New Glasses, an Antibiotic and a slice of Law | 1

VOISIN LAW

What does “prescription” mean to you? For most, it is simply a written direction from your Doctor for the preparation and use of medicine. It is not just medicine. It can apply to eyewear. I recall the classic Steven Wright observation: “I had some eye glasses. I was walking down the street when suddenly the prescription ran out”.

For lawyers, prescription is the time period in which a party can bring a claim. As a young legal student in England back in 1623, I was referred to the statute of limitations and specifically the Limitation Act 1980. This Law provided the timescales in which actions could be taken in England and Wales. For example, a simple breach of contract had to be brought within 6 years of the date of the breach. If you were run over by an emu, that period was 3 years and so on.

The fact that these limits were set out in one document was of great assistance to all practitioners.

As with all things the “Jersey way”, when I rocked up at Voisin, I was advised that Jersey did not have a statute of limitations. It still doesn’t. The Jersey periods are almost entirely dictated by customary law and precedent. More of which later.

The aim of the statute of limitation “is to prevent citizens from being oppressed by stale claims, to protect settled interest from being disturbed, to bring certainty and finality to disputes …..”.

When discussing the introduction of the new Royal Court Practice Directions in last month’s article, I commented upon the judiciary’s obsession with time and time limits. I have no doubt that such comments will come back to bite me on the backside at a later date. It did to some extent this month when I happened upon a Judgment of the Master of the Royal Court who was adjudicating upon an application by an Applicant for an extension of time to challenge a planning decision. He had failed to file a planning appeal within the requisite time. A number of interesting points were discussed and adjudicated upon but one notable issue for me was the Court’s findings concerning the Applicant’s failure to act timeously from the date that he became aware of the decision of the Planning Department. It would appear that the Applicant took time to instruct lawyers and the Master concluded that had the Applicant acted more quickly, there was a greater chance that the relevant time limit would have been met.

Accordingly, the Master refused to extend the time period to file the appeal even though he had the power to do so.

This brings me back to where we started: prescription. If you have a claim, you must make sure that you bring it within the appropriate time period. Prescription starts to run as soon as the cause of action has occurred. As with all law, there can be conditions. In the famous Jersey case of Maynard, the Plaintiff was exposed to asbestos fibres in the 1970s. It was not until the 1990s that he tragically started to suffer lung disease caused by the asbestos. On the face of it, he brought his claim outside the prescribed 3 year time limit. The Court of Appeal held that the cause of action in the tort of negligence accrues only when the damage has been become reasonably discoverable to the Plaintiff.

In Jersey, you have to be extra careful to identify and quantify prescription periods because frankly they are all over the place. Perhaps it is time to consolidate.

Here are but a few examples:

An Action Pétitoires has a prescription period of 40 years. An action Déception d'outre moitié du juste prix is 30 years. Any action Partage d'héritage is 25 years. In contract, it is 10 years. Torts are 3 years. An action to annul wills of realty and personality must be done within a year and a day. You must file any opposition to passing a contract within 6 months and a landlord's droit de suite is only but 40 days.

Apart from my appalling showboating, what is the lesson in all of this? Notwithstanding the laudable aims of prescription periods and time limits, unfortunately worthy causes do fall away as a result. Tough justice. If in doubt, go and see a lawyer. If you think you have a claim, move quickly. The next time you make any planning applications or such like, ensure that you comply with the time periods in which appeals etc must be filed. Failure to do so can have catastrophic effects.

I am now off to develop an app which will assist those living in Jersey to identify the recognised prescription/time periods for legal actions/steps that can be taken in our beautiful Island. I can just see me ringing that Wall Street bell next year.