CONCLUSION

Limitation periods generally begin at one of three points: when the action accrues, when the action becomes discoverable, or when the act or omission alleged to have caused the damage occurs. However, because the limitation statutes vary significantly from jurisdiction to jurisdiction and often depend on the type of personal injury claim, particular attention should be paid to the jurisdiction's legislation, as identifying the point at which a limitation period commences is often critical to the bringing of a claim. ■

Notes: **1** For those who are interested, a comprehensive table can be found in Hanford, *Limitation of Actions: The Laws of Australia* (2nd ed, 2006). **2** See, for example, *Limitation of Actions Act 1958* (Vic) s5(1A), or s55(1) of the *Limitation Act* 2005 (WA). **3** *Reeves v Butcher* [1891] 2 QB 509, 511, Lindley J. **4** Luntz & Hambly, *Torts* (5th ed, 2006), 342 citing J Stapleton, *The Gist of Negligence: Parts I & II* (1988) 104 LQR 143. **5** (Unreported, Queens Bench Division, Turner J, 23 January 1998) [136]. **6** Hanford, *Limitation of Actions: The Laws of Australia* (2nd ed, 2006), [810]. **7** *Backhouse v Banomi* (1861) 9 HCL 503. **8** (Unreported, Vincent J, Supreme Court of Victoria, 12 March 1987). **9** [2006] HCA 1. **10** (2002) 211 CLR 317. **11** *Tame v NSW*, [7]. **12** *Re Donald Edgerton Jobbins v Capel Court Corporation Ltd* [1989] 25 FCR 226; *Hawkins v Clayton* (1986) 5 NSWLR 109, 124 (Glass JA). **13** [1963] AC 758, (*Cartledge*). **14** Colbran, Reinhardt, Spender, Jackson & Douglas, *Civil Procedure Commentary and Materials* (3rd ed, 2005), 302. **15** *Cartledge*, 778 (Lord Pearce). **16** *Review of the Law of Negligence Final Report*, Commonwealth of Australia, Rec 24. **17** *Limitation of Actions Act 1958* (Vic) s27F. **18** *Limitation Act 1969* (NSW) s50D. **19** *Limitation Act 1974* (Tas) s5A. **20** *Limitation Act 1985* (ACT) s16B. **21** *Limitation Act 2005* (WA) s55(1): which defines 'accrue' similarly to other jurisdictions' definition of 'discoverable'. **22** For example, *Delai v Western District Health* [2009] VSC 151; *Kaye v Hoffman* [2008] TASSC 2; *Casey v Alcock* [2009] ACTCA 1. **23** [2008] VSC 198 ('*Spandideas*'). **24** *Spandideas*, [32]. **25** *Spandideas*, [35]. **26** *Spandideas*, [27]. **27** *Telstra Corporation v Rea* [2002] NSWCA 49, *Commonwealth of Australia v Smith* [2005] NSWCA 478. **28** *Spandideas*, [65] **29** [2007] TASSC 31, [35] (Master Holt). **30** New Zealand Law Commission, *Limitation Defences in Civil Proceedings* (Report No. 6 1988) ('New Zealand Report'), [169]-[170]. **31** *Midland Bank Trust Co Ltd v Heft, Stubbs & Kemp* [1979] Ch 384. **32** *Turner v Roche Mining (MT)* [2006] QDC 094. **33** New Zealand Report, [170].

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WINDMILLS OF MY MIND

Rogue economist and plain-speaking judges

By Andrew Stone

One of my favourite books of recent times has been *Freakonomics: A Rogue Economist Explores the Hidden Side of Everything (2005)* by Steven Levitt and Stephen Dubner. Levitt, a well-regarded but self-described rogue economist, applies economic theories to analyse social phenomenon: why real estate agents sell their own homes for more; the economic hierarchies of gangs and why parents from lower socio-economic groups give their children wacky names. The book has topped the *New York Times* bestseller list.

One of Levitt's most controversial theories is his attribution of a drop in the crime rate in major US cities in the 1990s to the legalisation of abortion following *Roe v Wade* in 1973. Levitt hypothesises that the greater availability of abortion means fewer children being born to poor single mothers. Over time, this leads to fewer juvenile delinquents, fewer adult criminals and thus less crime.

In propounding this theory, Levitt was critical of John Lott, an academic who contends that the carrying of concealed weapons leads to a drop in crime rates. Lott has published his own research to support his argument. Levitt was critical of Lott's research, observing that other scholars had been unable to replicate Lott's results.

In passing, I disclose that while I am a fan of having a bill of rights, I am no fan of including a right to keep and bear arms. Far too many Americans have found that the second amendment impinges upon their right not to get shot.

Lott sued Levitt for defamation in the District Court in Illinois. An Illinois judge dismissed the case, finding no defamatory imputation.

Lott subsequently sought to revive his claim, arguing that Virginia law should have been applied, despite his prior acceptance and reliance on the Illinois jurisdiction. The District Court refused to revive the case, finding that Lott had waived his choice of law argument. Lott appealed. The Seventh Circuit of United States Court of Appeals dismissed Lott's appeal. Writing for the court, Judge Evans concluded:

> 'Lott is not entitled to get a free peek at how his dispute will shake out under Illinois law and, when things don't go his way, ask for a mulligan under the laws of a differing jurisdiction. In law (actually in love and most everything else in life), timing is often everything. The time for Lott to ask for the application of Virginia law has passed – the train has left the station.'

A quick search on Austlii shows that the mulligan (for the non-golfers it means to take a shot over again without penalty) has yet to enter the Australian legal lexicon. The readership for judgments from Australian courts might expand if Judge Evans' plainspoken style was more widely adopted. ■

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