
SUBJECT MATTER JURISDICTION

1. COMPETENCE

A court must have subject matter jurisdiction (competence) to hear the type of controversy brought before it. Subject matter jurisdiction cannot be waived. A court of general original subject matter jurisdiction is a trial court with the power to hear any type of action. In New York, this is the supreme court of the State of New York. The supreme court can hear all cases except for those brought against the state of New York. There is a supreme court of New York in each of the 62 New York counties. Each of the 62 has jurisdiction, regardless of the county in which the event occurred.

The supreme court has subject matter jurisdiction to hear any case, even if the parties do not reside in New York, and even if the claim has no connection to New York. Thus if A (who resides in New Jersey) serves B (who resides in New Jersey) with process, regarding an event that took place in New Jersey, the NY supreme court would still have **subject** matter jurisdiction on the case. However, the supreme court does not automatically have **personal** jurisdiction over such parties. There are various ways a court can have personal jurisdiction, these will be discussed later.

The courts have discretion whether to dismiss the case upon a motion of the defendant on the grounds of **forum non conveniens** - this means lack of nexus.

EXCEPTIONS TO SUPREME COURT'S GENERAL JURISDICTION

- (1) Cases where federal law confers exclusive jurisdiction to federal courts. Such as bankruptcy, patents and copyright cases.
- (2) Claims for money damages in tort or contract against the State of New York. Such claims are brought in the New York Court of Claims. The State of New York is the only defendant that can be sued in the New York Court of Claims. If an action is against both New York and anyone else, the actions would have to be split into two as only the State of New York can be sued in the New York Court of Claims. Suing an employee of the state does not constitute suing the state. Even if a county of New York is being sued, you still would not bring the action in the New York Court of Claims. Only when the State of New York itself is sued, is the case heard at the New York Court of Claims.

EXCLUSIVE SUBJECT MATTER JURISDICTION OF THE SUPREME COURT OF NEW YORK

The supreme court of New York has exclusive jurisdiction over

- (i) Matrimonial actions (e.g. divorce, annulment);
- (ii) CPLR Article 78 proceedings (e.g. judicial review of administrative action);

- (iii) Declaratory judgment actions. This is where the court rules on the rights and obligations of disputing parties who wish to find out on whose side, the law stands.
- (iv) The highest appeal court in New York is the New York Court of Appeal. The intermediate appeal court is the appellate division.

2. STATUTE OF LIMITATIONS

A. General concepts

Statute of limitations is an **affirmative defense**. The statute of limitations begins to run the day after the injury or event occurs. In personal injury and property damage cases, the statute of limitations begins to accrue from the date of the original impact. For breach of contract cases, it starts from the time of the breach, and does not start when the plaintiff discovers the damage, injury or breach.

If a child is injured *in utero*, the child has no action unless it is born alive. However unlike usual personal injury cases, here, the accrual starts not at point of damage, but from when the child is born. To satisfy the statute of limitations, the action must be **commenced** by the last day that is within the statute of limitations period. In the supreme and county courts, this means that the **process must be filed** by the last day of this period. In any other court this means that the **defendant must be served** with process by the last day.

Personal injury claims and property damages have a three year statute of limitations in New York.

Where the last day falls on a weekend or public holiday, the time is extended until the end of the next business day.

B. Medical malpractice

For **medical malpractice** injuries involving dentists, doctors and hospitals, the statute of limitations is two and a half years from the date of the malpractice. If the plaintiff is suing the employer for their negligence in hiring the doctor that made the mistake, this would be an ordinary negligence claim and thus will have the usual negligence statute of limitations - i.e., three years.

Exceptions to medical malpractice two and a half year statute of limitations rule

- (i) **Continuous treatment** - Where a physician is negligent in his/her treatment of a condition, if the treater continues to treat the plaintiff for the same condition, the statute of limitations starts on the day after the treatment ends.
- (ii) **Foreign object rule** - where a doctor leaves a foreign object in a patient, the plaintiff has two and a half years from date of the event or one year from when the patient discovered, or should have discovered the foreign object, whichever is the longer period.

Note that foreign objects do not include chemical substances or prosthetic devices or fixation devices (such as a steel pin in the knees.)

C. Other professional malpractice

A victim of other types of professional malpractice has **three years** from the date of the termination of services in which the malpractice occurred. For an **architect** this period normally starts at the **completion** of the building, for an attorney from delivery of the completed work.

If a plaintiff is in essence claiming professional malpractice, it does not matter what he writes on the complaint (e.g. breach of contract for negligent performance of contract, to try and take advantage of the six year statute of limitations for breach of contract,) he will only have the period associated with the statute of limitations for the professional misconduct involved.

Non-parties to the original contract are not bound by the statute of limitations associated with the professional malpractice. Thus, if a building collapses causing injuries, the injured parties can utilize the usual three year statute of limitations period for personal injuries against the architect.

Where an architect or engineer is being sued for personal injuries caused by their work, if the suit comes more than ten years after the completion of the building, the following procedural rules apply.

- (i) Plaintiff must serve a notice of claim on the architect or engineer at least 90 days before suit.
- (ii) Plaintiff may obtain discovery from potential defendant during the 90 day waiting period.
- (iii) After suit is commenced, defendant may move to dismiss and the burden will be on the plaintiff to make an immediate evidentiary showing that there is a substantial basis to believe that the defendant's negligence was the proximate cause of the injuries.

D. Products Liability

In New York, products liability claims can be based on one or more of the following tortious claims.

Negligence - the statute of limitations runs out three years from the date of injury.

Strict products liability - the statute of limitations runs out three years from the date of injury.

Breach of warranty - the statute of limitations runs out four years from date of sale. In a products liability case, the defendant can normally sue the manufacturer, retailer and any middlemen involved. Each defendant is liable for four years after he sold it on. For example, if the manufacturer sold it to the distributor in 1990 and the distributor sold it to the wholesaler in 1991, who then sold it to a department store in 1992, each defendant will be liable for four after they sold it on.

Often manufacturers will **indemnify** sellers of their products. Thus, if the department store gets sued, the store can claim indemnification or a contribution from the manufacturer. The statute of limitations for indemnification or contribution claims is **six years** from the date that the store actually paid out the judgment against it.

Where a products case involves exposure to a toxic substance, the statute of limitations starts from when the injury is discovered or should have been discovered. For example, in 1990, a doctor injects the plaintiff with a vaccine that causes a cancer. The cancer is discovered in 1995. In a negligence case or strict products case against the makers of the vaccine, the statute of limitations runs out three years from discovery, i.e., 1998. If the plaintiff tried to sue the doctor for **medical malpractice**, the usual two and a half years statute of limitations period would apply, as this case does not come under one of the two malpractice exceptions to the two and a half year rule.

E. Tolls and Extensions

Toll due to defendant's absence

If the defendant is not in New York when the cause of action starts to accrue, the statute of limitations period does not begin to run until the defendant comes to New York.

If the defendant is in New York when the statute of limitations period starts but leaves and stays away for at least four months continuously, then the period of absence is tolled, unless, despite defendant's being out of town, the New York courts still had personal jurisdiction over him and the plaintiff was able to serve him out of state.

Plaintiff's infancy or insanity

Although an insane or infant plaintiff could sue through a competent adult representative, they still get the benefit of a toll during their infancy or insanity. Thus, the statute of limitations does not begin to run until the infancy or insanity ends. If the original statute of limitations period was three years or more, the plaintiff gets a three year statute of limitations period which begins once the disability is over. If the original statute of limitations period was less than three years, the plaintiff gets that same original period once the disability ends.

Exception

In two cases, the statute of limitations is not tolled indefinitely until the disability ends.

- (i) In an infancy toll, a **medical malpractice** claim must be commenced no later than ten years after the statute of limitations period would normally start - even if the plaintiff is still in infancy when this ten year period ends. The infant plaintiff's remedy would be to get adult representation.
- (ii) A statute of limitation that is tolled due to insanity becomes time-barred ten years from accrual, no matter what the cause of the claim - no matter if the plaintiff is still insane.

Tolls for death

Survival claim - these are any claims that the plaintiff could have made himself whilst still alive. It is not limited to torts, it can include breach of contract and it includes pain and suffering.

Wrongful death - this cause of action is a tort claim for pecuniary damages made by the decedent's (dead person's) heirs. It is limited to a claim for lost earnings of the decedent. Both types of claim are made by the executor (where the decedent left a will) or the administrator (where he died without a will). Each claim has its own statute of limitations rule.

Wrongful death - the statute of limitations runs out two years from date of death. (Even if the death was caused by negligence, [which normally has a three year statute of limitations]). But claimant must also show that the plaintiff's underlying personal injury claim would have been timely if filed at time of death.

Survival claim - if the plaintiff's underlying claim would have been timely if filed at time of death, the claimant will have the remainder of the time that would be left if the plaintiff were alive. Or one year from the death of the plaintiff - whichever is longer.

Where a **defendant** or potential defendant dies during the accrual period, the plaintiff always receives an additional eighteen months to sue the estate.

Six months from dismissal grace period

General rule

If a New York action is timely commenced, but is thereafter dismissed before trial, and at the time of dismissal, the statute of limitations has either expired or has less than six months remaining, the plaintiff gets six months from date of dismissal, to re-file the same action and serve process on the same defendant.

Exceptions

There are four types of prior dismissal which do not affect a six month re-filing period.

- (i) Dismissal on the merits.
- (ii) Voluntary dismissal by plaintiff.
- (iii) Failure to prosecute by plaintiff.
- (iv) Dismissal for lack of personal jurisdiction.

Examples of dismissal for lack of personal jurisdiction are; dismissal for defect in the form of summons, dismissal for out of state service, where no long arm statute applies.

F. Borrowing statute

Where a cause of action occurs out of New York, a difficulty arises if the statute of limitations period is different in New York and the state in which the action arose. The courts wanted to prevent out of state plaintiffs suing in New York to take advantage of longer statute of limitations. Thus, we have the "borrowing statute." The borrowing statute provides as follows:

Out of state cause of action - Where plaintiff is non-resident of New York

New York will apply the statute of limitations of the state where the cause of action arose, if it is shorter than New York's statute of limitations. If the state where the cause of action arose has a longer statute of limitations than New York, then New York will apply New York's statute of limitations.

Out of state cause of action where plaintiff is resident of New York

The New York statute of limitations will apply.

3. Personal JURISDICTION

In addition to subject matter jurisdiction, three additional jurisdiction elements must be satisfied in order for court to render a valid judgment. Failure of one of these three elements will mean a failure of personal jurisdiction.

- (i) Proper commencement of the action.
- (ii) Proper service of process on defendant.
- (iii) Proper basis of jurisdiction over the person or property involved in the action.

(i) Proper commencement of the action

A **duly** commenced action means the action was correctly and properly commenced.

Timing

In the **lower civil courts** (i.e. NYC civil court, all other city courts, district courts of Nassau and Suffolk Counties, and the Justice courts) an action is commenced by serving the defendant with process.

In the **Supreme courts and County court** an action is commenced by filing process with the court clerk. The filing must be accompanied by payment of a fee for the purchase of index number. This is then followed by service of process in the defendants. **The process must be served on defendant within 120 days** (approximately four months) of filing with the court. The court, at its discretion, may increase this time to serve on defendant.

If the defendant is not timely served, he may make a motion to dismiss for untimely service. It is at the court's discretion whether to grant such a motion.

(ii) Proper service of process on defendant

What is "process"?

There must be a summons and a complaint. The summons advises the defendant that the plaintiff is suing him in a particular court. The complaint is the plaintiff's pleading. It specifies the transaction or the event that is the subject of the complaint. It must also spell out the basic causes of action (i.e., the legal grounds to sue).

Sometimes the summons is accompanied by a notice instead of a complaint. The notice consists of:

- i) A brief statement of nature of action,
- ii) The nature of relief sought,
- iii) The amount of damages the plaintiff is seeking (except for medical malpractice cases which must not specify amount of damages.)

If the plaintiff serves a summons without an accompanying complaint or notice, it causes a defect in the personal jurisdiction of the court and the case is subject to dismissal.

Days on which process can be served

A **duly** served action means the action was correctly and properly served.

The process can be served by any person 18 years or older that is not a party to the action (the plaintiff's attorney is not considered a party to the action nor is his spouse - only the plaintiff himself is a party to the action).

Process may be served on any day of the week except Sunday, or Sabbath if the defendant is a Sabbath observer and the plaintiff is aware of this. However if the plaintiff served a Sabbath observer on Sabbath because he was unaware of this, the service is valid. Service on holidays is valid.

Method of delivery

We will see soon that only certain methods of delivery are acceptable and if these methods are not adhered to, the service is defective even though the defendant might receive the process and thus have notice of it.

(a) Personal delivery

Service by personal delivery is complete upon process server's tender of summons directly to the defendant (defendants response time starts upon completed delivery). If the process is given to someone other than the defendant, the service has not been complete even if that person then hands the summons to the defendant.

(b) "Leave and mail"

In order for service to someone other than the defendant to be valid, it must be

- i) Delivered to someone of suitable age and discretion.
- ii) At the defendants dwelling place or place of business
- iii) **Plus** a copy must be **mailed** to the defendant at the defendant's dwelling place or place of business within **20** days of the delivery.

This method is called the "**leave and mail**" method. **Service is complete 10 days after proof of service is filed.** Proof of service is an affidavit by the

process server describing the details of the service. Failure to file a proof of service is not a jurisdictional defect but rather will delay the start of the defendant's response time.

If there are two defendants, each is required to receive a copy of the summons. If the leave and mail method is used, each must be left their own copy and a copy must be mailed to both of them.

(c) Affix and mail

In order for the affix and mail method to be used

- i) The process server must affix the process to the door of defendants dwelling place or place of business.
- ii) Plus a copy must be mailed to the defendant at the defendant's dwelling place or place of business within 20 days of the delivery.
- iii) The process server must first exercise **due diligence** in attempting to use either the personal delivery or leave and mail method

Due diligence is more than just showing up once - several attempts must be made at different times of day (usually three attempts will suffice). Service is complete 10 days after proof of service is filed.

(d) Expedient service

If the plaintiff exercises due diligence but has not been able to carry out one of the above methods (usually because he has been unable to trace the defendants current whereabouts) he may make an *ex-parte* motion to the court, for an order allowing an improvised method of delivery that is reasonable under the circumstances - perhaps service on a child or publishing in a newspaper etc. Remember - the plaintiff cannot use expedient service without a court order.

(e) Designated agent

A plaintiff may serve process on the designated agent. Often contracts will designate an agent (such as the defendant's attorney) as authorized to receive any complaints that may arise over the contract.

(f) Infants and the mentally incapacitated

Where the defendant is an infant, the infant's name goes on the summons and complaint but the delivery goes to an eligible adult. An eligible adult is normally the parent or guardian. Where the infant is 14 or older, the process must be served on both the infant and the eligible adult. Any of the above methods may be used.

Where the defendant is mentally incapacitated and the courts have appointed a legal guardian, the complaint must be served on both the legal guardian and the defendant. If no guardian has been appointed by the courts, then only the

defendant is served. Mail service cannot be used for defendants that are infants or mentally incapacitated (see below)

(g) Service outside of New York

Assuming there is a basis for out of state service, the usual methods are employed for service **even if they are not valid** under that state's law. Anyone authorized by New York, or the out-of-state's law, or any attorney licensed in that state, may serve process.

(h) Corporations

Where a corporation is the defendant, two methods of service are acceptable - personal delivery and service on the secretary of state.

Personal delivery can be made to:

- i) Any officer of the corporation.
- ii) Any director.
- iii) A designated agent.
- iv) Managing agent.

Delivery cannot be made to the secretary. Leave and mail is not valid to a corporation. Neither is affix and mail.

If there is a basis of jurisdiction over the corporation, service can be made by personal delivery to any of the above, wherever they are in the US.

Service on secretary of state

For a domestic corporation (i.e., incorporated in New York), or a foreign corporation that is licensed to do business in New York, two copies should be delivered to the secretary of state. The secretary of state who is a designated agent of all New York businesses will mail a copy to the corporation. For an unlicensed foreign corporation, a copy should be mailed to the secretary of state (who is an implied agent for the corporation) and another copy should be sent by certified mail to the corporation.

(i) Service by first class mail plus acknowledgement.

If the plaintiff is very far away from the defendant, he may want to utilize a service which uses just mail. He may only do so by

- i) Mailing the process by first class mail to the defendant.
- ii) Enclosing an acknowledgement form.
- iii) A return prepaid addressed envelope.
- iv) The defendant must agree to be served in this way by signing the form and returning it within thirty days of receipt.

Service will be completed once the defendant posts the acknowledgement form. If the defendant does not return the acknowledgement form, or does so more than thirty days after receipt, the service was invalid and the plaintiff must serve the defendant again.

A return of the acknowledgement form does not mean that the defendant has agreed that the court has jurisdiction over him. **Service by mail can be used regardless of whether the defendant is in or out of state.** Mail service cannot be used for defendants that are infant or mentally incapacitated.

[To see the remaining pages of this outline, please click here to purchase access to Smarter Review](#)