

## CHAPTER 8

### Limitation of Action

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#### **§ 801. Presumption of satisfaction of judgment.**

A judgment of any court shall be presumed to be paid and satisfied at the expiration of 20 years after it is rendered.

**Source:** TT Code 1966 § 315; TT Code 1970, 6 TTC 301; TT Code 1980, 6 TTC 301.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

**Case annotations:** The general rule is that statutes of limitations do not run against the sovereign. *FSM Dev. Bank v. Yap Shipping*

*Coop.*, 3 FSM R. 84, 86 (Yap 1987).

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. *FSM Dev. Bank v. Yap Shipping Coop.*, 3 FSM R. 84, 86 (Yap 1987).

A statute of limitation begins to run when the cause of action accrues. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

### **§ 802. Limitation of twenty years.**

(1) The following actions shall be commenced only within 20 years after the cause of action accrues:

- (a) actions upon a judgment;
- (b) actions for the recovery of land or any interest therein.

(2) If the cause of action first accrued to an ancestor or predecessor of the person who presents the action, or to any other person under whom he claims, the 20 years shall be computed from the time when the cause of action first accrued.

**Source:** TT Code 1966 § 316; TT Code 1970, 6 TTC 302; TT Code 1980, 6 TTC 302.

**Case annotation:** Denial to a defendant of the right to assert a statute of limitations defense by way of punishment for tardiness in filing its answer is inappropriate. *Lonno v. Trust Territory (III)*, 1 FSM R. 279, 280 (Kos. 1983).

The general rule is that statutes of limitations do not run against the sovereign. *FSM Dev. Bank v. Yap Shipping Coop.*, 3 FSM R. 84, 86 (Yap 1987).

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. *FSM Dev. Bank v. Yap Shipping Coop.*, 3 FSM R. 84, 86 (Yap 1987).

A statute of limitation begins to run when the cause of action accrues. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

Since the statute of limitations does not commence running until after the cause of action accrues a prerequisite to determining the when the cause of action accrues is a precise clarification of the cause of action. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 174 (Pon. 1993).

In general, a cause of action accrues when the right to bring suit on a claim is complete. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 176 (Pon. 1993).

In cases where a cause of action is contingent on a condition precedent, the statute of limitations does not begin to run until the condition has occurred, and as to a continuing injury until damages are actually sustained. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 176 (Pon. 1993).

The 20 year statute of limitation to contest land title did not take effect until 1951 so that it could not be asserted as a defense until 1971. *Chipuelong v. Chuuk*, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

In order for an action over an interest in land to be barred by the statute of limitations, the cause of action must arise more than 20 years before the action is brought. If the claim could have been made over 20 years before it was actually made, then the action can no longer be maintained, no matter how meritorious. *Chipuelong v. Chuuk*, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

When 38 years have elapsed since the determination of ownership of a tract of land in the Wito Clan, when there have been public notices posted concerning the determination and concerning its later lease to the Trust Territory; two separate High Court decisions and three determinations of ownership concerning the land, and when construction activity on the land began 36 years ago; this constitutes both constructive and actual notice of the Wito Clan's claim to the land to another clan whose numerous members lived on the same small island. *Chipuelong v. Chuuk*, 6 FSM R. 188, 195 (Chk. S. Ct. Tr. 1993).

### **§ 803. Limitation of two years.**

The following actions shall be commenced only within two years after the cause of action accrues:

- (1) actions for assault and battery, false imprisonment, or slander;
- (2) actions against a chief of police, policeman, or other person duly authorized to serve process, for any act or omission in connection with the performance of his official duties;
- (3) actions for malpractice, error, or mistake against physicians, surgeons, dentists, medical or dental practitioners, and medical or dental assistants;
- (4) actions for injury to or for the death of one caused by the wrongful act or neglect of another, except as otherwise provided in chapter 5 of this title, or a depositor against a bank for the payment of a forged or raised check, or a check which bears a forged or unauthorized endorsement.

**Source:** TT Code 1966 § 317; TT Code 1970, 6 TTC 303; TT Code 1980, 6 TTC 303.

**Case annotation:** Denial to a defendant of the right to assert a statute of limitations defense by way of punishment for tardiness in filing

its answer is inappropriate. *Lonno v. Trust Territory (III)*, 1 FSM R. 279, 280 (Kos. 1983).

The general rule is that statutes of limitations do not run against the sovereign. *FSM Dev. Bank v. Yap Shipping Coop.*, 3 FSM R. 84, 86 (Yap 1987).

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. *FSM Dev. Bank v. Yap Shipping Coop.*, 3 FSM R. 84, 86 (Yap 1987).

A statute of limitation begins to run when the cause of action accrues. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

#### **§ 804. Actions by or against the estate of a deceased person.**

Any action by or against the executor, administrator, or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two years after the executor, administrator, or other representative is appointed or first takes possession of the assets of the deceased.

**Source:** TT Code 1966 § 318; TT Code 1970, 6 TTC 304; TT Code 1980, 6 TTC 304.

#### **§ 805. Limitation of six years.**

All actions other than those covered in the preceding sections of this chapter shall be commenced within six years after the cause of action accrues.

**Source:** TT Code 1966 § 319; TT Code 1970, 6 TTC 305; TT Code 1980, 6 TTC 305.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

**Case annotation:** Denial to a defendant of the right to assert a statute of limitations defense by way of punishment for tardiness in filing its answer is inappropriate. *Lonno v. Trust Territory (III)*, 1 FSM R. 279, 280 (Kos. 1983).

There is no provision in the Public Service Act nor in the Public Service System Regulation that establishes a time limit for seeking judicial review of agency action. For this reason, the Court adopts the six-year statute of limitations established in 6 TTC 305 and holds that the petition for judicial review was filed in a timely manner. *Amor v. Pohnpei*, 3 FSM R. 28, 33 (Pon. S. Ct. Tr. 1987).

The general rule is that statutes of limitations do not run against the sovereign. *FSM Dev. Bank v. Yap Shipping Coop.*, 3 FSM R. 84, 86 (Yap 1987).

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. *FSM Dev. Bank v. Yap Shipping Coop.*, 3 FSM R. 84, 86 (Yap 1987).

A statute of limitation begins to run when the cause of action accrues. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

In the absence of any law or regulation in the Federated States of Micronesia which provides a specific limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

A statute of limitation begins to run when the cause of action accrues. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

When a stock subscription specifies the date of payment, including payment in installments at specified times, the corporation has no cause of action until the date specified and at that time the statute of limitations begins to run. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 161 (Pon. 1989).

Laches is a tool courts use to limit a party's rights when they have not been timely asserted, such that it is unfair for the court to now redress them. The period of time may be less than the statutory limitations period and each case must be judged on a case by case basis for fundamental fairness. *Palik v. Kosrae*, 5 FSM R. 147, 155 (Kos. S. Ct. Tr. 1991).

A cause of action accrues, and the statute of limitations begins to run, when a suit may be successfully maintained thereon. Where a note is payable in installments, each instalment is a distinct cause of action and the statute of limitations begins to run against each instalment from the time it becomes due, that is, from the time when an action might be brought to recover it. *Waguk v. Kosrae Island Credit Union*,

6 FSM R. 14, 17 (App. 1993).

The applicable period of limitations on actions arising under the Corporations, Partnerships and Associations Regulations is six years. 6 F.S.M.C. 805. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 174 (Pon. 1993).

Since the statute of limitations does not commence running until after the cause of action accrues a prerequisite to determining the when the cause of action accrues is a precise clarification of the cause of action. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 174 (Pon. 1993).

In general, a cause of action accrues when the right to bring suit on a claim is complete, the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 176 (Pon. 1993).

In cases where a cause of action is contingent on a condition precedent, the statute of limitations does not begin to run until the condition has occurred, and as to a continuing injury until damages are actually sustained. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 176 (Pon. 1993).

A cause of action based on violation of Corporations, Partnerships, and Associations Regulation 2.7 accrues from the point of insolvency of the corporation. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 176-77 (Pon. 1993).

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud, or when reasonable diligence should have led to discovery of the fraud. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 177 (Pon. 1993).

An action for damages for negligent surveying is not an action for the recovery of an interest in land, for which the 20 year statute of limitation would apply, therefore it may be barred by the lesser statute of limitations. *Damarlane v. United States*, 6 FSM R. 357, 361 (Pon. 1994).

Under § 24(1) of the Pohnpei Government Liability Act of 1991, the statute of limitations on a cause of action brought pursuant to the Act is not suspended during the period of administrative review required by the statute. *Abraham v. Lusangulira*, 6 FSM R. 423, 425 (Pon. 1994).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the 20 year statute of limitations did not start to run until 1989. *Cheni v. Ngusun*, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

**§ 806. Disabilities.**

If the person entitled to a cause of action is a minor or is insane or is imprisoned when the cause of action first accrues, the action may be commenced within the times limited in this chapter after the disability is removed.

**Source:** TT Code 1966 § 320; TT Code 1970, 6 TTC 306; TT Code 1980, 6 TTC 306.

**Case annotations:** The Federated States of Micronesia tolling statute, 6 F.S.M.C. 806, applies to persons "entitled to a cause of action," including minors for whom wrongful death actions may be brought. *Luda v. Maeda Road Constr. Co.*, 2 FSM R. 107, 113 (Pon. 1985).

The two-year period proclaimed in 6 F.S.M.C. 503(2) is subject to the tolling provisions of 6 F.S.M.C. 806. Accordingly, the statute of limitations has not run against the minor children in this case. *Sarapio v. Maeda Road Constr. Co.*, 3 FSM R. 463, 464, (Pon. 1988).

**§ 807. Mutual account.**

In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account.

**Source:** TT Code 1966 § 321; TT Code 1970, 6 TTC 307; TT Code 1980, 6 TTC 307.

**§ 808. Extension of time by absence from the Trust Territory.**

If at the time a cause of action shall accrue against any person he shall be out of the Trust Territory, such action may be commenced within the times limited in this chapter after he comes into the Trust Territory. If, after a cause of action shall have accrued against a person he shall depart from and reside out of the Trust Territory, the time of his absence shall be excluded in determining the time limited for commencement of the action.

**Source:** TT Code 1966 § 322; TT Code 1970, 6 TTC 308; COM PL 4C\_55 § 1; TT Code 1980, 6 TTC 308.

**§ 809. Extension of time by fraudulent concealment.**

If any person who is liable to any action shall fraudulently conceal the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within this chapter after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards.

**Source:** TT Code 1966 § 323; TT Code 1970, 6 TTC 309; COM PL 4C-55 §2; TT Code 1980, 6 TTC 309.

**§ 810. Effect upon causes existing on May 28, 1951.**

For the purposes of computing the limitations of time provided in this chapter, any cause of action existing on May 28, 1951 shall be considered to have accrued on that date.

**Source:** TT Code 1966 § 324; TT Code 1970, 6 TTC 310; TT Code 1980, 6 TTC 310.

**Case annotations:** The 20 year statute of limitation to contest land title did not take effect until 1951 so that it could not be asserted as a defense until 1971. *Chipuelong v. Chuuk*, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

Claims for torts that took place before 1951 accrued, at the latest, when the applicable Trust Territory statute took effect in 1951. Unless tolled, the statutes of limitation bar the FSM courts from adjudicating such claims. *Alep v. United States*, 6 FSM R. 214, 219-20 (Chk. 1993).

**§ 811. Limitation of time for commencing.**

A civil action or proceedings to enforce a cause of action mentioned in this chapter may be commenced within the period of limitation herein prescribed, and not thereafter, except as otherwise provided in this chapter.

**Source:** COM PL 4C-55 § 3; TT Code 1980, 6 TTC 311.

**§ 812. Reckoning of period.**

Except as otherwise provided, periods herein prescribed shall be reckoned from the date when the cause of action accrued.

**Source:** COM PL 4C-55 § 3; TT Code 1980, 6 TTC 312.

**§ 813. Contrary agreements.**

No agreement made subsequent to the effective date of this section for a period of limitation different from the period described in this chapter shall be valid.

**Source:** COM PL 4C-55 § 3; TT Code 1980, 6 TTC 313.

**§ 814. Existing rights of action.**

Revision of this chapter shall not be construed to extinguish any rights or remedies which have accrued to any party prior to such revision, unless specifically provided otherwise.

**Source:** COM PL 4C-55 § 3; TT Code 1980, 6 TTC 314.

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