

When Is the Statute of Limitations a Defense?

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I) Definition of “statute of limitations.”

A statute of limitations sets forth the time within which an accrued cause of action must be asserted in court. If the plaintiff brings a cause of action after the statute of limitations has run, he/she has no legal remedy. The statute of limitations is an affirmative defense that must be pled by the defendant.

A statute of limitations affects only a plaintiff’s ability to seek a remedy; it does not affect a plaintiff’s underlying rights. In this respect, a statute of limitations is distinguishable from a statute of repose, which extinguishes a plaintiff’s rights or prevents them from arising once a fixed period of time has passed.

II) Framework for determining when a statute of limitations is a defense.

When faced with the question of whether the statute of limitations is a defense to a plaintiff’s claim, three questions must be answered:

- (1) What is the statute of limitations for this type of claim? (Part III)
- (2) When did the cause of action accrue? (Part IV)
- (3) Has the statute of limitations run? (If the timeframe between accrual and when the petition was filed is greater than the timeframe set forth in the applicable statute of limitations, the statute of limitations bars the plaintiff’s claim.)

III) Statutes of limitations for various claims.

Personal injury - within 2 years of accrual (Iowa Code § 614.1(2))

Unwritten contract, fraud, or injury to property – within 5 years of accrual (Iowa Code § 614.1(4))

Written contract – within 10 years of accrual (Iowa Code § 614.1(5))

Workers’ compensation - in a contested case, within 2 years of occurrence of injury or within 3 years of the last payment of weekly benefits (Iowa Code § 85.26)

Medical malpractice – within 2 years of accrual (Iowa Code § 614.1(9))

Claims against a municipality (city, county, township, school district or other unit of local government) or the employees, officers or agents of a municipality for “wrongful death, loss or injury” - 2 years from wrongful death, loss or injury (Iowa Code § 670.5))

Most claims of minors or people with mental illness- within one year of attainment of minority or one year from termination of disability. Iowa Code § 614.8. This is only the rule if a minor or individual with a mental illness wants to bring his or her own claim. If a guardian desires to bring an action on behalf of a minor or mentally disabled individual, then the claim must be brought within the statute of limitations applicable to the particular type of claim, with no extensions on account of minority or disability.

IV) Accrual.

The date a claim “accrues” is the date the statute of limitations will begin to run.

A) Accrual of most types of actions, including personal injury & contract-based actions.

Generally, a personal injury or contract action will accrue at the time a wrongful act causes damage. *Bob McKiness Excavating & Grading, Inc. v. Morton Bldgs., Inc.*, 507 N.W.2d 405, 408 (Iowa 1993). For example, a breach of contract action will generally accrue on the date of breach of the contract, while a personal injury action based on a motor vehicle accident will generally accrue on the date of the accident.

However, over time, Iowa courts started to realize that using the date of the occurrence of a wrongful act as the date of accrual can produce unfair results. In such circumstances, Iowa courts now apply the “discovery rule.” Under this rule, a cause of action will accrue only when an injured party is on actual or inquiry notice of the facts that would support the elements of a cause of action. *Speight v. Walters Dev. Co., Ltd.*, 744 N.W.2d 108, 116 (Iowa 2008). In other words, a cause of action will accrue when a plaintiff: (1) has actually discovered the facts supporting an action (actual notice), or (2) is aware of facts that would suggest to a reasonable person that the situation should be investigated, and is consequently chargeable with knowledge of facts that would be discovered through a reasonably diligent investigation (inquiry notice). *Id.*

B) Accrual of fraud actions.

A fraud cause of action “shall not be deemed to have accrued until the fraud . . . complained of shall have been discovered by the party aggrieved.” Iowa Code § 614.4. Thus, in fraud actions, the discovery rule, which is considered an exception in personal injury actions and contract-based actions, is the general rule. Although the wording of the statute suggests only actual notice on the part of the party aggrieved will start the statute of limitations, case law indicates that inquiry notice of fraud will also start it. *Hay v. Denver Sav. Bank*, 295 N.W. 176 (Iowa 1940).

C) Accrual of medical malpractice actions.

A medical malpractice action accrues on the date “when the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first.” Iowa Code § 614.1(9). The way the Iowa Supreme Court has interpreted this language has recently changed.

- 1) Very restrictive interpretation of discovery rule (pro-defendant).

Schlote v. Dawson, 676 N.W.2d 187 (Iowa 2004):

FACTS: Dr. Douglas Dawson removed James Schlote's voicebox on May 21, 1996. Schlote later learned Dr. Dawson had been kicked out of his practice, due to addiction to narcotics. Schlote decided to have the Iowa Board of Medical Examiners review his medical records. In December 1999, the Iowa Board of Medical Examiners suspended Dawson's license for excessive surgery. On February 17, 2000, Schlote sued Dawson.

HOLDING: Schlote's lawsuit was barred by the two year medical malpractice statute of limitations.

REASONING: The action accrued on the date of the removal of the voicebox. The Court interpreted the word "injury" in the statute to mean "physical harm," and determined the injury was removal of Schlote's voicebox. On May 21, 1996, Schlote knew he had his voicebox removed (i.e. he knew of his injury), so that is the date the statute of limitations began to run.

2) Expansive interpretation of discovery rule (pro-plaintiff).

Rathje v. Mercy Hospital, 745 N.W.2d 443 (Iowa 2008):

FACTS:

3/19/99 - The Rathjes admitted their sixteen year old daughter, Georgia, into an outpatient alcohol abuse treatment center. A doctor at the center prescribed Antabuse, a drug that results in an unpleasant bodily reaction to the ingestion of alcohol.

1 week later: Georgia began feeling nauseated.

4/26/99 - Georgia's skin was yellow; she appeared jaundiced.

4/27/99 - Georgia was admitted to a hospital, where a gastroenterologist diagnosed Georgia with drug-induced hepatitis. Georgia stopped taking Antabuse.

4/26/01 - Georgia and her parents filed a petition alleging medical malpractice.

5/5/01 - Georgia received a liver transplant due to end-stage liver disease secondary to Antabuse.

HOLDING: The district court erred in granting the defendant's motion for summary judgment on the ground the statute of limitations barred Georgia's claim.

REASONING: The Iowa Supreme Court determined that whether the two year medical malpractice statute of limitations bars the plaintiff's claim is a jury question. The Court established a new rule: *For a cause of action to accrue, a plaintiff must be on actual or inquiry notice of facts indicating both: (1) injury and (2) the cause of the injury.* (Contrast with *Schlote*, where notice of the injury alone caused accrual). A plaintiff does not have to know the legal cause of injury (negligence); he only needs to know the factual, medical cause of injury (for instance, in this case, prescription of Antabuse). A reasonable jury could find the earliest the Rathjes knew the injury (hepatitis) *and* cause of the injury (prescription of Antabuse) was 4/26/99, such that the cause of action did not accrue until that date, and the Rathjes' petition was filed before the statute of limitations had run.

Murtha v. Cahalan, No. 04-1727, 2008 WL 466751 (Iowa, Feb. 22, 2008):

FACTS:

Summer 1997 - Tamra Murtha noticed a lump in her breast.

Summer 1997 - December 2001- Doctors concluded Murtha's lump was not malignant and did not seem too concerned about it.

12/7/01 - A physician expressed some concern about the lump and suggested excision.

4/02 - Murtha obtained a second opinion that the lump should probably be removed.

6/14/02 - The lump was removed. Diagnostic testing showed the lump was cancerous.

9/5/03 - Murtha filed suit for misdiagnosis of her lump and negligent treatment/care.

HOLDING: The district court erred in granting the defendant's motion for summary judgment on the ground the statute of limitations barred Murtha's claim.

REASONING: The Iowa Supreme Court determined that whether the two year medical malpractice statute of limitations bars the plaintiff's claim is a jury question. In a negligent misdiagnosis case, "injury" occurs when a problem grows into a serious condition posing greater danger to the patient or which requires more extensive treatment. A reasonable factfinder could thus conclude Murtha was not injured until the two years preceding suit. A reasonable factfinder could also conclude the first Murtha knew of her injury and cause was 12/7/01 (within two-year period preceding lawsuit).

* Practical effect of *Rathje* and *Murtha* is that it will be harder for defendants to get summary judgment on the basis of the statute of limitations in medical malpractice cases. When a medical malpractice cause of action accrues will frequently be a fact question for the jury.

V. Miscellaneous.

A. Effect of death on statutes of limitations.

Iowa Code section 611.20 keeps alive for the benefit of the estate the cause of action that the deceased, prior to his death, could have brought if he had survived. *Wilson v. Iowa Power & Light Co.*, 280 N.W.2d 372 (Iowa 1979). The cause is deemed to accrue to the decedent's estate representatives at the time it would have accrued to the deceased if he had survived. Iowa Code § 611.22.

B. Counterclaims.

A counterclaim may be pled even if the statute of limitations for the claim has run, so long as the counterclaim (1) belonged to the party pleading it at the time the claim became barred, and (2) the claim was not "barred at the time the claim sued on originated." Iowa Code § 614.12. However, no judgment on the counterclaim may be obtained other than for costs. *Id.*

C. *Injunctions.*

If the commencement of an action is stayed by injunction, the time of the injunction is not counted as part of the time in which the action must be brought. Iowa Code § 614.13.

D. *Fraudulent concealment.*

Fraudulent concealment that prevents a plaintiff from discovering the facts that support his or her cause of action estops a defendant from using the statute of limitations as a defense. For instance, in a medical malpractice case, if a doctor lies about the cause of the injury, which in turn delays the plaintiff's discovery of the actual cause of injury, the doctor cannot rely on the statute of limitations defense. *Christy v. Miulli*, 692 N.W.2d 694 (Iowa 2005).