carolina. 10 SC LQ 292.

Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

Attorney General’s Opinions

Courts decision in Marchant v Hamilton, (1983, App) 279 SC 497, 309 SE2d 781, holding that employees of State or political subdivision are entitled to full civilian pay while undergoing military training, is to be applied retroactively as well as prospectively. Applicability of any statute of limitations for claims for backpay should be made on case‑by‑case basis. 1984 Op Atty Gen, No. 84‑137, p. 332.

NOTES OF DECISIONS

Constitutionality 1

1. Constitutionality

Subsection (3) of this section [former Code 1962 Section 10‑146], in so far as it relates to claims against counties which had accrued on or before the passage of this subsection, violates the equal protection and due process clauses of the State and Federal Constitutions. Gillespie v. Pickens County (S.C. 1941) 197 S.C. 217, 14 S.E.2d 900.

Act No. 947 of 1938 [former 1938 (40) 1893], which, like this section [former Code 1962 Section 10‑146], fixed a period of limitation for actions against counties for salaries, fees, etc., but which expressly did not affect this section [former Code 1962 Section 10‑146], was unconstitutional in so far as it related to claims which had accrued on or before its effective date, because it applied only to forty‑two counties of the State. Gillespie v. Pickens County (S.C. 1941) 197 S.C. 217, 14 S.E.2d 900.

As to constitutionality of subsection (1) of this section [former Code 1962 Section 10‑146] as enacted, see Davis v. Rockton & R.R.R., 1946, 65 F.Supp. 67.

**SECTION 15‑3‑570.** Action for penalty.

 An action upon a statute for a penalty or forfeiture given, in whole or in part, to any person who will prosecute for it must be commenced within one year after the commission of the offense. If the action be not commenced within the year by a private party it may be commenced within two years thereafter in behalf of the State by the Attorney General or the solicitor of the circuit where the offense was committed, unless a different limitation be prescribed in the statute under which the action is brought.

HISTORY: 1962 Code Section 10‑147; 1952 Code Section 10‑147; 1942 Code Section 393; 1932 Code Section 393; Civ. P. ‘22 Section 336; Civ. P. ‘12 Section 142; Civ. P. ‘02 Section 117; 1870 (14) 448 Section 119.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k35.

Limitation of Actions 35.

C.J.S. Limitations of Actions Section 77.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forfeitures Section 9, Statutes of Limitation.

S.C. Jur. Limitation of Actions Section 38, General Provisions.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Disability of Landowner With Respect to the Acquisition of Adverse Rights by Another by Statutes of Limitations, Presumption of a Grant, and Prescriptive Right in South Carolina. 10 SC LQ 292.

Limitation of Actions. 25 S.C. L. Rev. 437.

The Statute of Limitations and the Doctrine of “Relation Back.” 22 S.C. L. Rev. 607.

NOTES OF DECISIONS

In general 1

Accrual of claim 3

Notice 2

1. In general

Action for COBRA statutory penalty brought in South Carolina was subject to that state’s one‑year statute of limitations governing actions for penalty. Bryant v. Food Lion Inc., 2000, 100 F.Supp.2d 346, affirmed 8 Fed.Appx. 194, 2001 WL 434566, certiorari denied 122 S.Ct. 459, 534 U.S. 993, 151 L.Ed.2d 377. Federal Courts 3034(3); Labor And Employment 648

Section 15‑3‑570 is the statute of limitation applicable to actions under Section 32‑1‑20 because Section 32‑1‑20 is in the nature of a penalty. Ardis v. Ward (S.C. 1996) 321 S.C. 65, 467 S.E.2d 742, rehearing denied.

An action against a railroad company for the penalty for violation of the separate coach law is within this section [former Code 1962 Section 10‑147] and is barred in one year. Sturkie v. Southern Ry. (S.C. 1905) 71 S.C. 208, 50 S.E. 782. Limitation Of Actions 35(1); Railroads 254(6)

2. Notice

Debtor’s action seeking relief for secured creditor’s alleged failure to comply with Uniform Commercial Code’s (UCC) notice requirements in connection with sale of repossessed truck was subject to one or three‑year limitations period applicable to actions upon statutes for a penalty, not the six‑year limitations period applicable to actions for breach of contract for a sale of goods; debtor never alleged a breach of contract, and the relief requested by debtor, a finance charge and 10% of the principal amount of the obligation, was a mandatory, pre‑determined amount of “damages” that a debtor could obtain if a secured party failed to comply with the UCC’s notice requirements and thus constituted a statutory penalty. Delaney v. First Financial of Charleston, Inc. (S.C.App. 2016) 418 S.C. 209, 791 S.E.2d 546, rehearing denied. Penalties 1

3. Accrual of claim

Even if three‑year, rather than one‑year, statute of limitations applied to debtor’s action seeking statutory penalty for secured creditor’s alleged failure to comply with Uniform Commercial Code’s (UCC) notice requirements in connection with sale of repossessed truck, debtor’s action accrued, and the applicable limitations period began to run, when debtor received the allegedly deficient notice of sale, not when the truck was sold; although the three‑year statute was silent as to accrual, under the UCC, debtors could ask the court to restrain disposition of collateral upon recipe of deficient notice and a secured party could elect not to dispose of the property after giving notice, thus suggesting that the sale date was not the accrual date. Delaney v. First Financial of Charleston, Inc. (S.C.App. 2016) 418 S.C. 209, 791 S.E.2d 546, rehearing denied. Limitation of Actions 95(9)

**SECTION 15‑3‑580.** Actions by motor carriers for charges.

 All actions at law by motor carriers subject to Chapter 23 of Title 58 for the recovery of their charges or any part thereof shall be commenced within two years from the time the cause of action accrues and not thereafter. The cause of action by a motor carrier for its charges shall for the purpose of this section be deemed to accrue upon delivery or tender of delivery by the carrier.

HISTORY: 1962 Code Section 10‑147.1; 1952 (47) 2170.

LIBRARY REFERENCES

Westlaw Key Number Searches: 70k196; 241k46; 241k49.

Carriers 196.

Limitation of Actions 46, 49.

C.J.S. Carriers Sections 470, 483.

C.J.S. Limitations of Actions Sections 131, 156.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 22, Actions Relating to Motor Carrier Charges.

**SECTION 15‑3‑590.** Actions against motor carriers for overcharges.

 (1) Actions at law for the recovery of overcharges against motor carriers subject to Chapter 23 of Title 58 shall be commenced within two years from the time the cause of action accrues and not thereafter, subject to the provisions of subsection (2) of this section; provided, that if a claim for the overcharge has been presented in writing to the carrier within the two‑year period of limitation, the period shall be extended to include six months from the time notice in writing was given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof.

 (2) The cause of action against a motor carrier for overcharges shall for the purpose of this section be deemed to accrue at the time the charges are paid to the carrier.

 (3) The term “overcharges” as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Public Service Commission.

HISTORY: 1962 Code Section 10‑147.2; 1952 (47) 2170.

LIBRARY REFERENCES

Westlaw Key Number Searches: 70k196.5; 241k46; 241k49.

Carriers 196.5.

Limitation of Actions 46, 49.

C.J.S. Carriers Section 281.

C.J.S. Limitations of Actions Sections 131, 156.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 16, Other Regulation.

S.C. Jur. Limitation of Actions Section 22, Actions Relating to Motor Carrier Charges.

**SECTION 15‑3‑600.** Action for other relief.

 An action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued.

HISTORY: 1962 Code Section 10‑148; 1952 Code Section 10‑148; 1942 Code Section 394; 1932 Code Section 394; Civ. P. ‘22 Section 337; Civ. P. ‘12 Section 143; Civ. P. ‘02 Section 118; 1870 (14) 448 Section 120.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k39.

Limitation of Actions 39.

C.J.S. Limitations of Actions Section 36.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 37, Other Relief.

NOTES OF DECISIONS

In general 1

Action to set aside deed for fraud 5

Actions based on foreign judgments 3

Proceeding in mandamus 6

Quo warranto action by State 2

Redemption and recovery of land from mortgagee 4

1. In general

Ten‑year default statute of limitations applied to workers’ compensation insurers’ claims for reimbursement from Second Injury Fund for benefits paid to employees for their work‑related injuries; seventy‑eight week provision governing reimbursement from second injury fund in Workers’ Compensation Act was not a statute of limitation, but a notice requirement and, consequently, there was no statute of limitations in the Act that applied to claims for reimbursement. Transportation Ins. Co. and Flagstar Corp. v. South Carolina Second Injury Fund (S.C. 2010) 389 S.C. 422, 699 S.E.2d 687, rehearing denied. Workers’ Compensation 1030.1(5)

In foreclosure action brought by assignee of second mortgage, cross claim by holder of first mortgage against its attorney for his failure to discover properly recorded mortgage assignment was not governed by statute of limitations of Section 15‑3‑530 or Section 15‑3‑600, but cause of action accrued upon discovery. Mills v. Killian (S.C. 1979) 273 S.C. 66, 254 S.E.2d 556. Limitation Of Actions 95(10.1)

Section held inapplicable to the facts in McMakin v Gowan, 18 SC 502 (1883), which was an action to recover an amount on a sealed note upon which an erroneous settlement had been made. McMakin v. Gowan (S.C. 1883) 18 S.C. 502.

2. Quo warranto action by State

Ten‑year, catch‑all statute of limitations did not apply to state’s quo warranto action against city challenging city’s use of strip method for annexation of certain property; though legislature did not provide a specific statute of limitations for quo warranto actions, it did provide a specific statute of limitations for annexation matters. State ex rel. Condon v. City of Columbia (S.C. 2000) 339 S.C. 8, 528 S.E.2d 408. Municipal Corporations 33(9); Quo Warranto 29

3. Actions based on foreign judgments

Absent some specific limitations period for enforcement under the Uniform Enforcement of Judgments Act (UEFJA), the ten‑year, catch‑all statute of limitations applies to the time in which a foreign judgment must be filed pursuant to the UEFJA, just as it does to an action to enforce a foreign judgment under common law. Abba Equipment, Inc. v. Thomason (S.C.App. 1999) 335 S.C. 477, 517 S.E.2d 235, rehearing denied, certiorari dismissed. Judgment 823

Ten‑year statute of limitations applicable to foreign judgment creditors action under the Uniform Enforcement of Judgments Act (UEFJA) to enforce judgment against debtor residing in state began to run when debtor moved to state, not when creditor first discovered that debtor moved to state. Abba Equipment, Inc. v. Thomason (S.C.App. 1999) 335 S.C. 477, 517 S.E.2d 235, rehearing denied, certiorari dismissed. Limitation Of Actions 60(1); Limitation Of Actions 95(3)

Section 15‑3‑600 indirectly applies to actions based on foreign judgments and can serve to bar their prosecution; however, pursuant to Section 15‑3‑30, limitation period prescribed by Section 15‑3‑600 does not begin to run until foreign judgment debtor moves to South Carolina and courts of South Carolina become empowered to adjudicate cause of action between parties. Payne v. Claffy (S.C.App. 1984) 281 S.C. 385, 315 S.E.2d 814.

4. Redemption and recovery of land from mortgagee

An action to redeem land and to recover possession thereof from a mortgagee is not specifically referred to in the statute of limitations of this State, and this section [Code 1962 Section 10‑148], therefore, governs such an action. Frady v. Ivester (S.C. 1921) 118 S.C. 195, 110 S.E. 135.

In Jones, Mtge., vol. 2, Section 1144, it is said: “The right of the mortgagor to redeem being an equitable and not a legal right, the statute of limitations does not strictly constitute a bar to a bill to redeem; but equity adopts the statutory period of 20 years (10 years in this State) after forfeiture and possession taken by the mortgagee, beyond which the mortgagor shall not be allowed to redeem if he has paid no interest in the meantime. Such lapse of time affords evidence of a presumption that the mortgagee has abandoned his right. . . After the mortgagee has remained in possession for 20 years (10 years in this State) without accounting or in any way acknowledging the right of redemption in the mortgagor, the latter cannot redeem.” Frady v. Ivester (S.C. 1921) 118 S.C. 195, 110 S.E. 135.

5. Action to set aside deed for fraud

Action to set aside deed for fraud. This section [Code 1962 Section 10‑148] does not govern an action to set aside a deed as obtained by fraud. Subsection (7) of Code 1962 Section 10‑143 clearly covers such a case. Smith v. Linder (S.C. 1907) 77 S.C. 535, 58 S.E. 610. Cancellation Of Instruments 45

6. Proceeding in mandamus

The statute of limitations does not apply to a proceeding in mandamus, but where there is an unreasonable delay the court in the exercise of its discretion will refuse to issue the writ. Godwin v. Carrigan (S.C. 1955) 227 S.C. 216, 87 S.E.2d 471.

**SECTION 15‑3‑610.** Action upon current account.

 In an action brought to recover a balance due upon a mutual, open and current account when there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

HISTORY: 1962 Code Section 10‑149; 1952 Code Section 10‑149; 1942 Code Section 392; 1932 Code Section 392; Civ. P. ‘22 Section 335; Civ. P. ‘12 Section 141; Civ. P. ‘02 Section 116; 1870 (14) 448 Section 118.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k29.

Limitation of Actions 29.

C.J.S. Limitations of Actions Section 67.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 58, Action on Open Account.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 10‑149] was held inapplicable in the case of Jackson v Johnson, 186 SC 155, 195 SE 239 (1938), partly because the defendant was in a position of trust which had never been openly repudiated, and the plaintiff, being ignorant, injuriously relied entirely on him and his judgment and good faith. Jackson v. Johnson (S.C. 1938) 186 S.C. 155, 195 S.E. 239.

An action on a sealed note alone cannot in any sense be called an “open account.” Chapman v. Chapman (S.C. 1889) 31 S.C. 405, 10 S.E. 106.

A note of hand cannot be regarded as the evidence of a mutual account. It has directly the contrary effect; it furnishes a presumption that the accounts between the parties to its date have been settled. Chapman v. Chapman (S.C. 1889) 31 S.C. 405, 10 S.E. 106.

Where, in an action on a sealed note, the defendant set up as a counterclaim an account running back nine years, on which only one item was credited to the plaintiff, it was held that this did not establish a mutual account within the meaning of this section [former Code 1962 Section 10‑149]. Chapman v. Chapman (S.C. 1889) 31 S.C. 405, 10 S.E. 106.

**SECTION 15‑3‑620.** Actions by State.

 The limitations prescribed by this article shall apply to actions brought in the name of the State or for its benefit in the same manner as to actions by private parties; provided, however, that limitations against claims for charges for care, training, maintenance or treatment received by any patient or trainee from the South Carolina State Hospital, any State training school, or any State mental health facility, shall commence to run against the State, its boards, commissions or agencies charged with the operation of the above institutions only from the last date upon which care, training, maintenance or treatment was furnished to any such patient or trainee.

HISTORY: 1962 Code Section 10‑150; 1952 Code Section 10‑150; 1942 Code Section 396; 1932 Code Section 396; Civ. P. ‘22 Section 339; Civ. P. ‘12 Section 145; Civ. P. ‘02 Section 119; 1870 (14) 448 Section 121; 1954 (48) 1732.

CROSS REFERENCES

No action being brought to enforce a lien for care, etc., in a State mental health facility more than one year after death of patient or trainee, see Section 44‑23‑1140.

Suits involving state, state agencies and officials and United States, see Sections 15‑77‑10 to 15‑77‑50.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k11(1).

Limitation of Actions 11(1).

C.J.S. Limitations of Actions Section 17.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 19, Parties Against Whom Defense May be Asserted.

S.C. Jur. Mental Health Section 38, Cost of Inpatient Care‑ Claim.

NOTES OF DECISIONS

In general 1

1. In general

Applied in State v Piedmont & N. R. Co., 186 SC 49, 194 SE 631 (1938). State v Life Ins. Co., 254 SC 286, 175 SE2d 203 (1970).

Where a patient was hospitalized and discharged three separate times over a period of several years, and her periods of hospitalization were separated by substantial intervals of time when she received no inpatient care from the Department of Mental Health, each period of hospitalization gave rise to a separate claim for the cost of care furnished at that time, and the statute of limitations began to run, as to each hospitalization, from the last day on which care was furnished; that is, from the date of each discharge. South Carolina Dept. of Mental Health v. Estate of Guerry (S.C.App. 1985) 287 S.C. 265, 335 S.E.2d 812.

**SECTION 15‑3‑630.** Actions against architects, professional engineers or contractors; definitions.

 As used in Sections 15‑3‑630 to 15‑3‑670, the terms set out hereinbelow shall be defined as follows: (a) “Person” shall mean an individual, corporation, partnership, business, trust, unincorporated organization, association or joint‑stock company; (b) “substantial completion” shall mean that degree of completion of a project, improvement, or a specified area or portion thereof (in accordance with the contract documents, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended; the date of substantial completion may be established by written agreement between the contractor and owner.

HISTORY: 1962 Code Section 10‑151; 1970 (56) 2397.

CROSS REFERENCES

Architects generally, see Sections 40‑3‑10 et seq.

Contractors, see Sections 40‑11‑10 et seq.

Engineers and land surveyors, see Section 40‑22‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k32.

Limitation of Actions 32.

C.J.S. Limitations of Actions Section 71.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 33, Actions Relating to Property.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

Bruner and O’Connor on Construction Law Section 12:23, Duration of Performance Bond Obligation.

NOTES OF DECISIONS

In general 1

1. In general

Thirteen‑year period in statute of repose began to run, and cause of action for allegedly defective windows in condominium project accrued, when installation of windows was complete, not when certificates of occupancy were issued, where windows were specified area or portion of larger condominium project, and, upon incorporation into larger project, windows could be used for purpose for which they were intended. Ocean Winds Corp. of Johns Island v. Lane (S.C. 2001) 347 S.C. 416, 556 S.E.2d 377. Limitation Of Actions 55(5)

**SECTION 15‑3‑640.** Actions based upon defective or unsafe condition of improvement to real property; right to contract for guarantee of structure for extended period.

 No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement. For purposes of this section, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

 (1) an action to recover damages for breach of a contract to construct or repair an improvement to real property;

 (2) an action to recover damages for the negligent construction or repair of an improvement to real property;

 (3) an action to recover damages for personal injury, death, or damage to property;

 (4) an action to recover damages for economic or monetary loss;

 (5) an action in contract or in tort or otherwise;

 (6) an action for contribution or indemnification for damages sustained on account of an action described in this section;

 (7) an action against a surety or guarantor of a defendant described in this section;

 (8) an action brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest in the real property or improvement;

 (9) an action against owners or manufacturers of components, or against any person furnishing materials, or against any person who develops real property, or who performs or furnishes the design, plans, specifications, surveying, planning, supervision, testing, or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

 This section describes an outside limitation of eight years after the substantial completion of the improvement, within which normal statutes of limitations continue to run.

 A building permit for the construction of an improvement to real property must contain in bold type notice to the owner or possessor of the property of his rights under this section to contract for a guarantee of the structure being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement. The Department of Consumer Affairs shall publish in conspicuous places the right of an owner or possessor to contract for extended liability under this section. Nothing in this section prohibits a person from entering into a contractual agreement prior to the substantial completion of the improvement which extends any guarantee of a structure or component being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement or component.

 For any improvement to real property, a certificate of occupancy issued by a county or municipality, in the case of new construction or completion of a final inspection by the responsible building official in the case of improvements to existing improvements, shall constitute proof of substantial completion of the improvement under the provisions of Section 15‑3‑630, unless the contractor and owner, by written agreement, establish a different date of substantial completion.

HISTORY: 1962 Code Section 10‑152; 1970 (56) 2397; 1986 Act No. 412, Section 1; 2005 Act No. 27, Section 2, eff July 1, 2005.

Editor’s Note

2005 Act No. 27, Section 16(2), provides as follows:

“Section 2 [amending this section] takes effect on July 1, 2005, and applies to improvements to real property for which certificates of occupancy are issued by a county or municipality or completion of a final inspection by the responsible local building official after the effective date;[.]”

Effect of Amendment

The 2005 amendment substituted “eight years” for “thirteen years” in the first three undesignated paragraphs and made nonsubstantive language changes; at the end of item (6), substituted “section” for “subdivision”; and added the fourth undesignated paragraph relating to a certificate of occupancy as proof of substantial completion of an improvement project.

CROSS REFERENCES

Architects, generally, see Section 40‑3‑10 et seq.

Circumstances in which the limitation provided by this section is not available as a defense, see Section 15‑3‑670.

Construction of this section so as to create new causes of action or to bar causes of action existing on May 12, 1986, see Section 15‑3‑680.

Construction of this section so as to extend the period or periods provided by the laws of South Carolina, see Section 15‑3‑660.

Contractors, see Section 40‑11‑10 et seq.

Department of Consumer Affairs, generally, see Section 37‑6‑501 et seq.

Engineers and land surveyors, see Section 40‑22‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k32.

Limitation of Actions 32.

C.J.S. Limitations of Actions Section 71.

RESEARCH REFERENCES

ALR Library

5 ALR 6th 497 , Validity, as to Claim Alleging Design or Building Defects, of Statute Imposing Time Limitations Upon Action Against Architect, Engineer, or Builder for Injury or Death Arising Out of Defective or Unsafe Condition of...

17 ALR 6th 1 , Contribution Between Joint Tortfeasors as Affected by Settlement With Injured Party by One or More Tortfeasors.

122 ALR 5th 1 , What Constitutes “Improvement to Real Property” for Purposes of Statute of Repose or Statute of Limitations.

Encyclopedias

S.C. Jur. Action Section 38, Commencement.

S.C. Jur. Limitation of Actions Section 33, Actions Relating to Property.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Torts. 38 S.C. L. Rev. 232 (Autumn 1986).

Implied warranties to home purchasers limited. 39 S.C. L. Rev. 131, Autumn 1987.

Note: Latent defects: subsequent home purchasers beware. 40 S.C. L. Rev. 1017 (Summer 1989).

NOTES OF DECISIONS

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Validity 1

1. Validity

Section 15‑3‑640, which prohibits the bringing of actions to recover damages based on a condition of improvement to real property more than 13 years after the substantial completion of the improvement, but which does not apply to protect the owners of such improvements, does not violate either due process or equal protection since, because acceptance of some future responsibility for the condition of the premises is implied in the acceptance of the improvement, the disparate treatment of current possessors from those otherwise involved in the improvement is reasonable. Snavely v. Perpetual Federal Sav. Bank (S.C. 1991) 306 S.C. 348, 412 S.E.2d 382. Constitutional Law 3454; Limitation Of Actions 4(2)

Section 15‑3‑640 violates constitutional guaranty of equal protection of law, since no rational basis appears for making distinction between architects, engineers, and contractors, on the one hand, and owners and manufacturers on the other, when granting architects, engineers, and contractors immunity from suit for negligence in improvement of real property after 10 years. Broome v. Truluck (S.C. 1978) 270 S.C. 227, 241 S.E.2d 739.

2. In general

Under South Carolina law, as predicted by the district court, incline conveyor system used in cotton baling operation was not permanent improvement to real property within meaning of statute of repose, even though incline conveyor was bolted down and hardwired to facility’s electrical system, where system was capable of being moved and had actually been disassembled and moved to new location, system was not specifically integrated into building’s construction, incline conveyor and related equipment could be installed and function properly in any number of industrial buildings, and disassembly or movement of equipment was not peculiar or abnormal occurrence. Ervin v. Continental Conveyor & Equipment Co., Inc., 2009, 674 F.Supp.2d 709. Products Liability 305

Statute of repose of 13 years for actions involving defective or unsafe condition of improvements to real property applied to and barred school district’s action for contribution against manufacturer of bleachers which collapsed more than 13 years after the bleachers were installed at school. Florence County School Dist. No. 2 v. Interkal, Inc. (S.C.App. 2002) 348 S.C. 446, 559 S.E.2d 866. Contribution 9(3); Limitation Of Actions 49(6)

Thirteen‑year period in statute of repose began to run, and cause of action for allegedly defective windows in condominium project accrued, when installation of windows was complete, not when certificates of occupancy were issued, where windows were specified area or portion of larger condominium project, and, upon incorporation into larger project, windows could be used for purpose for which they were intended. Ocean Winds Corp. of Johns Island v. Lane (S.C. 2001) 347 S.C. 416, 556 S.E.2d 377. Limitation Of Actions 55(5)

Section 15‑3‑640, which prohibits the bringing of actions to recover damages based on a condition of improvement to real property more than 13 years after the substantial completion of the improvement, was properly applied retroactively to an action in which the improvement was completed on September 26, 1974 but not discovered until after the acts effective date of May 12, 1986, since Section 15‑3‑680 provides that nothing in the act may create “any cause of action not heretofore existing or recognized” prior to its effective date. Snavely v. Perpetual Federal Sav. Bank (S.C. 1991) 306 S.C. 348, 412 S.E.2d 382. Limitation Of Actions 6(1)

3. Actions for contribution

One‑year statute of limitations for settling tortfeasor to bring contribution action was not in irreconcilable conflict with and, therefore, did not impliedly repeal thirteen‑year statute of repose to bring an action for contribution based upon or arising out of the defective or unsafe condition of an improvement to real property; thus, the statute of repose barred property owner’s contribution claim against contractor more than thirteen years after completion, but less than one year after settlement of tort claim. Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc. (S.C. 2006) 368 S.C. 137, 628 S.E.2d 38. Contribution 9(3); Limitation Of Actions 49(6)

Statute of repose bars actions for contribution under the Uniform Contribution Among Tortfeasors Act brought more than 13 years after the completion of an improvement to real property. Florence County School Dist. No. 2 v. Interkal, Inc. (S.C.App. 2002) 348 S.C. 446, 559 S.E.2d 866. Contribution 9(3); Limitation Of Actions 49(6)

4. Easements

Easement is “real property” within meaning of thirteen‑year statute of repose applicable to defective or unsafe condition of improvement to real property. South Carolina Pipeline Corp. v. Lone Star Steel Co. (S.C. 2001) 345 S.C. 151, 546 S.E.2d 654. Limitation Of Actions 18

Natural gas pipeline was “improvement” to real property under which it lay, for purposes of thirteen‑year statute of repose applicable to defective or unsafe condition of improvement to real property; pipeline unquestionably made easement more valuable to easement holder, it involved investment of labor and money, and it was “permanent” in sense that it had lengthy useful life. South Carolina Pipeline Corp. v. Lone Star Steel Co. (S.C. 2001) 345 S.C. 151, 546 S.E.2d 654. Limitation Of Actions 18

5. Limitation of actions

Residence owners association’s action for negligence and breach of warranty related to common areas of development built within 13 years of action, and thus statute of repose did not bar the action even though problems that formed the basis of the action included general irrigation and design problems throughout the development, parts of which were built more than 13 years before the action was brought. Holly Woods Ass’n of Residence Owners v. Hiller (S.C.App. 2011) 392 S.C. 172, 708 S.E.2d 787, certiorari denied. Limitation of Actions 49(7); Limitation of Actions 55(5)

**SECTION 15‑3‑660.** Construction of Sections 15‑3‑640 through 15‑3‑670; extension of limitations periods.

 Nothing in Sections 15‑3‑640 through 15‑3‑670 may be construed as extending the period, or periods, provided by the laws of South Carolina, except by agreement between the parties for the bringing of any action.

HISTORY: 1962 Code Section 10‑154; 1970 (56) 2397; 1986 Act No. 412, Section 2.

CROSS REFERENCES

Architects, generally, see Section 40‑3‑10 et seq.

Circumstances in which the limitation provided by this section is not available as a defense, see Section 15‑3‑670.

Construction of this section so as to create new causes of action or to bar causes of action existing on May 12, 1986, see Section 15‑3‑680.

Contractors, see Section 40‑11‑10 et seq.

Engineers and land surveyors, see Section 40‑22‑10 et seq.

Provisions relative to whether Sections 15‑3‑640 through 15‑3‑670 may be construed to create causes of action not heretofore recognized, which provisions are similar to ones which formerly appeared in this section, see Section 15‑3‑680.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k32.

Limitation of Actions 32.

C.J.S. Limitations of Actions Section 71.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 33, Actions Relating to Property.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

**SECTION 15‑3‑670.** Circumstances in which limitations provided by Sections 15‑3‑640 through 15‑3‑660 are not available as defense.

 (A) The limitation provided by Sections 15‑3‑640 through 15‑3‑660 may not be asserted as a defense by a person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event the person in actual possession or control knows, or reasonably should have known, of the defective or unsafe condition. The limitations provided by Sections 15‑3‑640 through 15‑3‑660 are not available as a defense to a person guilty of fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to a person who conceals any such cause of action.

 (B) For the purposes of subsection (A), the violation of a building code of a jurisdiction or political subdivision does not constitute per se fraud, gross negligence, or recklessness, but this type of violation may be admissible as evidence of fraud, negligence, gross negligence, or recklessness.

 (C) The limitation provided by Section 15‑3‑640 may not be asserted as a defense to an action for personal injury, including a personal injury resulting in death, or property damage which is:

 (1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and

 (2) the result of ingestion of or exposure to some toxic or harmful or injury producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma.

HISTORY: 1962 Code Section 10‑155; 1970 (56) 2397; 1986 Act No. 412, Section 3; 2011 Act No. 52, Section 5, eff January 1, 2012.

Editor’s Note

2011 Act No. 52, Section 7, provides as follows:

“SECTION 7. This act takes effect January 1, 2012, and applies to all actions that accrue on or after the effective date except the provisions of SECTION 3 do not apply to any matter pending on the effective date of this act.”

Effect of Amendment

The 2011 amendment inserted subsection (B) relating to fraud per se, gross negligence, or negligence, added subsection identifiers (A) and (C), changed subsection designators (i) and (ii) to (1) and (2), and made nonsubstantive changes.

CROSS REFERENCES

Architects, generally, see Section 40‑3‑10 et seq.

Construction of this section so as to create new causes of action or to bar causes of action existing on May 12, 1986, see Section 15‑3‑680.

Construction of this section so as to extend the period or periods provided by the laws of South Carolina, see Section 15‑3‑660.

Contractors, see Section 40‑11‑10 et seq.

Engineers and land surveyors, see Section 40‑22‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k32.

Limitation of Actions 32.

C.J.S. Limitations of Actions Section 71.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 33, Actions Relating to Property.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

Bruner and O’Connor on Construction Law Section 12:23, Duration of Performance Bond Obligation.

**SECTION 15‑3‑680.** Construction of Sections 15‑3‑640 through 15‑3‑670; creation of causes of action not heretofore recognized; preclusion of causes of action accrued on May 12, 1986.

 Nothing in Sections 15‑3‑640 through 15‑3‑670 of the 1976 Code may be construed as creating any cause of action not heretofore existing or recognized or barring any cause of action existing or accrued on May 12, 1986.

HISTORY: 1986 Act No. 412, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 241k32.

Limitation of Actions 32.

C.J.S. Limitations of Actions Section 71.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 26, Limitations and Laches.

S.C. Jur. Banks and Banking Section 75, Extent of Liability.

S.C. Jur. Limitation of Actions Section 33, Actions Relating to Property.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

NOTES OF DECISIONS

In general 1

1. In general

Section 15‑3‑640, which prohibits the bringing of actions to recover damages based on a condition of improvement to real property more than 13 years after the substantial completion of the improvement, was properly applied retroactively to an action in which the improvement was completed on September 26, 1974 but not discovered until after the acts effective date of May 12, 1986, since Section 15‑3‑680 provides that nothing in the act may create “any cause of action not heretofore existing or recognized” prior to its effective date. Snavely v. Perpetual Federal Sav. Bank (S.C. 1991) 306 S.C. 348, 412 S.E.2d 382. Limitation Of Actions 6(1)

**SECTION 15‑3‑690.** Immunity from civil liability for liquefied petroleum gas dealers; definitions; scope.

 (A) As used in this subsection, the following definitions apply:

 (1) “System” or “systems” means assembly of equipment consisting of the container and any device that is connected to the container for the utilization of liquefied petroleum gas.

 (2) “Dealer” means a person engaging in the installation of liquefied petroleum gas systems or in the manufacture, distribution, sale, storing, or transporting by tank truck, tank trailer, or container of liquefied petroleum gases or engaging in installing, servicing, repairing, adjusting, disconnecting, or connecting appliances to liquefied petroleum gas systems and containers.

 (3) “Liquefied petroleum gas” means material composed predominately of hydrocarbons or mixtures of hydrocarbons, including propane, propylene, butanes (normal butane or isobutane), and butylenes.

 (B) A liquefied petroleum gas dealer shall be immune from civil liability if the proximate cause of the injury or damage was:

 (1) an alteration, modification, or repair of the liquefied petroleum gas system or gas burning appliance that could not have been discovered by the liquefied petroleum gas dealer in the exercise of reasonable care; or

 (2) the use of the liquefied petroleum gas system or gas burning appliance in a manner or for a purpose other than that for which the liquid petroleum gas system or gas burning appliance was intended to be used or for which could reasonably have been foreseen, provided that the liquefied petroleum gas dealer or the manufacturer of the liquefied petroleum gas system or gas burning appliance took reasonable steps to warn the ultimate consumer of the hazards associated with foreseeable misuses of the liquefied petroleum gas system or gas burning appliance.

 (C) Nothing in this subsection shall be construed as affecting, modifying, or eliminating the liability of a manufacturer of the liquefied petroleum gas system or gas burning appliance, or its employees or agents from any other legal claim, including, but not limited to, product liability claims.

 (D) Nothing in this subsection shall apply to a cylinder exchange company as defined pursuant to Section 40‑82‑20(3) or a reseller as defined pursuant to Section 40‑82‑20(7).

HISTORY: 2010 Act No. 155, Section 1, eff upon approval (became law without the Governor’s signature on May 13, 2010).

**SECTION 15‑3‑700.** Immunity for property damage incurred in rescue from locked vehicle.

 A person is immune from civil liability for property damage resulting from his forcible entry into a motor vehicle for the purpose of removing a minor or vulnerable adult from the vehicle if the person has a reasonable good faith belief that forcible entry into the vehicle is necessary because the minor or vulnerable adult is in imminent danger of suffering harm.

HISTORY: 2016 Act No. 133 (H.3145), Section 1, eff February 16, 2016.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 3, What Constitutes a Forcible or Unlawful Entry.