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LIMITATIONS AND THE FEDERAL COURTS

*William Wirt Blume** and *B. J. George, Jr.*†

"OF the time of commencing civil actions" was the second title of Part II of the Code of Procedure proposed by David Dudley Field and his co-commissioners in 1848. The reason for including time limitations in a code of procedure was stated by the commissioners in their first report:[1]

> "Their introduction in this place is rendered necessary, by the fact, that the existing limitations of actions, (with the exception of those relating to real property,) depend upon the distinctions between actions at law and suits in equity, and between the several forms of actions at law. To carry into effect, therefore, the abolition of those distinctions, it becomes necessary to revise the statute of limitations, and to adapt it to the substance, instead of the form, of the remedy."

When similar reforms for the federal courts became effective in 1938 as a result of the adoption of the Rules of Civil Procedure no attempt was made to provide time limitations for the commencement of civil actions. To have done so would have meant the adoption of a federal statute of limitations applicable to all actions commenced in, or removed to, the federal courts. Such a statute would have created differences in time limitations between state and federal courts, and would have led to evils of the type sought to be avoided by the Supreme Court by its decision of *Erie R.R. v. Tompkins* (1938).[2] One great objective of the Rules of Civil Procedure was to provide a uniform procedure for all the federal district courts without regard to the procedure of the states in which the courts were held. The great objective of the decision in *Erie R.R. v. Tompkins* was to provide uniformity of result within a particular state in actions involving state-created rights. The implementation of these great objectives in the same year marks 1938 as the beginning of a new period in the history of the federal courts.

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[1] FIRST REPORT OF THE COMMISSIONERS ON PRACTICE AND PLEADINGS 92 (1848).

[2] 304 U.S. 64, 58 S.Ct. 817 (1938).

I

APPLICABILITY OF STATE STATUTES TO FEDERAL CASES

A. Under Rules of Decision Act before 1938

1. *Actions at Law*

Section 34 of the Federal Judiciary Act of 1789 provided "that the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply."[3] That this section (later known as the Rules of Decision Act)[4] was intended to apply to matters of substantive law and not to procedure is clearly shown by the fact that Congress the same year enacted another statute[5] (known as the Process Act) which provided that the "forms of writs and executions" and the "modes of process" in "suits at common law" should be the same in each state respectively as then "used or allowed in the supreme courts of the same" except as otherwise provided by federal statute. The "forms and modes of proceedings" in equity and admiralty were to be "according to the course of the civil law." This act was extended in 1790,[6] and again in 1791.[7] In 1792 the act was amended[8] to provide that "the forms of writs, executions and other process" and "the forms and modes of proceeding in suits at common law" should be the same "as are now used" in the courts mentioned in the act of 1789. The "forms and modes of proceeding" in equity and admiralty were to be "according to the principles, rules and usages which belong to courts of equity and to courts of admiralty respectively." It was further provided that the prescribed practice might be altered by rule of court. The act of 1792 applied only to the original thirteen states. Federal courts sitting in states admitted after that time usually followed state practice in law actions, but were not required to do so.[9] In 1828 the act was amended[10] to make it applicable to federal courts held in states admitted into the Union since 1789. The "forms and modes of proceeding" in actions at law were to be same as *then* used in the highest state court of original jurisdiction.

[3] 1 Stat. L. 73, 92.
[4] Now §1652, tit. 28, U.S.C. (1948).
[5] 1 Stat. L. 93.
[6] 1 Stat. L. 122.
[7] 1 Stat. L. 191.
[8] 1 Stat. L. 276.
[9] Warren, "Federal Process and State Legislation," 16 VA. L. REV. 421 at 436 (1930).
[10] 4 Stat. L. 278

Since this act applied only to states then existing, the act was amended in 1842[11] to make it applicable to states admitted after 1828. After 1842 it was the practice to insert in each act admitting a state to the Union a provision making the laws of the United States, not locally inapplicable, effective within that state.[12] "Legal effect of that provision was, that the Process Act of the nineteenth of May, 1828, became applicable in the Federal courts of that State."[13] The "forms and modes of proceeding" in actions at law "were such as were used in the highest court of original jurisdiction of the State at the time of its admission into the Union."[14] Finally, in 1872, Congress got away from the old scheme of requiring conformity with state practice of some fixed, and often remote, time, by providing that the "practice, pleadings, and forms and modes of proceeding in other than equity and admiralty causes in the circuit and district courts of the United States shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held."[15] The Conformity Act of 1872 continued in effect until the Federal Rules of Civil Procedure became effective in 1938.[16]

a. *Rights created by federal statutes.* Federal statutes creating substantive rights have been of two types: (1) Statutes creating substantive rights and at the same time placing time limitations on the enforcement of the rights created. (2) Statutes creating substantive rights without placing special time limitations on the enforcement of the rights created. Actions involving statutes of the first type caused little trouble. It was clear that the time limitations prescribed by the federal statutes, and not those prescribed by statutes of the state in which the federal court was sitting, should be applied. In the absence of federal time limitations federal courts were faced with the choice of applying state statutes of limitations or getting along without statutory time limitations of any kind. This problem was considered by the Supreme Court in *McCluny v. Silliman* (1830),[17] and the conclusion reached that a federal court in an action brought to enforce a right arising under federal law should, where no special time limitation had

[11] 5 Stat. L. 499

[12] Warren, "Federal Process and State Legislation," 16 VA. L. REV. 421 at 445 (1930).

[13] Clifford, J., in United States v. Keokuk, 6 Wall. (73 U.S.) 514 at 516-17 (1867).

[14] Gray, J., in Michigan Insurance Bank v. Eldred, 130 U.S. 693 at 695, 9 S.Ct. 690 (1889).

[15] 17 Stat. L. 197.

[16] 2 MOORE'S FEDERAL PRACTICE, 2d ed., 6 (1948).

[17] 3 Pet. (28 U.S.) 269 at 275 (1830).

been prescribed by federal law, apply the statute of limitations of the state in which the federal court was sitting. After quoting section 34 of the Judiciary Act of 1789, McLean, J., stated: "Under this statute, the acts of limitations of the several states, where no special provision has been made by Congress, form a rule of decision in the courts of the United States, and the same effect is given to them as is given in the state courts." The question involved in *McCluny v. Silliman* was reconsidered in *Campbell v. Haverhill* (Supreme Court, 1895),[18] and the same answer given. After quoting part of section 721 of the federal Revised Statutes (Rules of Decision Act), Brown, J., stated: "That this section embraces the statutes of limitations of the several states has been decided by this court in a large number of cases."

b. *Rights created by state statutes.* At no time has Congress seen fit to prescribe time limitations for actions brought in federal courts to enforce state-created rights. In actions to enforce such rights state time limitations have always been applied. Whenever a state statute creating a right contained a special time limitation this limitation was considered as a limitation of the right created by the statute, and was enforced along with the rest of the statute by federal courts sitting in the same or other states.[19] The entire statute was a rule of decision under section 34 of the Judiciary Act of 1789. If a state statute creating a right did not contain a special time limitation, and there was no other state statute expressly limiting actions on the right created,[20] a federal court enforcing the right applied the general statute of limitations of the state in which the federal court was sitting.

c. *Right created by common law.* There being no federal statute of limitations applicable to common-law actions in general, the federal courts from the beginning found it necessary to apply in such actions the general statutes of the states. Authority for so doing was found in the Rules of Decision Act (section 34 of the Judiciary Act of 1789). When the action was brought in a federal court sitting in the state in which the cause of action arose, the federal court had no choice but to

[18] 155 U.S. 610, 15 S.Ct. 217 (1895).

[19] In Davis v. Mills, 194 U.S. 451, 24 S.Ct. 692 (1904), Holmes, J., stated at 454: "Ordinary limitations of actions are treated as laws of procedure and as belonging to the *lex fori*, as affecting the remedy only and not the right. But in cases where it has been possible to escape from that qualification by a reasonable distinction courts have been willing to treat limitations of time as standing like other limitations and cutting down the defendant's liability wherever he is sued. The common case is where a statute creates a new liability and in the same section or in the same act limits the time within which it can be enforced, whether using words of condition or not."

[20] See Davis v. Mills, 194 U.S. 451, 24 S.Ct. 692 (1904).

apply the statute of limitations of that state. When the action was brought in a federal court sitting in another state, the federal court had to decide whether to apply the statute of limitations of the state in which the cause arose or that of the state in which the federal court was sitting. This problem was considered at length by Story, J., on circuit in *LeRoy v. Crowninshield* (1820)[21] and the conclusion reached that a common-law action brought in a federal court on a cause of action arising in another state was governed by the statute of limitations of the state in which the federal court was sitting. The view that a general statute of limitations should be classified as remedial for the purpose of applying the law of the forum was adopted by the Supreme Court in *McElmoyle v. Cohen* (1839),[22] and reaffirmed by that Court after full consideration in *Townsend v. Jemison* (1850).[23] In *Hawkins v. Barney* (Supreme Court, 1831)[24] Johnson, J., recognized as "unquestionably true" an argument that "limitation laws, although belonging to the *lex fori*, and applying immediately to the remedy, yet indirectly they effect a complete divesture and even transfer of right." This view explains how the federal courts could say that a general statute of limitations was the law of the *forum*, and at the same time say that such a statute was a rule of decision under the Judiciary Act of 1789. Such a statute was procedural in the sense that it directly affected the remedy. It was substantive in the sense that it indirectly affected the right.

d. *Interpretation of state statutes.* In applying state statutes of limitations the federal courts followed interpretations of the statutes given by the highest courts of the states. In a consideration of this problem in *Bauserman v. Blunt* (Supreme Court, 1893),[25] Gray, J., after quoting the Rules of Decision Act, stated: "No laws of the several States have been more steadfastly or more often recognized by this court, from the beginning, as rules of decision in the courts of the United States, than statutes of limitations of actions, real and personal, as enacted by the legislature of a State, and as construed by its highest court."

e. *Commencement provisions of state statutes.* Statutes of limitations of some of the states contained provisions declaring when an action should be deemed commenced for the purpose of stopping the running

[21] 2 Mason 151 (1820).
[22] 13 Pet. (38 U.S.) 311 (1839).
[23] 9 How. (50 U.S.) 406 (1850).
[24] 5 Pet. (30 U.S.) 457 at 466 (1831).
[25] 147 U.S. 647, 13 S.Ct. 466 (1893).

of a time limitation. A question arose as to whether a federal court in applying such a statute should, under the Rules of Decision Act, apply the commencement provision along with the rest of the statute. This question was answered in the affirmative in *Michigan Insurance Bank v. Eldred* (Supreme Court, 1889).[26] The commencement provision in question had been enacted after the state had been admitted to the Union, and, therefore, could not be applied under the Process Act of 1828.[27] The provision could not be applied under the Conformity Act of 1872, that act not being in force when the cause of action arose. After noting briefly that the Process Act of 1828 and the Conformity Act of 1872 were not applicable, Gray, J., stated: "But it has been settled by a series of decisions of this court that statutes of limitations, even in personal actions, including actions on judgments, were 'laws of the several States' which, except where the constitution, treaties or statutes of the United States otherwise required or provided, must, under the Judiciary Act of September 24, 1789, c. 20, §34, 'be regarded as rules of decision in trials at common law in the Courts of the United States in cases where they apply.' "[28] After the Conformity Act of 1872 became effective there was little or no occasion for determining whether a commencement provision of a state statute of limitations was procedural, and therefore should be applied under the Conformity Act, or was an integral part of the statute, and therefore should be applied under the Rules of Decision Act. If not applicable under the one statute it was applicable under the other.

2. *Suits in Equity*

Section 34 of the Federal Judiciary Act of 1789, which directed that the "laws of the several states" should be regarded as "rules of decision" in the courts of the United States, was expressly limited to "trials at common law."[29] The conformity provisions of the various process acts[30] were also limited to actions at law, as was the general Conformity Act

[26] 130 U.S. 693, 9 S.Ct. 690 (1889).

[27] Supra at note 14.

[28] 130 U.S. 693 at 696. Referring to the state statute of limitations Gray, J., stated at 697: "The legal construction and effect of §27 of c. 138, taken in connection with the preceding sections of the same chapter, is that the service of the summons, or its delivery to an officer with intent that it shall be served, is the act by which the period of limitation must be computed; and the definition of that act is an integral part of the statute of limitations, and as such applicable, as the rest of the statute undoubtedly is, to actions in the courts of the United States."

[29] 1 Stat. L. 73, 92.

[30] 1 Stat. L. 93, 122, 191, 276; 4 Stat. L. 278; 5 Stat. L. 499.

of 1872.[31] The Process Act of 1789[32] provided that "the forms and modes of proceeding in causes of equity, and of admiralty and maritime jurisdiction, shall be according to the course of the civil law" or, as amended in 1792,[33] "according to the principles, rules and usages which belong to courts of equity and courts of admiralty respectively." From these and other statutes it seems that Congress did not intend or expect the federal courts to apply state law—substantive or procedural—in equity cases.

While not bound by any act of Congress to apply state statutes of limitations to equity cases, the federal courts gradually developed a set of rules which required, or went far towards requiring, the application of state limitations statutes in the following situations: (1) Where a state statute expressly provided a time limitation for the particular type of suit in equity. (2) Where a state statute provided a time limitation for an action at law, and the suit in equity was for a concurrent remedy. (3)Where a state statute provided a time limitation for an action at law, and the suit in equity was brought in aid of the action at law. (4) Where a state statute provided a time limitation for an action at law, and the suit in equity was analogous to the action at law. In other situations the doctrine of laches was applied.[34] It should be noted, however, that the federal courts did not always consider themselves "bound to follow local statutes which in ordinary circumstances they could adopt and apply by analogy."[35] Due to this reservation of power to apply the doctrine of laches in special situations, it is generally said that the federal courts before 1938 were not bound by the state statutes of limitations.

Under the Process Act of 1792 the "forms and modes of proceeding" in equity were to be "according to the principles, rules and usages which belong to courts of equity" except as prescribed by federal statute or court rule.[36] In 1822 the Supreme Court adopted a rule providing that "in all cases where the rules prescribed by this court, or by the circuit court, do not apply, the practice of the circuit court shall be regulated by the practice of the high court of chancery in England."[37] The Equity Rules of 1822 regulated the service of process, but did not pre-

[31] 17 Stat. L. 197.
[32] 1 Stat. L. 93.
[33] 1 Stat. L. 276
[34] See analysis of early cases (opinion by Stone, J.) in Russell v. Todd, 309 U.S. 280, 60 S.Ct. 527 (1940). Also see 2 MOORE'S FEDERAL PRACTICE, 2d ed., 718 (1948).
[35] Stone, J., in Russell v. Todd, 309 U.S. 280 at 288, 60 S.Ct. 527 (1940).
[36] 1 Stat. L. 276.
[37] 7 Wheat. (20 U.S.) p. xxi (Rule XXXIII) (1822).

scribe how a suit in equity should be commenced, or when such a suit should be deemed commenced for the purpose of stopping the running of a time limitation. The Rules did provide that a plaintiff should file his bill "before or at the time of taking out the *subpoena*."[38] Due to uncertainty as to when a suit in equity was considered commenced under English chancery practice, and to the absence of a controlling federal statute or court rule, the federal courts had considerable difficulty in fixing the point of commencement of a suit in equity for the purpose of stopping the running of a time limitation. In *United States v. American Lumber Company* (9th Cir. 1898)[39] Gilbert, circuit judge, stated:

> "Just at what point of time a suit in equity may be said to have been begun under the practice of the federal courts has not been determined by any statute, or by any rule of court, or by any authoritative decision. A solution of the question must be found by reference to the English chancery practice, which has been made the rule of procedure in those courts."

After a review of the English practice, the origin of which was said to be "involved in some obscurity," Judge Gilbert pointed out that it had been "the interpretation of the English chancery practice," as the same had been followed and applied by American state courts, "that a suit is begun, within the meaning of the statute of limitations, when the subpoena has been issued, provided that its issuance has been followed by a bona fide effort to serve the same." In *Linn & Lane Timber Company v. United States* (Supreme Court, 1915)[40] Holmes, J., disposed of the question with characteristic briefness as follows:

> "The bills were filed and subpoenas were taken out and delivered to the Marshal for service before the statute had run, reasonable diligence was shown in getting service and therefore the rights of the United States against all the patents were saved. For when so followed up the rule is pretty well established that the statute is interrupted by the filing of the bill."

According to this case it was the filing of the bill, and not the issuance of the subpoena, which stopped the running of the statute.

In the first case mentioned above, the trial judge, sitting in California,[41] called attention to a section of the California Code of Civil Procedure which provided that "an action is commenced . . . when the

[38] Id. at p. xvii (Rule IV).
[39] 85 F. 827 at 829 (1898).
[40] 236 U.S. 574 at 578, 35 S.Ct. 440 (1915).
[41] Circuit Court, N.D. California (1897) 80 F. 309 at 315.

complaint is filed." "But," he continued, "the procedure in equity in the United States circuit courts is not controlled by state statutes; it is entirely separate and independent of the equity rules and procedure existing in the state tribunals." This case involved a time limitation prescribed by a federal statute.[42] *Armstrong Cork Co. v. Merchants' Refrigerating Co.* (8th Cir. 1910)[43] involved a time limitation prescribed by the state statute which created the right sought to be enforced. The federal trial judge applied the state time limitation as such, but the court of appeals thought it should be applied by analogy. After stating that under the English chancery practice as modified in the United States, a suit in equity should be considered commenced from the time of the filing of the bill, Sanborn, circuit judge, added:

> "Now, even if the rule of the federal courts were that a suit in equity was not commenced until the subpoena was issued, or until it was served, yet since the analogous statute of limitations at law, as interpreted by the courts in the state of Missouri which enacted it, would not bar an action like this in hand in which the petition was filed within, and the summons was issued and served without, the 90 days, a national court in equity ought not to bar such a suit under the circumstances of this case."

The court was not unaware of the fact that the Missouri view as to when an action should be considered commenced was based on a section of the Missouri Code of Civil Procedure found in an article entitled: "The Manner of Commencing Suits, and the Service of Notices."[44] *Equitable Life Assurance Society v. Schwartz* (5th Cir. 1930)[45] involved a time limitation contained in a contract of insurance. The trial judge found that the suit had not been begun within the limitation, citing a state statute. The court of appeals reversed, holding that "a suit in equity is commenced when the bill is filed and process is issued, where the process is subsequently served." As to the applicability of the state statute (citation not given) Foster, circuit judge, stated:

[42] For another case involving a federal time limitation see United States v. Miller, (C.C. Ore. 1908) 164 F. 444, in which Wolverton, district judge, said at 445: "It is suggested that the commencement of a suit in equity in the federal court is governed by the local statute for the commencement of actions within the state court; but such is not the rule. The solution of the question when a suit is begun is to be sought wholly within equity practice and procedure."

[43] 184 F. 199 at 207.

[44] The court cited §566 of Missouri Revised Statutes 1899. This section is in Article IV ("The Manner of Commencing Suits, and the Service of Notices").

[45] 42 F. (2d) 646 at 648.

> "The Conformity Act (28 USCA §724) has no application to proceedings in equity in the federal courts, and therefore the statute of Florida cited by the District Court is also without effect, as the limitation relied upon was created by the contract and not by the law of Florida."

The views here expressed seem to conflict with those expressed in *Armstrong Cork Co. v. Merchants' Refrigerating Co.*, supra. Aside from that case, it can be said in general that the federal courts did not follow state law in determining when a suit in equity was deemed to be commenced.[46]

B. *Under Rules of Decision Act since 1938*

1. *Forms of Action*

Rule 2 of the Federal Rules of Civil Procedure (1938) provides: "There shall be one form of action known as 'civil action.'" Under this rule it is not necessary or proper to label an action for legal relief as anything other than a "civil action." Under the federal practice before 1938 it was necessary to label actions and suits as "at law" or "in equity," and, in states which had not abolished the forms of action, to label each action at law as being brought in a particular form of action. In *Williamson v. Columbia Gas & Electric Corporation* (3d Cir. 1939)[47] the court was called on to apply a state statute providing time limitations for certain "forms of action" to a "civil action" brought under the federal rules on a claim arising under a federal statute. The state statute provided: "No action of trespass, no action of replevin, no action of debt not founded upon a record or specialty, no action of account, no action of assumpsit, and no action upon the case shall be brought after the expiration of three years from the accruing of the cause of action." The first question was whether a state statute limiting "forms of action" should be applied to a federal "civil action" brought under rules of procedure which had abolished the "forms of action." In answer to this question, Maris, circuit judge, stated:

> "We find no evidence in the Federal Rules of Civil Procedure or in the notes thereto of an intent to cover the field of limitations of actions. The state statutes accordingly remain applicable under the Rules of Decision Act."

The next question was the manner of applying such a statute. As to this Judge Maris stated:

[46] See 2 MOORE'S FEDERAL PRACTICE, 2d ed., 733 (1948).
[47] 110 F. (2d) 15 at 20.

"In order to apply a statute of limitations, such as that of Delaware, which reads in terms of common law actions, to a civil action brought in a district court, it is necessary for the court through a consideration of the nature of the cause of action disclosed in the complaint to determine the form of action which would have been brought upon it at common law."

Then came the complicated problem of determining whether the particular claim would have been sued on at common law in an action of debt on a specialty, or in an action of trespass on the case. The consideration of this problem took the court back to *Young and Ashburnsham's Case* (1587)[48] and to other old cases dealing with the various types of actions of debt, and the differences between actions of debt and actions of trespass on the case.

When the forms of action were abolished in New York in 1848 the code commissioners recognized the importance of revising the statute of limitations "to adapt it to the substance, instead of the form, of the remedy."[49] Now that the forms of action have been abolished for federal courts sitting in states which have not effected this reform, it is highly unfortunate that these courts, and the federal appellate courts, must continue to apply statutes of limitations which refer to the form of the action.[50] Where, under the old practice, the plaintiff labeled his action as being in a particular form, the application of such a statute was not especially difficult.[51] Under the present federal practice the court must determine in what form or forms the particular action might

[48] 3 Leonard 161, 74 Eng. Rep. 606 (1587).

[49] Supra at note 1.

[50] The common-law scheme of placing all claims for relief in groups, and prescribing a form of action for each group, is followed in *Alabama* (assumpsit, debt, detinue, ejectment, trespass, trespass on the case, and trover), *Maine* (assumpsit, covenant, debt, detinue, replevin, trespass, trespass on the case, and trover), *Maryland* (assumpsit, detinue, ejectment, replevin, trespass, trespass on the case, and trover), *Massachusetts* (contract, ejectment, replevin, and tort), *Michigan* (assumpsit, ejectment, replevin, and trespass on the case), *New Hampshire* (assumpsit, covenant, debt, detinue, ejectment, replevin, trespass, trespass on the case, and trover), *Pennsylvania* (assumpsit, ejectment, replevin, and trespass), *Rhode Island* (assumpsit, covenant, debt, detinue, ejectment, replevin, trespass, trespass on the case, and trover), *Tennessee* (contract, detinue, ejectment, replevin, and tort "on the facts of the case"), *Vermont* (contract, ejectment, replevin, and tort), *Virginia* (assumpsit, covenant, debt, detinue, ejectment, trespass, trespass on the case, and trover), and *West Virginia* (assumpsit, covenant, debt, detinue, ejectment, trespass on the case, and trover). The general statutes of limitations of the following states are geared in whole or in part to forms of action: *Colorado* (assumpsit, case, debt, and replevin), *Delaware* (writ of right), *Maine* (account, assumpsit, case, debt, replevin, and trespass), *Maryland* (account, assumpsit, debt, detinue, ejectment, replevin, and trespass), *New Hampshire* (debt and trespass), *New Jersey* (account, case, covenant, debt, detinue, replevin, trespass, and trover), *Pennsylvania* (account, case, debt, detinue, replevin, trespass q.c.f., and trover), *Rhode Island* (account, case, covenant, debt, detinue, replevin, and trespass), and *Vermont* (contract and replevin).

[51] See discussion in McCluny v. Silliman, 3 Pet. (28 U.S.) 269 at 277-8 (1830).

have been brought. When it is recalled that in some situations the plaintiff had a choice between or among two or more forms, the complexity of the problem is more apparent. "The forms of action we have buried, but they still rule us from their graves."[52]

2. *Union of Law and Equity*

The Federal Rules of Civil Procedure (1938) were made applicable to procedure in the federal district courts "in all suits of a civil nature whether cognizable as cases at law or in equity."[53] This provision, coupled with the one which provides there shall be "one form of action,"[54] had the effect of establishing one procedure for civil actions whether for legal or equitable, or for legal and equitable, relief. The adoption of the federal rules did not affect the application of state time limitations, and, as we have seen, the federal courts continued, under the Rules of Decision Act, to apply state statutes of limitations in actions for legal relief. In actions for equitable relief an important change was made. The Supreme Court in *Erie R.R. v. Tompkins* (1938)[55] decided that state law—unwritten as well as written—must be applied by federal courts in all cases except in matters governed by the constitution or statutes of the United States. This action was for legal relief, and involved an interpretation of the Rules of Decision Act. A week later, in *Ruhlin v. New York Life Insurance Co.* (1938),[56] the same doctrine was applied to a question of construction of a contract arising in a suit in equity. In *Russell v. Todd* (1940)[57] the Supreme Court declined to consider whether a federal court was required to apply a state statute of limitations in a suit for equitable relief brought to enforce a right conferred by federal law. Stone, J., indicated that the courts would, "without reference to the Rules of Decision Act," apply such a statute "as a substitute or supplement for the equitable doctrine of laches." In *Guaranty Trust Co. v. York* (1945)[58] the court held that a federal court must apply a state statute of limitations in a suit for equitable relief where jurisdiction is based solely upon diversity of citi-

[52] MAITLAND, EQUITY AND THE FORMS OF ACTION 296 (1913). Cf. Salmond, 21 L. Q. REV. 43 (1905): "Forms of action are dead, but their ghosts still haunt the precincts of the law. In their life they were powers of evil, and even in death they have not wholly ceased from troubling."

[53] Rule 1.

[54] Rule 2.

[55] 304 U.S. 64, 58 S.Ct. 817 (1938).

[56] 304 U.S. 202, 58 S.Ct. 860 (1938).

[57] 309 U.S. 280, 60 S.Ct. 527 (1940).

[58] 326 U.S. 99, 65 S.Ct. 1464 (1945); 160 A.L.R. 1231. Noted in 44 MICH. L. REV. 477 (1945).

zenship. *Holmberg v. Armbrecht* (1946)[59] involved a federally-created right for which the sole remedy was in equity. The Supreme Court held that the action was not controlled by the state statute of limitations; that in such a case the federal court should apply its own views of the doctrine of laches. *Cope v. Anderson* (1947)[60] involved a federally-created right, but the sole remedy was not in equity. In such a case, according to Black, J., "equity will withhold its relief . . . where the applicable statute of limitations would bar the concurrent legal remedy."

For the purpose of determining the applicability of state time limitations to actions in federal courts it is now necessary to classify all such actions as follows:

1. Actions to enforce state-created rights.
2. Actions to enforce federally-created rights.
   a. Legal remedies.
   b. Equitable remedies
   c. Concurrent remedies.

An action to enforce a state-created right is now subject to the same time limitations in a federal court as in a state court, and it is not necessary to distinguish legal remedies from equitable remedies. This is as it should be. Uniformity of result (the objective of *Erie R.R. v. Tompkins*) is achieved, and procedural union of law and equity (an objective of the Federal Rules) is made more nearly possible. An action to enforce a federally-created right is subject to the same time limitations in a federal court as in a state court when the remedy is "legal" as distinguished from "equitable." This gives uniformity of result, but makes it necessary to distinguish between legal and equitable remedies. When the remedy sought in such a case is solely equitable the action is not subject to the same time limitations in a federal court as in a state court, except where the time limitations are fixed by federal statute. In the absence of federal time limitations, state and federal courts may reach different results in the same type of case. When the remedy may be either legal or equitable, and the equitable remedy is sought because of its greater procedural efficiency, the action is subject to the same time limitations in a federal court as in a state court. Under this rule there will be uniformity of result, but before the rule can be applied it must appear that the equitable remedy sought is concurrent with one at law, and not one available in equity alone.

[59] 327 U.S. 392, 66 S.Ct. 582 (1946).
[60] 331 U.S. 461, 67 S.Ct. 1340 (1947).

While it must be recognized that constitutional rights to jury trial make it impossible, without constitutional amendments, to blot out completely the historical distinction between actions at law and suits in equity, the obstacles preventing complete union of legal and equitable procedure should be reduced to the constitutional minimum. The elimination of the necessity of distinguishing between legal and equitable remedies in actions to enforce state-created rights, in order to determine the applicability of state statutes of limitations, was a step toward a more perfect union. It should be noted, however, that a federal court in dealing with a state-created right may be forced to apply to a federal "civil action" a state statute of limitations which was drawn to cover only certain actions at law.[61] It must determine whether the federal action is "at law" within the statute or is "in equity" and therefore governed by the state doctrine of laches. So long as these distinctions remain in state statutes of limitations the federal courts will be compelled to deal with them in civil actions brought to enforce state-created rights.

3. *Meaning of "Cause of Action"; "Arose"; "Accrue"*

State statutes of limitations commonly provide that certain actions must be commenced within specified years from the time the "cause of action" shall "accrue." And many have provisions for applying the time limitations of the state or country where the "cause of action" "arose." The common-law term "cause of action" was employed in the New York Code of Procedure (1848), and in similar codes of other states, to describe the chief procedural unit of the code civil action. The term was not defined by the codes, and serious questions arose as to its proper definition. Some of the confusion disappeared when it was recognized that a legal term may properly be defined one way for one purpose, and another way for another purpose. It is now recognized that the term "cause of action" may be defined one way for determining where a cause of action arose; another way for determining when a cause of action accrued; and still another way for determining whether two pleadings refer to the same cause of action. The same is true of the "claim for relief" of the Federal Rules (1938). The question to be considered here is whether a federal court in applying a state statute of limitations should proceed according to state views of what constitutes a "cause of action," and apply state definitions of "arose" and "ac-

[61] See note 50 supra for states in which statutes of limitations are geared in whole or in part to common-law forms of action. "Equitable" or "chancery" relief is referred to in the statutes of the following states: Colo., Ga., Iowa, Mich., Miss., S.C., S.D., Va., and W.Va.

crue," or whether the court should rely on definitions of "claim for relief" worked out by the federal courts, and apply federal definitions of "arose" and "accrue." In order to have uniformity of procedure in the federal courts (a chief objective of the Federal Rules) it may be necessary to have "claim for relief," "arose," and "accrue" defined the same way in all federal cases involving similar situations. In order to have uniformity of result in actions involving state-created rights (the objective of *Erie R.R. v. Tompkins*) it may be necessary to have all courts—state and federal—applying a particular statute of limitations give the statute the same interpretation. If, for instance, a particular "cause of action" is considered by state courts as having accrued at one time, and by federal courts as having accrued at another time, the choice of tribunal may be governed by this difference of view. In this situation, advantages of uniformity of procedure are outweighed by advantages of uniformity of result.

Rawlings v. Ray (1941)[62] was an action to enforce a federally-created right. As the remedy sought was legal, the state statute of limitations was applicable. The statute provided that an action of the type involved must be commenced "within three years after the cause of action shall accrue." For the meaning of the word "accrue" Hughes, C. J., referred to a state case (*Holloway v. Morris*, 1931)[63] in which it was said that "it is well settled that the statute of limitations does not begin to run in any case until there is a complete and present cause of action." He then stated: "The question as to the time when there was a complete and present cause of action . . . is a federal question."[64] In another case to enforce a federally-created right, *Cope v. Anderson* (1947),[65] the Supreme Court was called on to decide where the cause of action "arose" in order to determine what state statute of limitations should be applied. Black, J., stated:

> "The Ohio Supreme Court has itself said that a 'cause of action is the fact or combination of facts which gives rise to a right of action, the existence of which affords a party a right to judicial interference in his behalf.' . . . Our appraisal of the Ohio borrowing statute, the opinions of the courts of that state, and the circumstances leading to this suit, persuade us that the cause of action 'arose' in Kentucky within the meaning of the Ohio borrowing statute. . . . We have been referred to no Ohio decisions,

[62] 312 U.S. 96, 61 S.Ct 473 (1941).
[63] 182 Ark. 1096, 34 S.W. (2d) 750 (1931).
[64] For a similar holding in a similar case see Fisher v. Whiton, 317 U.S. 217, 63 S.Ct. 175 (1942).
[65] 331 U.S. 461 at 466-7, 67 S.Ct. 1340 (1947).

and have been unable to find any, which contradict our conclusion that events which culminated in this suit justify our holding that this 'cause of action' 'arose' in Kentucky within the meaning of the Ohio statute."

As to when the cause of action "accrued" the Court held that the answer to this question depended on "federal law."

Pickett v. Aglinski (4th Cir. 1940)[66] involved a state-created right. After referring to the applicable state statute of limitations, Parker, J., stated:

> "The decisions of West Virginia must be followed in the interpretation of this statute; and there can be no question but that, under those decisions, the period of limitations runs from the time when the wrong is committed and the cause of action accrues, and not from the plaintiff's discovery of it."

A similar position was taken by the Supreme Court in *West v. American Tel. & Tel. Co.* (1940).[67] In this case, which involved state-created rights, the trial court held that a cause of action for wrongful transfer of stock accrues when demand is made on the corporation to reinstate claimant's interests. This was in accord with a decision made by a state court. The Circuit Court of Appeals (6th Circuit) reversed, holding that such a cause of action accrues when the stock is transferred. The Supreme Court reversed, holding that the views of the state court should be followed. Stone, J., stated:

> "Since the equitable relief sought in this suit is predicated upon petitioners' legal rights growing out of respondent's unlawful transfer of the stock to the assignee of the life tenant, the state 'laws' which, by §34 of the Judiciary Act of 1789, c. 20, 28 U.S.C., §725, are made 'the rules of decision in trials at common law' define the nature and extent of petitioner's right. See *Russell v. Todd*, 309 U.S. 280, 289. And the rules of decision established by judicial decisions of state courts are 'laws' as well as those prescribed by statute. *Erie Railroad Co. v. Tompkins. . . .*"

In *Guaranty Trust Co. v. York* (Supreme Court, 1945)[68] we are told that the policy of *Erie Railroad v. Tompkins* "touches vitally the proper distribution of judicial power between State and federal courts." Also:

[66] 110 F. (2d) 628 at 629 (1940).
[67] 311 U.S. 223 at 236, 61 S.Ct. 179 (1940).
[68] Supra at note 58.

"In essence, the intent of that decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court."

Taken literally this statement seems to mean that a federal court in a diversity case should apply the same "legal rules," substantive and procedural, as would be applied by a state court in a similar case. But we know this cannot be a proper interpretation of the Rules of Decision Act. The Rules of Civil Procedure continually remind us that Congress has empowered the Supreme Court to prescribe "the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions." Of the "legal rules" which "determine the outcome of litigation," some are uniform rules of procedure adopted by the Supreme Court. If these latter rules differ from the rules of the state in which the federal court is sitting, this difference may mean one outcome for a particular litigation in a state court, and a different outcome for a similar litigation in the federal court. How this possibility of difference in result can be avoided short of complete conformity is difficult to see. Furthermore, the general superiority of the procedure of the federal court over that of the state court, or vice versa, may influence a party to choose the forum having the better procedure. But, again, it is hard to see how this can be avoided without complete conformity. And even with complete conformity, there may be differences in the personalities of the judges of state and federal courts which will influence the choice of forum. Where the basis of choice of forum is superior procedure or personnel there can be no reasonably certain prediction that the outcome of the litigation will be different because of the choice. The same is true of specific differences in procedure unless some act or omission has already occurred which will give a controlling advantage under one scheme of procedure and not under the other. The test here suggested is ability to predict before the forum is selected that one outcome is probable in one forum and a different outcome is probable in the other forum because of differences in the "legal rules" which will be applied. Such a prediction can be made only when the act or omission to which the legal rule is to be applied has already occurred.

In *West v. American Tel. & Tel. Co.* (supra)[69] the controlling facts had occurred before the forum was selected. The stock involved was

[69] At note 67.

transferred by the defendant in 1927. In 1934 the plaintiffs brought suit in a state court for damages. Judgment for the plaintiffs was reversed, the appellate court holding that proof of demand and refusal was necessary to show conversion. In 1937 plaintiffs made the required demand, and then brought suit in a federal court. The trial court held that the cause did not accrue until the demand was made, and, therefore, the action was not barred by the statute of limitations. The court of appeals reversed holding that demand was not prerequisite to accrual, and that plaintiffs' suit was barred by limitations and laches. Had this decision not been reversed by the Supreme Court, the plaintiffs would have been defeated by their choice of forum.

In *Pickett v. Aglinski* (supra)[70] the controlling facts had occurred before the forum was selected. The defendant performed an operation on the plaintiff's arm in December 1934. He ceased treating plaintiff on March 1, 1935, and did not examine him afterwards except once in June 1937. On October 19, 1937, it was discovered that a gauze or sponge inserted in 1934 had not been removed. Action was commenced October 10, 1938. The court of appeals held that plaintiff's cause of action "accrued" when the injury was received; not when it was discovered. Had there been a difference on this point between state and federal law, it is obvious that plaintiff would have selected the forum applying the more favorable rule.

In any case an action cannot be properly commenced until the cause of action is complete. Before commencing an action the plaintiff will know that his cause of action is complete, when it became complete, and where it arose. He will know how much time has elapsed since his cause accrued. Where he has a choice of forums he will take into account any differences in time limitations and any differences in interpretations of "cause of action," "arose," and "accrue." When, because of such differences, his action will be barred in one forum and not in another, his choice will mean a difference in result. Where a plaintiff has a choice between a state court and a federal court there should be no differences in time limitations or in interpretations of "cause of action," "arose," or "accrue." Otherwise, the choice of forum may be influenced by these differences contrary to the policy of the Rules of Decision Act indicated by *Erie Railroad v. Tompkins.*

In order to eliminate the above bases of choice in diversity cases a federal court sitting in a particular state will apply that state's time limitations along with its interpretations of "cause of action," "arose,"

[70] At note 66.

and "accrue." In applying state statutes of limitations in cases involving federally-created rights, federal courts will follow state views as to where the cause of action "arose," but will follow federal views as to when the cause "accrued."

Legal rules which do their work before an action is commenced are not rules of procedure.

4. *When an Action Is Deemed "Commenced"*

Rule 3 of the Federal Rules of Civil Procedure provides: "A civil action is commenced by filing a complaint with the court." Rule 4(a) provides: "Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it." The statutes of limitations of many states contain provisions declaring when actions shall be deemed commenced for the purpose of stopping the running of time limitations.[71] The Kansas statute[72] is typical:

> "An action shall be deemed commenced within the meaning of this article, as to each defendant, at the date of the summons which is served on him, or on a codefendant who is a joint contractor, or otherwise united in interest with him. Where service by publication is proper, the action shall be deemed commenced at the date of the first publication. An attempt to commence an action shall be deemed equivalent to the commencement thereof within the meaning of this article when the party faithfully, properly and diligently endeavors to procure a service; but such attempt must be followed by the first publication or service of the summons within sixty days."

In *Ragan v. Merchants Transfer Co.* (1949)[73] the Supreme Court was called on to decide whether this statute or the federal rules should be followed in a diversity case by a federal court sitting in Kansas in determining whether the action had been commenced within the time limited. The case involved a highway accident which occurred October 1, 1943. Plaintiff filed his complaint in the federal court September 4, 1945. Summons was promptly issued, but was not served until December 28, 1945. Defendant pleaded an applicable two-year statute of limitations, and moved for a summary judgment. Plaintiff argued that the filing of the complaint stopped the running of the time limitation,

[71] See survey of state statutes infra p. 964 ff.

[72] Kan. Gen. Stats. (1935) §60-308.

[73] 337 U.S. 530, 69 S.Ct. 1233 (1949), noted in 48 MICH. L. REV. 531 (1950).

citing the federal rules. Defendant argued that the running of the time limitation was not stopped until the summons was served, citing the Kansas statute. The trial court held for the plaintiff, but was reversed by the court of appeals. The Supreme Court agreed with the court of appeals, Douglas, J., saying:

> "*Erie R. Co. v. Tompkins,* 304 U.S. 64, . . . was premised on the theory that in diversity cases the rights enjoyed under local law should not vary because enforcement of those rights was sought in the federal court rather than in the state court. If recovery could not be had in the state court, it should be denied in the federal court. Otherwise, those authorized to invoke the diversity jurisdiction would gain advantages over those confined to state courts."

It does not appear, however, that plaintiff's choice of tribunal was to any extent influenced by the differences which existed between the state and federal provisions for commencement of the action. The fact (failure to get service within sixty days) which might have influenced his choice had not occurred. The only situation in which a party can obtain an advantage by choice of forum is where he can predict a favorable outcome because of some act or omission which has already occurred. If he is merely looking forward to some situation which may arise in the course of a judicial proceeding, the basis of his choice is too speculative to be taken into account. A party may prefer a federal forum because he may, in the course of the proceedings, need the benefits of free joinder, liberal discovery, or other up-to-date federal procedure. But the only way to obviate this basis of choice is to require complete conformity with the practice of the state. And no one advocates this.

Bomar v. Keyes (2d Cir. 1947)[74] involved a federally-created right. L. Hand, J., stated:

> "We now hold that it is the filing of the complaint which tolls the statute. We think that Rules 3 and 4(a) of the Rules of Civil Procedure . . . have made no longer applicable §17 of the New York Civil Practice Act, which fixes the beginning of the action at the date when the writ is served, or is put into the sheriff's hands for service. The Rules have with some modification adopted the practice which was apparently general in equity: i.e., that the filing of the complaint, when followed by lodging the writ in the marshal's hands, will toll the statute."

[74] 162 F. (2d) 136 at 140 (1947).

This case was referred to in *Ragan v. Merchants Transfer Co.* as "a suit to enforce rights under a federal statute." It was thus distinguished, but not disapproved. As the matter now stands it again seems necessary to distinguish between state-created rights and federally-created rights: (1) If the action is to enforce a state-created right we look to the state statute of limitations to determine when the action shall be deemed commenced. (2) If the action is to enforce a federally-created right we look to the federal rules to determine when the action shall be deemed commenced.

5. *Relation Back of Amendments*

Rule 15(c) of the Federal Rules of Civil Procedure provides: "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." That this rule affects the application of federal time limitations in actions to enforce federally-created rights clearly appears from the opinion of Black, J., in *Tiller v. Atlantic Coast Line R. Co.* (Supreme Court, 1945).[75] The amendment in this case was from a claim under the Federal Employers Liability Act to a claim under the Boiler Inspection Act. After quoting Rule 15(c) Justice Black stated: "There is no reason to apply a statute of limitations when, as here, the respondent has had notice from the beginning that petitioner was trying to enforce a claim against it because of the events leading up to the death of the deceased in the respondent's yard." Does the rule also affect the application of state time limitations in actions in federal courts to enforce state-created rights? This question was squarely answered in *Barthel v. Stamm* (5th Cir. 1944).[76] The original complaint alleged that *D* had borrowed three certain sums of money from *P*'s testator as evidenced by checks attached to the complaint. The contracts as thus pleaded appeared to be oral, and *D* pleaded the state statute of limitations applicable to oral contracts. *P* then amended his complaint so as to make it appear that the contracts were in writing. This was done after the time for suing on the contracts as written contracts had expired. Sibley, J., stated:

> "It is further argued that limitation is a matter of substantive law and not alterable by the Rules of Civil Procedure, and that under the Georgia decisions the introduction by amendment of the

[75] 323 U.S. 574, 65 S.Ct. 421 (1945).
[76] 145 F. (2d) 487 at 491 (1944).

written contracts would be a new cause of action which would not relate back to the date of the original suit. We agree that limitation is a matter of substance rather than of procedure; but assuming the Georgia decisions on the effect of an amendment are as asserted, nevertheless the Rules validly fix the potential scope of a petition in a federal court which identifies a claim, and the relation of an amendment which amplifies and further explains the transaction out of which the claim arises, for these things are procedural. Limitation is suspended by the filing of a suit because the suit warns the defendant to collect and preserve his evidence in reference to it. When a suit is filed in a federal court under the Rules, the defendant knows that the whole transaction described in it will be fully sifted, by amendment if need be, and that the form of the action or the relief prayed or the law relied on will not be confined to their first statement. So long as the amendment is of the sort described in the above quoted Rule it is within the scope of the original suit and part of it."

A similar answer had been given by Underwood, D.J., in *White v. Holland Furnace Co.* (D.C., S.D. Ohio, E.D., 1939).[77] Judge Underwood clearly recognized the necessity of applying statutes of limitations to new causes of action set up by amendment. "But," he observed, "the rule has been broadened by liberalizing the meaning of the term 'cause of action' by the courts and the new federal procedure." In *L. E. Whitham Construction Co. v. Remer* (10th Cir. 1939)[78] a different result was reached. The original complaint contained a "cause of action" for alleged wrongful death. After trial, appeal, and reversal, the plaintiff amended by adding a claim for medical expenses incurred during the decedent's last illness, and one for pain suffered by decedent before his death. Relying on Rule 15(c), counsel for plaintiff argued that the amendments related back to the date of the filing of the original complaint. Phillips, J., stated: "We are of the opinion that the rule is not applicable where the amendment introduces a different and additional claim or cause of action." The court relied on state statutes and decisions to show that the statutory cause of action for wrongful death was separate and distinct from the cause of action which accrued to the injured person in his lifetime. It should be noted, however, that both causes of action arose out of the "conduct, transaction, or occurrence" described in the original complaint. By the filing of the original complaint the defendant was warned to "collect and preserve his evidence." The claims set forth in the amendments were "potentially" within the

[77] 31 F. Supp. 32 at 34 (1939).
[78] 105 F. (2d) 371 (1939).

scope of the original complaint. In *Burdick-Baron Co. v. Swift & Co.* (5th Cir. 1950)[79] the amendment was from breach of warranty to fraud in making the representations. The action was to enforce state-created rights. After quoting a state statute which provided that "no subsequent amendment or supplement changing any of the facts or grounds of liability or defense shall be subject to a plea of limitations," Rice, D.J., speaking for the court of appeals, stated: "We think" this statute "is applicable here." If, in this case, the court had applied Rule 15(c) instead of the state statute, the result most probably would have been the same due to the fact that the relation-back provisions of both are broad and liberal. Nevertheless, the court's failure to refer to Rule 15(c) is perplexing, and somewhat disturbing. Is the shadow of *Erie Railroad v. Tompkins* beginning to fall on Rule 15(c)?[80]

In states not having statutes or decisions as broad and liberal as Rule 15(c) cases may arise in which the relation back of an amendment will depend on whether the state or federal rule is applied. In such a case, when brought to enforce a state-created right, must the federal court apply the state rule so there will be uniformity of result? The answer given in *Barthel v. Stamm* (supra)[81] is "no," but that case was decided before the doctrine of *Erie Railroad v. Tompkins* had been extended to its present scope. At the time of that decision it was still permissible to distinguish substantive law from rules of procedure. Despite the extension of the doctrine of *Erie Railroad v. Tompkins* it does not seem reasonable to believe that the Supreme Court will go so far as to declare that the scope of a federal pleading in a diversity case must be determined by state law so that it will have the same scope as that of a similar pleading in a state court. Furthermore, it does not seem likely that a plaintiff having a choice between a state court and a federal court will choose the federal court because the federal rule for the relation back of amendments is more liberal than that of the state. At the time such a choice must be made no event will have occurred on which a difference in result may be predicted.

6. *Change of Venue*

Title 28, U.S.C., section 1404 provides: "For the convenience of

[79] 13 Fed. Rules Ser. 308, §15c.1, case 2; 180 F. (2d) 424.

[80] The influence of Erie Railroad v. Tompkins is clearly apparent in Nola Electric Co. v. Reilly, (D.C. N.Y. 1949) 93 F. Supp. 164. Ryan, J., first held (in 1948) that an amendment (from tort to contract) related back under Rule 15(c). Upon rehearing (after the decision of Ragan v. Merchants Transfer Co., supra note 73) Judge Ryan held that the question of relation back should be decided in accordance with state statutes and decisions.

[81] At note 76.

parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Section 1406 provides: "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." These provisions are new (1948), and, providing as they do for transfer of a case from one state to another, raise some new questions with respect to the application of state statutes of limitations. (1) If an action is brought in a state where it is barred by the state statute of limitations may it be transferred at the request of the plaintiff to a state in which it would not have been barred? (2) If an action is brought in a state where it is not barred by the state statute of limitations may it be transferred at the request of the defendant to a state in which it would have been barred? (3) If either of the above-supposed cases is transferred, which statute of limitations shall be applied? Answer to the third question is suggested by the answer to question two. The first question was considered in *Bolten v. General Motors Corporation* (D.C., N.D. Illinois, E.D., 1949).[82] In this case the plaintiff, instead of commencing his action in the state in which his cause of action arose, which state had a five-year statute of limitations, commenced it in a state having a two-year statute. After the defendant had moved for a summary judgment, the plaintiff moved to dismiss without prejudice, or, in the alternative, to have the case transferred to the state in which the cause of action arose. The plaintiff's motion was denied. After pointing out that a federal court should apply the general statute of limitations of the forum in cases involving common-law rights, Campbell, J., remarked: "The selection of the forum was plaintiff's, and he should not now be permitted to transfer the action indiscriminately." The second of the above questions was considered in *Greve v. Gibraltar Enterprises* (D.C., New Mexico, 1949).[83] This action was commenced in a state having a four-year statute of limitations after it was too late to bring it in the state in which the cause of action arose. The latter state had a two-year statute. The defendant moved to have the case transferred to the state in which the cause of action arose for convenience of parties and witnesses. The plaintiff resisted this motion on two grounds: (1) The action "might" not "have been brought" in the state in which the cause of action arose, because it would have been barred by the statute of limitations of that state. (2) It would not be "in the interest of jus-

[82] 81 F. Supp. 851 (1949).
[83] 85 F. Supp. 410 (1949).

tice" to transfer the case to the state in which the cause of action arose, because it would be barred by the statute of limitations of that state. After exacting from the defendant a promise not to plead the statute of limitations of the state in which the cause of action arose, the court ordered the case transferred to that state for trial. Hatch, J., was clearly of the opinion that the plaintiff's first objection to the transfer was without merit, but was doubtful concerning the second. He suggests that "it could be held under Section 1404(a) that a transfer to another district is for the purpose of trial alone"; also that "the rule should be that the legal rights of the parties are determined by the law of the state or district in which the cause originates." While inclined to these views, Judge Hatch was unwilling to base a decision on them. Instead, he relied on the defendant's assurance that it would not rely on the statute of limitations of the state in which the cause arose, considering that the defendant would be bound by this assurance as an estoppel. *Headrick v. Atchison, etc. Ry. Co.* (10th Cir. 1950)[84] was commenced in a state court of a state other than the one in which the cause of action arose. The state selected was the only one in which the defendant could be sued, and the action would not be barred by time limitations. After having the case removed to a federal court, the defendant moved to dismiss it on the ground of forum non conveniens, or, in the alternative, to have it transferred to the state in which it arose. The trial court dismissed the case, indicating that it would have transferred it to the state in which it arose had the statute of limitations of that state not run. The court of appeals reversed. The fact that it was too late to sue in the state in which the cause of action arose was considered no reason for refusing to make the transfer. In the first place, it had not been established that the defendant could or would rely on the statute of that state. In the second place, the trial court was "in error" in assuming that upon a transfer to the state in which the cause arose, the statute of limitations of that state would be applicable. When a case removed to a federal court is transferred to another state, there is, according to the court of appeals, no logical reason why it should not remain a case of the first state "still controlled by the law and policy of that state."

In *Magnetic Engineering Co. v. Dings Mfg. Co.* (2d Cir. 1950)[85] L. Hand, J., stated: "When an action is transferred, it remains what it was; all further proceedings in it are merely referred to another tribunal, leaving untouched whatever has already been done." This statement clearly indicates the position which should be taken with respect to the

[84] 182 F. (2d) 305 (1950).
[85] 178 F. (2d) 866 at 868 (1950).

application of state statutes of limitations to transfer cases. Time limitations apply to commencement, not to trial. There is no reason why an action cannot be commenced in one state, and tried in another. If an action has been commenced within the time limited by the statutes of the state of commencement, the action has been commenced in time. Whatever has already been done should be left untouched. This should apply to all transfer cases whether removed from state courts or commenced originally in federal courts. If the statute of limitations of the state in which a transfer case is commenced has a "borrowing" provision,[86] that provision should be applied by the court to which the case is transferred. This will mean that the time limitation applied will not be longer than that of the state in which the cause of action arose.

If, contrary to the views expressed above, a federal court to which a case has been transferred should apply the statute of limitations of the state of the forum, it may turn out that the action will be barred when it would not have been barred if tried in a state court of the state in which it was commenced. This, it seems, would be contrary to the policy of *Erie Railroad v. Tompkins.*

C. *Under Federal Constitution*

In *Erie Railroad v. Tompkins* (Supreme Court, 1938)[87] Brandeis, J., stated: "Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts." The "unconstitutionality" of the course pursued in the past was said to be "clear."[88] But, in disapproving the course pursued, "we do not hold unconstitutional §34 of the Federal Judiciary Act of 1789 or any other Act of Congress." In *Guaranty Trust Co. v. York* (Supreme Court, 1945)[89] Frankfurter, J., stated: "Although §34 of the Judiciary Act of 1789 . . . directed that the 'laws of the several States . . . shall be regarded as rules of decision in trials at common law . . . ,' this was deemed, consistently for over a hundred years, to be merely declaratory of what would in any event have governed the federal courts and therefore was equally applicable to equity suits." This statement, coupled with the views expressed by Justice Brandeis, suggests that the Rules of Decision Act has never been really effective, but has been merely

[86] See discussion infra p. 982.

[87] Supra at note 55.

[88] The "course" referred to was that indicated by Swift v. Tyson, 16 Pet. (41 U.S.) 1 (1842).

[89] Supra at note 58.

declaratory of a practice impliedly required by the Federal Constitution. It should be noted that the *Erie* and *York* cases involved "state-created" rights. To the extent the Rules of Decision Act makes state laws creating "rights" rules of decision in federal cases involving those rights, the view that the Rules of Decision Act is merely declaratory of what "would in any event have governed the federal courts," seems correct. It is absurdly obvious that the federal government, whether acting through Congress or its courts, cannot create a "state-created" right. In an action to enforce a state-created right a federal court must look to the law creating the right to determine the nature and extent of the right. Were the Rules of Decision Act repealed tomorrow, the federal courts would, of necessity, continue to look to state law to determine the nature and extent of state-created rights. If Congress or a federal court should undertake to add to or subtract from a state-created right, the act would be in violation of the Federal Constitution. Does this mean that Congress has no power to enact a general statute of limitations applicable to actions brought in federal courts to enforce state-created rights? The answer seems to be yes.[90]

What is said above with respect to state-created "rights" does not apply to "remedies." In the *York* case, supra,[91] Justice Frankfurter stated:

> "State law cannot define the remedies which a federal court must give simply because a federal court is available as an alternative tribunal to the State's courts. Contrariwise, a federal court may afford an equitable remedy for a substantive right recognized by a State even though a State court cannot give it."

It thus appears that Congress or the federal courts may afford "remedies" to be applied by federal courts in actions brought to enforce state-created rights. That Congress has power to prescribe "procedure" for actions brought in federal courts to enforce state-created rights, seems entirely clear. If Congress should enact a general statute of limitations applicable to actions brought in federal courts to enforce state-created rights, the statute would "bear" on the state-created rights "vitally and not merely formally or negligibly."[92] As pointed out earlier in this discussion,[93] a general statute of limitations, "although belonging to the

[90] Time limitations worked out as limitations on jurisdiction would be constitutional, but would not be equivalent to a general statute of limitations.

[91] Supra at note 58.

[92] In the York case, supra at note 58, Frankfurter, J., stated at 110: "A statute that would completely bar recovery in a suit if brought in a State court bears on a State-created right vitally and not merely formally or negligibly."

[93] Supra at note 24.

lex fori, and applying immediately to the remedy," indirectly affects the "right."[94]

Insofar as the Rules of Decision Act (revised, 1948)[95] requires federal courts to apply state statutes of limitations in actions brought in federal courts to enforce federally-created rights, the act is effective, and not merely declaratory of what the federal courts would be compelled to do in the absence of such a statute.[96] While it is clear the states cannot add to or subtract from federally-created rights, there is no reason why Congress cannot direct the federal courts to apply to such rights state statutes of limitations.

II

SURVEY OF STATE STATUTES*

A. *General Comparisons*

Under the doctrine of *Erie Railroad v. Tompkins,* federal courts sitting in diversity-of-citizenship cases must apply the statute of limitations of the state in which the court is sitting. In the absence of specific time limitations in the federal statutes and in light of the revised Rules of Decision Act, state statutes of limitation are applied in actions enforcing federally-created rights. Therefore, it becomes important to see how much actual variance in limitation periods exists from state to state. For as the state statutes differ, so will the result differ among federal district courts sitting in similar cases. Although not a matter of primary emphasis in this article, these differences also present a real problem in non-federal cases where the defendant, usually a corporation, can be

[94] State courts uniformly take the position that general statutes of limitations pertain to the remedy, and, therefore, in determining whether an action is barred, apply the statute of the forum. GOODRICH, CONFLICT OF LAWS, 3d ed., 240 (1949). In Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 61 S.Ct. 1020 (1941), the Supreme Court held that federal courts in diversity cases "must follow conflict of laws rules prevailing in the states in which they sit."

[95] 28 U.S.C. §1652. As revised in 1948 the section reads: "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

[96] Courts can and have operated without statutes of limitations. See early territorial experience briefly noted in BLUME, TRANSACTIONS OF THE SUPREME COURT OF THE TERRITORY OF MICHIGAN, 1805-1814, Vol. 1, p. 96.

* No citations other than to the names of states will be given in the following notes. The reader's attention is directed to the Table of Statutes, page 1007, for citations to the general statutes of limitation of the several states. Because of the basic dissimilarity between the civil law and the common law, only such provisions of the Louisiana statute of prescriptions have been included as seem clearly compatible with provisions found in other jurisdictions.

sued in any of several states where time limitations may and usually do differ.

A comparative study of the time limitations of the several jurisdictions reveals that though the individual peculiarities are many, there is basic agreement in purpose and method. For example, when examining actions involving the basic areas of the law such as contracts, real property, personal property and negligence, one finds a rather small variance between minimum and maximum time limitations. Yet over and above these common provisions are a multitude of particular limitations on highly specialized types of actions which greatly complicate the task of grouping and comparing limitations on like causes of actions. In all probability most of these uncommon provisions were added as the result of a single case which the legislature found unsatisfactory, or as the result of a special problem arising at a particular time.[97] In many instances provisions have been retained, apparently through legislative inertia, long past their time of usefulness.[98]

General statutes of limitations tend to fall into three rather indefinite categories of emphasis: (1) those in states retaining the old forms of action;[99] (2) those in states following the New York Code of Civil Procedure of 1848;[100] and (3) those in a large group of states which do not accept either system completely, some speaking in whole or part of actions in the nature of the old forms of actions,[101] and others approximating the New York statute.[102]

One also notes that groups of states tend to have similar or identical provisions in all or part of their general statutes of limitation. Wyoming essentially adopted the Ohio statute. West Virginia retained much of the earlier Virginia statute, and has tended to enact similar provisions subsequent to 1863. Geographical groups of states often have particular identical provisions. For example, Kentucky and Missouri have a unique requirement that fraud or mistake be discovered within ten years. Illinois, Michigan and Ohio provide for limitation on recovery

[97] E.g., action for damages arising from use or occupancy of lands for right of way by railroads in North Carolina; action for damages caused by steamboat or other vessels in Kentucky; actions for damages caused by commercial or non-commercial dams in Minnesota.

[98] E.g., limitations on writs of inquisition to determine damages to old mill seats by the building of races, dams or ponds in Delaware, and on actions based on statutes merchant or statutes of the staple in Maryland. The Maryland provision stems from the first statute of limitations in 1715, XXX ARCHIVES OF MARYLAND 229, 231.

[99] E.g., Me., Md., Pa., R.I., Vt.

[100] E.g., Cal., Idaho, Mont., Nev., N.C., N.D., S.D., Utah.

[101] E.g., Colo., T.H., N.J., Mass.

[102] E.g., Minn., Mo., N.M., Tex., Wis. In addition, one must include as a separate category Louisiana, which retains a civil law system adapted from the Code Napoleon in 1803.

of charges and overcharges by and against intrastate carriers designed to supplement similar limitations on actions involving interstate carriers.[103]

In the process of the survey of state statutes of limitation carried on in connection with this article, it was found that provisions of the statutes fall into three general categories: (1) time limitations on specified causes of action; (2) conditions resulting in suspension or extension of the periods limited; and (3) general rules for applying time limitations. The scope of the various provisions will be taken up in that order.[104]

B. *Time Limitations*

1. *Damages and Sums Due for Breach of Contract*

Limitation of recovery for breach of contract is common to all jurisdictions, although the type of contracts limited may vary. Some states limit formal contracts as opposed to informal contracts. Limitations on formal contracts include those on some or all types of bonds,[105] recognizances,[106] and negotiable or commercial instruments.[107] A number of states retaining the seal specially limit actions on sealed instruments.[108] Many states limit actions on special kinds of informal contracts, including actions on stated accounts, open accounts, or accounts in general, both mercantile and non-mercantile,[109] and certain miscel-

[103] Found in 49 U.S.C. (1946) §16(3).

[104] No attempt has been made to collate special limitations on statutory causes of action appearing elsewhere than in the section of the statutes dealing with time limitations in general.

[105] Ala., Ariz., Ark., Cal., Conn., Del., D.C., Ga., Idaho, Ill., Ind., Kan., Ky., Me., Md., Mass., Mich., Minn., Mont., Neb., N.J., N.M., N.Y., N.C., Ohio., Okla., Pa., S.C., S.D., Tenn., Tex., Utah, W.Va., Wis., Wyo. Number: thirty-five. Average: seven and one-half years. Extremes: one year, Cal., Conn., Me., Mass., Pa., Utah; twenty years, Ga., N.J., Pa.

[106] Conn., Del., Ky., Me., Md., Mich., N.H., Va., W.Va. Number: nine. Average: seven years. Extremes: one year, Conn.; twenty years, N.H.

[107] Ark., Conn., Del., Ga., Ill., Ind., Ky., La., Mass., Minn., N.M., Pa., S.C., Vt. Number: fourteen. Average: seven years. Extremes: six months, Conn.; twenty years, Mass.

[108] Ala., Alaska, Ark., Colo., Conn., D.C., Fla., Ga., Md., Mass., Mo., Neb., N.H., N.J., N.Y., N.C., Ohio, Ore., R.I., S.C., S.D., Vt., Va., W.Va., Wis., Wyo. Number: twenty-six. Average: thirteen years. Extremes: five years, Ark., Neb.; twenty years, Fla., Ga., Mass., N.H., R.I., S.C., S.D., Wis. Arkansas (Const. 1874, Schedule 1) and Oregon (Ore. C.L. §2-804) retain the seal solely for the purposes of the statute of limitations. Missouri (Mo. R.S. §3344), Nebraska (Neb. R.S. §76-212), New York (N.Y.C.P.A. §342), Ohio (Throckmorton's Ohio Code §32), and Wyoming (Wyo. Comp. Stat. §§66-214, 66-215) have abolished the use of private seals, but have retained a special limitation on actions on some or all sealed contracts.

[109] Ala., Ariz., Cal., Conn., Del., Fla., Ga., Ind., Ky., La., Md., Miss., Mont., Nev., N.J., N.M., Pa., R.I., Tex., Utah, Va., W.Va. Number: twenty-two. Average: four years. Extremes: one year, Md.; six years, Ala., Conn., Cal., Ga., Ind., Nev., N.J., Pa., R.I., Tex., Utah. California, Montana, Nevada and Utah set no limitation on recovery of bank deposits.

laneous actions for money due.[110] Contract actions limited include those based on written contracts,[111] unwritten contracts, express or implied,[112] or contracts in general without regard to sealing or writing.[113] In addition, a handful of states place a special limitation on actions for breach of promise of marriage.[114]

2. *Enforcement of Non-contractual Money-Obligations*

The bulk of actions falling under this head are actions to recover statutory liabilities and actions to enforce judgments. Many states limit actions for recovery of all statutory liabilities other than penalties or forfeitures.[115] Maximum periods are provided for suits to recover fines, penalties or forfeitures in general,[116] by persons aggrieved,[117] by persons prosecuting,[118] or concurrently with and alternatively to such persons, by the prosecutor of the state or of the country where the offense was committed.[119] A special group of actions to recover penalties and for-

110 E.g., for a debt or lending in Ala., Ariz., Del., N.J., N.Y., and Pa.; for money paid by a bank on forged indorsement in Cal., Mont., and Ohio; for wages and fees in Conn., Iowa, La., Md., Mont., and Wis.

The fourteen states having such provisions are Ala., Ariz., Cal., Conn., Del., Iowa, La., Md., Mont., N.J., N.Y., Ohio, Pa., Wis. Average: four years. Extremes: six months, Mont. (recovery of police salaries); seventeen years, Conn. (non-negotiable note).

111 Ala., Ark., Cal., Conn., Fla., Ga., Idaho, Ill., Ind., Iowa, Kan., Ky., Mo. (for payment of money or property only), Mont., Neb., Nev., N.M., Ohio, Okla., S.C., Tex., Utah, Va., Wash., W.Va., Wyo. Number: twenty-six. Average: eight years. Extremes: two years, Cal.; twenty years, Ind., S.C. When Indiana abolished the seal the limitation period on all contract actions was raised to the period formerly allowed for actions on sealed contracts.

112 Ark., Cal., Conn., Del., Fla., Idaho, Ill., Ind., Iowa, Kan., Ky., Miss., Mont., Neb., Nev., N.M., Ohio, Okla., Tex., Utah, Wash., Wyo. Number: twenty-two. Average: four years. Extremes: two years, Cal., Tex.; eight years, Wyo.

113 The most common contract limitation. Ala., Alaska, Ark., Colo., Conn., Del., D.C., Ga., T.H., Ind., La., (semble), Me., Md., Mass., Minn., Mo., Neb., N.J., N.Y., N.C., N.D., Ore., Pa., R.I., S.C., S.D., Tenn., Vt., Va., W.Va., Wis., Wyo. (foreign contracts only). Number: thirty-seven. Average: five and one-half years. Extremes: two years, Minn.; twenty years, Mass. Hawaii differentiates between local and foreign contracts.

114 Ariz., Ky., Tenn., Tex., Wash. The Washington limitation is three years, the others one year. In addition, Maine, New Hampshire and Wyoming include in their general statutes of limitations their so-called Anti-Heart Balm Statute, abolishing actions for breach of promise of marriage, seduction and criminal conversation.

115 Alaska, Ariz., Cal., Del., Fla., Ga., Idaho, Kan., Minn., Mo., Mont., Neb., Nev., N.Y., N.C., N.D., Ohio, Okla., Ore., S.C., S.D., Utah, Wis., Wyo. Number: twenty-four. Average: four and one-half years. Extremes: one year, Ariz., Utah; twenty years, Ga.

116 Conn., D.C., Ill., Iowa, Kan., Ky., Md., Miss., Neb., Ohio., Okla., Tenn., Utah (foreign statute), Wis., Wyo. Number: fifteen. Average: two years.

117 Ala., Alaska, Cal., Del., Fla., Ky., Minn., Mo., Nev., N.J., N.Y., N.C., N.D., Ore., Pa., S.C., S.D., Tenn., Wash. Number: nineteen. Average: two and one-half years.

118 Ala., Alaska, Ark., Cal., Colo., Del., Ga., Idaho, Me., Mass., Minn., Mo., Mont., Nev., N.J., N.Y., N.C., N.D., Ore., Pa., S.C., S.D., Utah, Wash., Wis. Number: twenty-five. Average: one year.

119 Alaska, Ark., Cal., Colo., Del., Fla., Idaho, Me., Mass., Mich., Minn., Mo., Mont.,

feitures attaches to federal and state wage-hour laws. Some states limit recoveries under either state or federal laws,[120] or under the Fair Labor Standards Act by name.[121] A few jurisdictions, attempting to remedy the undesirable situation resulting from congressional failure to limit actions on federally-created rights, limit recoveries under any federal statute for which no other limitation period is provided.[122] By the enactment by Congress in 1947 of a statute of limitations on certain federal wage-hour statutes,[123] applicability of such state limitations has been superseded, though such statutes may still apply by their terms to state wage-hour law recoveries, or recoveries under other federal statutes than those singled out by Congress.

Only in some jurisdictions are all judgments treated in the same manner.[124] In others a shorter period for enforcement is allotted to a foreign judgment than to a domestic judgment.[125] The right of enforcement of a foreign judgment against one moving into the forum and residing there a certain number of years may be cut off.[126] Several states distinguish between judgments of courts of record and those of courts not of record.[127] Some jurisdictions do not limit in terms of actions to enforce judgments, but deem judgments satisfied after a given number of years have passed.[128] In addition, a time may be set beyond which no writ of execution shall be issued or no judgment revived.[129]

3. *Recovery of Real Property*

One of the most difficult groups of actions to compare is that respecting recovery of real property. Part of the difficulty stems from the

Nev., N.J., N.Y., N.C., N.D., Ore., Pa., S.C., S.D., Utah, Wash., Wis. Number: twenty-five. Average: two years.

120 Del., Fla., Ga., Iowa, Minn., N.M., Ohio, Ore., S.D., Tenn. Periods range from one to three years.

121 Ala., Colo., Md., Mo., N.C.

122 Colo., T.H., Neb., Wyo.

123 29 U.S.C. (Supp. III, 1950) §255.

124 Ark., Cal., Idaho, Ky., Md., Mich., Minn., Mont., Nev., N.H., N.M., N.C., N.D., Ore., S.C., Tenn., Utah, Vt., Wash. Number: nineteen. Average: ten years.

125 Colo., Fla., Miss., N.D., Wis. Average on domestic judgments is twelve years, on foreign judgments, eight years. Mississippi sets a shorter period on foreign judgments against Mississippi residents than such judgments against nonresidents.

126 Tex., Va., W.Va., Wyo.

127 Colo., Fla., T.H., Ind., Iowa, Me., Mont., N.J., N.M., N.Y., N.C. Number: eleven. Average on judgments of courts of record, twelve years; on courts not of record, six years.

128 T.H., Ind., La., Me., Mass., Miss., Mo., N.Y. Number: eight. Average: fourteen years. Extremes: seven years, Miss.; twenty years, Ind., Me., Mass., N.Y.

129 Conn., Ill., Ky., La., Me., Mass., Miss., N.J., N.C., Tex., Vt. Number: eleven. Average: seven and one-half years. Extremes: one year, Conn., Me., Mass.; twenty years, Ill., N.J.

retention in the general statute of limitations of substantive statutory materials relating to adverse possession. Their presence is explained historically by the fact that the first statutes of limitation were aimed primarily at actions for recovery of land which related directly to the kind of ownership asserted by both claimant and defendant, and which resulted in confirmed title in an adverse possessor.[130] But such provisions occupy a somewhat anomalous position in a modern general statute of limitations which embraces more non-real property actions than actions relating to real property. A second factor complicating the situation is the reflection in some one or more American jurisdictions of each phase of the historical development of general statutes of limitations. The earliest development was the barring of claims older than a certain year.[131] Some American jurisdictions have adapted this by barring claims older than a certain number of years.[132] The second step was to bar claims by persons whose last seisin was more distant than sixty years.[133] A number of American jurisdictions still limit actions for a recovery of real property in terms of last seisin or possession by the claimant or his predecessor in interest.[134] The third, and perhaps most important step, was to bar issuance of certain real property writs and exercise of a right of entry more than twenty years after the right accrued.[135] A number of American states limit the time in which a right of entry can be exercised after accrual of the right,[136] while of these several restrict the time in which an action on an entry can be made following the actual entry.[137] The final development, both in England[138] and the United States,[139] has been to limit actions for recovery of real property of certain

[130] AMES, LECTURES ON LEGAL HISTORY 197-207 (1913).

[131] Statute of Merton, 20 Hen. III, c. 8 (1235); Statute of Westminster, 3 Edw. I, c. 39 (1275). Iowa has adopted this system of barring claims older than a certain named year.

[132] Colo., Del., Fla., Ill., Ind., Minn., Miss., N.J., S.D., Tex., Va., Wis. Number: twelve. Limitations range from three years in South Dakota to seventy-five years in Illinois. Indiana, Illinois and Wisconsin allow extension of the period if the claim is recorded, Wisconsin allowing as much as sixty additional years. Minnesota bars a claim only if it is not recorded within the specified number of years.

[133] Stat. 32 Hen. VIII, c. 2 (1540).

[134] Ala., Cal., Del., Fla., Idaho, Minn., Mont., Nev., N.Y., N.C., N.D., Pa., S.C., S.D., Tex., Utah, Wis. Number: seventeen.

[135] Stat. 21 Jac. I, c. 16 (1623). Personal actions were also limited in this statute. See 3 BLACKSTONE'S COMMENTARIES *307.

[136] Ark., Cal., Conn., Del., T.H., Idaho, Ill., Mass., Miss., Mont., Nev., N.J., N.Y., N.C., N.D., Pa., S.C., S.D., Vt., W.Va., Wis. Number: twenty-one. Average: thirteen years. Extremes: five years, Cal., Idaho, Nev.; twenty-one years, Pa.

[137] Ark., Cal., Conn., T.H., Idaho, Mass., Mont., Nev., N.Y., N.C., N.D., Pa., S.C., S.D., Wis. All are limited to one year. Michigan has only the limit on bringing an action following entry, and Massachusetts and Michigan also recognize either quiet peaceable possession following or an action on the entry.

[138] Stat. 3 & 4 Wm. IV, cc. 27, 42 (1833).

[139] Ariz., Ark., D.C., T.H., Ill., Ind., Iowa, Kan., Ky., La., Me., Mich., Miss., Neb., N.H., N.J., Ohio, Okla., Tenn., Vt., Va., W.Va., Wyo. Number: twenty-three.

kinds or of all kinds. A few states[140] combine limitations on all actions for recovery of real property with a requirement of seisin or possession within a certain number of years.[141]

Actions for the recovery of real property are also limited in terms of persons claiming and of persons against whom claims are asserted. A state may have only a limited period in which to recover land from adverse possessors,[142] land from others than adverse possessors,[143] or rents and profits from real estate.[144] Grantees from the state may be allowed to recover real property from adverse possessors,[145] or other persons,[146] and may also be allowed to recover rents and profits.[147] Where special limitations are provided for suit by persons not claiming as grantees of the state against adverse possessors, such possession may be under color of title,[148] by bare possession,[149] or of any kind.[150]

From a practical standpoint, mortgage matters can be classified under recovery of property. A number of states limit the time in which a lien on real property can be foreclosed,[151] although a number allow the period to be extended if the claim is filed as a matter of record.[152]

140 Alaska, Colo., Mass., Mo., Ore., Wash.

141 The average of all these actions is thirteen years. Extremes: one year, Wis.; forty years, S.C.

142 Cal., Ga., Mich., Mont., Nev., N.J., N.Y., N.C., N.D., Ohio, Pa., S.C., S.D., Utah, Wis. Number: fifteen. Average: twenty-one years. Extremes: seven years, Utah; forty years: N.Y., N.D., S.D. Rhode Island has a blanket confirmation of all grants by the legislature.

143 Alaska, Cal., Idaho, Mass., Mont., Nev., N.J., N.Y., N.D., Ohio, S.C., S.D., Utah, Va., W.Va., Wis. Number: sixteen. Average: fourteen years. Extremes: five years, Cal.; forty years, Wis.

144 Cal., Idaho, Mont., Nev., N.J., N.Y., N.C., N.D., S.C., S.D., Utah. Number: eleven. Average: twenty-one and one-half years.

145 N.M., ten years; Md., twenty years; N.Y., N.D., forty years.

146 Cal., Colo., Mont., Nev., N.Y., N.D., S.D., Utah. Number: eight. Average: twelve years. Extremes: five years, Cal.; twenty years, N.Y., N.D., S.D.

147 Ala., Ark., Cal., Colo., Del., T.H., Idaho, Ind., Ky., La., Md., Mont., N.J., Pa., R.I., Tenn., Utah, Va., Wash. Number: nineteen. Average: seven years. Extremes: three years, Ark., Del., La., Md.; twenty years, Pa.

148 Ariz., Colo., Fla., Ga., Idaho, Ill., Ky., La., Me., Miss., Mo., Mont., Nev., N.M., N.Y., N.D., R.I., S.D., Tenn., Tex., Wis. Number: twenty-one. Average: eleven years. Extremes: three years, Ariz., Tex.; thirty years, Tenn.

149 Ariz., Colo., Fla., Ga., Idaho, La., Me., Mo., Mont., Nev., N.J., N.M., Wis. Number: thirteen. Average: nineteen years. Extremes: two years, Ariz.; sixty years, N.J.

150 Ala., Ark., Cal., Colo., Conn., Del., Fla., T.H., Idaho, Ill., Me., Mass., Mich., Minn., Miss., Mo., Mont., Nev., N.J., N.Y., N.C., N.D., Ore., Pa., S.C., S.D., Utah, Vt., Va., W.Va., Wis. Number: thirty-one. Average: thirteen years.

151 Cal., Colo., Conn., Fla., Ill., Md., Iowa, Ky., Mich., Minn., Neb., N.C., N.D., S.D., Tenn., Tex., Va., W.Va. Number: eighteen. Average: thirteen years. Extremes: two years, Cal., Conn.; thirty years, Ill.

152 Colo., Ill., Ind., Iowa, Ky., Minn., Mo., Neb., Tenn., Tex., Va., W.Va. Number: twelve. Average: twelve and one-half years. Extremes: four years, Tex.; thirty years, Colo. Tennessee sets no specific period of extension, while Colorado's limitation is in terms of a maximum possible extension. Only California, Mississippi and North Carolina provide for deficiency judgments after foreclosure, the limit being three months in California and one year in the other two states.

Several states limit the time in which a mortgagor can assert his equity of redemption.[153]

4. *Damages for Injury to Person or Property*

This grouping of actions receives the most nearly uniform treatment of any general grouping. A number of jurisdictions limit the time in which any action can be entertained to recover damages for injury to the person or to any non-contractual right.[154] But in most general statutes of limitations certain types of personal injury actions are singled out for special treatment. Actions for injury to the person include assault and battery,[155] false arrest,[156] false imprisonment,[157] malicious prosecution,[158] malpractice,[159] wrongful death,[160] seduction,[161] and criminal conversation.[162] In addition, one finds limitations on actions to redress injury to the character either by libel,[163] slander,[164] or by any

[153] Ala., Cal., Colo., Idaho, Md., Ky., Miss., Mont., N.Y., N.C., Pa., Utah. Number: twelve. Average: eight and one-half years. Extremes: one year, Ind.; fifteen years, Colo., Ky., N.Y.

[154] Ala., Alaska, Ariz., Cal., Conn., Del., Ga., T.H., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Mass., Mich., Minn., Mo., Neb., N.H., N.J., N.M., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., R.I., S.C., S.D., Tenn., Tex., Vt., Wash., Wis., Wyo. Number: thirty-nine. Average: three years. Extremes: one year, Ala., Cal., Conn., Del., Ky., La., Me., Tenn.; six years, T.H., Minn., N.Y., N.D., S.C., Vt., Wis.

[155] Ala., Alaska, Ark., Cal., Colo., D.C., Fla., Idaho, Ill., Kan., Me., Md., Mass., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., S.C., S.D., Utah, Vt., Wash., Wis., Wyo. Number: thirty-four. Average: two years. Extremes: one year, Ark., Cal., Colo., D.C., Kan., Md., Miss., Neb., N.C., Ohio, Okla., Utah, Wyo.; six years, Ala.

[156] D.C., Iowa, Ky., Md., Miss., Pa. Average: one year.

[157] Ala., Alaska, Ariz., Ark., Cal., Colo., D.C., Fla., Idaho, Ill., Kan., Me., Md., Mass., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., S.C., S.D., Tenn., Utah, Vt., Wash., Wis., Wyo. Number: thirty-six. Average: two years. Maryland limits applications for writs of habeas corpus to three years.

[158] Ala., Ariz., D.C., Ill., Kan., Ky., Mich., Neb., N.Y., Ohio, Okla., Pa., Tenn., Tex., Wyo. Number: fifteen. Average: one year.

[159] Ark., Colo., Conn., Ind., Ky., Me., Mass., Mich., Minn., Mo., Neb., N.H., N.Y., N.D., Ohio, S.D., Number: sixteen. Average: two years.

[160] Ala., Ariz., Cal., Conn., Fla., Idaho, Mont., Nev., N.D., Pa., Tex., Utah, Wis. Number: thirteen. Average: two years. No attempt has been made to include special limitations found in the body of wrongful death acts.

[161] Ala., Alaska, Ariz., Cal., Idaho, Ill., Ky., Mont., Nev., Tenn., Tex., Utah, Wash., Wis. Number: fourteen. Average: one and one-half years.

[162] Ark., T.H., Ill., Ky., Minn., Mo., N.C., N.D., Ore., S.C., S.D., Tenn. Number: twelve. Average: three and one-half years. Extremes: one year, Ark., Ky., Tenn.; six years, T.H., Minn., N.D., S.C., S.D. Wisconsin limits actions for alienation of affections to one year.

[163] Ala., Alaska, Ariz., Ark., Cal., Colo., D.C., Fla., T.H., Idaho, Ill., Kan., Ky., La., Me., Md., Mass., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.J., N.C., N.D., Ohio, Okla., Ore., Pa., S.C., S.D., Tenn., Tex., Utah, Vt., Wash., Wis., Wyo. Number: forty. Average: one and one-half years.

[164] Ala., Alaska, Ariz., Ark., Cal., Colo., D.C., Fla., T.H., Idaho, Ill., Kan., Ky., La., Me., Mass., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.J., N.C., N.D., Ohio, Okla., Ore., Pa., R.I., S.C., S.D., Tenn., Tex., Utah, Vt., Wash., Wis., Wyo. Number: forty-one.

means causing injury to the character.[165]

A very common limitation is that on certain actions involving personal property. Such actions include those for recovery of possession,[166] recovery for damage done,[167] or for taking,[168] for detaining,[169] for converting,[170] or for injuring such property.[171]

One may also find limitations on certain actions to recover damages for injury to real property or to interests in land. A number of states limit any action to recover for injuries done to real property.[172] Several limit actions of forcible entry or forcible entry and detainer.[173]

5. *Special Types of Relief*

With the few exceptions noted below, most of the remaining provisions of the general statutes of limitations are fringe provisions peculiar to a few states. These are the limitations which indicate legislative disapproval of a particular court holding, or legislative selection of a

Average: one and one-half years. Extremes: six years on libel actions in Hawaii to six months on slander actions in North Carolina and Tennessee.

[165] Ala., Ariz., Ark., Ga., T.H., Ind., Iowa, N.H., N.M. Number: nine. Average: two years.

[166] Alaska, Cal., Colo., Del., D.C., Fla., Ga., T.H., Idaho, Ill., Ind., Kan., Ky., La., Me., Md., Mass., Minn., Miss., Mo., Mont., Neb., Nev., N.J., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., R.I., S.C., S.D., Utah, Vt., Wash., Wis., Wyo. Number: thirty-nine. Average: four years. Extremes: three months, Cal.; ten years, La. On the basis of traditional classification this action should be included under recovery of property. But the modern replevin action, providing for redelivery bond and damages in default, seems to rest on damage to interests of the owner rather than restoration of possession. The statutes so treat it.

[167] Ga., Md., N.J., Pa., R.I. Average: five years.

[168] Alaska, Ariz., Ark., Cal., Colo., Fla., T.H., Idaho, Kan., Ky., Me., Mass., Minn., Mo., Mont., Neb., Nev., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., S.C., S.D., Tex., Utah, Wash., Wis., Wyo. Number: thirty-one. Average: four years.

[169] Ala., Alaska, Ariz., Colo., Del., D.C., Fla., T.H., Idaho, Ill., Ind., Kan., Ky., Me., Minn., Mo., Mont., Neb., Nev., N.Y., N.C., N.D., Ohio, Okla., Ore., S.C., S.D., Tenn., Tex., Utah, Wash., Wis., Wyo. Number: thirty-three. Average: four years.

[170] Ala., Alaska, Ariz., Cal., Ga., Ill., Ky., Mass., N.M., N.C., Tenn., Tex. Number: twelve. Average: three years.

[171] Ala., Ark., Cal., Colo., Conn., D.C., Fla., Ga., T.H., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Me., Md., Mich., Minn., Mo., Mont., Neb., Nev., N.M., N.Y., N.C., N.D., Ohio, Okla., Ore., S.C., S.D., Tenn., Utah, Vt., Wash., Wis., Wyo. Number: thirty-nine. Average: four years. Extremes in the area of damage to personal property range from three months in California to six years in a substantial number of states.

[172] Ala., Alaska, Ariz., Ark., Cal., Colo., Conn., Del., D.C., Fla., Ga., T.H., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Me., Md., Mich, Minn., Mo., Mont., Neb., Nev., N.J., N.M., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., S.C., S.D., Tenn., Tex., Utah, Wash., Wis., Wyo. Number: forty-four. Average: four years. Extremes: six months, Cal.; ten years, La., Wis.

[173] Ariz., Ark., Conn., Del., Kan., Neb., Okla., Tex. Number: eight. Average: two years. Extremes: six months, Conn.; three years, Ark. These actions, while possessory in form, seem to give redress for a tortious injury to interests in the property.

small group of claims for special treatment. But certain types of special claims are similarly treated in many states. These include claims brought against decedents' estates,[174] or against corporation officers and stockholders.[175] Limitation of actions against certain kinds of public officials is common. Such actions include actions for damages caused by the misconduct in office of a sheriff,[176] coroner,[177] constable,[178] or other public officer;[179] for failure to pay over money collected on execution by a sheriff,[180] coroner,[181] constable,[182] or other officer;[183] and for the escape of a prisoner arrested on civil process caused by the negligence of any officer.[184] One also finds a common limitation on actions for relief based on grounds of fraud[185] or mistake.[186]

6. *Residual Limitations*

A large number of states include residual limitations to cover those actions not specifically provided for, either in terms of personal actions

[174] Ala., Ky., Me., Mass., Miss., Nev., N.C., Ore., Tenn., Vt., Va., Wash., Wis. Number: thirteen. Average: six years.

[175] Cal., Idaho, Mont., Nev., N.Y., N.C., N.D., Pa., S.C., S.D., Utah, Wis. Number: twelve. Average: four years.

[176] Ala., Alaska, Ark., Cal., Colo., Conn., T.H., Idaho, Ind., Iowa, Me., Mass., Mich., Minn., Mo., Mont., Nev., N.Y., N.D., Ore., S.C., S.D., Utah, Vt., Wash., Wis. Number: twenty-six. Average: three years.

[177] Ala., Alaska, Ark., Cal., Colo., Idaho, Minn., Mo., Mont., Nev., N.Y., N.D., Ore., S.C., S.D., Wash., Wis. Number: seventeen. Average: three years

[178] Ala., Alaska, Cal., Conn., Idaho, Minn., Mont., Nev., N.Y., N.D., Ore., S.C., S.D., Utah, Wash., Wis. Number: sixteen. Average: three years.

[179] Ala., Cal., T.H., Ind., Iowa, La., Mo., N.M., N.C., Utah, Wis. Number: eleven. Average: three years.

[180] Alaska, Ariz., Cal., Idaho, Iowa, Minn., Mo., Mont., Nev., N.J., N.Y., N.D., Ore., S.C., S.D., Tex., Utah, Wash., Wis. Number: nineteen. Average: three years.

[181] Alaska, Cal., Idaho, Minn., Mo., Mont., Nev., N.Y., N.D., Ore., S.C., S.D., Wash., Wis. Number: fourteen. Average: three years.

[182] Alaska, Cal., Idaho, Minn., Mont., Nev., N.Y., N.D., Ore., S.C., S.D., Utah, Wash., Wis. Number: fourteen. Average: three years.

[183] Ala., Ariz., Ind., Iowa, Mo., N.J., N.Y., Tex., Utah, Va., Wash., Wis. Number: twelve. Average: three years. Extremes: two months, N.J.; ten years, Va. Five western states, Cal., Idaho, Mont., Nev., and Utah, limit actions against officers or de facto officers for improper seizures or detention of money or property to one year.

[184] Alaska, Ark., Cal., Colo., T.H., Idaho, Me. (sheriff only), Mont., Nev., N.C., N.D., Ore., S.C., S.D., Utah, Wash., Wis. Number: seventeen. Average: one year. Extremes: six months, Colo.; two years, T.H., Idaho, Nev., Wash.

[185] Ala., Ariz., Cal., Colo., Fla., Idaho, Ind., Iowa, Kan., Ky., Me., Minn., Mo., Mont., Neb., Nev., N.M., N.Y., N.C., N.D., Ohio, Okla., S.C., S.D., Utah, Wash., Wis., Wyo. Number: twenty-eight. Average: four years. Extremes: one year, Ala.; six years, Ind., Me., Minn., N.Y., N.D., S.C., S.D., Wis.

[186] Ariz., Cal., Idaho, Ky., Mo., Mont., Nev., N.C., Utah. Number: nine. Average: three years.

not otherwise provided for,[187] forms of action not otherwise limited,[188] or any action for which no other limitation is provided.[189]

C. *Suspension or Extension of Time Limitations*

Provisions which either suspend the running of the ordinary time limitation during the existence of some condition or extend the period in which action may be brought for an additional period after a certain condition ceases to exist are found in the statutes of limitations of all states. Suspension or extension usually occurs upon disability of the plaintiff, absence of defendant, death of either party or both parties, war, or prevention or failure of plaintiff's initial attempt to assert his claim.

1. *Disability of Plaintiff*

Suspension or extension of the normal period because of disability of plaintiff are usually treated differently in real property actions than in personal actions, although some jurisdictions treat all actions alike. Within each of these groups, the common disabilities are infancy, insanity, or imprisonment of the plaintiff, although one often finds other types of disability which affect the normal running of the statute.

Real property actions are commonly extended in the case of infancy,[190] insanity,[191] or imprisonment of the plaintiff.[192]

187 Ariz., Colo., Del., T.H., La., Me., Md., N.H., Pa., Tex., Va., W.Va., Wis. Number: thirteen. Average: five years. Extremes: one year, Va., W.Va.; twenty years, Me. Virginia and West Virginia differentiate between actions which survive and actions which do not.

188 Maine limits all actions of trespass except for assault and battery and false imprisonment, while Rhode Island limits all but those for injury to the person. Colorado, Maine, New Jersey and Rhode Island limit all actions on the case except slander; Colorado, Maine and New Jersey, except libel; New Jersey and Rhode Island, except injuries to the person; and Pennsylvania, except on accounts between merchants.

189 Alaska, Ark., Cal., Colo., D.C., Fla., Idaho, Ill., Ind., Iowa, Kan., Ky., Mich., Miss., Mo., Mont., Neb., Nev., N.M., N.Y., N.C., N.D., Ohio, Okla., Ore., S.C., S.D., Tenn., Utah, Wash., Wyo Number: thirty-one. Average: seven years. Extremes: two years, Wash.; fifteen years, Ind.

190 Ark., Cal., Conn., Del., D.C., Fla., T.H., Idaho, Ill., Ky., Me., Mass., Mich. Miss., Mo., Mont., Neb., Nev., N.H., N.J., N.M., N.Y., N.C., N.D., Ohio, Pa., R.I., S.C., S.D., Utah, Va., W.Va., Wis. Number: thirty-three. Average: seven years. Four states, Ariz., Ga., La., and Tex., grant a period equivalent to the period originally limited. Eleven of these states, Cal., Fla., Ky., La., Miss., Mo., Neb., Pa., Tex., Va., W.Va., will not allow an extension averaging more than twenty-five years beyond the time of accrual.

191 See note 190, omitting La.

192 Cal., Conn., Del., D.C., Fla., T.H., Idaho, Ill., Me., Mass., Mich., Mo., Mont., Neb., Nev., N.M., N.Y., N.C., N.D., Ohio, Pa., R.I., S.C., S.D., Utah, Wis. Number: twenty-six. Average: seven and one-half years. Arizona and Texas grant an extension equal to the original period. Six states, Cal., Fla., Mo., Neb., Pa., Tex., set a maximum point following accrual.

Actions other than real property actions are commonly phrased in terms of an additional period equivalent to the originally limited period in case of plaintiff's infancy,[193] insanity,[194] or imprisonment.[195] However, other states grant an extension in terms of a definite number of years for infancy,[196] insanity,[197] or imprisonment.[198]

Those states which make no distinction between real property actions and all other actions have tended to adopt a shorter extension period corresponding to that on non-real property actions in other states. One finds an average two year extension after removal of disability where plaintiff has been an infant,[199] insane[200] or imprisoned.[201]

A few states grant an extension where any legal disability has prevented plaintiff from bringing a real property action,[202] a personal action,[203] or any action.[204]

In addition to the three primary disabilities, one may find extension of the period in the case of married women,[205] servicemen,[206] ministers sole,[207] and persons absent from the United States.[208]

[193] Ariz., Colo., D.C., Ga., T.H., Ky., Me., Mass., Mich., Miss., Mo., Neb., Nev., N.J., N.C., Ohio, Pa., R.I., Tex., Va., W.Va. Number: twenty-one. Mississippi, Virginia and West Virginia impose a maximum point after accrual. California and Idaho suspend the operation of the statute during the disability period.

[194] See note 193.

[195] Ariz., Colo., D.C., Ga., T.H., Me., Mass., Mich., Mo., Neb., Nev., N.C., Ohio, Pa., R.I., Tex. Number: sixteen. California, Idaho and Kentucky suspend the running of the statute.

[196] Ark., Del., D.C. (sealed), Ill., Mont., N.H., N.M., N.Y., N.D., Ore., S.C., S.D., Utah, Wis, Wyo. Number: fifteen. Average: two years. Montana, Oregon and South Carolina impose a five year maximum after accrual.

[197] The fifteen states listed in note 196. Montana, New York, North Dakota, Oregon, South Dakota and Wisconsin impose the five year maximum.

[198] Ark., D.C. (sealed), Ill., Miss. (assault, battery, maiming), Mont., N.Y., N.D., Ore., S.C., S.D., Utah, Wis., Wyo. Number: eighteen. Average: two years. The five year ceiling is found in Mont., N.Y., N.D., Ore., S.C., S.D., and Wis.

[199] Alaska, Iowa, Minn., Ore. The latter to impose a five year maximum. Alabama and Tennessee set the usual period or three years, whichever is shorter. Maryland, Vermont and Washington allow an amount equivalent to the original period.

[200] See note 199.

[201] Alaska, Minn., Ore., the latter two setting a five year maximum. The Alabama provision for a three year period or the usual period applies to imprisonment. Vermont and Washington allow the usual period after the disability is removed. Maryland grants no extension for imprisoment.

[202] Kan., Okla., Wyo. Colorado allows only two years following the end of the usual limitation period.

[203] Conn., Kan., Okla.

[204] Indiana. Colorado's unique provision allows either two years or the usual period, whichever is longer, when the disability ceases before the originally limited period expires.

[205] Cal., Conn., Del., Idaho, Me., Nev., Tex. Query as to how many of these retain currency. Maryland allows no extension.

[206] Ark., Ill., Tex.

[207] Me., Mass.

[208] Me., Mass., N.J., Pa., R.I. Maryland allows no extension.

2. *Absence of Defendant*

It is common to either suspend or extend the operation of the statute when the defendant either absents himself from the jurisdiction or conceals himself so that personal service cannot be had upon him. The treatment accorded the absence usually depends upon whether the absence or concealment occurred prior to the time the cause of action arose, or subsequent to that time.

The usual rule is that the plaintiff will be allowed a period equivalent to the originally limited period when prior to the time the cause of action arose defendant either absented himself from the jurisdiction[209] or concealed himself.[210] But if he leaves the jurisdiction[211] or conceals himself[212] subsequent to the time the cause of action arose, the operation of the statute is suspended during his absence. A few jurisdictions accord uniform treatment to any absence[213] or any concealment.[214]

3. *Death of Party*

The primary obstacle to a satisfactory correlation of suspension or extension of the usual limitation period because of the death of either party or both parties is the disagreement as to the point of time from which the provision applies. The critical point may be the time of death, the time that letters testamentary or of administration are issued, either time, or some intermediate point. When the plaintiff dies, thirty-three jurisdictions allow an extension for suit by the executor or administrator averaging one year, but in some of these states the point of determination is the time of death,[215] while in others it is at the

[209] Alaska, Ariz., Ark., Cal., Colo., Del., D.C., Fla., T.H., Idaho, Ill., Kan., Ky., Me., Md., Mass., Mich., Minn., Mo., Mont., Neb, Nev., N.Y., N.C., N.D., Ohio, Okla., Ore., S.C., S.D., Tenn., Utah, Vt., Wash., Wis., Wyo. Number: thirty-six. Four states, N.H., N.J., R.I., Tex., suspend the operation of the statute between time of accrual and return.

[210] Alaska, Ark., Colo., D.C., Kan., Neb., Ohio, Okla., Ore., Wash., Wyo. Number: eleven.

[211] Alaska, Ariz., Cal., Colo., Del., D.C., Fla., T.H., Idaho, Ill., Kan., Ky., Me., Mass., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.H., N.J. N.M., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., R.I., S.C., S.D., Tenn., Tex., Utah, Vt., Wash., Wis., Wyo. Number: forty-one. Rhode Island in effect tacks the period of presence before and after absence; Cottrell v. Kennedy, 25 R.I. 99, 54 A. 1010 (1903). Michigan and New York set a minimum period of absence before the provision applies. The Vermont and Rhode Island provisions are inapplicable if defendant leaves property in the state.

[212] Alaska, Colo., D.C., Kan., Ky., Neb., N.M., Ohio, Okla., Ore., Wash., Wyo. Number: twelve. New York suspends the statute while defendant resides in the state under a false name.

[213] *Suspension*: Ala., Conn., Ga., Ind., Iowa, Va., W.Va. *Extension*: Ark.

[214] *Suspension*: Va., W.Va.

[215] Alaska, Ariz., Ark., Cal., T.H., Idaho, Ill., Ind., Iowa, Mich., Minn., Miss., Mo., Mont., Nev., N.M., N.Y., N.C., N.D., Ore., R.I., S.C., S.D., Utah, Wash., Wis. Number:

time letters testamentary or of administration are issued.[216] A similar one-year period for suit against the estate is allowed when the defendant dies, but again this may be computed from death,[217] issuance of letters testamentary or of administration,[218] or either point, whichever is later.[219] A small group of states suspend the operation of the statute either following the death of the party[220] or until a representative is qualified.[221]

Most provisions deal with causes which have accrued prior to the death of a party. Where a cause accrues against the estate after the death of an individual, suit ordinarily is brought against the executor or administrator. Five states[222] say that where the limitation period is suspended between death and the appointment of a representative, such a representative is deemed qualified on causes arising after death after a period averaging four years has passed after death.

4. *Effect of War*

Eight states[223] suspend operation of the statute on causes of plaintiffs who are enemy aliens. Fourteen states[224] suspend the period where either party is an alien enemy. Several states[225] suspend or extend the statutory period for actions by servicemen, against servicemen, or both for the duration of a war.

twenty-six. The Arizona provision applies only unless no representative is appointed sooner. The limitation can be extended only to a maximum of three years after death in Michigan. The Massachusetts, Michigan and Rhode Island provisions apply if death occurs within a short time after the normal period terminated.

216 Colo., Conn., Ky., Me., Mass., Vt.

217 Ariz., D.C., Ga., Ind., Iowa, Md., Mich., Miss., R.I. Number: nine. District of Columbia and Georgia place a maximum extension beyond death.

218 Alaska, Cal., Del., Idaho, Ill., Ky., Mass., Mont., Nev., N.C., N.D., Ore., S.C., S.D., Utah, Vt., Wash., Wis. Number: eighteen. Kentucky allows suit to be brought against the heirs if no representative is appointed after death. Nevada, New York and Montana set special periods where the deceased died outside the state.

219 Me., Minn., Mo., N.Y.

220 Ga., Minn., Tenn., N.J., Tex., Va., Vt. North Carolina suspends during probate. All but Vermont limit the length of time during which there can be an extension.

221 Ala., Minn., Tenn.

222 Ky., Mont., N.Y., Va., W.Va.

223 Cal., Me., Mass., Mich., Minn., Mo., N.Y., Vt. The Minnesota statute allows one year after cessation of hostilities if no more than five years have elapsed since accrual. The rest suspend operation of the statute.

224 Ala., Alaska, Idaho, Mont., Nev., N.Y., N.C., N.D., Ore., S.C., Utah, Wash., W.Va., Wis. The New York statute applies to time of war or occupation. South Dakota allows no suspension.

225 Ark., Ill., N.J., Vt., Tex., Wash., Wis.

5. *Prevention or Failure of Action*

If some paramount authority prohibits plaintiff from enforcing his claim, or if certain circumstances exist in which enforcement is impossible, the running of the statute is suspended until such time as plaintiff can commence his action. Prohibition may be by statute[226] or injunction.[227] Plaintiff may be unable to bring his action if defendant conceals the cause of action[228] or if other circumstances beyond plaintiff's control[229] make commencement impossible.

If plaintiff begins an action on his claim within the period allowed, but fails to obtain judgment, many states give him an additional period after such disposition of his case as the court may make, in order that he can successfully prosecute his claim to judgment. Judicial determinations resulting in an additional period include reversal of judgment,[230] arrest of judgment,[231] failure of process or service,[232] defeat of the writ or action by the death of a party[233] or a matter of form,[234] nonsuit of plaintiff,[235] or any disposition not cutting off or affecting plaintiff's right to bring a second action.[236] The usual period of extension is one year.

D. *Rules for Applying Time Limitations*

The third major category into which provisions of general statutes

[226] Ala., Alaska, Cal., D.C., Idaho, Ill., Iowa, Miss., Mont., Nev., N.Y., N.C., N.D., Ore., S.C., S.D., Utah, Wash., Wis. Number: nineteen. Minnesota allows one year after removal.

[227] Ala., Alaska, Ark., Cal., D.C., T.H., Idaho, Ill., Iowa, Ky., Miss., Mo., Mont., Nev., N.M., N.Y., N.C., N.D., Ore., S.C., S.D., Tenn., Utah, Vt., Wash., Wis. Number: twenty-six. Minnesota allows one year after removal.

[228] Conn., Ga., T.H., Ill., Ind., Me., Md., Mass., Mich., Miss., Mo., N.M. (trust), N.D., R.I., Vt. Number: fifteen. In Mississippi and North Dakota the statute begins to run from discovery or when the existence of the cause should have been discovered.

[229] E.g., prevention by officer, Kentucky; by defendant's improper acts, Missouri; fraud, North Dakota; obstruction by improper means, Virginia, West Virginia; nobody in existence to sue, Wisconsin.

[230] Ala., Ark., Cal., Colo., Conn., Del., Fla., T.H. (real property), Idaho, Ill., Ind., Kan., Me., Mass., Mich., Minn., Miss., Mo., Mont., Nev., N.H., N.J., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., S.C., S.D., Tenn., Utah, Vt., Va., Wash., W.Va., Wis., Wyo. Number: thirty-nine.

[231] Ala., Ark., Colo., Conn., Del., T.H. (real property), Ill., Mass., Mich., Minn., Mo., Pa., R.I., Tenn., Vt., Va., W.Va. Number: seventeen.

[232] Colo., Conn., Del., Me., Mass., Mich., Vt., Va., W.Va. Number: nine. Also: finding of no jurisdiction, Conn., Ky.; wrong defendant, Conn.

[233] Ark., Colo., Conn., Del., T.H. (real property), Ind., Me., Mass., Mich., Miss., Mo., Pa. (real property), R.I., Vt., Va., W.Va. Number: sixteen. Also: marriage of party, Va., W.Va.

[234] Colo., Conn., Del., Me., Mass., Mich., Miss., Vt. Number: eight. Also: loss or destruction of papers in first action, Va., W.Va.; failure to provide security for costs, W.Va.

[235] Ark., Conn., Ga., Ill., Mo., N.C., Ore.

[236] Ind., Iowa, Kan., Mont., N.H., N.M., N.Y., Ohio, Okla., R.I., Tenn., Tex., Utah, W.Va., Wyo. Number: fifteen.

of limitations fall is that comprising rules for applying all or certain limitation periods, together with definition and scope of terms used.

1. *Application to Specific Categories of Claims*

The operation of the statute of limitations may be applied to, or withheld from, certain groups of claims or persons. In some states the statute is specifically made applicable to the state itself,[237] while other states enact the traditional sovereign immunity to the running of the statute into positive law.[238] Some jurisdictions exempt bills, notes and other evidences of indebtedness issued by banks and monied corporations[239] or by corporations in general.[240] A few states[241] define the scope of application of the statute to equitable or equitable-type actions. Limitations are applied to claims used in set-off in some states,[242] but do not apply to such claims in other states.[243] The statute is usually made applicable to joint defendants,[244] joint mortgagors,[245] or joint contractors,[246] individually. A few states[247] limit individual attempts to circumvent the normal statutory period through private contract limitations. In three jurisdictions[248] a provision of a will calling for the payment of a barred obligation may be ineffective unless intent to revive the claim is clear.

2. *Definition of "Accrual" or "Arising" of Cause or Claim*

A very important definition often found in the statutes is that of the time when a cause of action is deemed to have accrued, or claim to have arisen, for it is from that point that the statutory period is computed. Accrual of actions based on accounts may be at the time of the last

[237] Alaska, Cal., Ga., Idaho, Ky., Mass., Mich., Minn., Mo., Mont., Nev., N.Y., N.C., N.D., S.C., S.D., Utah, Vt., W.Va. Number: nineteen.

[238] Ala., Ariz., D.C., Fla., Ind., Miss., Ore., Tenn., Va., Wash. Number: ten.

[239] Ark., La., Miss., Mo., N.M., N.C., N.D., S.C., S.D., Vt., Wis. Number: eleven.

[240] Ala., N.Y.

[241] Applies: where not inequitable, Ga.; except for equitable possession of land, Alaska; where concurrent law-equity jurisdiction, Colo., Miss.

[242] Ark., Colo., Del., Ga., T.H., Me., Miss., N.J., N.Y. (except real property), Okla., Utah, Vt., Wis. Number: thirteen. The Arkansas statute applies only to amounts in excess of plaintiff's claim.

[243] Ill., Iowa, Mich., Minn., Miss., N.M., S.D. Scope: claims owned by defendant (Ill., Iowa, Miss.), and unbarred (Ill., Iowa, Mich., Miss.), when plaintiff's cause arose; malpractice claims used against claim for services (Minn., S.D.).

[244] Me., Miss. Georgia does not apply her statute to joint defendants until the disabilities of all are removed.

[245] Cal., Idaho, Mont., Utah. Cotenants, N.C.

[246] Colo., Mass., Mich., Miss., N.J., Vt., W.Va., Wis.

[247] Any attempt: Fla., Kan., Miss., S.C., Va. Shortening the period: Ala., Fla., Tex. (under two years).

[248] D.C., Va., W.Va.

item proved on the adverse side,[249] of the last item proved on either side,[250] or at the last transaction or payment.[251] The cause of action for recovery of a bank deposit may accrue at demand.[252] Actions for a statutory penalty or a common law liability against corporation directors or stockholders commonly accrue at the discovery of the facts by the person aggrieved.[253] Real property actions are deemed to have accrued at disseisin,[254] at the death of a predecessor in interest who died seised or possessed,[255] at the termination of an intermediate estate regardless of a forfeiture or breach of condition giving a right of entry or action,[256] at the time of such forfeiture or breach if benefit of them is sought,[257] at the time the ancestor or predecessor in interest first gained the right to title or possession,[258] or at any other time when the claimant became entitled to entry or possession.[259] An action for waste or trespass accrues only at the time the facts are discovered by plaintiff.[260] Actions seeking relief based on grounds of fraud[261] or mistake[262] are deemed to have accrued when the facts constituting such fraud or mistake are discovered by plaintiff.

3. *Commencement of Action*

Some definite act of plaintiff is required to halt the running of the statutory period. More may be required of plaintiff to toll the statute of limitations than is necessary from a procedural viewpoint to begin an action. An action may be deemed commenced at the filing of the com-

[249] *Mutual, open and current accounts where demands mutual and reciprocal*: Ky., Mo.

[250] *Mutual, open and current accounts where demands mutual and reciprocal*: Alaska, Cal., Fla., Idaho, Ind., Me., Minn., Mont., Nev., N.C., N.D., Ore., S.C., S.D., Utah, Wash. Number: sixteen. Alaska, Oregon and Washington require less than a year between entries. *Mutual, open and current accounts in general*: Ala., Ark., Cal., Colo., T.H., Iowa, Mass., Mich., Miss., N.M., N.Y., Tenn., Wis. Number: thirteen.

[251] *Mutual, open and current accounts in general*: Ala., Ariz., Tex., Va., W.Va.,

[252] Idaho, Mont., N.Y., Va. At insolvency: Cal.

[253] Cal., Idaho, Mont., Nev., N.Y., N.C., N.D., S.C., S.D., Utah, Wis. Georgia and Washington apply a similar provision to any statutory penalty or forfeiture.

[254] Colo., T.H., Ill., Me., Mass., Mich.

[255] Ibid.

[256] Ibid.

[257] Ibid.

[258] Colo., T.H., Ill., Me., Mass., Mich., N.H.

[259] Ala., Colo., T.H., Ill., Me., Mass., Mich.

[260] *Underground trespass to mining claim*: Mont., Nev., Ohio, Utah. *In general*: Iowa.

[261] Ala., Alaska, Ariz., Cal., Colo., Idaho, Iowa, Kan., Ky., Me., Md., Minn., Mo., Mont., Neb., Nev., N.M., N.C., N.D., Ohio, Okla., Ore., S.C., S.D., Utah, Va., Wash., Wis., Wyo. Number: twenty-nine. Maryland adds when by reasonable diligence it should have been discovered. Pennsylvania applies a similar provision to fraud raising a resulting or implied trust.

[262] Alaska, Ariz., Cal., Idaho, Iowa, Ky., Mo., Mont., N.M., N.C., N.D., Utah, Va. Number: thirteen.

plaint or petition,[263] at the filing of complaint or petition and the issuance of summons or process,[264] at the time service is obtained on defendant or a co-defendant who is a joint contractor or otherwise united in interest with defendant,[265] or at first publication.[266] In many jurisdictions an attempted service of process is the equivalent of actual service if certain conditions are met. An attempt may be equivalent to service if plaintiff faithfully and diligently attempts to procure service,[267] if process is delivered to an officer with intent that it be served,[268] if there is actual service within sixty days,[269] or if first publication occurs within sixty days.[270]

4. *Manner of Pleading the Statute*

Some jurisdictions provide for the manner in which the bar of the statute must be pleaded and proved. The statute may be invoked by answer,[271] by demurrer,[272] as a matter of defense,[273] by motion,[274] by reply[275] or by any proper manner of raising the issue.[276]

5. *Revival of Barred Claim*

The bar of the statute need not be final. The statute of limitations is considered a matter of privilege which the defendant must invoke, and which he may voluntarily waive. An action on an obligation expressed in terms of money payment may usually be revived by an acknowledgment or promise in writing signed by the person to be charged,[277] or by a part payment of principal or interest by the person to be charged.[278] An indorsement of payment on a note, bill or other

263 Ala., Cal., Idaho, Mont., N.M., Wash.

264 Alaska, Fla., Kan., Ky., Me., N.C., Tenn.

265 Kan., Minn., Neb. (defendant only), N.Y., N.D., Ohio, Okla., Ore., S.C., S.D., Wis., Wyo. Number: twelve.

266 Kan., Neb., Ohio, Okla., Wyo.

267 Kan., Ohio, Okla., Wyo.

268 N.D., Ore., S.C., S.D., Wis.

269 *All courts*: Kan., N.D., Ohio, Okla., Ore., S.D., Wyo. *Courts of record*: N.Y., Wis. *Courts not of record*: due diligence, N.Y., Wis.

270 Kan., N.Y. (court of record), N.D., Okla., Ore., S.D.

271 Mont., N.Y., N.C., N.D., S.C., S.D., Wash., Wis.

272 Wash., Wis.

273 Ariz., Colo. (real property).

274 N.Y.

275 Unless not needed to raise the issue, Mont., N.Y.

276 Colo. (real property), La. (real property), Ohio, S.D.

277 Ala., Alaska, Ariz., Ark., Cal., Colo., Fla., Ga., Idaho, Ind., Iowa, Kan., La., Me., Mass., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.J., N.M., N.Y., N.C., N.D., Ohio, Okla., Ore., S.C., S.D., Tex., Utah, Vt., Va., Wash., W.Va., Wis., Wyo. Number: forty.

278 Ala., Alaska, Cal., Colo., Ga., Idaho, Ind., Kan., Me., Mass., Mich., Minn., Mo., Mont., Neb., N.J., N.Y., N.C., N.D., Ohio, Okla., Ore., S.C., S.D., Utah, Vt., Wash., Wis., Wyo. Number: twenty-nine

writing may be insufficient evidence of such payment.[279] Such a promise[280] or payment[281] by one joint defendant does not affect rights under the statute accruing to his fellows. After an acknowledgment or payment of a barred claim, plaintiff may either be restricted to suit on the original cause of action[282] or allowed to sue on either the old cause or the new promise.[283]

6. *Requirements for Extension or Suspension*

Not all disabilities of those falling within the terms of the statute give plaintiff the benefit of a longer period for suit. The disabilities of plaintiff must exist at the accrual of the cause or the arising of the claim;[284] successive disabilities cannot be tacked.[285] When two or more disabilities co-exist at the time of accrual or arising, all must be removed before the limitations attach.[286]

7. *Borrowing Provisions*

For conflict-of-laws purposes, the general statutes of limitations are considered procedural, so that the forum applies its own statute without regard to the limitation period of the place where the cause arose. However, in order to eliminate some of the foreign plaintiffs who seek the most favorable statute of limitations available, many states have enacted "borrowing statutes" which in effect borrow the limitation period of the state where the cause of action arose or claim accrued, if that period is shorter than the forum period. An action may be barred if it would be barred where the cause of action arose,[287] where the cause arose and defendant resided,[288] where defendant resided,[289] or where the cause arose and all parties resided.[290] A preferred position may be given to

[279] Ark, Colo., Ind., Me., Mass., Mich., N.J., Vt., Wis. Number: nine.

[280] Ark., Colo., Ga., Ind., Me., Mass., Mich., Miss., Mo., N.J., Vt., Va., W.Va., Wis. Number: fourteen. Same by partner after dissolution of partnership, Ga., N.C., S.C.

[281] Ark., Colo., Ind., Me., Mass., Mich., N.J., Wis.

[282] Ga., S.C.

[283] Va., W.Va.

[284] Ala., Alaska, Ariz., Ark., Cal., Fla., Ga., Idaho, Ky., Minn., Mo., Mont., Nev., N.M. (real property), N.Y., N.C., N.D., Ore., S.C., S.D., Tenn., Tex., Utah, Wash., Wis. Number: twenty-five.

[285] Ariz., Mass., Mich., N.M. (real property), Tex.

[286] Ala., Alaska, Ark., Cal., Idaho, Ky., Minn., Mo., Mont., Nev., N.Y., N.C., N.D., Ore., S.C., S.D., Tenn., Utah, Wash., Wis. Number: twenty.

[287] Colo., Fla., Ill., Ky., Mo., Neb., Ohio, Pa., Wyo. Number: nine. Nebraska largely nullified its statute by including only those claims which would be barred had defendant resided in Nebraska for its limitation period.

[288] Miss., Okla.

[289] Ala., Ariz., Ind., Iowa.

[290] Alaska, Kan., Me., Mass., Ore., R.I., Tenn., Wash.

residents of the forum state by excepting causes accruing to such residents and held by them from accrual.[291] Similar borrowing provisions may apply to actions on judgments rendered in foreign courts,[292] or actions on contracts executed in other states.[293]

III

SURVEY OF FEDERAL LIMITATIONS

A. *Actions Involving the United States*

The United States Code contains many limitations on actions brought against the United States. Every civil action against the United States is barred unless the complaint is filed within six years after the right of action first accrued.[294] A tort claim against the United States is barred unless action is brought within two years after accrual of the claim.[295] Small tort claims which may be settled by administrative officers[296] must be presented within two years after accrual.[297] Claims under the jurisdiction of the Court of Claims must be filed, or referred by the Senate, House of Representatives or the head of an executive department, within six years after the claim accrues.[298] Claims or demands against the United States cognizable by the General Accounting Office, except those of a state, territory, possession or the District of Columbia, must be submitted to the Office within ten years after the claim or demand accrues.[299] Meritorious claims not subject to adjustment under existing appropriations may be submitted to Congress by

[291] Cal., Del., Idaho, Minn., Mont., Nev., N.Y., Utah.

[292] Ariz., D.C., Ky., La., Okla., Va., W.Va.

[293] La., Va., W.Va.

[294] 28 U.S.C. (Supp. III, 1950) §2401(a). Any person under a legal disability is given three years to bring his action after the disability is removed. Because the limitations on raising tax questions under the Internal Revenue Code seem primarily a matter of fiscal policy, they have been omitted.

[295] 28 U.S.C. (Supp. III, 1950) §2401(b). A temporary one year period was allowed for claims accruing prior to enactment of the section.

[296] Under the Federal Tort Claims Act, 28 U.S.C. (Supp. III, 1950) §2672. These claims must be under $1000.

[297] 28 U.S.C. (Supp. III, 1950) §2401(b). If written notice is given within the period, action is not barred until six months after the claim is withdrawn or a notice of final disposition is mailed by the agency.

[298] 28 U.S.C. (Supp. III, 1950) §2501. Actions by persons under a legal disability or beyond seas when the claim accrues may be brought within three years after the disability or absence terminates. Claims by oyster growers growing out of river-harbor improvement projects must be brought within two years of the termination of the operation responsible.

[299] 31 U.S.C. (1946) §71a. Persons serving in the armed forces who acquired a claim after, or had had a claim less than five years when war was declared, are allowed five years after cessation of hostilities. For this purpose the Joint Resolution of July 25, 1947, 61 Stat. L. 451, is considered termination of the war.

the Comptroller-General,[300] but such claims must be presented in writing within ten years after the claim accrues.[301] Claims for personal property left on a Veterans Administration facility[302] or left by a person dying as an inmate of a Veterans Administration facility[303] must be brought within five years of notice of sale of such property.[304] A person who fails to claim a pension for the period of three years is presumed to have terminated eligibility and must reapply for reinstatement on the rolls.[305] Claims against the Alien Property Custodian concerning property held by him must be brought within two years after the vesting of the property.[306]

Relatively few non-criminal actions by the United States are subject to limitations. The government may sue for a forfeiture of $2000 and double the loss of the government when there has been a false or fraudulent claim against the United States or a false or fraudulent procurement of government property, provided that such action is brought within six years of the act in question.[307] Where suit is brought for any pecuniary penalty or forfeiture of property under the customs laws, it must be within five years from the discovery of the alleged offense.[308] The federal district attorney of the district where the Hours of Service Act for railroad employees is violated may recover a fine for the violation within one year.[309] The government may sue to vacate a patent of land within six years.[310]

B. *Private Actions Based on Federal Statute*

Prior to 1948 many important private actions based on violations of federal regulatory statutes were not limited. By revisions in 1948 limitations have been placed on actions under several important federal statutes. Actions under the Portal-to-Portal Pay Act,[311] the Fair Labor

[300] 31 U.S.C. (1946) §236.

[301] 31 U.S.C. (1946) §§237, 71a. The attorney-general is allowed to settle claims under $1000 of persons employed in federal penal institutions if the claim is presented in writing within one year of the occurrence of the accident or incident out of which the claim arises. 31 U.S.C. (1946) §238. Cf. 28 U.S.C. (Supp. III, 1950) §2672.

[302] 38 U.S.C. (1946) §16a(d).

[303] 38 U.S.C. (1946) §16f.

[304] If claimant is under a disability, he may sue within five years after the termination of the disability.

[305] 38 U.S.C. (1946) §53.

[306] 50 U.S.C. App. (1946) §34(b).

[307] 31 U.S.C. (1946) §235.

[308] 19 U.S.C. (1946) §1621. Time during which the cause is concealed or defendant or the property is absent from the United States is not reckoned in the period.

[309] 45 U.S.C. (1946) §63.

[310] 43 U.S.C. (1946) §1166.

[311] 29 U.S.C. (Supp. III, 1950) §257ff.

Standards Act as amended,[312] the Walsh-Healey Act,[313] and the Bacon-Davis Act,[314] must be brought within two years after the accrual of the action.[315] A limitation of three years from the day the cause of action accrues has been placed on actions under the Federal Employers' Liability Act.[316] Under the Longshoremen and Harbor Workers Compensation Act[317] the right to compensation for disability or for death is lost unless a claim is filed within one year from the date of the injury or death, or in case of payments without award, from the last payment. Actions under the Suits in Admiralty Act[318] must be brought within two years of the time the cause of action arises, and under the Death on the High Seas by Wrongful Action Act[319] within two years after the wrongful act.

Fairly uniform provision has been made for actions by and against carriers. A two year limitation is placed on actions by the carrier for charges or against the carrier for overcharges in interstate commerce when the carrier is a railroad,[320] a motor carrier,[321] a water carrier,[322] or a freight forwarder.[323] A similar limitation of one year is imposed on actions by and against telephone, telegraph, or radiotelephone companies.[324] In all these actions accrual is at delivery or tender of delivery.

Causes of action are often created for the recovery of fines, penalties and forfeitures by a private individual aggrieved because of violations of federal law. The only statute dealing in general terms with such recoveries places a limit of five years after the accrual of the claim in which action may be brought.[325] However, by decision this has been restricted to strictly public wrongs, and does not cover actions to redress private wrongs, even though the wrongful act also constituted a public wrong.[326] But the companion section enacted in 1948 provides that

[312] 29 U.S.C. (1946) §201ff.

[313] 41 U.S.C. (1946) §§35-45.

[314] 40 U.S.C. (1946) §§276a–276a-5.

[315] 29 U.S.C. (Supp. III, 1950) §255. This applies to actions accruing after May 14, 1947. Actions on causes accruing prior to that time were limited to either two years or the appropriate state statute of limitations, whichever was shorter.

[316] 45 U.S.C. (Supp. III, 1950) §56.

[317] 33 U.S.C. (1946) §913.

[318] 46 U.S.C. (1946) §§741, 745.

[319] 46 U.S.C. (1946) §§761, 763. If no jurisdiction may be obtained over the vessel in the two year period, action may be brought within ninety days after such jurisdiction is obtained.

[320] 49 U.S.C. (1946) §16(3).

[321] 49 U.S.C. (1946) §304a.

[322] 49 U.S.C. (1946) §908.

[323] 49 U.S.C. (1946) §1006a.

[324] 47 U.S.C. (1946) §415.

[325] 28 U.S.C. (1948) §2462.

[326] Meeker v. Lehigh Valley R. Co., 236 U.S. 412, 35 S.Ct. 238 (1915). The section was held inapplicable to the Fair Labor Standards Act [Keen v. Mid-Continent Petroleum

any civil fine, penalty or forfeiture prescribed for a violation of a statute without mode of recovery being provided for may be recovered in a civil action.[327] This was intended "to clarify a serious ambiguity in existing law."[328] Despite the restrictive interpretation placed on the older section, there seems little reason why the two sections should not be construed as coextensive, since the need for both mode of recovery and limitation of recovery seems clear, and since the descriptive language is identical in both sections. Particular limitations on recovery of fines, penalties or forfeitures include those for violation of the Rent Control Act[329] and for usurious interest charged by national banks.[330]

The statutes dealing with regulation of securities and exchanges provide causes of action for persons injured or damaged when regulatory measures are not complied with. The common limitation is within one year after the discovery of the facts constituting the cause of action, or after the time when the facts should have been discovered, the maximum being three years after the actual accrual of the cause of action. Such actions may result from a false registration of a security or trust indenture,[331] from a misrepresentation in a document filed with the Securities and Exchange Commission or a statement or omission resulting in such a misrepresentation,[332] or from any violation of the Securities Exchange Act.[333]

Under the Federal Bankruptcy Act a receiver or trustee within two years after the adjudication of bankruptcy or within any further time allowed by federal or state law may sue on any claim against which the state or federal statute of limitations had not expired at the time the petition of bankruptcy was filed.[334] The operation of the statute of limitations of the United States or of any state affecting any debt of the bankrupt is suspended from the date of the filing of a petition in bankruptcy until (a) thirty days from an order denying the discharge, (b) thirty days after the filing of a waiver of discharge or the entry of an

Co. (D.C. Iowa 1945) 58 F. Supp. 915], or to the Sherman Act, 15 U.S.C. (1946) §1, [Chattanooga Foundry Co. v. Atlanta, 203 U.S. 390, 27 S.Ct. 65 (1906)].

[327] 28 U.S.C. (Supp. III, 1950) §2461.

[328] Reviser's Notes to section 2461. "Numerous sections in the United States Code prescribe civil fines, penalties, and pecuniary forfeitures for violation of certain sections without specifying the mode of recovery or enforcement thereof." Ibid.

[329] One year. 50 U.S.C. App. (1946) §1895.

[330] Two years. 12 U.S.C. (1946) §86.

[331] 15 U.S.C. (1946) §§77*k*, 77*l*, 77*m*. Accrues at bona fide offer to public under 77*k* or 77*l*(1) or at sale under 77*l*(2).

[332] 15 U.S.C. (1946) §77*www*. Accrues at filing of such document.

[333] 15 U.S.C. (1946) §78*i*(e).

[334] 11 U.S.C. (1946) §29(e).

order providing for loss of the discharge,[335] or (c) thirty days after a dismissal of bankruptcy proceedings.[336] Actions against a person having acted as a trustee in bankruptcy or as a receiver arising during his administration may be brought within two years after the estate is closed.[337] Actions on the bond of a referee[338] or a receiver or trustee in bankruptcy[339] must be brought within two years.

Actions on the bond of any United States officer or official disbursing or chargeable with public monies must be brought against the surety within five years after liability appears upon the account submitted by such officer.[340] Action on the bond of a United States marshal must be brought within six years after the right accrues.[341]

C. *Suspension, Extension and Application of Limitations*

The only blanket suspension of all statutes of limitations, state and federal, is found in the Soldiers' and Sailors' Civil Relief Act. [342] The period of service in the armed forces is not computed in any limitation period on an action by or against any person in military service, or his heirs, executors, administrators or assigns, whether or not the cause accrued prior to or during the period of service. No part of the period after the passage of the act is to be included in computing the period of redemption for real property sold or forfeited to enforce an obligation, tax or assessment.[343] However, when the United States commences a criminal, equitable or legal action under the Sherman Act,[344] statutes of limitation are suspended in favor of any private right of action arising under the anti-trust laws and based in whole or in part on any matter complained of in such proceeding. One should also compare the temporary suspension of state and federal limitations during pendency of bankruptcy proceedings.[345] All of these suspensions rest on some primary federal constitutional delegation of power.

Specific limitations on federally-created rights commonly are ex-

[335] If a corporation has made no application for discharge within six months, suspension lasts until thirty days after the expiration of such period.

[336] 11 U.S.C. (1946) §29(f).

[337] 11 U.S.C. (1946) §29(d).

[338] 11 U.S.C. (1946) §78(*l*). Accrual is at date of breach.

[339] 11 U.S.C. (1946) §78(m). Accrual is at discharge of the individual.

[340] 6 U.S.C. (1946) §5.

[341] 28 U.S.C. (Supp. III, 1950) §544. Action may be brought within three years after the removal of a legal disability.

[342] 50 U.S.C. App. (1946) §525. Cf. 31 U.S.C. (1946) §§71a, 237.

[343] Except under 26 U.S.C. (1946) §527, Internal Revenue Code.

[344] 15 U.S.C. (1946) §16.

[345] 11 U.S.C. (1946) §29(f).

tended in case of a legal disability[346] or when no property can be found within the United States.[347]

There is no general restriction on the right to shorten a limitation period by private contract. However, persons in control of sea-going vessels are prohibited from contracting to limit the time for giving notice or filing claims for loss of life or bodily injury to less than six months, or for commencing suit to less than one year from the date of death or injury.[348] Carriers are forbidden to contract away liability imposed on them for loss of, or damage or injury to, property carried by them or connecting carriers.[349]

Although state limitations are applied by federal courts where no federal limitations are provided on federally-created rights, in only two places have the state statutes been specifically incorporated into federal statute. A state statute limiting recovery of land is applied when an action is brought by a patentee or his successor for possession, rents or profits of land patented in severalty to members of Indian tribes pursuant to treaty.[350] State statutes shorter than two years were applied to causes accruing prior to May 14, 1947 under the Portal-to-Portal Pay Act, the Fair Labor Standards Act, the Walsh-Healey Act or the Bacon-Davis Act.[351]

IV

SUGGESTED REVERSAL OF CONFLICTS RULE

In the Anglo-American legal system, the general statute of limitations is considered a matter going to the remedy and not to the right,[352] though on the Continent it is considered as substantive and thus directly affecting the right.[353] However, the common law system does recognize as substantive a statute creating a right unknown to the common law

[346] E.g., 28 U.S.C. (Supp. III, 1950) §§544, 2401, 2501.

[347] E.g., 28 U.S.C. (Supp. III, 1950) §2462; 46 U.S.C. (1946) §763.

[348] 46 U.S.C. (1946) §183b. Such provisions are inapplicable to a minor, insane person or a decedent's estate until a legal representative is appointed, if such appointment is within three years.

[349] 49 U.S.C. (1946) §20(11).

[350] 25 U.S.C. (1946) §377.

[351] 29 U.S.C. (Supp. III, 1950) §255. See notes 314-318, incl., supra.

[352] 3 RABEL, THE CONFLICT OF LAWS: A COMPARATIVE STUDY 495 (1950); WESTLAKE, PRIVATE INTERNATIONAL LAW, 6th ed., §238 (1922); GOODRICH, CONFLICT OF LAWS, 3d ed., §85 (1949); STORY, CONFLICT OF LAWS §476; 1 WOOD ON LIMITATIONS, 4th ed., §8 (1916).

[353] 3 RABEL, THE CONFLICT OF LAWS: A COMPARATIVE STUDY 493 (1950); WESTLAKE, PRIVATE INTERNATIONAL LAW, 6th ed., 310 (1922); Kuhn, "Doctrines of Private International Law in England and America Contrasted With Those of Continental Europe," 12 COL. L. REV. 44, 53 (1912).

which purports to cut off the right after a certain period of time has elapsed; courts still recognize the distinction when dealing with such statutes as the wrongful death act.[354] Historically the development of this approach is understandable. English law had developed without contact with conflicting foreign systems of law,[355] developing its own court system and procedure, including limitations on access to the courts.[356] When foreign causes did come before the English courts, foreign law was viewed with suspicion, and restricted in its application as much as possible. Except when faced with a statute clearly purported to cut off a cause of action unknown to English law, English judges characterized statutes of limitation as going to the remedy; since the foreigner was deemed to take the English courts as he found them, English statutes of limitation were applied.[357] Early United States judges[358] and writers[359] adopted the English doctrine, although not without dissent.[360]

Lending strength to this early, restrictive approach was the comity theory, espoused by Justice Story,[361] which called for application of only such foreign law as the state as a civilized nation thought necessary. But within the past fifty years new concepts of the relation of local and foreign law have been evolved. By the vested rights theory the law of the state where the cause of action arose is deemed to create a right which should be recognized by every other jurisdiction.[362] By the local

[354] GOODRICH, CONFLICT OF LAWS, 3d ed., §86 (1949); STORY, CONFLICT OF LAWS §582; 1 WOOD ON LIMITATIONS, 4th ed., §9 (1916).

[355] Lorenzen, "The Statute of Limitations and the Conflict of Laws," 28 YALE L.J. 492 (1919); Kuhn, "Doctrines of Private International Law in England and America Contrasted With Those of Continental Europe," 12 COL. L. REV. 44 (1912).

[356] Wainford v. Barker, 1 Ld. Raym. 232, 91 Eng. Rep. 1051 (1697); Anonymous, 1 Salk. 154, 91 Eng. Rep. 142 (1707); Quantock v. England, 5 Burr. 2628, 98 Eng. Rep. 382 (1770).

[357] Dupleix v. DeRoven, 2 Vern. 540, 23 Eng. Rep. 950 (1705); Williams v. Jones, 13 East. 439, 104 Eng. Rep. 441 (1811); British Linen Co. v. Drummond, 10 B. & C. 903, 109 Eng. Rep. 683 (1830); Huber v. Steiner, 2 Bing. (N.C.) 203, 132 Eng. Rep. 80 (1835).

[358] Nash v. Tupper, 1 Caines (N.Y.) 402 (1803); Pearsall v. Dwight, 2 Mass. 84 (1806); Ruggles v. Keeler, 3 Johns. (N.Y.) 263 (1808); McElmoyle v. Cohen, 13 Pet. (38 U.S.) 312 (1839).

[359] Notably STORY, CONFLICT OF LAWS.

[360] Livingston, J., dissenting in Nash v. Tupper, 1 Caines (N.Y.) 402 (1803); Maryland v. Todd, (C.C. Ind. 1854) Fed. Case No. 9220, 16 Fed. Cas. 996; Baker v. Stonebraker's Adm'r., 36 Mo. 338 (1865); Rathbone v. Coe, 6 Dak. 91, 50 N.W. 620 (1888); Finnell v. Railway, (C.C. Mo. 1888) 33 F. 427, contra on same statute, Morgan v. Metropolitan Street Railway Co., 51 Mo. App. 523 (1892).

[361] STORY, CONFLICT OF LAWS §38. See criticism in Cook, "The Logical and Legal Bases of the Conflict of Laws," 33 YALE L.J. 457 (1924); Lorenzen, "Territoriality, Public Policy, and the Conflict of Laws," 33 YALE L.J. 736 (1924).

[362] Loucks v. Standard Oil Co., 224 N.Y. 99, 120 N.E. 198 (1918); Walsh v. New York & New England R. Co., 160 Mass. 571, 36 N.E. 584 (1894); Slater v. Mexican National Rys., 194 U.S. 120, 24 S.Ct. 581 (1903).

law theory the forum applies a rule of decision identical or nearly so with the rule of decision which would be applied in the state where some or all of the operative facts occurred.[363] Under the influence of these new approaches, many matters formerly thought of as procedural have come to be considered substantive, so that the law of the state where the operative facts occur is applied in preference to forum law.[364] The treatment of the general statute of limitations remains an anomalous segment of provincialism in a framework essentially inter-jurisdictional in its modern development. It is difficult to conceive of a right without a remedy, or of a right not derived from a governmental unit.[365] If the forum state "recognizes" a foreign right while at the same time applying its own statute of limitations, it is in effect creating a new right, and adjusting the relative position of the parties on the basis of a relationship which did not in fact or contemplation of law arise within the forum.[366] It is submitted that American courts should abandon the long-standing procedural approach to this problem and recognize that in fact a general statute of limitations, as well as a special statute of limitations such as that on the wrongful death act, affects the right, and not merely the remedy.[367] As a result, a foreign

[363] Cook, "The Logical and Legal Bases of the Conflict of Laws," 33 YALE L.J. 457 (1924); Lorenzen, "Territoriality, Public Policy, and the Conflict of Laws," 33 YALE L.J. 736 (1924).

[364] See Cook, "'Substance' and 'Procedure' in the Conflict of Laws," 42 YALE L.J. 333 (1933); cf. Ailes, "Substance and Procedure in the Conflict of Laws," 39 MICH. L. REV. 392 (1941). Statutes and rules considered by more recent cases to be substantive include the statute of frauds [GOODRICH, CONFLICT OF LAWS, 3d ed., §88 (1949); Lorenzen, "The Statute of Frauds and the Conflict of Laws," 32 YALE L.J. 311 (1923)]; parol evidence rule [GOODRICH, CONFLICT OF LAWS, 3d ed., §89 (1949)]; wrongful death act [Loucks v. Standard Oil Co., 224 N.Y. 99, 120 N.E. 198 (1918)]; survival statute [Orr v. Ahern, 107 Conn. 174, 139 A. 691 (1928); Friedman v. Greenburg, 110 N.J.L. 462, 166 A. 119 (1933); *contra,* Chase v. Ormsby, (3d Cir. 1933) 65 F. (2d) 521]; married woman's disability to sue husband [Gray v. Gray, 87 N.H. 82, 174 A. 508 (1934); Buckeye v. Buckeye, 203 Wis. 248, 234 N.W. 342 (1931); *contra,* Mertz v. Mertz, 271 N.Y. 466, 3 N.E. (2d) 597 (1936) holding it procedural]; measure of damages [GOODRICH, CONFLICT OF LAWS, 3d ed., §90 (1949)].

[365] "An immortal right to bring an eternally prohibited action is a metaphysical subtlety that the present writer cannot pretend to understand." AMES, LECTURES ON LEGAL HISTORY 199 (1913). Cf. Holt, C.J., in Ashby v. White, 2 Ld. Raym. 938, 953, 92 Eng. Rep. 126 (1703): "If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy; for . . . want of right and want of remedy are reciprocal."

[366] WESTLAKE, PRIVATE INTERNATIONAL LAW, 6th ed., 310-312 (1922).

[367] *Accord:* 3 RABEL, THE CONFLICTS OF LAWS: A COMPARATIVE STUDY 521 (1950); Lorenzen, "The Statute of Limitations and the Conflict of Laws," 28 YALE L.J. 492 (1919); WESTLAKE, PRIVATE INTERNATIONAL LAW, 6th ed., §238 (1922); GOODRICH, CONFLICT OF LAWS, 3d ed., §85 (1949); Holmes, J. in Davis v. Mills, 194 U.S. 451, 24 S.Ct. 692 (1904). *Contra:* Ailes, "Limitation of Actions and the Conflict of Laws," 31 MICH. L. REV. 474 (1933).

statute of limitations should be given the same force in the forum state as it would be in the state where the cause of action arose.

Two different situations would arise to be dealt with under a substantive approach. The first occurs when the forum statute is longer than the statute of the state where the operative facts occurred. It is here that the ill effects of the present rule are most apparent, for it is to avoid the shorter limitation period of the place where the cause of action arises that plaintiff shops around for a longer period in which to sue. When the forum recognizes a shorter statute of limitations, most of the incentive to shop will be gone. The forum statute will be construed to extend only to causes arising within the forum, and the shorter foreign statute will be applied.[368] The second arises when the foreign statute is longer than the forum statute. Logically, if the foreign statute affects the cause when it is shorter than the forum period, it also affects the cause when it is longer. To recognize the shorter statute recognizes a right in defendant protecting him from being sued beyond a certain time; to recognize the longer period recognizes a correlative right in plaintiff allowing him to sue for a given number of years. Yet it is this second situation which early courts and writers found most abhorrent, because of the possibility of immeasurably stale or perpetually vital causes being brought in from foreign jurisdictions.[369] Though in light of modern conflicts developments such objections should be considered far-fetched and without merit, there is room to protect tender local feelings within a substantive approach to the general statutes of limitations. By accepted conflicts principles, no foreign right repugnant to the public policy of the forum need be recognized; access to the courts will be denied to such causes.[370] Even though the general statute of limitations can be considered as affecting only causes arising within the jurisdiction, it can also be considered if a court so chooses as a legislative determination that

[368] Story in LeRoy v. Crowninshield, (C.C. Mass. 1820), Fed. Case No. 8269, 15 Fed. Cas. 362, thought this should be the law in such a situation, although he felt himself bound by precedent; he had changed his mind by the time he published his work on the conflict of laws.

[369] "Every nation must have a right to settle for itself the times . . . within . . . which suits shall be litigated in its own courts. There can be no pretense to say that foreigners are entitled to crowd the tribunals of any nation with suits of their own which are stale and antiquated, to the exclusion of the common administration of justice between its own subjects." STORY, CONFLICT OF LAWS §578. See also Pearsall v. Dwight, 2 Mass. 84 (1808); Nash v. Tupper, 1 Caines (N.Y.) 402 (1803).

[370] "[Courts] do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." Cardozo, J. in Loucks v. Standard Oil Co., 224 N.Y. 99, 111, 120 N.E. 198 (1918). See GOODRICH, CONFLICT OF LAWS, 3d ed., §§11, 97 (1949); Lorenzen, "The Statute of Limitations and the Conflict of Laws," 28 YALE L.J. 492 (1919).

injustice will be worked by the enforcement of stale claims, or that the judicial system of the state is inadequate to dispose of such ancient causes. This policy would not be violated when the foreign statute cutting off the right in a shorter period of time than the forum statutory period is recognized, but it could result in the withholding of the aid of the forum courts in the enforcement of the claim when the period is longer. Although this public policy approach will restrict the full effectiveness of a recognition of the substantive aspect of the general statute of limitations,[371] it does serve to protect local interests while at the same time reducing the worst features of inter-jurisdictional shopping. In light of modern developments in application of special statutes of limitation, whether longer or shorter than comparable forum states, all courts could in time come to apply the foreign statute in all cases.[372] Treatment accorded a cause of action thus would be the same in any jurisdiction. This in turn would remedy the undesirable lack of uniformity between federal districts resulting from the state-federal uniformity requirement of *Erie Railroad v. Tompkins,* for if treatment of a cause is the same in all state courts, it will then be uniform in all federal courts.

V

PROPOSED FEDERAL AND STATE STATUTES

A. *Proposed Federal Statutes*

There is no constitutional barrier which prevents Congress from enacting a statute of limitations covering federally-created rights. No constitutional mandate requires that state limitations be adopted when federal rights are enforced in either state courts or federal district courts. Nor can one find any policy in favor of letting state limitations fill a vacuum created by the failure of Congress to limit the time in which action on a federally-created right may be brought. Since such rights are enforceable throughout the country, they should be enforceable within the same period of time. No longer should the length of time in

[371] See 3 RABEL, THE CONFLICT OF LAWS: A COMPARATIVE STUDY 513-516 (1950). "A public policy, not strong enough to be enforced by the court except when pleaded by the defendant should not be a reason to shield one who changes his abode arbitrarily to the forum, nor should it be a ground to remove limitation from many other important incidents of the governing law." Id. at 514.

[372] For such an enlightened treatment of a special statute of limitations see Lewis v. R.F.C., (D.C. Cir. 1949) 177 F. (2d) 654, and in same spirit, Young v. United States, (D.C. Cir. 1950) 184 F. (2d) 587. *Contra,* McMillen v. Douglas Aircraft Corp., (D.C. Cal. 1950) 90 F. Supp. 670; Hartwell v. Piper Aircraft Corp., (D.C. Pa. 1950) 92 F. Supp. 271. All cases deal with wrongful death statutes.

which one defendant can be sued differ according to the jurisdiction in which he may be found, nor should it differ from the time in which a defendant in a similar action may be sued where that defendant is found. As indicated in the survey of existing federal limitations, Congress has closed many of the more obvious gaps,[373] making state limitations, many of them passed for the purpose of limiting such federal rights, unnecessary. Two primary tasks remain to be accomplished. The first is a conscious correlation of existing federal limitations, with similar types of action being limited to the same period of time.[374] One possibility would be to incorporate a general statute of limitations in Title 28 of the Code, with reference being made to the appropriate limitation whenever the Code creates or recognizes a right of action in a private individual. The second is a general residuary limitation, perhaps broken down into specific types of action such as contract, tort, or recovery of penalty, covering any federally-created right not specially limited by Congress. The language used should be broad, with adequate reviser's notes to discourage a restrictive judicial treatment of the provision.[375] In this manner, by a careful correlation of existing limitations and a residual clause designed to cover actions for which no special limitation is deemed necessary, there should be no reason to apply varying state limitations periods to federal causes enforced in state and federal courts throughout the United States.

B. *Proposed State Statutes*

The evils which have grown out of inter-jurisdictional shopping cannot be eliminated by Congress alone. Congress can provide time limitations for federally-created rights, but cannot fix time limitations for state-created rights. While it is true that Congress can limit the jurisdiction of the federal district courts,[376] and it is conceivable that the courts' diversity jurisdiction could be limited to actions commenced within a specified time after accrual, such a solution is not desirable. Any such legislation might be considered by the Supreme Court to be an evasion of the constitutional doctrine laid down in *Erie Railroad v. Tompkins*. But the most undesirable features of such a jurisdictional ap-

[373] E.g., 45 U.S.C. (Supp. III, 1950) §56; 29 U.S.C. (Supp. III, 1950) §255.

[374] This has been done in certain titles of the United States Code; e.g. 49 U.S.C. (Transportation); 15 U.S.C. (Commerce and Trade); but should be carried out throughout the Code.

[375] To avoid a treatment such as that accorded the present 28 U.S.C. (Supp. III, 1950) §2462. See note 326.

[376] Analogous, perhaps to requirements of admiralty jurisdiction. See Panama Ry. v. Johnson, 264 U.S. 375, 44 S.Ct. 391 (1924); The Thomas Barlum, 293 U.S. 21, 55 S.Ct. 31 (1934).

proach stem from its rigidity. If jurisdictional, the statute could not be waived by the parties, nor could a barred claim be revived by individual action. Private persons could not limit jurisdiction by contracting for a shorter limitation period, or confer jurisdiction by contracting for a longer period. Furthermore, the basic uniformity requirement of *Erie Railroad v. Tompkins* is sound policy so far as state-created rights are concerned, even though language placing the requirement on a constitutional basis poses some difficulty. Any congressional attempt to remedy the problem of conflicting state statutes of limitations on state-created rights would prove extremely unsatisfactory. As a result, the solution of the underlying problem must rest with state legislatures.

The most desirable state remedial action[377] would be the adoption of uniform legislation. Two statutes might be utilized: (a) a uniform "borrowing" statute; or (b) a uniform statute of limitations. A "borrowing" statute basically adopts the shorter limitation period of the state where the cause of action arose to bar action in the forum state on that cause. So long as the statute of limitations is considered procedural in nature, there is no constitutional requirement for recognition of any foreign limitation period, and adoption of such borrowing legislation rests solely on recognition of the sound policy underlying such statutes. Although thirty-one states now have borrowing legislation of some kind, a great many of them are undesirable, being limited in scope. Some statutes apply the foreign period only if the defendant resided in the foreign jurisdiction throughout the period.[378] This is designed primarily to protect the plaintiff when the defendant either injures plaintiff while defendant is temporarily within the jurisdiction where the cause of action arises or removes from the state before the limitation period has expired. Such an exception seems unwarranted today. Benefit to the plaintiff from defendant's absence from the jurisdiction should be strictly limited, for in most instances a plaintiff can discover the whereabouts of his absent debtor; even though a particular plaintiff cannot, there is a considerable public interest in having all claims settled as quickly as possible which should prevail even though individual hardship should result. Furthermore, with expanded concepts of contacts with the state for the purpose of out-of-state service of process[379] and

[377] Other than the reversal of the conflicts rule by judicial action, supra pp. 988-992.

[378] Story desired to engraft such a requirement on statutes limiting action on a statutory right. STORY, CONFLICT OF LAWS §582b. See Huber v. Steiner, 2 Bing. (N.C.) 203, 132 Eng. Rep. 80 (1835), citing Story with approval. No recent case has adopted this view.

[379] E.g., Hess v. Pawloski, 274 U.S. 352, 47 S.Ct. 632 (1927); Doherty & Co. v. Goodman, 294 U.S. 623, 55 S.Ct. 553 (1935); International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154 (1945); Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339 (1940).

with quasi-in rem jurisdiction over property within the state,[380] plaintiffs have sufficient enforcement machinery available so that they need not be allowed to rest until events transpire allowing them to sue a defendant newly in funds or newly discovered without effort on their part. A second exception carved out from some existing borrowing statutes favors causes of action held from accrual by residents of the forum state. If the purpose of the statute of limitations is to bar stale claims, it is difficult to justify degrees of staleness depending upon the domicile of the claimant. A uniform borrowing statute should provide in simple terms that a cause of action barred by the statute of the state where it arose or accrued will be barred in the forum.[381] The effect of such a statute would be that the right to bring action on a claim would not survive beyond the bar of the place where the operative facts occurred, though it might be barred in a particular jurisdiction at an earlier time. Much of the shopping among jurisdictions would be eliminated, although there would still be some choice of forum possible within the period of limitations of the state where the cause of action arose. Due to the fact that federal district courts would have to follow state practice, there would be an indirect result of bringing about greater uniformity among federal districts.

The borrowing statute corrects the situation between a particular plaintiff and defendant only when the foreign statute is shorter than the forum statute, and does not affect the situation when the foreign statute is longer than the forum statute. It does not solve the discrepancy when like causes of action are litigated between different parties in different jurisdictions. From an objective viewpoint it is difficult to justify statutes which allow suit against one defendant when suit against a similar defendant is barred in another jurisdiction, or which bar one plaintiff when a plaintiff on a similar cause could still bring action in another jurisdiction. The apparent disinclination of legislatures to correlate their general statutes of limitations with those of sister states seems a holdover of provincial English and colonial attitudes toward limitation of actions unwarranted in a day when geographical boundaries no longer restrict personal and business activities. The tendency to copy matters of substantive law[382] and matters of procedure[383] is not reflected

[380] Pennoyer v. Neff, 95 U.S. 714 (1877).

[381] Rabel would borrow the foreign statute as an exclusive limitation, whether longer or shorter than the forum statute, thus codifying the desirable susbtantive approach to the statute of limitations. 3 RABEL, THE CONFLICT OF LAWS: A COMPARATIVE STUDY 522 (1950).

[382] E.g., uniform statutes proposed by the Committee on Uniform Legislation of the American Bar Association.

[383] E.g., procedural rules modeled after the federal rules of civil procedure.

where general statutes of limitations are concerned.[384] Though inconvenience to individual plaintiffs or defendants attributable to unrelated statutes of limitations has been evidenced since colonial times,[385] it has taken *Erie Railroad v. Tompkins* to point up the over-all national need for correlation of statutes of limitation. The best "correlation" is "uniformity."

Therefore it is suggested that a uniform statute of limitations be drawn up and submitted to the states for adoption. The specific time limitations desirable are beyond the scope of this article. They should, however, be arrived at in light of statistics showing the number of causes of action sued on in each year subsequent to the accrual of a particular type of claim.[386] However, a few general observations on the content of such a statute may be in order.

First, the limitations should be few in number and broad in scope. Specialized provisions encourage and even necessitate refined judicial construction, resulting in a likelihood of conflicting interpretation among the several jurisdictions.[387] Actions limited might include those on contracts, on judgments, for fines, penalties or forfeitures, for injury to the person or rights of another not arising from contract, for recovery of real property, for injury to real property, for recovery of, or injury to, personal property, and for relief based on grounds of fraud or mistake. A residuary provision for all actions not otherwise provided for should be included.

Second, provisions defining adverse possession and otherwise dealing with acquisition of property or property interests by prescription should be removed from the general statutes of limitation and placed in the body of statutory material dealing with conveyancing.[388] Although such provisions were logically included in early statutes of limitation aimed primarily at real property actions, they no longer serve a functional purpose in a general statute of limitations in which limitations on personal actions usually outnumber limitations concerning real property.

Third, the state should be subjected to the same period of limitations as would a private party under the same circumstances. The concept of sovereign immunity to suit seems unwarranted today, and the states should follow the lead of the federal government, which has made itself

[384] Compare the widespread adoption of the general statute of limitations drawn up in connection with the procedural reform of the Field Code in 1848.

[385] E.g. cases note 358.

[386] The average limitations shown in the Appendix to this article may throw some light on possible limitation periods, although they may tend to be too long.

[387] The treatment of the Uniform Negotiable Instruments Law is an example.

[388] Appropriate cross-references should be provided.

subject to suit in tort when a private individual would be so subject, in the Federal Tort Claims Act.[389]

Fourth, provisions calling for suspension or extension of the normal limitation period should be reduced to a minimum. Though suspension or extension for some or all legal disabilities of plaintiff is common to most jurisdictions, today it is possible to have a legal representative appointed who is as fully capable of protecting or asserting the legal rights of the person incapacitated as the individual himself, making the need for such provisions doubtful. Nor should the common suspension in case of one imprisoned on a criminal charge or in execution of a criminal sentence be retained in any jurisdiction where such a prisoner does not lose the right to maintain an action in the courts.[390] Although a suspension during time of war of limitations of actions involving either enemy aliens or servicemen may be desirable, such suspension could well be left to Congress as a war measure,[391] and not be retained as a permanent part of the state statutes of limitations. Since most failures to assert a claim against an absentee defendant may be attributed more to plaintiff's lack of initiative than to defendant's elusiveness, the absence provision should be severely limited in scope. The suspension or extension resulting from absence or concealment of the defendant should be operative only when defendant leaves no property behind which can be attached, or when he cannot be sued under expanded concepts permitting out-of-state service of process. Because of the nullifying effect of such absence provisions upon a borrowing statute, a maximum period of suspension or extension, preferably quite short, should be provided. An extension of one year after the death of a party to an action should be enough in which to allow a second action to be brought. An additional period for suit after an unsuccessful initial attempt to assert a claim should be allowed only when the disposition of the first case is not directed to the merits or does not result from a lack of diligence on the part of the plaintiff. The period in which the second action may be brought should be brief, perhaps much shorter than the one year commonly allowed today.

Fifth, exceptions from the operation of the statute, other than necessary suspension or extension of the statute where it otherwise normally

[389] 28 U.S.C. (Supp. III, 1950) §2674. Cf. 28 U.S.C. (Supp. III, 1950) §2401, civil actions, and 28 U.S.C. (Supp. III, 1950) §2501, claims within the jurisdiction of the Court of Claims.

[390] On the practical side a prisoner may hesitate to enforce a claim when the fact of his prisoner status may be brought out to his detriment. But this may also occur after release. A prisoner also is handicapped in finding and attaching or levying on defendant's property in satisfaction of his claim.

[391] Such as the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. (1946) §525.

applies, should be few; and perhaps should be eliminated entirely. Statutory actions otherwise limited are obviously excepted from the operation of the general statute of limitations. The statute should be applied to causes asserted in counterclaim.[392] In light of the broad relief provisions and the merger of law and equity of either code or rule type procedure, the statute should be phrased in terms of relief sought, and should be applied without regard to old law-equity distinctions.[393] The statute should be applied to joint defendants individually so long as there are suspensive provisions applicable to individual defendants.

Sixth, there should be a uniform definition of "arising" or "accrual" of the "cause" or "claim." So far as possible, accrual should be defined in general terms, and not related to individual causes of action. The Missouri provision for accrual in general, deeming a cause accrued when damage has become ascertainable after breach so that relief may be full and complete, might be desirable, though it does leave considerable leeway for judicial interpretation.

Seventh, there should be a uniform provision defining commencement of an action sufficient to halt the running of the limitation period. The filing of the complaint, which is the point of commencement of an action under the federal rules,[394] might be a desirable point for halting the running of the statute, since this should indicate a timely assertion of the claim against the defendant. However, perhaps actual service or notice to the defendant should be required within a relatively short time in order that he can effectively marshal and preserve his evidence.

Eighth, the manner of invoking the bar of the statute should be provided for, preferably as an affirmative defense which must be pleaded by the defendant to the individual cause of action.[395]

Ninth, barred contract claims, or claims involving a sum certain in money, should be revivable by payment, acknowledgment or a new promise by the defendant. Such conduct should be considered as raising a new obligation which should be sued on as such.[396] Since the statute should be applied to joint defendants individually, any such payment, acknowledgment or promise by one joint defendant should not

[392] Except perhaps if it is a claim which would be the subject of compulsory counterclaim under a court rule similar to Federal Rule of Civil Procedure 13(a).

[393] This should eliminate the need of harking back to old practice forms and rules to ascertain whether the action is legal or equitable in nature. To phrase the statute of limitations in terms of relief sought makes concern with old practice unnecessary.

[394] Federal Rule of Civil Procedure 3.

[395] Federal Rule of Civil Procedure 8(c). Cf. Rule 9(f) and see 63 HARV. L. REV. 1198 (1950).

[396] Under a substantive approach to the statute of limitations this would seem necessary if the old right was completely extinguished by the original bar of the statute.

affect the protection of the bar of the statute enjoyed by any other joint defendant.

Finally, from a practical standpoint a borrowing provision should be included. If the uniform statute of limitations should receive non-uniform treatment by the judiciary, or if it should not be adopted in all jurisdictions, if it should not be passed in its entirety, or if it should have special local limitation provisions engrafted onto it, such a provision would eliminate shopping by a plaintiff to take advantage of such local peculiarities.

Though as a practical matter it is difficult to secure passage of uniform legislation in all states, particularly when the subject matter has so long been considered as of local interest only, the need for such legislation in the case of the statute of limitations seems clear. To the extent that such a statute is adopted, the problem of varying limitation periods upon particular causes of action and similar causes of action will be removed. Only by a uniform state treatment of the problem will the conflict among federal districts resulting from the uniformity of result requirement of *Erie Railroad v. Tompkins* be resolved.

APPENDIX

ANALYSIS OF GENERAL STATUTES OF LIMITATIONS

A. TIME LIMITATIONS

	Number of states	Average in years	Mean in years
I Formal Contracts			
1. Contractual provisions of deeds	4	10.6	10
2. Bonds			
a. Official	22	6.9	6
b. Procedural	14	4.9	3
c. Fiduciary	19	7.6	6
d. Other	18	8.5	7
3. Recognizances	9	7.2	3
4. Negotiable instruments	14	6.8	6
5. Sealed contracts in general	26	12.8	10
II Informal Contracts			
1. Accounts			
a. Stated	8	4.0	4
b. Open	8	3.4	4
c. In general	16	4.3	4
2. Other obligations to pay money	14	3.9	4
3. Written contracts in general	26	7.9	7
4. Unwritten contracts in general			
a. Express	10	4.3	4
b. Implied	9	4.4	4
c. In general	12	3.8	4
5. Breach of promise to marry	8	1.4	1
6. Contracts in general	37	5.4	6

	Number of states	Average in years	Mean in years
III Non-Contractual Obligations to Pay Money			
1. Quasi-contract	3	1.7	1
2. Statutory liability			
a. Penalty or forfeiture			
(1) Person aggrieved	12	2.4	3
(2) Person prosecuting	22	1.2	1
(3) State or county	19	1.8	2
(4) In general	28	1.9	2
b. Federal or state wage statute	18	1.8	2
c. Usury	4	1.5	1
d. Other	25	4.5	3
3. Judgment			
a. Action on judgment			
(1) Court of record			
(a) United States	3	1.5	10
(b) This state	6	16.0	20
(c) Other states	5	9.3	7
(d) All states	2	15.0	—
(2) Courts not of record			
(a) This state	2	6.0	—
(b) Other states	1	4.0	—
(c) All states	8	6.5	6
(3) In general			
(a) United States	17	10.0	10
(b) This state	7	11.6	10
(c) Other states	16	7.6	6
(d) All states	14	10.4	10
b. Judgment deemed satisfied	8	14.1	10
c. Execution and revival	11	7.6	7
4. Other obligation	8	5.6	5
IV Real Property			
1. Recover of land or possession			
a. By state or other municipal corporation			
(1) Against adverse possessor			
(a) Color of title	3	20.7	20
(b) Bare possession	2	30.0	—
(c) In general	10	21.8	20
(2) Against other person	15	14.0	10
b. By grantee of state			
(1) Against adverse possessor	4	27.5	20
(2) In general	9	11.8	10
c. By other persons			
(1) Against adverse possessor			
(a) Color of title	21	11.1	10
(b) Bare possession	12	19.0	10
(c) In general			
(i) Entry or action after accrual	22	13.4	10
(ii) Action on entry	16	1.0	1
(iii) In general	16	13.3	10
(2) Against state	3	4.3	4
(3) Against purchaser of tax title	7	3.6	3
(4) Against purchaser at execution sale	6	5.8	5
(5) Against purchaser from estate	6	4.4	5
(6) Against other person	44	13.1	10

	Number of states	Average in years	Mean in years
2. Injury to land	44	4.3	3
3. Enforcement of liens			
a. Foreclosure	18	13.0	10
— Extension by filing	12	16.2	15
b. Redemption	12	8.6	7
c. Deficiency judgment	3	0.8	1
4. Rents, use and profits			
a. By state	11	21.5	20
b. By other person	20	6.8	6
5. Specific performance	5	11.3	5
6. Forcible entry and detainer			
a. Forcible entry and detainer	5	1.7	2
b. Forcible entry only	5	1.8	2
V Personal Property			
1. Recovery of possession	39	4.2	4
2. Claim for damages			
a. Taking	31	4.1	4
b. Detention	33	4.3	4
c. Conversion	12	2.7	2
d. Injury	39	4.0	3
e. In general	5	5.0	6
VI Persons			
1. Assault and battery	34	1.8	2
2. Imprisonment			
a. Arrest	6	1.3	1
b. False imprisonment	36	1.8	2
c. Habeas corpus	1	3.0	—
3. Wrongful death	13	1.8	2
4. Seduction	14	1.5	1
5. Criminal conversation	12	3.5	2
6. Alienation of affections	1	1.0	—
7. Injury to character			
a. Libel	40	1.5	1
b. Slander	41	1.4	1
c. In general	9	1.7	2
8. Malicious prosecution	15	1.2	1
9. Malpractice	16	1.8	2
10. Injury to persons in general	39	2.9	2
VII Trusts and Estates			
1. Trusts			
a. Establishment and enforcement	5	5.6	5
b. Misconduct of trustee	2	8.0	—
c. Recovery of corpus from trustee	3	7.0	10
2. Decedents' estates			
a. Establishment and probate of will	5	8.4	6
b. Contest of will	3	2.0	1
c. Claim against estate			
(1) Accruing before death	3	4.5	5
(2) Accruing after death	1	5.0	—
(3) In general	13	6.4	6
d. Misconduct of representative	2	5.5	—
3. Guardianship			
a. Misconduct of guardian	1	5.0	—
b. In general	2	6.0	—

	Number of states	Average in years	Mean in years
VIII Business Associations			
1. Corporations			
a. By corporation			
(1) Against officer or shareholder	1	6.0	—
(2) Against other person	3	2.0	2
b. By other person			
(1) Against corporation			
(a) Injury to person	1	1.0	—
(b) Injury to property	4	2.3	1
(c) In general	6	6.3	2
(2) Against officer or shareholder	12	4.3	3
2. Partnerships			
— Settlement of accounts	4	5.0	5
IX Municipal Corporations			
1. State			
a. By state	6	8.5	5
b. Against state			
(1) For money	3	4.3	2
(2) In general	7	3.5	3
2. Other municipal corporation			
a. By municipal corporation			
(1) For money	1	5.0	—
(2) In general	1	3.0	—
b. Against municipal corporation			
(1) Contesting election	3	0.3	0.3
(2) Contesting bond issue	3	0.3	0.2
(3) Contesting tax assessment	4	0.6	0.8
(4) Enforcement of bond or other obligation	4	8.0	6.0
(5) Injury to person	6	0.8	1.0
(6) Injury to property			
(a) Real property	1	6.0	—
(b) In general	7	0.8	1
(7) In general	13	2.1	1
X Public Officers			
1. Misconduct			
a. Sheriff or deputy	26	3.0	3
b. Constable	16	3.0	3
c. Coroner	16	3.1	3
d. Other officer	12	3.0	3
2. Non-payment of money collected			
a. Sheriff or deputy	19	2.9	3
b. Constable	14	2.8	3
c. Coroner	14	2.6	3
d. Other officer	12	6.1	3
3. Improper seizure or detention of money or property			
— Officer or de facto officer	5	0.8	1
4. Escape of prisoner arrested on civil process			
a. Sheriff or deputy	16	1.2	1
b. Other officer	16	1.2	1
XI Fraud and Mistake			
1. Fraud	28	4.0	4
2. Mistake	9	3.3	3

	Number of states	Average in years	Mean in years
XII Actions Not Otherwise Limited			
1. All other personal actions	13	5.2	4
2. Actions of trespass except			
a. Assault and battery	1	6.0	—
b. False imprisonment	1	6.0	—
c. Injury to person	1	4.0	—
3. Actions on case except			
a. Slander	4	6.0	6
b. Libel	3	6.0	6
c. Injury to person	2	6.0	6
d. Account between merchants	1	6.0	—
4. All other actions	31	7.0	5

B. SUSPENSION AND EXTENSION OF STATUTORY PERIOD

	Extension			Suspension[4]
	(1)[1]	(2)[2]	(3)[3]	
I Disability of Plaintiff				
1. Infancy				
a. Actions concerning land	6.9 (33)[5]	(4)[5]	24.8 (11)[5]	
b. Other actions	1.9 (14)	(21)	14.2 (5)	(2)[5]
c. All actions	1.8 (6)	(5)	15.0 (3)	
2. Insanity				
a. Actions concerning land	6.9 (33)	(3)	24.8 (10)	
b. Other actions	1.9 (14)	(21)	10.0 (10)	(2)
c. All actions	1.8 (6)	(5)	15.0 (3)	
3. Imprisonment				
a. Actions concerning land	7.5 (26)	(3)	25.0 (6)	
b. Other actions	1.8 (12)	(16)	5.2 (5)	
c. All actions	1.8 (4)	(3)	13.3 (3)	
4. Other disabilities				
a. Actions concerning land	7.2 (9)	(1)	27.5 (2)	
b. Other actions	1.6 (4)	(6)		(2)
c. All actions	1.0 (1)		5.0 (1)	(1)
5. All disabilities				
a. Actions concerning land	4.7 (3)		2.0 (1)	
b. Other actions	2.2 (3)			
c. All actions	2.0 (2)	(1)		
II Absence of Defendant				
1. Absence at time of accrual		(36)		(4)
2. Absence after accrual		(1)		(40)
3. Concealment at time of accrual		(11)		
4. Concealment after accrual				(12)
5. Absence in general		(9)		(2)
6. Concealment in general				(3)

[1] Average years for bringing action after removal of disability.
[2] States permitting full statutory period after removal of disability.
[3] Average maximum time allowed after accrual of claim.
[4] States suspending operation of the statute during condition.
[5] Number of states having such a provision indicated in parenthesis.

	Extension (1)	Extension (2)	Extension (3)	Suspension
III Death				
1. Death of plaintiff	1.0 (31)		3.0 (1)	(1)
2. Death of defendant	1.1 (27)		5.0 (4)	(5)
3. Death of either party				(7)
4. Representative deemed qualified	4.2 (5)			
IV War				
1. Enemy plaintiff	1.0 (1)		5.0 (1)	(8)
2. Enemy either party				(14)
3. Serviceman	1.0 (1)			(4)
V Insolvency and Arbitration				
1. Duration of insolvency proceedings				(3)
2. Duration of arbitration proceedings	1.0 (1)			(2)
VI Prevention or Failure of Action				
1. Prevention				
a. Statutory prohibition against commencement	1.0 (1)		5.0 (1)	(20)
b. Injunction staying commencement	1.0 (1)		5.0 (1)	(26)
c. Other interference				
(1) Fraudulent concealment	4.0 (5)	(6)		(4)
(2) Other methods	1.0 (1)			(5)
2. Failure				
a. Reversal of plaintiff's judgment	1.1 (39)			(2)
b. Arrest of plaintiff's judgment	1.0 (18)			
c. Failure of process or service	1.0 (9)			
d. Defeat of writ or action				
(1) Death of party	1.3 (16)			
(2) Matter of form	0.9 (8)			
(3) Other matter	1.0 (23)			(1)
e. Effect of proceedings on defendant's cause used as counterclaim or defense	0.5 (1)			(4)

C. DEFINITIONS AND RULES FOR APPLYING STATUTE OF LIMITATIONS

	Number of states
I Applicability of State Statutes	
1. Persons and causes	
a. Claims by state	
(1) Applies	19
(2) Does not apply	10
b. Claims against state	
— Applies	1
c. Claims by other municipal corporation	
(1) Applies	3
(2) Does not apply	5
d. Claims against other municipal corporation	
— Applies	1
e. Claims against nonresidents	
(1) Applies	3
(2) Does not apply	1

	Number of states
f. Claims against fiduciaries	
— Does not apply	4
g. Accounts between merchants	
— Does not apply	3
h. Bills, notes and other evidences of debt	
(1) Of banks and other corporations	
— Does not apply	10
(2) In general	
— Does not apply	3
i. Claims for equitable relief	
(a) Applies	4
(b) Does not apply	2
j. Counterclaim	
(a) Applies	15
(b) Does not apply	6
k. Inapplicable to claim barred prior to statute	12
l. Inapplicable to claim specially limited	24
m. Inapplicable to actions already commenced	6
n. Inapplicable to amendment of cause	
— Unless arising from different transaction	1
o. Where applicable to fiduciary also applicable to beneficiary	2
p. Where applicable to indebtedness also applicable to security	4
q. Applicable to all civil actions	21
r. Applicable to special proceedings of a civil nature	6
s. Applicable to joint defendants individually	14
2. Effect of contracts and wills	
a. Contracts altering time limitations void	5
b. Contracts shortening time limitations void	3
c. Will providing for payment of barred claims ineffective unless intent clear	3
II "Arising" or "Accrual" of Claim[6]	
1. Account	
a. Mutual, open and current	
(1) Where demands are mutual and reciprocal	
(a) At last item proved on adverse side	2
(b) At last item proved on either side	16
(2) In general	
(a) At last item proved	12
(b) At last item proved on either side	1
(c) At last transaction or payment	5
b. Bank deposit	
— At demand	4
2. Statutory penalty or forfeiture	
a. Against corporate director or stockholder	
— At discovery of facts	11
b. Against other person	
— At discovery of facts	2
3. Real Property	
a. Recovery of title or right of entry	
(1) At disseisin	6
(2) At death of predecessor seised or possessed	6

[6] In addition, one finds accrual provisions in from one to three states covering matters such as deed covenants, bonds, judgments, wrongful death, establishment or contest of will, property held by fiduciaries, charges of carriers, agency and partnership.

	Number of states
(3) At termination of intermediate estate	6
(4) At forfeiture or breach of condition for which benefit sought	6
(5) At time ancestor or predecessor first gained right to title or possession	7
(6) At any other time when claimant became entitled to entry or possession	7
b. Action for waste or trespass	
— At discovery	5
4. Fraud and mistake	
a. Relief for fraud	
— At discovery	30
b. Relief for mistake	
— At discovery	14
III Commencement of Action	
1. Action deemed commenced	
a. Filing of complaint or petition	6
b. Filing of complaint or petition and issuance of summons or process	4
c. Issuance of summons or process	3
d. Service on defendant	1
e. Service on defendant or co-defendant who is joint contractor or otherwise united in interest with defendant	11
f. First publication, if regularly continued	5
2. Attempted service equivalent to service	
a. In court of record	
(1) If delivered with intent it be served to sheriff of county where defendant last resided or defendant corporation last did business	1
(2) Where actual service made within 60 days	2
(3) Where first publication within 60 days	1
b. In court not of record	
(1) If delivered to officer, authorized to serve process, of city or town where defendant resided or defendant corporation last did business	1
(2) If actual service obtained with due diligence	2
c. In general	
(1) If party faithfully and diligently attempts to procure service	4
(2) When delivered to officer with intent it be served	5
(3) Where actual service within 60 days	7
(4) Where first publication within 60 days	5
IV Manner of Invoking Statute	
1. Answer	8
2. Demurrer	2
3. Defense	2
4. Motion	1
5. Reply	2
6. Any proper manner of raising issue	4
V Effect of Bar on Joinder of Parties	
— Non-joinder of one jointly liable is not objectionable when claim against him is barred	6
VI Effect of Payment, Acknowledgment or New Promise	
1. Action may be revived by acknowledgment or promise in writing signed by person to be charged	40
2. Action may be revived by part payment on principal or interest by person to be charged	29

	Number of states
3. No indorsement of payment on note, bill or other writing deemed sufficient proof of payment	9
4. No promise or acknowledgment signed by joint contractor deprives other joint contractor of benefit of statute	14
5. No payment by joint contractor affects rights of other joint contractors	8
6. Admission, act or acknowledgment of partner after dissolution affects only himself	3
7. After promise or acknowledgment, plaintiff sues:	
a. On original cause	2
b. On either original cause or new promise or acknowledgment	2
VII Disabilities	
1. Disabilities of plaintiff must exist at accrual or arising of claim	25
2. Successive disabilities may not be tacked	5
3. When two or more disabilities co-exist, all must be removed before limitations attach	20
VIII Applicability of Statutes of Other States	
1. No action allowed in this state if barred:	
a. Where it accrued	9
b. Where it accrued and defendant resided	2
c. Where defendant resided	4
d. Where it accrued and all parties resided	8
2. No action allowed in this state if barred where it accrued, except in favor of resident of this state holding it from accrual	8
3. Where action on judgment barred where rendered, no action allowed in this state	7
4. If action on contract barred where entered into, no action allowed in this state	3

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* The study includes all cumulative changes and all additions to the several statutes reported through 1950.

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