

A COMPARISON OF THE STATUTES OF LIMITATIONS

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Anglo-American jurisprudence always has been cautious in cutting off claims on bases which do not go to the merit of the action. Nevertheless from the Limitation Act of 1623 through to modern times courts both in England and the United States have supported the legislative policy either because the security of all men depend upon it,¹ or because the limitations have been fixed by the legislature and courts could not inquire into the conscientiousness of the application.²

Blackstone suggested that the reasons for the limitation of actions for the recovery of realty were founded on the following proposition:

- (1) To punish the neglect of plaintiff;
- (2) Because there was a presumption that the adversary had gained good title or he would have sued earlier.³

And where the action did not involve realty the same principle was frequently emphasized in the decisions. "It has been supposed that the Legislature only meant to protect persons who had paid their debts but from length of time had destroyed proof of payment. From the title of the act until the last section every word of it shows that it was not passed on this narrow ground. It is, as I have often heard it called by great judges, an Act of peace. Long dormant claims have often more of cruelty than of justice in them. Christianity forbids us to attempt to enforce the payment of a debt which time and misfortune have rendered the debtor unable to discharge. The Legislature thought that if a demand was not attempted to be enforced within six years some good excuse for non-payment might be presumed, and took away the legal power of recovering it."⁴

To date, however, the primary principle of limitations is supported by the desire to compel the settlement of claims

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1. *Green v. Rivet*, 2 Salk. 421 (1702).
2. *Reeves v. Butcher*, (1891) 2 Q.B. 509, 511.
3. *Bl. Comm.*, Vol. III, p. 188.
4. *A'Court v. Cross*, 3 Bing. 329, 333 (1825).

within a reasonable time while the evidence is still fresh and both evidence and witnesses are obtainable.⁵ The old presumption of payment, satisfaction or release has been discarded.⁶

Historically, the limitations (time periods) were first reckoned from some well-known date, such as the first year of the reign of a certain king. Gradually a limitation in terms of a definite number of years was adopted. At first the time period was very long and only a few actions were included within the Statute.⁷ But the step to an all-inclusive statute with relatively short periods of limitations was not too difficult. However, it is apparent that this step was not taken all at once, nor is it yet completed.

But whatever the historical development or the principles upon which succeeding ages have rationalized the statute, it is generally conceded that today the statute is one of merit. And whereas it was once frowned upon with disfavor, today it is regarded as beneficial and based upon sound policy.⁸ It remains to be seen, however, whether the statutes of the various states in prescribing the numerous limitations fulfill these principles. Too often the limitations are treated as a law unto themselves without any attempt to reconcile them either to a logical system or to plain reason.

With the passage of time and with the multiplication of jurisdictions in the United States considerable diversity has arisen concerning the length of time which must elapse before a cause of action is barred. The diversity in part suggests differences in state policy concerning the time within which an action may be brought but frequently the diversity only reflects accidental differences. Likewise because of the antiquity of the statutes the original policy in regard to time periods may no longer represent the most desirable practice in commercial and real property transaction.

The following materials attempt to survey the statutes relating to civil actions in the various states with special emphasis upon the "time period" allowed for the bringing

5. Wood, Limitations, §5.

6. See also (1940) 190 L.T. 303.

7. Wood, Limitations, §2.

8. Wood, Limitations, §4. For a sharp criticism see (1940) 190 L.T. 303.

of such action.⁹ Although many statutes might be distinguishable because of their distinctive wording their basic similarity is such that they may be significantly compared on the basis of the "time periods" involved.

The source of each statute is the latest compiled code or compiled statutes of the state concerned.¹⁰ Some compilations are more authentic and up-to-date than others; however, the selected sources are reliable for our purposes. The relative position of Indiana in comparison with other states both as to similarities and dissimilarities has been indicated.

I. *General Consideration*

All of the states have by legislative action adopted limitations on the time for bringing causes in both the civil and criminal actions. Although there is similarity in wording and time-periods among the various Statutes of Limitation, there are naturally many variations not a few of which go to the substance of the limitations themselves.

The most notable variations, aside from the expected differences in length of the period relating to a specific action, concern:

1. The substance of the limitation in actions for recovery of real estate;
2. The application of disabilities to stop or extend the running of the statute.

Another apparent wide variation deals with the limitation on sealed instruments. However, it should be noted that those states which allow a longer period for sealed instruments are the ones which still give special emphasis to the seal, while those states where the period is shorter are those in which the seal no longer has any special significance. Generally in the latter states sealed instruments and written instruments are on a par, while in the former, a longer period is given to sealed instruments than to mere written instruments.

The discussion following of limitations and disabilities is made in reference to the accompanying table, (see Appendix A, p 39) showing the number of years allowed by each state for each action. A short comparison of the figures, if such

9. See Appendix A, Table I. "Time-periods Allowed for Bringing Actions."
 10. For a complete list of the sections of each code or compiled statutes referred to, see the appendix to this article.

is necessary, will be made in each section and the discussion following is intended as a basis for a better understanding of the statutes in the table.

II. *Limitations*

A. *General*

Before taking up the limitations on real and personal actions specifically, a few general rules applicable to both types of actions should be mentioned. These general provisions are found in the statutes of most states either in a separate section or intermingled with the sections on real and personal actions.

They will be set out briefly:

1. No limitation, other than the one specified by statute, may be set by the parties to the transaction.
2. After a cause of action is barred, a new promise, to be effective in removing the bar, must be in writing, signed by the person charged.¹¹
3. On the question of whether an indorsement noting partial payment or payment of interest by the holder is sufficient to remove a bar to a bill or note, there is considerable diversity. Most states do not give it this effect unless the endorsement is signed by the maker, or the one to be charged.
4. If a court issues an injunction or writ of prohibition in the trial of a cause of action, such time is not included in the running of the statute.¹²
5. A new promise, after a cause of action is barred, by one joint-promisor, joint-debtor, etc. is not effective against other joint promisors.
6. When one of the parties to a cause of action is a citizen of a country with which the United States has been at war, the period of the war is not a part of the statutory period.
7. There is disagreement as to the commencement of a cause of action. Most states say it begins when the complaint is filed—but there is also dis-

11. For a discussion of a new oral promise made before the statute had expired on the old written promise, see (1940) 1 W. & L.L. Rev. 301.

12. Where the suit was dismissed for lack of jurisdiction, same result. (1937) 17 B.U. L. Rev., 900.

agreement as to when a complaint is effectively filed.¹³ The exact moment of effectiveness is more or less an arbitrary matter. Most states are inclined to hold a complaint effective when it is filed with the clerk, others when delivery is made to the sheriff, and others when process is served on the defendants.

8. In case of fraud, the cause of action does not commence until discovery of the fraud.¹⁴
9. Actions barred in another state on a cause of action originating in that state, are barred everywhere. Some states, however, give their own citizens a preference if the statute has not yet run in their state.
10. When suits against a political subdivision of the state are allowed, notice of a claim must be presented to the subdivision within a specified period (usually from 30 to 90 days) before suit can be brought.
11. A counter-claim valid at the time the plaintiff files his complaint is a valid counter-claim although it has been subsequently barred.¹⁵
12. The Statute of Limitations in order to be used as a defense must be pleaded specifically as a bar.¹⁶ (But it may be permissible to amend the pleadings after trial has begun to include a pleading of the statute.)
13. *Actions by the State.*¹⁷ The tendency is to permit the statute to run against the State. A slight majority of states still adhere to the older rule, while others have taken a middle position and allow the Statute to run against it except in real actions.

13. See, as to suits against the United States under the Tucker Act, (1938) 51 Harv. L. Rev. 1087.

14. There are instances of attempting to get out of the normal limitation by evoking the fraud exception. The courts have not been too friendly toward this subterfuge, see (1938) 51 Harv. L. Rev. 1300.

15. This is the majority rule. For an illuminating discussion of this phase including a breaking down of counterclaims into recoupment, set-off, and statutory counterclaims, see (1943) 31 Calif. L. Rev. 210.

16. Wood, Limitations, §7.

17. Limitations of Time which Apply to Actions Against the State of New York, (1936) N.Y.L. Rev. Comm. 975-991.

14. Once the Statute has started to run, no subsequent event will stop it, except the defendant's absence from the State.¹⁸

It is apparent that most of the above provisions, although not limited to any one action or limitation, are necessary provisions to any effective Statute of Limitations. They should form a separate section of the statute, preferably preceding the more specific sections relating to particular actions.

Although the Statute of Limitation is now considered a meritorious defense, since it cuts off rights, either substantive, or remedial, or both, the tendency is to construe it strictly.¹⁹

The fact that there is no Federal Statute of Limitations has led to some confusion. Generally, the limitations of the State wherein the court sits have been held to prevail but this has not always led to desirable consequences.²⁰

B. *Limitations on Real Actions.*

Perhaps the greatest variation found among the statutes is in the field of real actions. The length of the period itself varies greatly, ranging from three years²¹ to forty years.²² Greater refinements have been made concerning these actions than any others. There are four logical divisions to which the statutes lend themselves.

1. Actions by or against the State or one holding from the State.
2. Actions by or against individuals claiming under "color of title".
3. Actions by or against individuals claiming on mere possession alone.
4. Actions by or against individuals holding title from an execution or judgment sale.

A fifth division made by some states concern actions by or against individuals holding by virtue of deeds from the State which have been declared void by a court.

Where a state allows the statute to run against itself

18. Wood, *Limitations*, §6.

19. Wood, *Limitations*, §4.

20. (1941) 49 Yale L.J. 738.

21. Arizona, Texas (under "color of title").

22. Maine (on bare possession alone).

a longer period is usually required to obtain adverse possession against the State or an individual holding from it.²³ This may be explained as a relaxation of the former general rule that one could not maintain adverse possession at all against the sovereign.²⁴

The reasons given for the statute not running against the state²⁵ are mainly historical—that the sovereign is too busy to protect his own rights, or that the sovereign makes his own rules to govern his courts. Today the chief reason given is that a loss due to negligence of public officers in prosecuting claims ultimately rests on the taxpayers who should be spared this extra burden.²⁶

In spite of these reasons, the principles behind the Statute of Limitations generally are as applicable to the state as to private individuals. However, the presumption that the statute does not run against the state, unless specifically provided by the legislature still stands.²⁷ A large number of state legislatures have so provided.²⁸

The distinction between one holding under "color of title", usually defined as an instrument *duly recorded* purporting to give title but which for some reason is defective, and one holding by mere possession is basically valid. Our modern recording statutes lend substantial reason for placing a shorter period on conveyances recorded, even though they may be defective.

A requirement, so generally recognized that in some statutes it is not even mentioned, is that a person seeking to recover land must have been seized, or claim from one who was seized, of the disputed land within the statutory period.

The most recent and notable development in the field of real actions is the requirement that a person claiming

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23. The advantage of a longer period is usually granted in real actions only. In personal actions no advantage is given.
 24. The situation in Indiana is confusing. The statute does run against the state as concerns sureties Burns §2-613 and also in actions dealing with title to land. Burns §3-1411.
 25. On the question of the statute running against a foreign state, see (1938) 26 Calif. L. Rev. 713.
 26. (1938) 26 Calif. L. Rev. 713.
 27. For a good discussion of this topic, see (1944) 38 Ill. L. Rev. 713.
 28. At least 17 states are included in this group. In only one state (Arizona) have the courts ruled that the statute runs against the state in the absence of such a provision.

title by adverse possession must have paid taxes on the property for a specified number of years,²⁹ usually coextensive with the statutory period. This requirement is increasing and is consistent in supporting the claim whether it is under color of title or by possession alone.³⁰ However, it has the practical effect of requiring all claims to be under a recorded instrument (i.e., color of title), since in most states taxes can only be paid on recorded property. It therefore appears that in this recent trend adverse possession based on mere possession is gradually diminishing as a means of gaining title. This is a natural development in states where most of the land is now occupied.

In contrast, a considerable number of states have adopted the rule that possession is the primary factor, but a person holding under color of title gains all the land described in the instrument.³¹ Without such an instrument the adverse possessor gets only as much as he actually occupies which may not be all that he claims.

Most, but not all Statutes of Limitations define adverse possession.³² For the most part the states have adopted the common law rules. The necessary factors are:

1. Claim of ownership against the whole world.
2. Actual and visible possession.
 - a. Open and notorious
 - b. Acts of ownership, of which the general nature of the land permits. (This includes requirements of enclosure.)

Frequently the payment of taxes is made a requisite of adverse possession. Likewise, color of title arising from a recorded instrument may affect the extent of the adverse claim.

A comparison of the time periods will indicate wide variation. In those states where the statute permits adverse possession against the state, a longer period is usually required.³³ And the same is true of one holding under a grant from the state.

29. I.e., Arkansas, Tennessee.

30. Indiana is included as requiring payment of taxes Burn's §3-1314.

31. E.g., Nevada, South Carolina, South Dakota.

32. There is no clear-cut statute in Indiana defining adverse possession. The courts have said it must be actual, visible, open and notorious, under claim of ownership.

33. E.g., California, Idaho, New York.

In those states allowing a difference of time for a recorded color of title, one holding under such color of title has a shorter period.³⁴ One holding under a deed from the state, subsequently declared void by a court, also has the advantage of a shorter period before adverse possession gives him title.

Gaining title by mere possession as might be expected is usually between the two extremes pointed out.

Where there is a different length of time required to gain title under an execution or judgment sale, the statutes give a purchaser the benefit of a shorter period to make his title undisputable.³⁵ Little comment is necessary concerning limitations for actions for injury to real property and actions to recover rents and profits. The variation here is not so marked. In general the statutory period is close to that allowed for the recovery of or injury to personal property, and is considerably less than the period for the recovery of real estate.

There is also little variation on actions on mortgages of real property.³⁶ Generally the period is similar to the period required for recovery of possession against one holding or claiming on mere possession. However, the figures in the table might lead to possible misunderstanding since it is evident that only fourteen states have specific limitations on mortgages. A review of those states which are silent on the subject reveals that the courts of some states have included mortgages under the limitations on actions to recover land, while others have included them under the limitations on either written or sealed instruments. It appears that the latter is the majority holding. Likewise, there is direct conflict on the proposition that when suit on the note or debt is barred, suit on the mortgage is barred. A majority seems to favor the proposition³⁷ but the courts in a few states have adopted the opposite conclusion.³⁸

The length of the period in Indiana for recovery of possession is considerably above the average, although an identical number of years is allowed in about a dozen other states.

34. E.g., Arizona, Colorado, Kentucky, Texas.

35. E.g., Indiana, Illinois, Kansas, Michigan, Oklahoma.

36. As to when the statute starts to run on a deficiency judgment against a mortgagor, see (1939) 11 Rocky Mt. L. Rev. 130.

37. I.e., Arkansas, Mississippi, Wisconsin.

38. I.e., Ohio.

The same is true of mortgages. The number of years allowed in Indiana for an action for injury to real property is again twice the average, although a number of other states have identical periods.

In most other respects the Indiana limitations are in general conformity with the majority of states.

C. *Personal Actions.*

The limitation statutes dealing with personal actions are more harmonious than those concerning real actions. The time periods are uniformly shorter. The difference is traceable solely to the historical significance attached to real property. It is questionable, however, whether this wide variation is defensible in light of the principles behind the statute. The goal of prompt settlement of disputes is not altered by the character of the property or claim involved. However, there is one consideration that must be noted in order to understand the accompanying table—that is the length and detail of each statute. Although the statutes do little more than enumerate the actions and the corresponding limitations, some statutes go into greater detail in the number of actions specifically set out. This does not mean that there is no limitation on those actions not enumerated but merely that they are included in the general limitation reserved for “all other actions.”

A general limitation is essential since a legislature cannot foresee all statutory actions which subsequently will be enacted. Yet several states have no general limitation statutes. However, some of those states³⁹ have statutes stated in general terms, such as “all actions of tort” or, “all actions of contract,” etc., intended to serve the same purpose. One or two states have clauses specifically providing that only those actions enumerated in the statute shall have limitations.

There is one other respect in which the accompanying table may be misleading. While it does contain the most important actions, it does not contain every action in every statute where a limitation has been specified. There are two reasons for this: first, the table is meant only to show the actions most commonly contained in the statutes of all states and no attempt was made to include a limitation of an action contained in only one or two states; second, many limita-

39. I.e., Colorado, Vermont.

tions are made a part of the statute setting up a cause of action and are not included in the Statute of Limitations. This, of course, could be remedied by amending or adding to the Statute of Limitations at the time a new statute is enacted. But most states have seen fit to use an alternative and to include in the Statute of Limitations a second general clause validating limitations reserved within other statutes. A leading example of the type referred to is the limitation of actions under Workmen's Compensation Laws, which are usually included within the statute on Workmen's Compensation and not within the regular Statute of Limitations.⁴⁰

Indiana, generally, accords with the other states regarding limitations on personal actions. On the whole, however, Indiana allows a slightly longer period than most states. There are two instances where the difference merits special comment, first in the field of written contracts, second, in the general "all other actions" clause.

Indiana is in general conformity concerning the limitation on oral or unwritten contracts and contracts to pay money, promissory notes, etc. Only in the case of written contracts is Indiana out of line. This is because Indiana is one of the many states where the seal is no longer of special significance.⁴¹ When a state abolishes the seal, it may either raise the limitation on all written contracts to the level of sealed contracts or reduce all sealed contracts to the level of written ones. Indiana has followed the first alternative while a majority of states have followed the latter.⁴²

Indiana's limitations on written contracts is similar to the limitation on sealed contracts in those states which still preserve the significance of a seal. But it is out of line

40. While this practice is unobjectionable since for most purposes a person is interested in only one statute and one limitation in any case, it is apparent that the practice may be abused, e.g. Indiana's provision that the statute may run against the state in actions dealing with title to land is located in Burns in the chapter on quieting title, Burns § 3-1411. Even if our legislatures fail to make amendments to the Statute of Limitations, at least the compilers of the various codes could include references to numerous limitations not found in the statute itself.

41. Twenty-one states still give special significance to the seal as far as the Statute of Limitations is concerned.

42. Ohio with a 15 year limitation nearest approaches Indiana's 20 year period on written contracts. In Ohio the 15 year period prevails for both sealed and written instruments. See, Note (1941) N.Y. L. Rev. Comm. 373, 400-401.

with the limitation on written contracts in those states where the seal has been abolished.

In the general limitation clause, Indiana imposes a time period twice as long as the average of the other states and half again as long as the most common limitation. In those states allowing the statute to run against the state, there is no differentiation made in the time allowed after which the state is barred.⁴³ It is the same as for individuals.

III. *Disabilities.*

A. *Effect.*

Although the law relating to disabilities is usually stated in one or two short sections of the statutes, there is such a wide variation in their application that they should be considered at length. Every state recognizes some disabilities; but the time by which they extend the running of the statute and the different application to real and personal actions presents a situation allowing for many variations.

In general, disabilities do one of two things:

1. Extend the statute for a stated number of years after the disability is removed.
2. Extend the statute so as to allow the same number of years after the disability is removed as is allowed to one not under a disability.⁴⁴

Only in the second case, does the disability "stop the running of the statute." In the first instance it merely extends or lengthens the statutory period.

B. *Comparison—Real and Personal Actions.*

Most states permit a longer extension for real actions than for personal actions. For example, an extension of ten years for a real action after the disability is removed is often allowed, whereas for a personal action three years usually is allowed.⁴⁵

Some states allow a specific extension (i.e., 15 years) for real actions, and stop the statute completely for personal actions.⁴⁶ Although this appears to favor personal actions,

43. As we have seen, this is not true concerning real actions.

44. Arizona, Georgia, New Jersey, Rhode Island, Vermont, and Washington are among the few states in this category.

45. I.e., New Hampshire, New York, North Dakota.

46. I.e. California, Maine, and many others.

the result is often similar as merely allowing a shorter extension for personal actions, since in fact the extension allowed real actions is considerably longer than the longest limitation for any personal action.

It is thus seen that a preference is shown for real actions when disabilities are concerned as well as when the limitation itself is concerned. Only a few states, in which Indiana is included, put the two on a par concerning disabilities and allow the same extension in both types of cases.

C. *Which Disabilities are Allowed.*

In most states the following disabilities are specified: infancy, insanity, and imprisonment for a term less than life.

A fourth disability, that of coverture of married women, has now generally been abandoned.

However, there is not complete harmony on the weight to be given each disability. Most states place them on an equal footing. But a few give a preference to infancy by providing that no disability may extend the statute beyond a certain number of years (usually five) except infancy.⁴⁷ Generally, however, there is no over-all preference shown to one of the disabilities above the others.

D. *General Provisions.*

In the case of disabilities there are several general provisions which are distinct from the number of years granted in favor of one under a disability:

1. The disability must exist at the time the cause of action accrues. (Exception—Georgia).
2. If two disabilities exist when the cause of action accrued, both must be removed before the extension period begins to run.
3. Disabilities in successive persons entitled to the cause of action cannot be tacked.
4. The statute does not run at all while defendant is out of the state.

In a number of states there is an additional limit to the effectiveness of a disability. This is the provision of a limit beyond which even a disability is barred. The number

47. Michigan, Louisiana, New York, and others in some manner or other give preferences to infants.

of years so required is large, from 20 to 35 years.⁴⁸ In a few states recently this limit has been placed at only five years.⁴⁹ After that length of time and after the normal running of the statute the cause of action is barred, regardless of the disability.

There are two additional limitations which might be considered with disabilities. These are the provisions of time granted, (1) upon the death of a party to a cause; and (2) upon failure of an action. Upon these two points there is usually uniformity. In almost all states an additional one year is allowed for bringing the action.

The year allowed upon the death of a party to a cause is effective only when that death occurs within a year of the time when the statute ordinarily would have run. In the case of a prospective plaintiff, the cause of action must be one that survives.

The year allowed after failure of an action must arise under circumstances where the adverse decision is not on the merits of the case, but for some technical reason.

There are also limitations upon the time an appeal may be taken, ranging from several months up to a year.

IV. *Summary*

Little need be said in way of summary since the foregoing sections themselves are little more than summaries of comparisons of the various statutes. It may be desirable, however, to emphasize several of what may be considered the more important points.

First, there is greater uniformity in the field of limitations on personal actions than on real actions. And a longer period is allowed in real actions than in personal actions.

Second, the same comparison may be made of disabilities as applied to real and personal actions. The tendency is to allow a greater extension for real actions than for personal actions.

Third, although there is uniformity in the definition of adverse possession there is a divergence as to the weight to be given to the various elements. The modern tendency is to give more weight to the requirement of color of title

48. Virginia, West Virginia.

49. Oregon, and New York, South Carolina, Michigan except in the case of infants.

and payment of taxes, for which a recording of an instrument giving color of title is a prerequisite. This may be explained as a natural development from the occupation of most of the available land in the country.

Fourth, the tendency is toward a lesser number of years permitted for bringing actions.

Fifth, the tendency is to allow the statute to run against the State, although a longer period may be given to the State to bring action.

The summing up Indiana's position we may briefly state that Indiana is in general accord with the other states with the following exceptions:

1. Limitation for recovery of possession of real property (far above average length of period).
2. The general limitation of personal actions, i.e. the "all other actions" clause (again longer than average).
3. Limitation on written contracts (far above average period allowed by other states).
4. No differentiation between real and personal actions as regards disabilities.
5. No differentiation in action for recovery of real estate concerning color of title.
6. With the exception of actions against sureties and actions dealing with title to land, not allowing the statute to run against the state.

In the first four items, Indiana is clearly out of line with the majority of states. In the last two, Indiana is in line with the majority but the tendency is toward the present minority view.

It should be again pointed out that the limitations of actions recorded in the table are not exhaustive, but present those actions for which at least three or more states have limitations. However, the actions listed provided an accurate basis for comparison and comment. In almost every state there is some limitation on an action which is peculiar to that state. Apparently some states have omitted limitations on important actions. But as long as an "all other actions" clause is included we may look to it where a statute is otherwise silent.

In conclusion we should consider again a question posed

at the beginning of this article as to whether the Statutes of Limitations serve the purpose for which they are intended. If we agree that the underlying purpose of the Statute may be summed up to be a means of compelling early settlement of disputes and claims while the evidence is still obtainable, our only question is, does the statute effectively compel an early settlement? The trend seems to be towards a lesser number of years in fuller realization of this goal. On the other hand, safeguards are necessary to protect those who are unable to press their claims or who through fraud or ignorance do not know of their claims. Somewhere a balance must be struck. But with these safeguards, a number of years as low as is consistent with sound reason seems desirable to prevent "stale claims" and insure rapid settlement of disputes.

APPENDIX A

TABLE I
TIME-PERIODS (BY YEARS) ALLOWED FOR BRINGING ACTION

STATES	Real Property								Personal		Contracts					
	Recovery of possession By state	Individual (color of title)	Individual (bare possession)	Plaintiff seized	Property sold on execution	Property sold on judgment	Injury to real property	Use, rents, profits	Mortgages—real	Recovery of possession	Injury to personal property	Under seal	Written	Unwritten (oral)	Promissory notes, bills of exchange, etc.	
Alabama	20				10	5	6	6	20	6	6	10	20 ^g	6	10	
Alaska	10							6		6			10	6		
Arizona		3	10							6			10	6		
Arkansas	7					5				6			5	3	5	
California	5							5		6			5	3		
Colorado		7	18	18	7	7				6			4	3		
Connecticut	15									6			17	6	1	
Delaware	20							3		6			17	6	1	
Florida	7				5					6			20	5	3	
Georgia	20								10	6			20	5	3	
Iaho	5				6			6		6			20	5	3	
Illinois	20				7	7			10	5			10	5	6	
Iowa	10				7	7			10	5			10	5	6	
Kansas	10				5	5			20	5			10	5	6	
Kentucky	15							5	15	5			15	5	5	
Louisiana		7	15					5	15	5			15	5	5	
Maine		10	30		5	5		5	15	5			15	5	5	
Maine			40	20	5	5		6	6	6			20	5	5	
Maryland	20				5	7		3	3	3			12	3	3	
Massachusetts	20							3		3			12	3	3	
Michigan	15				5	10			15	6			20	6	20	
Minnesota	15					3		6	15	6			10 ^f	6	6	
Mississippi	15								10	6			10 ^f	6	6	
Missouri	10								10	6			10	6	6	
Missouri	10								20 ^d	5			10	10	5	
Montana	10							10	10	5			10	8	5	
Montana	10								10	5			10	8	5	
Nebraska	10								10	4			5	5	4	
Nevada	10								10	4			5	5	4	
Nevada	10	10	5b	5	5				3	3			6	6	6	
New Jersey	20							6	6	6			16	6	6	
New Hampshire	20								2	4			20	4	h	
New Mexico	20								4	4			20	6	4	
New Mexico	10								4	4			20	6	4	
New York	20, 40								15	6			20	6	6	
New York	21, 30								3	3			20	6	6	
North Carolina	30								3	3			10	3	3	
North Carolina	40								3	3			10	3	3	
North Dakota		7	20						10	6			15	6	6	
North Dakota			20						10	6			15	6	6	
Ohio	21								4	4			15	6	6	
Oklahoma	15								6	6			15	6	6	
Oklahoma	10				5	5			6	6			10	6	6	
Oregon	10								6	6			10	6	6	
Pennsylvania	21								6	6			10	6	6	
Rhode Island	10								6	6			20	6	6	
South Carolina	10								6	6			20	6	6	
South Carolina	20								6	6			20	6	6	
South Dakota	20, 40								6	6			20	6	6	
Tennessee	7								6	6			20	6	6	
Tennessee	7								6	6			20	6	6	
Texas	7								6	6			20	6	6	
Texas	7								6	6			20	6	6	
Utah	3								6	6			8	6	4	
Vermont	15								3	3			8	6	14	
Virginia	10, 15a								3	3			8	6	14	
Washington	10								10	20			10	5	3	
Washington	10				5	3c	3		6	6			10	5	3	
West Virginia	10								20	6			10	10	5	
Wisconsin	10								6	6			10	10	5	
Wisconsin	10								6	6			10	10	5	
Wyoming	10								4	4			10	10	8	
Number States having limitation on subject	35	6	10	12	6	11	12	42	18	20	42	38	25	40	36	13
Arithmetical Average (in years)	13	30	8	18	15	6	5	4	6	14	4	4	15	7	4½	8
Arithmetical Mean (in years)	10	40	10	20	20	5	5	3	6	10	6	3	20	6	6	6

a) Ten years east of Allegheny river; 15 years west of Allegheny river.
 b) Gives adverse possession to whole tract described in document.
 c) Tax deed.
 d) Note secured by mortgage (mortgage barred when note is barred—limit 20 years.)
 e) Actions of tort.
 f) Contracts dealing with realty.
 g) Contracts to pay money, ten years.
 h) Note secured by mortgage barred when mortgage is barred.

TABLE I--(Continued)

STATES	Persons											Miscellaneous					
	Injury to	Assault	Battery	False Imprisonment	Wrongful death	Seduction	Criminal conversation	Injury to character	Libel	Slander	Malicious Prosecution	Malpractice of physician	Against sheriff, for misfeasance	Judgment deemed satisfied	Mechanics lien	Municipal Improvement lien	To contest will
Indiana	2							2	2	2		2	5	20	1	5	1
Alabama	6			1	2	1	1	1	1	1	1	10	20	4			1
Arizona	2			1	2	1	1	1	1	1	1	2	20	5	2		
Arkansas		1	1	1	1	1	1	1	1	1	1	2	10	5			
California		1	1	1	1	1	1	1	1	1	1	2	10	5			
Colorado		1	1	1	1	1	1	1	1	1	1	2	10	5			
Connecticut	1											1	1	1	2		
Delaware	1											1	1	1			
Florida	2	2	2	2	2		2	2	2	2		6					
Georgia	2						1	1	1				7				
Idaho													20k				
Illinois	2	2	2	2	2	2		2	2	2		2	6	1	10	7	
Iowa	2							2	1	1			20				
Kansas	2	1	1	1									20k				
Kentucky	1							1	1	1			3				
Louisiana	10					1	1	1	1	1	1	1	15		5		
Maine	6	2	2	2	2			2	2	2		4	10				
Maryland		1	1	1	1			2	2	2		5	20				
Massachusetts	6	2	2	2	2			2	2	2		4	12				
Michigan	6	2	2	2	2			2	2	2	2	4	20				
Minnesota	6	2	2	2	2			2	2	2		2	10				
Mississippi		1	1	1	1			1	1	1		2	7				
Missouri	5	1	1	1	1			2	2	2		2	10				
Montana		1	1	1	3	2		2	2	2		3	3	10			
Nebraska	4	2	2	2	2	2		2	2	2		2	5				
Nevada	2	2	2	2	2	2		2	2	2		2	6				
New Jersey	2	2	2	2	2	2		2	2	2		2	20				
New Hampshire	3	2	2	2	2	2		2	2	2		2	20				
New Mexico	3	2	2	2	2	2		3	3	3		3	7			1	
New York	3	2	2	2	2	2		1	1	1	2	2	20				
North Carolina	3	2	2	2	2	2		2	2	2		1	10				
North Dakota	3	2	2	2	2	2	6	2	2	2		2	10	6			
Ohio	41	1	1	1	1	1		1	1	1		1	10				
Oklahoma	2	1	1	1	1	1		1	1	1		1	10				
Oregon	2	2	2	2	2	2		2	2	2		3	10				
Pennsylvania	2	2	2	2	2	2		1	1	1	1	3	10				
Rhode Island	6	2	2	2	2	6		2	2	2		3	3				
South Carolina	6	2	2	2	2	6		2	2	2		3	20				
South Dakota	3	2	2	2	2	6		2	2	2		2	10,				
Tennessee	1			1		1		1	½	1			20k				
Texas	2				2	1		1	1	1			10				
Utah		1	1	1	2	1		1	1	1		2	8				4
Vermont	3j	3	3	3				1	3	3			8				
Virginia													10				
Washington	3	2	2	2				2	2	2		3	6				
West Virginia																	
Wisconsin	6	2	2	2				2	2	2		3	10,				
Wyoming	4	1	1	1				1	1	1			20k				
Number States having limitation on subject	37	31	31	34	11	12	12	12	42	44	15	15	28	38	4	4	6
Arithmetical Average (in years)	3½	2	2	2	2	1½	3	2	1½	1½	1	2	3	12	2½	6	3
Arithmetical Mean (in years)	2	2	2	2	2	1	1	1	1	1	1	2	3	10	1	5	1

(i) Bodily injury—two years.
(j) General provision—six years for actions of tort and contract.
(k) Higher number of years for local judgments; lower number for foreign judgments.

TABLE I—(Continued)

STATES	Miscellaneous (continued)										Disabilities							
	Forfeiture of penalty	Defects in chain of title barred	Relief against fraud	On accounts	By or against a common carrier to collect	Forcible entry and detainer	Suit after entry on real property	Liability created by statute (except forfeiture)	Bond of Pub. Officer	Bond of Ex'r, Adm'r.	ALL OTHER ACTIONS	Real Actions Extends for—years	Real Actions Extends full period	Personal Actions Extends for—years	Personal Actions Extends full period	Death of party extends	New action after failure	
Indiana	2	35	4		2			5		15	2		2		1½	5		
Alabama	1			3	3			5	6		3		3			1		
Arizona			3	3				5	6	4	4	x		x	1	1		
Arkansas						3		4	8		3		3		1	1		
California	1	1	3	4			3			4	5			x	½	1		
Colorado	1	1	3							6	5			x	1	1		
Connecticut	1	1								6	5			x	1	1		
Delaware						½			6	3	10		3t		1	1		
Florida	1	1	3	3		1	3			4	7				1	1		
Georgia	1	1	4	4			20		10			x		x	1	½		
Idaho							1	3		4	5			x	1	1		
Illinois		75	5	5				5	5	5	2		2		1	1		
Iowa			5	5				5	5	5	1		1		½	½		
Kansas			2	2		2	3	5		10	3		1		1	1		
Kentucky	5		5	5	5		5			10	3			x	1	1		
Louisiana		30	3	3						10	1q		5t					
Maine	1		6	6						10	10			x	1½	½		
Maryland	1	20	1	1						10	10			x	1½	3		
Massachusetts	1	1	1	1						10	5r			x	3	3		
Michigan	2	2	2	2	3					6	6			x	5	1		
Minnesota	3	31	6	6			6			6	5		1		1	1		
Mississippi	1	1	1	1	3					10	10			x	1	1		
Missouri	1	24	5	5			5			10	3			x	1	1		
Montana	1	2	2	2	5			2		10	10			x	1	1		
Nebraska	1	21	4	4		1	4	10	10	4	10			x	1	1		
Nevada	2		3	4			3	4,9	20	4	2			x	1	1		
New Jersey	2									6	5			x	½	1		
New Hampshire			4	4				2	2	4	1		1		1	½		
New Mexico								2	2	4	10		1r		1½	1		
New York	3		6	6			1	6		10	10			x	1	1		
North Carolina	1		3	3				3	6	6	10			x	1	1		
North Dakota	3		6	6			1	6		10	10		1r		1	1		
Ohio	1		4	4	3			6	10	10	10			x	1	1		
Oklahoma	1		2	2		2		3	5	5	5		1		1	1		
Oregon	3		2				6			10	1s		1s		1	1		
Pennsylvania	1						1			10	10			x	1	1		
Rhode Island										10	10			x	1	1		
South Carolina	3	40	6	6		1	6			10	10		1r		1	1		
South Dakota	3		6	6			6			10	10		1r		1	1		
Tennessee	1	30						10	10	3	3		3u	x	1	1		
Texas			2m	2		2			4	4	25			x	1	1		
Utah	1		3	4			3			4	2		1		1	1		
Vermont										4	j			x	2	1		
Virginia				5						1,5p	10			x	1	1		
Washington	3		3					2		2	10		x		1	1		
West Virginia		30		5				10	10	1,5p	5			x	1	1		
Wisconsin	2		6			1	6		10	10	1		1r		1	1		
Wyoming	1		4				8	10	10	10	10		3		1	1		
Number States having limitation on subject	37	10	32	18	3	8	7	22	14	14	33		41	6	22	26	33	42
Arithmetical Average (in years)	2	33	4	4	3	1½	1	5	7	8	6		6	2		1	1	
Arithmetical Mean (in years)	1	30	3	3	3	2	1	6	10	10	10		10	1		1	1	

- (j) General provision—six years for actions of tort and contract.
- (l) General provision—statute runs from time of discovery of fraud; no number of years stated for fraud itself.
- (m) Except between merchants.
- (n) Actions "on the case."
- (p) Five years when cause of action survives; one year when cause of action does not survive.
- (q) Infants only (on real actions only).
- (r) Time cannot be extended altogether more than five years, except in case of infants.
- (s) Disability cannot extend statute over five years at most.
- (t) Contract actions only (and only by infants in Louisiana).
- (u) Three years or full period, whichever is shorter.
- (v) No action at all after 20 years.

TABLE II—STATE'S IMMUNITY FROM THE STATUTE OF LIMITATIONS

STATES	1. Does S/L run against the State?	2. Real Actions	3. Personal Actions	4. If so, is a longer period granted the State?	5. Real Actions	6. Personal Actions
Indiana	Yes ²		No ³	No		
Alabama	No	No	Yes			No
Arizona	No					
Arkansas	Yes ⁴					
California	Yes				Yes	No
Colorado	No					
Connecticut	No					
Delaware	No					
Florida	No					
Georgia	No		Yes			No
Idaho	Yes				Yes	No
Illinois	No					No
Iowa						
Kansas						
Kentucky	Yes			No		
Louisiana	No					
Maine						
Maryland						
Massachusetts	Yes			No		
Michigan	Yes			No		
Minnesota	Yes			No		
Mississippi	No			No		
Missouri		No ⁵	Yes	No		
Montana	Yes			No		
Nebraska		No	Yes ⁶			No
Nevada	Yes				Yes	No
New Hampshire		Yes			No	
New Jersey						
New Mexico	No					
New York	Yes				Yes	No
North Carolina	Yes				Yes	No
North Dakota	Yes				Yes	No
Ohio	No					
Oklahoma						
Oregon	No					
Pennsylvania						
Rhode Island						
South Carolina	Yes				Yes	No
South Dakota	Yes				Yes	No
Tennessee	No					
Texas	No					
Utah	Yes			No		
Vermont	Yes ⁷			No		
Virginia	No					
Washington	No ⁸					
West Virginia	Yes					
Wisconsin	Yes			Yes		
Wyoming	No					
TOTALS ⁹						
YES	18	2	4	1	8	0
NO	15 ¹⁰	3	1	9	1	11
NOT STATED	9 ¹¹					

- The presumption is that the Statute does not run against the State unless specifically authorized.
- In suits dealing with title to real property (quieting title.)
- Except as to sureties.
- By decision of the Supreme Court of Arkansas, *Gathright v. State*, 129 Ark. 339, 195 S. W. 1069 (1917).
- The Statute does not run against land held by the State for "public" use, but does if land is for "private" use.
- Except for actions for collection of revenue, upon official bonds, or for collection of loans.
- Except lands devoted to public, pious, or charitable use.
- But it does run against counties, municipalities, and other political subdivisions.
- The totals should be considered as a group in answering each question to be best understood. Then there is seen (1) a slight tendency to restrict the running against the State in real actions and (2) a tendency to grant a longer period to the State in real actions. It is significant that only one state, Wisconsin, also allows a longer period in personal actions.
- It is not always specifically provided in the Statutes that the limitations shall not run against the State. If the Statute is silent, this fact is usually found in a judicial decision. However, if the Statute is to run against the State, such is usually specifically provided in the Statute (exception: Arkansas).
- The presumption is that these states would be included as *not* allowing Statute to run against the State. This figure includes only those states which have not committed themselves at all.

SOURCES OF THE STATUTES OF LIMITATIONS

- Indiana—Burns' Annotated Statutes (1933), sec. 2-601 ff.
 Alabama—Code of Alabama (1940)—Title 7, sec. 16 ff.
 Arizona—Arizona Code Annotated (1939) sec. 29-101 ff.
 Arkansas—Digest of Statutes of Arkansas (1937) Ch. 102.
 California—Civil Procedure & Probate Codes (1944) sec. 312 ff.
 Colorado—Colorado Statutes Annotated (1935) Chapters 102; 40
 Connecticut—General Statutes of Connecticut (1939) sec. 6004 ff.
 Delaware—Revised Code of Delaware (1935) sec. 5120 ff.
 Florida—Florida Statutes (1941)—Chap. 95
 Georgia—Georgia Code (1933) sec. 3-701 ff.
 Idaho—Idaho Laws Annotated (1943) sec. 5-201 ff.
 Illinois—Illinois Revised Statutes (1941) Chap 83
 Iowa—Code of Iowa (1939) sec. 11007 ff.
 Kansas—General Statutes of Kansas (1935) sec. 60-301 ff.
 Kentucky—Kentucky Revised Statutes (1944) Chap 413
 Louisiana—Louisiana Civil Code (1945) sec. 3457 ff.
 Maine—Revised Statutes of Maine (1930) Ch. 95 sec. 90
 Maryland—Annotated Code of Maryland (1939) Article 57
 Massachusetts—Annotated Laws of Massachusetts (1933) Vol. 9, Ch. 260
 Michigan—Compiled Laws of Michigan (1929) (1940 Supp.) sec. 13964
 ff.
 Minnesota—Minnesota Statutes (1941) Chap. 541
 Mississippi—Mississippi Code Annotated (1942) sec. 709 ff.
 Missouri—Revised Statutes of Missouri (1939) sec. 1002 ff.
 Montana—Revised Code of Montana (1935) sec. 9012 ff.
 Nebraska—Revised Statutes of Nebraska (1943) sec. 25-201 ff.
 Nevada—Nevada Compiled Laws (192-1941 supp.) sec. 8505 ff.
 New Hampshire—Revised Laws of New Hampshire (1942) ch. 385
 New Jersey—Revised Statutes of New Jersey (1937) sec. 2-24-1 ff.
 New Mexico—New Mexico Statutes Annotated (1941) sec. 27-101 ff.
 New York—Thompson's Laws of New York (1939) CPA sec. 10 ff.
 North Carolina—General Statutes of North Carolina (1943) sec. 1-14 ff.
 North Dakota—North Dakota Revised Code (1943) sec. 28-0101 ff.
 Ohio—Page's Ohio General Code Annotated (1938) sec. 11218 ff.
 Oklahoma—Oklahoma Statutes (1941) sec. 12-91 ff.
 Oregon—Oregon Compiled Laws Annotated (1940) sec. 1-201 ff.
 Pennsylvania—Purdon's Pennsylvania Statutes (1936) sec. 12-31 ff.
 Rhode Island—General Laws of Rhode Island (1938) Chap. 510.
 South Carolina—Code of Laws of South Carolina (1942) sec. 355-1 ff.
 South Dakota—South Dakota Code (1939) sec. 33.02 ff.
 Tennessee—Michie's Tennessee Code (1938) sec. 8591 ff.
 Texas—Texas Statutes (1936) sec. 5507 ff.
 Utah—Utah Code Annotated (1943) sec. 104-2-1 ff.
 Vermont—Public Laws of Vermont (1933) sec. 1642 ff.
 Virginia—Virginia Code of 1942 Annotated—sec. 5805 ff.
 Washington—Remington's Revised Statutes of Washington (1932) sec.
 155 ff.
 West Virginia—West Virginia Code of 1943 Annotated—sec. 5393 ff.
 Wisconsin—Wisconsin Statutes (1943) sec. 330.01 ff.
 Wyoming—Wyoming Revised Statutes (1931) sec. 89-401 ff.
 Note: The dates given are the dates of last publication but not of the
 last cumulative supplement.