



## Applicable rules of statute of limitation: Comparative study of United States & Saudi Arabia

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### Abstract

Statute of limitations is a law which sets out the maximum time that parties have to initiate legal proceedings from the date of an alleged offense. The precise form of a statute of limitations differs from one jurisdiction to the other. The length of time for statutes of limitation corresponds roughly to the amount of notice that both parties have regarding the underlying injury or wrong. The more notice both parties have that there is a problem and the more likely it is that the injured party will sue, the longer the statute of limitation. The less likely it is that the offending party will be aware of his wrong or the more inconsequential it is likely to be, the shorter the statute of limitation. The longest statutes of limitation are generally those regarding the recovery of judgment after a lawsuit in this situation, the parties are clearly on notice of the lawsuit. If the losing party refuses to pay his judgment, it should come as no surprise that he will be sued, even if it is as many as 10 years later. The Statute of Limitation is the deadline for filing a lawsuit. The purpose of this research is to differentiate between The United States and the Kingdom of Saudi Arabia regarding the Statute of Limitation. Moreover, each of them has different types, general time limits, purposes, and advantages as well as disadvantages. Statute of limitations is sometimes controversial due to cases where legal action cannot be brought against an offender because the maximum length of time has elapsed. As time goes on, important evidence may be lost and the memories of witnesses can grow foggy. Legal proceedings brought under these circumstances may not be fair to all parties.

**Keywords:** Statute of limitation, prescription, Lawsuit, legislation; period of time obsolescence

### Introduction

The acquisitive prescription is a highly important penalty when it comes to the legal system of any country. Thus clarifying this law would be beneficial to all whom want to know their rights, as well as the legal procedures of seeking out rights in court systems, by filing lawsuits.

Legislation that sets a timeframe (limitation period), which affected parties must take action to enforce their rights or to seek redress after damages or injury. This period varies according to the nature of the case. However, its objective is to encourage diligent prosecution of certain offenses while evidence is already available. It is generally not applicable to cases involving fraud and murder.

First, the United States has only two types of statute: Federal law and Civil law. Whereas in Saudi Arabia there are three types: Criminal, transactions regime based on Islamic jurisdiction, and Administrative law. Islamic jurisdiction is based on the judge's discretion. Second, regarding the statute of Limitation's general time limit in the United States, when it comes to federal Crimes, it is 5 years. As for the Civil (state) case, each of the 50 states differs in its laws about every specific civil Tort in accordance to its state law. However, in Saudi Arabia, the statute time limit differs regarding the type of breach is it; however, the law doesn't follow the time limit if there was a lawful excuse. Third, the purpose of Statute of Limitation in the United States is to protect the defendant and to not have them defend themselves after a long period of time. In contrast, the purpose of the Statute of Limitation in Saudi Arabia is to prioritize all the filings of lawsuits by hierarchy of what is furthest from the time limit; since the

Judicial System in Saudi Arabia is free.

Last but not least, Statute of Limitation has advantages and disadvantages in both countries. In most situations the Statute of Limitation can be more of a hurdle in the way of justice when attempting to convict someone who should have been in jail ages ago. And in other situations, it is the only savior to those who might get convicted unjustly through lack of material for the procedures of the Judicial Systems.

All of these matters will be discussed in more details following research paper.

### Statute of Limitation in the United States

The Statute of Limitations<sup>[1]</sup> is the time-limit decided by law for pursuing or filing a lawsuit against the defendant/claimant, depending on which law it falls under.

There are two types of Statutes of Limitation in the United States of America, Criminal (federal) and Civil (state) prescription.

When it comes to federal<sup>[2]</sup> crimes, the Limitation is 5 years long; therefore, any crime that surpasses this time-period becomes ineligible for prosecution.

Despite that, the federal laws also state that the general -five year- Statute of Limitations applies in every case unless there is a specific code section that extends the prescription for that particular offense. I.E. capital crimes, such as the Capital Murder<sup>[3]</sup>, Terrorism<sup>[4]</sup>, Sexual offenses against children<sup>[5]</sup>,

<sup>1</sup> 10 U.S. Code 843 - Art. 43. Statute of limitations

<sup>2</sup> <http://www.bayarea-attorney.com/federal-statue-of-limitations-article-on-Federal-Statute-of-Limitation-by-the-bayarea-attorney>

<sup>3</sup> 18 USC 3281

many White Collar crimes<sup>[6]</sup>, Federal tax law violations (tax crimes such as tax evasion)<sup>[7]</sup>; and finally major Fraud against the United States<sup>[8]</sup> has certain conditions for the Statute of Limitations. Every state enforces strict time limits for filing a civil action, whether it's a medical malpractice lawsuit or a claim for collection of debt. Again, they are intended to ensure the integrity of physical evidence and witness testimony, while also removing the indefinite threat of a lawsuit (which could be used as blackmail in the absence of limits). For instance, the time limit to file a trespass case in California is three years from the date of the incident, whereas in Colorado it is only two years.

Whereas the Civil (state) prescription covers these types of cases under Tort Law:

“Personal injury from negligence or intentional wrongdoing, property damage from negligence or intentional wrongdoing, breach of an oral contract, breach of a written Contract, professional malpractice, libel, slander, fraud, trespass, a claim against a governmental entity (usually a short time), and some other variations.”

And as for the specific duration; every state of the 50 states differs in every specific civil Tort (as those mentioned above) in accordance to its state law when it comes to the Statute of Limitation<sup>[9]</sup>.

### Purpose of the Statute of Limitations

The main purpose of the Statute of Limitations is to keep defendants/respondents from having to protect themselves from charges that occurred so far into the past that it makes it impossible to legally defend/respond about oneself.

In many of these cases, evidence may no longer be available, making it harder to protect oneself and prove one's innocence. Therefore, by rational conclusion, it would be a clear violation of the defendant/respondent's right to receive due process under the law and the right to receive a fair trial if a prosecution was to take place under those conditions.

The argument that the Statute of Limitations has run is a defense/response against a criminal or civil charge, yet if it is not presented before a trial begins, the defendant/respondent has likely waived their right to use this as a defense/response. In order to successfully use the Statute of Limitations defense/response, it is necessary to show that the criminal or civil complaint or indictment was filed after the period of the prescription had been surpassed by the legally designated law of duration in accordance to it being Federal or State, Statute of Limitation.

### Statute of Limitation in Saudi Arabia

It must be clarified that within the Kingdom of Saudi Arabia, even with “Statute of Limitation”; they rather go -due to religious perspective- with “The Passage of Time”<sup>[10]</sup>. Despite

that, the law in Saudi Arabia doesn't follow the system of passage of time when there is a lawful excuse. Thus, there is only one type, which is the general Statute of Limitation; i.e. same as in the western legal system, without the other type known within the Arab legal system as “Attagadum Al Muksib”<sup>[11]</sup>.

The prescription in the Kingdom of Saudi Arabia is divided to three different branches which fall under:

(1) Criminal, (2) Transaction regime (civil) and (3) Administrative.<sup>[12]</sup>

The definition is the same as stated prior in the USA part, which means it is also “the time-limit decided by law, for pursuing or filing a lawsuit”.

### One, Criminal<sup>[13]</sup>

When it comes to the Criminal branch, one would find that there is disagreement; for each religious group<sup>[14]</sup> differs in their opinions when it comes to the Statute of Limitation.

However, the opinion that takes supremacy in the Kingdom is the Hanbali opinion, which resides on the following:

No matter what, there is no Statute of Limitation when it comes to Criminal cases and the defendant could never wield the passing of time as a defense, except in two

Situations which are: 1- Crimes of Consolutions<sup>[15]</sup> 2- When the General Legal System<sup>[16]</sup> sees otherwise; under the principle of **Justice**.

### Two, Transaction regime<sup>[17]</sup>

As for the Civil branch and laws<sup>[18]</sup> known as transaction regime based on Islamic jurisdiction, there are a lot of focuses, but rather mainly on acquisition. For example, the acquisition of property; but only when it comes to real-estate, not movables. And the rule behind this type of obsolescence is: the necessity of physical acquisition itself of the property (real-estate) for 15 years<sup>[19]</sup> prior to the filing of the lawsuit. This is before issuing the royal decree number; 2167, in 9/11/1387 therefore, it is followed by Islamic Jurisdiction. Moreover, after issuing that law, there is no ownership over 15 years (attagadum al muksib). However, nowadays there are numerous procedures for territory beyond urban planning ownership and it is known as ‘mwat lands’<sup>[20]</sup>. For example, taking authorization from the governor and start functioning to

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Therefore, there is no fixed statute of limitation in Saudi Arabia that delated the right. Property and assets book pg. 305-307.

<sup>11</sup> ‘gained obsolescence’

<sup>12</sup> Administrative limitation of time – criminal- civil- in Hisham kamel Zawen: law and legislation in Islamic Fiqh.

<sup>13</sup> Dr. Hasan Salah Abduljawad, Third chapter in the research: Aging crime and penalty in Islamic Fiqh.

<sup>14</sup> “math’hb -”

<sup>15</sup> condolences crimes

<sup>16</sup> General system

<sup>17</sup> Property and assets book, Dr. Ayman Saad Saleem, chapter three, discarded discipline. Pg.305 Civil law in Saudi Arabia is known as transaction regime based on Islamic jurisdiction.

<sup>18</sup> Code 222, Saudi labor law, determines the end time limit to claim labor rights.

<sup>19</sup> Almabsot Al Sarkhasi stated: a case shall not be heard from a man who didn't mind left his proceeding for 33 years and then alleged. Because he left the case empowered. Look at, Almalkiya and theoretical contract in Islamic Jurisdiction. Alsheikh abo Zahra, previous reference, pg 140.

<sup>20</sup> For more information look at book of revitalizing mwat lands, Dr. Almuthafer. 1972 edition, pg 78-79.

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<sup>4</sup> 18 USC 3286

<sup>5</sup> 18 USC 3283

<sup>6</sup> 26 USC 6531

<sup>7</sup> 26 USC 7201

<sup>8</sup> 18 USC 1031

<sup>9</sup> As can be seen in the extra hand-out of the “50 states’ chart”

<sup>10</sup> Based on Saudi system: there is statute of limitation, however after a period of times passes the civil commitment changes to natural commitment.

revitalize the lands. The time limit given is 3 years, if he requests for ownership and 25% of the work has been achieved, therefore, the land will be extradited based on a title by the government.

Moreover, when it comes to lawsuits in relation to Corporate, Commercial<sup>[21]</sup>, Legacy of the dead etcetera, the general time limit for these types of cases varies between short: 3-5 years. Or long: ~15 years.

### Three, Administrative<sup>[22]</sup>

The administrative job, under the Saudi government is highly important in a lot of different aspects, but mainly it being that each administrative employee is a governmental employee; thus a representative of what the Saudi government stands for<sup>[23]</sup>.

One then by implication would understand the *massive* effects the Statute of Limitation would have on these jobs; and it quite frankly and in all actuality does.

Thus leading to the fact that the Statute of Limitation in the Administrative branch is quite extensive and detailed, but here, in this paper it shall be limited to the statement of: it is not clarified much in the legal system itself but rather only by implication on Managerial Functions and Business Functions; in the administrative courts<sup>[24]</sup>.

### Purpose of prescription

The Judicial System in the Kingdom of Saudi Arabia is free<sup>[25]</sup>, therefore it can be found that it is highly packed with an unbelievable number of requests of an abundant amount of lawsuits. Thus by nature the existence of the Statute of Limitation is very much so beneficial to the Kingdom; by having it prioritize all the filings by the hierarchy of what is furthest from the time limit. Saving both time and resources for all parties.

### Advantages and Disadvantages

#### - Disadvantages of the Statute of limitation in the USA<sup>[26]</sup>

When it comes to reality, there is always a positive and negative side to any concept, even in legal regulations and rules. Here are several reasons to why the Statute of Limitation can be unfair to a certain extent:

In one situation, the Statute of Limitation can be a major unjust waving of judicial power, for it could very much stand in the way of justice to a plaintiff when attempting to convict a defendant who should have been in jail many, many years ago.

Furthermore, when it comes to child abuse (sexual “physical”

and non-sexual), a victim may find it hard to speak up for many reasons such as: they still live with their abuser, Stockholm syndrome and so on. So it could take years for someone to regain the courage to seek personal justice, yet they, most of the time, get denied in

Justice due to the mere existence of the Statutes of Limitation; despite it being stated otherwise in the federal system. Some states have other rules, and simply have the main rule only on paper, yet it is clearly inapplicable when it comes to executive action.

It could also be found that the Statute of Limitation is too rigid; not as flexible as common law, moreover, it takes a long time to change because of its drawn out process, it can also be dominated by the political agenda of government, as well as rushed through as knee jerk reaction, e.g. Dangerous Dogs Act 2004<sup>[27]</sup>. Last but not least; the ultimate disadvantage would be that there is little to no public knowledge of these legal time limits when it comes to filing a lawsuit.

#### - Advantages of Statute of limitation in the USA<sup>[28]</sup>

Clearly a law wouldn't be set unless it is ultimately just and necessary with an abundant amount of reasons to why it had been concluded. And this is definitely the obvious case when it comes to the Statute of Limitation.

### The focus here will be, however, on these major reasons

It can actually be easily accessed by the general public, *when* they actually become aware of it; making it a combination of necessary evil to surpass the initial disadvantage i.e. the lack of knowledge. Moreover, after multiple read-ons, one would find that it is predictable in the good sense of becoming aware, thus careful. Add to that that it can be repealed if changes in society/technology require as such.

Finally, it is made by politicians after all; who arguably know what the public want best.

#### - Advantages and disadvantages of prescription in KSA<sup>[29]</sup>

After the moral behind the Statute of Limitation has been established as the religious, fair necessity when it comes to the Arab-Muslim world of Saudi Arabia -as clarified in the previous sections of this paper- let us get straight to the point of the positives and negatives of this matter:

In the Kingdom, it is well thought-out when it comes to the durations of the Statute of Limitation. For example, when it comes to the Commercial branch of the law, the prescription is quite shorter in comparison to the civil branch; due to the nature of each. And as that can be considered as beneficial in the rational sense; it is more of a double-edged sword, however; for it would be rather advisable to the creditor to not seek out the debtor after the Statute of Limitation has been indeed, surpassed.

<sup>21</sup> Code 84, private promissory note and commercial papers, a promissory note proceeding shall not be heard after 3 years of its due date.

<sup>22</sup> Administrative prescription Research, Mohammad Saad, pg 4 Nayef university for security sciences.

<sup>23</sup> Code 8 from system proceedings to implement regulations in front of broad of grievances specified 10-year time limit for forfeiture in case tort remedies lawsuit wasn't raised to the board of grievances or the military structure of the member.

<sup>24</sup> Also known as “Diwan Al Mthalam”

<sup>25</sup> That means they don't follow the system of passage of time when there is a lawful excuse.

<sup>26</sup> Statute of Limitations Disadvantages: Abuse Victims by Ryan Turk, regular columnist on CNN news article Collegiate Times. Jan 22, 2014

<sup>27</sup> <http://www.telegraph.co.uk/news/uknews/8224504/Dangerous-Dogs-Act-the-law.html>

<sup>28</sup> As found on thestudentroom.co article: Advantages and Disadvantages to Statute of Limitation

<sup>29</sup> Lawyers of Saudi Arabia blog:

National newspaper, Sunday 19-12-2004, fifth year. Disadvantages of rights falling and obsolescence, Osama Saad Alyamani.

Just as in the USA's legal system, the regulation on the duration of the Statute of Limitation within the Kingdom of Saudi Arabia is very rigid and broad when it would have been more preferable if the law dictated each possible dispute with its specific time-limit instead.

As for the benefits of the existence of the overtime prescription within KSA, -in the specific sense- it creates a healthy balance within the Judicial system and all its branches, moreover, it gives room to focus on all that is important.

Furthermore, if one were to act with inaction towards their own rights, they deserve having those rights set aside for good, to focus on those who actually seek out their rights quite progressively and immediately, thus making the country stable and filled with the proper needed justice.

### Conclusion

We conclude that, prescription (passage of time to hear the case) is completely different than what we have been discussing. There is a specific time limit for limitation stated in the law in the United States. However, statutes of limitation are different from one state to another even if the cases are similar. The right forfeits upon the expiry of the time limit. Same goes to the Arab countries that followed the law of extinctive perception of rights. Moreover, the judge may raise that prescription on his own even if the parties didn't ask for that because it is related to public law.

As a result for countries that have mixed Law and Islamic jurisdiction, the case shall not be heard after the passage of time ends. However, it requires the denial of the defendant and his relicense to claim his right in the passage of time which will lead to disruption of the limitation of time and the judge shall not raise the conflict by his own because it is not related to the public system.

Furthermore, countries like Saudi Arabia that derived their regulations from Islamic Jurisdictions and rely on achieving justice, state that the rule of perception that is stated in the code of sharia procedures does not affect the hearing of the case as long as plaintiff has a lawful excuse that the judge appreciates and hears for even after the time passage has ended legally, once the satisfaction is achieved by the judge, the case shall be heard. However, if the time has ended and the right is denied by the defendant, the judge shall rule that the case cannot be heard. Despite that, the right shall not be distinguished however, it shall stay in the debt of the debtor.

In contrast to pure law regulations that follow the forfeit of right after the time limit end.

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